

**APPRAISAL REPORT**

COMMERCIAL TIDELANDS  
NEWPORT HARBOR  
NEWPORT BEACH, CALIFORNIA

DATE OF VALUE  
AUGUST 10, 2012

PREPARED FOR

MR. ROB HOUSTON  
ASSISTANT TO THE CITY MANAGER  
CITY OF NEWPORT BEACH  
3300 NEWPORT BOULEVARD  
NEWPORT BEACH, CALIFORNIA 92663

PREPARED BY

NETZER & ASSOCIATES  
170 E. SEVENTEENTH STREET, SUITE 206  
COSTA MESA, CALIFORNIA 92627  
FILE NO. 2012-014

# NETZER & ASSOCIATES

Real Estate Appraisal & Consulting

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August 10, 2012  
File No. 2012-014

Mr. Rob Houston  
Assistant to the City Manager  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, CA 92663

Re: Appraisal Services  
Commercial Tidelands – Newport Harbor  
Newport Beach, California

Dear Mr. Houston:

In accordance with your request and authorization, I have undertaken the investigations and analyses necessary to estimate the Market Value, Fee Simple Interest, in the above referenced real property, which is the subject of this report. James B. Netzer conducted inspections of the subject properties in June, July and August 2012.

Based upon the work undertaken and my experience as a real estate analyst and appraiser, I have formed the opinion, as of the 10th day of August 2012, subject to the Assumptions and Limiting Conditions contained in this report, that the subject has the following market values:

## SECTION A

Current Fair Market Rent for the Fuel Docks is \$0.99 per square foot per annum, against a rent per gallon of \$0.015 per gallon for the first 100,000 gallons (combined gas & diesel) and \$0.02 per gallon in excess of 100,000 gallons (combined gas & diesel).

Annual Base Rent for 813 E. Bay Avenue  
**TWELVE THOUSAND FOUR HUNDRED THIRTY FOUR DOLLARS**  
**\$12,434.00**

Annual Base Rent for 406 S. Bay Avenue  
**ELEVEN THOUSAND ONE HUNDRED EIGHTY SEVEN DOLLARS**  
**\$11,187.00**

Rob Houston  
August 10, 2012  
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#### SECTION D

The submerged tidelands in Newport Harbor that are not leased in conjunction with the adjoining upland parcel for marina purposes have a Minimum Fair Market Rent of \$1.45 per square foot of tidelands against 20.0-percent of the gross revenue from slip rental fees.

The submerged tidelands used by non-profits (ExploreOcean, etc...), have a Fair Market Rent that is on a "No Fee" basis. The Fair Market Rent for submerged tidelands used by non-profits that are used for the rental of marina slips is 20-percent of the gross slip rental revenue.

The submerged tidelands that are associated with yacht clubs, have a base Fair Market Rent of \$0.55 per square foot of tidelands against 20.0-percent of the gross revenue from slip rental fees not associated with regattas or junior sailing programs.

The submerged tidelands in Newport Harbor that are leased for "short-term" uses (90-days or less) for "Marina-Oriented" business's (shipyards, yacht brokerage), in conjunction with the adjoining upland parcel, have a Fair Market Rent of \$0.99 per square foot of tidelands against 4.0-percent of the gross revenue from "short-term" slip rental fees.

This letter of transmittal must remain attached to the summary appraisal report, which contains 77 pages plus related exhibits, in order for the value opinions set forth to be considered valid.

I invite your attention to the following summary narrative report which has been prepared in accordance with the Code of Professional Ethics of the Appraisal Institute and is in compliance with the USPAP standards, and sets forth the data and analysis which my opinions are, in part, predicated. Thank you for the opportunity of serving you in this matter.

Respectfully submitted,

  
James B. Netzer, MAI  
California General Appraiser No. AG003143

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## CERTIFICATION

To the best of my knowledge and belief, I certify that:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions and conclusions.

I have no present or prospective interest in the property that is the subject of this report, and have no personal interest or bias with respect to the parties involved.

I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of the this assignment.

I have no bias with respect to the property that is the subject of this report or to the parties involved in the assignment.

My engagement in this assignment was not contingent upon developing or reporting predetermined results.

My compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, which include the *Uniform Standards of Professional Appraisal Practice*.

The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

I have made a personal inspection of the property that is the subject of this report.

In accordance with the USPAP Competency Provision, I certify that I have the knowledge and experience to complete this assignment and have appraised this property type before.

Disclosure of the contents of this appraisal review is governed by the Bylaws and Regulations of the Appraisal Institute. In furtherance of the aims of the Institute to develop higher standards of professional performance by its Members, the appraiser may be required to submit authorized committees of said Institute copies of this report and any subsequent changes or modifications thereof.

The Appraisal Institute conducts a voluntary program of continuing education for its designated members. MAI's who meet the minimum standards of this program are awarded periodic

educational certification. As of the date of this report, James B. Netzer has completed the requirements under the continuing education program of the Appraisal Institute.

I have personally conducted an inspection of the real property identified in Exhibit A to the Contract For Services, which is the subject of this report. Based upon my investigation and analysis, I have formed the opinion that the subject submerged tidelands have the following Fair Market Rental values as of August 10, 2012:

#### SECTION A

Current Fair Market Rent for the Fuel Docks is \$0.99 per square foot per annum, against a rent per gallon of \$0.015 per gallon for the first 100,000 gallons (combined gas & diesel) and \$0.02 per gallon in excess of 100,000 gallons (combined gas & diesel).

I have concluded that the gas dock located at 813 E. Bay Avenue, Newport Beach, California, has an Annual Base Rent of \$12,434.00, against a rent per gallon of \$0.015 per gallon for the first 100,000 gallons (combined gas & diesel) and \$0.02 per gallon in excess of 100,000 gallons (combined gas & diesel).

I have concluded that the gas dock located at 406 S. Bayfront, Newport Beach, California, has an Annual Base Rent of \$11,187.00, against a rent per gallon of \$0.015 per gallon for the first 100,000 gallons (combined gas & diesel) and \$0.02 per gallon in excess of 100,000 gallons (combined gas & diesel).

#### SECTION D

The submerged tidelands in Newport Harbor that are not leased in conjunction with the adjoining upland parcel for marina purposes have a Minimum Fair Market Rent of \$1.45 per square foot of tidelands against 20.0-percent of the gross revenue from slip rental fees.

The submerged tidelands used by non-profits (ExploreOcean, etc...), have a Fair Market Rent that is on a "No Fee" basis. The Fair Market Rent for the submerged tidelands used by non-profits that are used for the rental of marina slips is 20-percent of gross slip rental revenue.

The submerged tidelands that are associated with yacht clubs, have a base Fair Market Rent of \$0.55 per square foot of tidelands against 20.0-percent of the gross revenue from slip rental fees not associated with regattas or junior sailing programs.

The submerged tidelands in Newport Harbor that are leased for "short-term" uses (90-days or less) for "Marina-Oriented" business's (shipyards, yacht brokerage), in conjunction with the adjoining upland parcel, have a Fair Market Rent of \$0.99 per square foot of tidelands against 4.0-percent of the gross revenue from "short-term" slip rental fees.

Respectfully submitted,

  
James B. Netzer, MAI  
California General Appraiser No. AG003143

## INTRODUCTION

### Purpose of Report

The purpose of this report is to set forth the data, analyses, and conclusions relative to my opinion of the Fair Market Rent for the various uses of the submerged tidelands located in Newport Harbor, in the City of Newport Beach, California. As set forth in Exhibit "A" of the Professional Services Agreement, dated May 25, 2012, between Netzer & Associates and the City of Newport Beach, market rent conclusions for the following tideland uses are presented:

- A. Commercial entities operating at fixed locations on tideland properties, i.e. gas dock operations;
- D. Commercial piers within the City of Newport Beach;

For the purpose of describing the properties and the presentation of market data and market rent conclusions the above property uses will be discussed separately in the report and will be segregated by section based on the above outline.

### Function of Report

The function of this report is to estimate the Fair Market Rent of the above uses for the City's internal purposes and possible revisions to the City's Harbor Permit Policy. For reference, the City's Harbor Permit Policy is included in the report Addenda. The appraisal is completed in compliance with the City's Harbor Permit. The appraisal is made at the request of Rob Houston, Assistant to the City Manager, with the City of Newport Beach, who is the intended user of this report.

### Date of Value

The date of value presented in this report is August 10, 2012. Given the number of properties involved in this report the inspections were completed during the months of June, July and August 2012.

### Scope of Investigation

This report conveys the results of my investigations and analyses concerning the subject property. The report includes a summary of the information utilized and the methodology used in determining an estimate of value. The appraisal process is a systematic analysis wherein data utilized in estimating the value of the subject property is acquired, classified, analyzed and presented. The first step of the appraisal process involves defining the appraisal problem. The step includes the identification of the real estate, an explanation of limiting conditions, stating the effective date of the value estimate, identification of the property rights being appraised and

determining the type of value being sought. The next step is to gather information on the subject property such as vesting of ownership, property history and tax assessment information. The third step is the collection of regional, city and neighborhood data that influences the value of the subject property through economic forces. Relevant factors affecting the value of the subject property such as zoning, site and improvement data are considered to determine the Highest and Best Use of the subject property. The valuation methodology process then discusses the meaningful applications and limitations of the three approaches to value which are the Cost, Sales Comparison, and Income Capitalization Approaches. The comparable market data is analyzed for comparison to the subject property as determined by a degree of similarities. The final step in the appraisal process is the reconciliation of the data gathered to determine the final value estimate. All sections of the appraisal report are structured to show the reasoning and justification utilized in the estimate of highest and best use and conclusion of value. The "Addenda" section of the report contains various information supportive of the appraisal.

### Interests Appraised

The interests appraised and considered in this appraisal include the Fee Simple Estate, the Leased Fee Interest and the Leasehold Interest under the assumption that the subject properties will eventually be leased either on an annual basis or on a long term basis.

The term "Fee Simple Estate"<sup>1</sup> is defined as follows:

*Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.*

The term "Leased Fee Interest"<sup>2</sup> is defined as follows:

*An ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. The rights of the Lessor (the leased fee owner) and the lessee are specified by contract terms contained within the lease.*

The term "Leasehold Interest"<sup>3</sup> is defined as follows:

*The interest held by the lessee (the tenant or renter) through a lease transferring the rights of use and occupancy for a stated term under certain conditions.*

### Market Value Defined

The term "Market Value"<sup>4</sup>, as used in this report, is defined as follows:

<sup>1</sup> Appraisal Institute, The Dictionary of Real Estate Appraisal, Fourth Edition, (Chicago, 2002), p. 113.

<sup>2</sup> Appraisal Institute, The Dictionary of Real Estate Appraisal, Fourth Edition, (Chicago, 2002), p. 161.

<sup>3</sup> Appraisal Institute, The Dictionary of Real Estate Appraisal, Fourth Edition, (Chicago, 2002), p. 162.

<sup>4</sup> Appraisal Institute, The Dictionary of Real Estate Appraisal, Fourth Edition, (Chicago, 2002), p. 177.



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*The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.*

Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well-informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure on the open market;
4. Payment is made in cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by any one associated with the sale.

#### Market Rent Defined

The term "Market Rent"<sup>5</sup>, as used in this report, is defined as follows:

*The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including, term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from the lessor to the lessee under conditions whereby:*

1. Lessee and lessor and are typically motivated;
2. Both parties are well-informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure on the open market;
4. The rent payment is made in cash in United States dollars, and expressed as an amount per time period consistent with the payment schedule of the lease contract; and
5. The rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by any one associated with the transaction.

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<sup>5</sup> Appraisal Institute, The Dictionary of Real Estate Appraisal, Fourth Edition, (Chicago, 2002), p. 176.

Bulkhead Line Defined

The term “Bulkhead Line”<sup>6</sup>, as established, shall define the limit of solid filling or solid structures along the bayfront.

Pierhead Line Defined

The terms “Pierhead Line”<sup>7</sup>, as established, typically shall define the limit for pier and float-type structures.

Project Line Defined

The terms “Project Line”<sup>8</sup>, shall define the channel lines of the improvements and by the Federal Government in 1935-36.

Probability of Change

The opinion of value is based upon my knowledge of conditions as of the date of this report. Constantly changing economic, social, political and physical conditions have varying effects upon real property values. Even after the passage of a relatively short period of time, property values may change substantially and require a review based on differing market conditions.

Legal Descriptions

I have not been provided with the legal description of each individual property; however, this does not impact the analysis or conclusions presented.

Owner of Record and Property History

It is assumed that title to all of the tideland properties being appraised is vested in the City of Newport Beach. Unless specifically addressed in this report, none of the properties have transferred or encumbered with long term leases in the recent past.

Assumptions and Limiting Conditions

The analyses and opinions in this report are subject to the following assumptions and limiting conditions:

**Specific**

The fair market rent analysis presented is completed on a “global” basis for each category of use and applies to all of the tideland properties included in each category (whether or not the property is specifically identified) in Newport Harbor that are under the jurisdiction of the City of

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<sup>6</sup> City of Newport Beach, Harbor Permit Policy

<sup>7</sup> City of Newport Beach, Harbor Permit Policy

<sup>8</sup> City of Newport Beach, Harbor Permit Policy

Newport Beach. The use categories set forth in the report are assumed to be the Highest and Best Use of the tidelands, as it is beyond the scope of this assignment to assess the Highest and Best Use of each tideland property, either without the adjoining upland parcel or in conjunction with the adjoining upland parcel. I reserve the right to make such adjustments to the analysis, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.

### **General**

No investigation of title to the property has been made, and the premises are assumed to be free and clear of all encumbrances, leases, use restrictions, easements, cases or actions pending, except as specifically discussed in this report. Title is assumed to be good and marketable, and that the property is under responsible ownership, competent management and available for its highest and best use.

No survey, legal, or engineering analysis of this property has been made by the appraiser. I assume no responsibility for any condition not readily observable from the customary inspection of the premises, and that there are no hidden or unapparent conditions of the property, subsoils or structures that render it more or less valuable, except as noted herein.

The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocation for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.

The maps, plats, photographs, and exhibits included herein are for illustration only, as an aid in visualizing matters discussed within the appraisal. They should not be considered as surveys nor relied upon for any other purpose, nor should they be removed from, reproduced, or used apart from this report.

I assume no responsibility for economic or physical factors, which may affect the opinions herein, stated which might occur at some date after the date of value. I reserve the right to make such adjustments to the analysis, opinions and conclusions set forth in this report as may be required by consideration of additional data or more reliable data that may become available.

Information contained in this appraisal has been gathered from sources, which are believed to be reliable, and where feasible, has been verified. No responsibility is assumed for the accuracy of information supplied by others.

No opinion is expressed as to the value of sub-surface oil, gas, or mineral rights, or whether the property is subject to surface entry for the exploration or removal of such materials except as expressly stated.

The property is appraised assuming to be in full compliance with all applicable federal, state, and local environmental regulations and laws, unless otherwise stated.

The property is appraised assuming that all applicable zoning and use regulations and restrictions have been complied with, unless otherwise stated.

The property is appraised assuming that all required licenses, certificates of occupancy, consents, or other legislative administrative authority from any local, state, or national government or

private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based, unless otherwise stated.

The Americans with Disabilities Act ("ADA") became effective January 26, 1992. The appraiser has not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since the appraiser has no direct evidence relating to this issue, possible noncompliance with the requirements of the ADA in estimating the value of the property has not been considered.

Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on the property. The appraiser, however, is not qualified to detect such substances. The presence of substances such as asbestos, urea formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no material on or in the property that would cause a loss in value. No responsibility is assumed for any such condition, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired. If the client is aware or becomes aware of any conditions, the appraiser should be consulted immediately to assess the impact, if any, upon the market value.

The appraiser reserves the right to make such adjustments to the valuation herein reported, as may be required by consideration of additional data or more reliable data that may become available.

No opinion is intended to be expressed, or implied, for matters, which require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers.

I shall not be required, by reason of this appraisal, to give testimony or to be in attendance in court or any governmental or other hearing with reference to the property without prior arrangements having first been made with me relative to such additional employment.

Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser. I do not authorize out of context quoting, or partial reprinting of the report. In the event the report is placed in the hands of a third party, it is requested that such party be made cognizant of any and all limiting conditions resulting in the basis of my employment and the discussions thereto, as well as those set forth herein.

The submission of this report constitutes the completion of the service authorized. It is submitted upon the condition that the client will provide the appraiser customary compensation relative to any subsequent required deposition, conferences, additional preparation or testimony.

The appraiser respectfully requests that neither all nor part of the contents of this report shall be disseminated to the public through advertisement, public relations, news, sales, or other media,

without written consent and approval of the author, particularly the valuation conclusions, the identity of the appraiser, or any reference to the Appraisal Institute or the MAI designation.

In the event the appraiser is subpoenaed for a deposition, judicial or administrative proceeding, and is ordered to produce his appraisal report and file, the appraiser will immediately notify the employer.

It shall be the responsibility of the employer to obtain a protective order.

The liability of Netzer & Associates and the appraiser responsible for this report is limited to the client only and to the fee actually received by the appraiser. Further, there is no accountability, obligation or liability to any third party. If this report is placed in the hands of anyone other than the client, the client shall make such party aware of all limiting conditions and assumptions of the assignment and related discussions. The appraiser is in no way responsible for any costs incurred to discover or correct any deficiencies of any type present to the property -- physical, financial, and/or legal.

It is agreed that the appraiser is not a necessary party in any inquiry or judicial proceedings. If called upon to testify in any litigation or other proceeding arising out of the duties in this matter, and is compelled to incur court costs, attorney's fees or other out-of-pocket expenses in connection with court proceedings, such costs or expenses, together with the appraisers' usual hourly per diem applicable for study, preparation, testimony or travel will be paid by the party (or parties) who acts to bring any suit requiring a judicial proceeding.

Any dispute or claim made with respect to this report shall be submitted to and resolved in accordance with the rules of the American Arbitration Association for arbitration, and the decision of the Association shall be binding. All appraisal services, pursuant to this report, shall be deemed to be contracted for and rendered in Orange County, California, and any arbitration or judicial proceedings shall take place in Orange County, California.

The signatory of this appraisal report is a member of the Appraisal Institute. The Bylaws and Regulations of the Institute require each member to control the use and distribution of each appraisal report signed by such member. Therefore, except as hereinafter provided, the party for whom this appraisal report was prepared may not distribute copies of this appraisal report, in its entirety, without the written consent of the signatory of this report. The report and parts thereof and any additional material submitted, may not be used in any prospectus or printed material used in conjunction with the sale of securities or participation interests in any Public Offering as defined under US Security laws. Further, neither all nor any part of this appraisal report shall be disseminated to the general public by the use of advertising media, public relations media, news media, sales media, or other media for public communication without the prior written consent of the signatory of this appraisal report.

#### **AREA DESCRIPTION**

Newport Harbor is the focal point of the incorporated city of Newport Beach, which is located in coastal Orange County approximately 10 miles southwest of the Santa Ana Civic Center. The coastal city was incorporated on September 1, 1906. The State Department of Finance reports an estimated population of 85,186 persons, as of the 2010 Census. According to the City Chamber

of Commerce, the influx of the tourist population during the summer months increases the population to well over 100,000 persons.

Newport Beach is located 85 miles north of San Diego, 14 miles south of Long Beach and 50 miles from downtown Los Angeles. The City's elevation ranges from sea level to 691 feet. With the annexation of Newport Coast, the City is comprised of approximately 25 square miles of land area, approximately 25.5 square miles bay, harbor and ocean waters for a total area of approximately 50.5 square miles. The city has 6.1-miles of ocean frontage and 25.4-miles of harbor frontage. Newport Harbor is one of the largest pleasure craft harbors on the West Coast and is home to approximately 9,900 boats, 1,200 piers, 2,300 commercial slips and side ties and 1,200 moorings.

In addition to the City's miles of beaches and pleasure craft harbor, the City is home to several public and private golf courses, Newport Center and its Fashion Island regional mall, the Balboa Peninsula, Balboa Island, Corona del Mar, and the Upper Newport Bay. Newport Center, developed by the county's largest landowner, The Irvine Company, is a master planned, mixed-use development, and includes offices, lodging and meeting facilities, and the Fashion Island regional mall. Newport Center is perceived as a premier business address in Southern California and the Class-A office buildings command some of the highest rents in the county. Fashion Island, an open-air regional mall containing approximately 1,200,000 rentable square feet, is home to many local, regional, national and international retailers, restaurants, and movie theaters. It caters to the business community, the local population, and attracts a large tourist market. Coupled with its mild climate, these community amenities will continue to draw the transient population from around the region and the nation, and the city should continue to be a destination resort into the foreseeable future.

Newport Harbor is formed by the Balboa Peninsula on south and the mainland on the north and extends inland to Jamboree Road and the north end of the Upper Newport Bay (Back Bay). The primary focus of this assignment is the Lower Newport Bay, which is generally defined as the water area south of the Coast Highway Bridge near the intersection of Coast Highway and Dover Drive. Traditionally, most of the boating activity within the harbor is concentrated in the Lower Bay as most of the Back Bay is an ecological preserve with limited boating facilities (Newport Dunes, Newport Aquatic Center, U.C.I. Rowing base, Bayside Village and Dover Shores). The Balboa Peninsula consists of all the contiguous land east of 45<sup>th</sup> Street extending to Peninsula Point and the jetty at the mouth of Newport Harbor. The south side of the Peninsula consists of sandy beaches on the Pacific Ocean while the north side of the Peninsula forms the southern perimeter of Newport Harbor.



**Location Map**

Todd Pt.

Arch Rock

Little Corona City Beach

Corona Del Mar State Beach

East Jetty

West Jetty

The Wedge

Balboa Pier

Newport Pier

Bay Shores

Lido Isle

Bay Island

Harbor Island

Linda Isle

Newport Harbor High School

Newport Beach

Placentia

Orange

West Newport Beach

Landfall

Whittier

17th

15th

13th

11th

9th

7th

5th

3rd

1st

Access to the Peninsula is via Newport Boulevard, Superior Avenue/Balboa Boulevard, or the famous ferry that runs between Balboa Island and the Balboa Peninsula. Newport Boulevard merges with Balboa Boulevard at 21<sup>st</sup> Street near McFadden Square and the Newport Pier and Balboa Boulevard continues eastward to the end of the Peninsula and eventually turns into Channel Road. Access the inland side of the Harbor is via Coast Highway, Bayside Drive and Harbor Island Drive. Additional access is afforded to the residents of the eight islands that ring the harbor, which include Newport Island, Lido Isle, Linda Isle, Harbor Island, Bay Island (the only island with no vehicular traffic), Balboa Island, Little Balboa Island and Collins Isle.

Primary landmarks and attractions include the Newport and Balboa Piers, the Balboa Fun Zone (being converted to ExploreOcean by the Newport Harbor Nautical Museum), the Balboa Pavilion and the Wedge, a well-known body surfing beach at the tip of the Peninsula. The commercial activities are concentrated along the Mariner's Mile section of Coast Highway, in Lido Village along the Rhine Channel, and the neighborhood surrounding the Balboa Island Ferry and Fun Zone. The balance of the upland and tidelands include residential properties, marinas, private docks and beaches. The Location Map on the facing page shows the subject location relative to the surrounding community and transportation network.

### HIGHEST AND BEST USE

"Highest and Best Use" is an appraisal concept which is defined in The Dictionary of Real Estate Appraisal, Third Edition, as follows:

*The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria that must be met are legal permissibility, physical possibility, financial feasibility, and maximum profitability.*

Inherent in this definition are several conditions, which must be satisfied by the existing or proposed use in order to develop the maximum value. The use must be physically possible for the site. Soil condition, topography, size and shape must be compatible with the proposed use. The use must be legally permissible in that it must conform to current or projected zoning. Similarly, the use must not be precluded by deed restrictions or other encumbrances, which may limit potential uses. Also, the use must be economically feasible. The market should indicate sufficient economic demand so as to support a proposed use of the site. Among the various uses that meet the above criteria, the use which creates the greatest rate of return and maximum productivity is considered to be the highest and best use of the site.



Highest and Best Use Criteria - As If Vacant/As-Improved

A complete Highest and Best Use study of each of the use categories and the tidelands, either without the associated upland parcels, or in conjunction with the upland parcels, is beyond the scope of this assignment. The analysis presented is on a “global” basis and it is a Specific assumption of the report that the Highest and Best Use of the tidelands properties “as if vacant” and “as improved” are the uses set forth in each use category.

**APPRAISAL PROCEDURES**

The appraisal of real property generally involves one, two or three of the conventional approaches to value, and is based upon consideration of market-derived data, the experience of the appraiser, and opinions of other informed market participants.

Valuation Approaches

Three basic approaches to value are available to the appraiser: the Cost Approach, the Income Approach, and the Direct, or Sales Comparison Approach.

**Cost Approach**

This approach entails the preparation of a replacement or reproduction cost estimate of the subject property improvements new (maintaining comparable quality and utility) and then deducting for losses in value sustained through age, wear and tear, functionally obsolescent features, and economic factors affecting the property. The land value is then added to the depreciated cost along with an allowance for entrepreneurial profit to arrive at a value estimate.

**Income Approach**

This approach is based upon the theory that the value of property tends to be set by the net income that is to be realized by the owner. It is, in effect, the capitalization of expected future income into a present worth estimate. This approach requires an estimate of potential gross income, an analysis of all expense items, the selection of a capitalization rate, and finally, the processing of the net income stream into a value estimate.

**Sales Comparison Approach**

This approach is based upon the principle that the value of a property tends to be set by the price at which comparable properties have recently been sold or for which they were acquired. This approach requires a detailed comparison of sales of comparable properties with the subject property.

Approaches Used in the Valuation of the Subject

The Sales (or Lease) Comparison Approach is a process of comparing lease rates paid for similar properties, prices asked by owners, and offers made by prospective Lessees. The approach presents good evidence of value because it represents the actions of buyers and sellers, or in the case of leased properties Lessee's and Lessor's. The Sales (or Lease) Comparison Approach is based on the principle of substitution, which implies "the value of a property tends to be set by the price that would be paid to acquire a substitute property of similar utility and desirability within a reasonable amount of time."<sup>9</sup> Given the preceding discussion, and the interactions of market participants, the Sales (Lease) Comparison Approach is the most relevant approach in estimating Market Rent and is the only approach used in the analysis.

**RECENT CITY OF NEWPORT BEACH LEASE AGREEMENTS**

Within the recent past, the City of Newport Beach has entered into at least two agreements for Tideland properties in Newport Harbor. In December 2002 they entered into a Lease with the American Legion for the property at 15<sup>th</sup> Street and West Bay Avenue and in 2000 the Balboa Bay Club exercised its option for the redevelopment of their property at 1221 W. Coast Highway. The basic terms of the leases are summarized in the table at the following table.

LEASE SUMMARY – CITY OF NEWPORT BEACH					
DATA NO. LOCATION	LEASE DATE	LEASE TERM	BASE RENT	ADJUSTMENT	PERCENTAGE RENT (% of Gross Revenue)
1/ American Legion 215 E. 15 <sup>th</sup> Street Newport Beach	12/2002	25 yrs.	\$96,000	Every 5 years Greater of 10% or 75% of CPI	Hall Rental: 20% Marina: 40% Storage: 50% Parking Lot: 100%
2/ Balboa Bay Club 1221 W. Coast Highway Newport Beach	10/2000	50 yrs.	\$1,125,000	After 97 <sup>th</sup> Month Every 5 years based on 75% of previous 5 years average rent	Dues: 6.0% Apartment: 16.5% Marina: 31% Storage: 20% Charter Commission: 20% Charter: 6% Room: 5% Beverage: 5% Food: 3% Retail: 5% Miscellaneous: 10%

Both of these lease agreements are for properties in Newport Harbor and both Lessee's had prior operations at the respective locations. They both include the upland and tidelands parcels and are

<sup>9</sup>Appraisal Institute, The Appraisal of Real Estate, Eleventh Edition, (Chicago, 196), p.398.

included as background information and for comparison to other properties located in Newport Harbor that have similar use components.

The American Legion had been occupying their property at the corner of Bay Avenue and 15<sup>th</sup> Street since 1975 and they constructed a legion hall, marina, parking area, dry boat storage facilities and lockers. The membership is restricted to those who have served in any branch of the United States armed forces. The Lease has a 25 year term with an option to extend the lease for an additional 25 year term. The Base Rent is \$8,000 per month, or \$96,000 per annum. The American Legion paid \$88,119 in percentage rent for the tidelands property in 2011. This equates to \$2.40 per square foot of leased tidelands.

The Bay Club lease reflects the exercise of an Option Agreement that was originally negotiated in June 1996 that had a five year term and one extension and they paid non-refundable option money (approx. \$355,000) during the option period. The operator of the Balboa Bay chose to exercise their option in October 2000. As part of the lease, the Bay Club was required to make a substantial investment in upgrading/replacing their existing improvements and had three years from the commencement date to complete the improvements. The base rent paid by the Bay Club is \$1,125,000 per year plus any amount that the percentage rent exceeds the base rent. The percentages are set forth in the previous table. The base rent was reduced by approximately one-half during the first 30-months of the lease to permit the construction/renovation of the improvements. The base rent is adjusted in the 97<sup>th</sup> month and then every 61<sup>st</sup> month thereafter, to 75% of the average annual rent for the previous five year period. There is a "Fair Market Rent" adjustment at the commencement of the 26th year based on a formula set forth in the lease. In 2011 the Bay Club paid \$666,336 in percentage rent for the tidelands. The lease encumbers 205,738 square feet of tidelands and the 2011 rental equates to \$3.24 per square foot of tidelands (\$666,336 :- 205,738 Sq.Ft.). It should be noted that the Bay Club and a sister property (Newport Beach Country Club) were recently sold; however, the details of the transaction are not available.

### **JURISDICTIONAL LEASING POLICIES**

During the course of completing this assignment interviews were conducted with representative of most of the jurisdictions that administer/lease tidelands along coastal Southern California as well as a marina developer/operator. The representatives were interviewed with regard to the general leasing practices along the coastal strip and the following discussion is a summary of the interviews conducted.

County of Orange

At Dana Point Harbor, which is under the jurisdiction of Orange County, two marinas – the East Basin Marina and the Dana West Marina, had been leased on a “typical” percentage rent based on the various permitted uses. In 2001 the County changed its policy regarding the “lease” of marina properties. Dana Point Harbor is one of the few jurisdictions to enter into property management agreements for the operation of their tidelands.

In 2001 the County and the operator of the East Basin Marina (1,500 slips w/ eight service buildings) entered into a management agreement to operate the East Basin Marina at the expiration of the 30-year lease. Under the management agreement the County retains the operational expertise and historical knowledge of the original lessee (as the property manager) and the revenue to the County is significantly higher than the amounts received from percentage rents under the original lease.

The lease for the Dana West Marina expired in October 2005 and a five-year lease extension expired in 2010 and the management company has been operating on a month-to-month basis since. The original leases commenced in 1975 and the Marina is comprised of approximately 990 slips, six service buildings to provide boats facilities (showers, restroom, laundry facilities, etc...) on the lower floor with the upper floors leased to various marine related business activities including a yacht club, boat broker, marine insurance and the operators administrative offices. In 2005 the County entered into a similar five-year management agreement with the former Lessee and they have increased the County revenue significantly and retained ownership of all the improvements including personal property (docks, etc...). Under the Management Agreement the County pays the manager five-percent (5.0%) of the gross receipts collected on behalf of the County from slip rents, building tenants and other business activities at the marina. The manager contracts with the vendors and pays all operating expenses on behalf of the county (subject to county approved budgets and reimbursement by the County) and is responsible for the proper handling and reporting of all financial information. The County retains ownership of all the improvements. The County sent out a Request For Proposal (RFP) in September 2010 for a new management contract and four companies submitted proposals. The County Board of Supervisors has evaluated each of the proposals submitted; however, a decision on the final award has not been made as of the date of this report.

Another area within the harbor (Dana Wharf Sportfishing) that is leased to the operator of the Marina in a more traditional Lessor/Lessee basis under a 10-year ground lease with a 10-year option. This lease was entered into in 2002 and includes an annual “Base” rent and percentage rent based on the gross receipts of the Lessee. They also pay 1.0-percent of their gross receipts

for Common Area Maintenance. There are different percentages established for each of the permitted uses and the Base rent is adjusted every five years based on the greater of the CPI, or 75% of the Lessee's average rent for the prior three years.

Within Dana Point Harbor, the County entered into a new lease with the Dana Point Shipyard in November 2011. The lease is for approximately 1.6-acres of land area and associated water area. The area of the water is not defined; however, based on the aerial photograph it appears to be about 30,000 square feet and there are several slips that occupy the water area. The primary business of the Lessee is the maintenance and repair of vessels and much of the work occurs on the upland parcel; however, the lease permits the short-term (90-days) rental of the slips while vessels are being serviced. The percentage rent applicable to the short-term rentals is 4.0-percent of the gross slip revenue as compared to the percentage rent applicable to "Long Term Storage and Slippage" of 20.0-percent of the gross revenue. It was reported by a representative of the County that the percentage rent applicable to the short term slip rentals recognizes that the water area is required to support the ship yard and the services they provide are needed to support the Harbor.

#### Long Beach Marina (City of Long Beach)

Based on the interviews completed during the course of this assignment, it was noted by Mark Sandoval, Long Beach Marine Bureau Manager that the City of Long Beach owns and manages all of the marina properties within their jurisdiction. In the redeveloped Rainbow Harbor, they charge base rent (\$3,000 to \$5,000 per year), percentage rent (6.0% to 6.5%) and wharfage fees (\$12.00 to \$12.50 per lineal foot per month) to operators of charter services, dinner cruises and sightseeing tenants. These rates apply to users of the City owned and operated facilities as they do not lease the tidelands. It was noted that the slips are between 150- and 175-feet and will accommodate boats well over 200-feet.

#### California State Lands Commission

The State Lands Commission has jurisdiction of two distinct types of public lands – sovereign land (4 million acres) and school lands (468,000 acres). The sovereign public lands are defined as the navigable rivers, lakes and streams, as well as the state's tide and submerged lands along the coastline extending from the shoreline out to three miles offshore and include approximately 120 rivers and sloughs, 40 lakes and the state's coastal waters (including portions of Huntington Harbor). A representative of the Land Management Division reported that they complete a "benchmark" survey to establish base rates for the general leasing of "recreational use" tidelands, which includes many of the uses typically associated with a harbor (residential piers, yacht clubs, gas docks, etc...) and generally the tidelands leases include a "public access" component. To

establish the base rate for the “recreational” use of tideland properties, they survey commercial marinas in the region and establish an average slip fee per lineal foot to help establish the “base” rent per square foot for the tidelands. It was noted that when they convert the concluded rental figures to a rent per square foot they use a rate of return from 5.0-percent to 7.0-percent for the “recreational” use of tidelands and in the case of “commercial” use of “recreational” tidelands they use a 9.0-percent rate of return.

#### Unified Port of San Diego

The Unified Port of San Diego has jurisdiction over the tidelands in most of San Diego Harbor. In 2006 they negotiated two lease agreements for the development of two separate marinas along with the associated support facilities that include both tideland and upland property. The leases are based on fixed minimum rent that is adjusted periodically based on the changes in the Consumer Price Index (CPI) and percentage rent based on benchmarks that they established in 2004 that are identified as “Benchmark Fair Market Rent Percentage Rental Rate Study Conducted for the San Diego Unified Port District and the San Diego Port Tenants Association”. This document is included in the Report Addenda for reference. Interviews with a Senior Asset Manager in the Port Real Estate Department indicates that this study was completed based on comparison with lease data for other harbors along the Southern California coast and that the Port District has not updated the study since 2004. It was reported that they have very limited latitude in negotiating percentage rent with prospective tenants, unless the property is located behind (south) of the Coronado Bridge, as properties behind the bridge are a minimum of seven miles from the harbor mouth.

#### City of Avalon

The primary uses of Avalon Harbor are associated with the mooring rentals, shore boat services and charter tours. The City of Avalon charges all business engaged in the operation of boats using harbor facilities for landing, discharging loading or embarking passengers 7.0 percent of the gross receipts. They charge cruise ships \$2.00 per passenger. Businesses engaged in the operation of “shore boats” are charged 7.0-percent of the gross receipts.

#### City of Los Angeles (San Pedro/Wilmington)

The City of Los Angeles has historically charged fees to marina operators, bait barges and other users of tideland properties a fixed rent that was based on a price per square foot of tidelands property and, when applicable, the upland rent is based on a price per square foot of land area both multiplied by a contractually established rate of return. The information provided by the City indicates that when this method was last updated (2005) the upland parcels for marina uses

was assigned a rental value of \$1.40 per square foot and the tidelands were valued at \$0.325 per square foot, on an annual basis. This is the basis for establishing the fixed minimum rent, and the percentage rent was calculated based on a figure of 22.5-percent of the gross receipts (for recreational berthing, anchorage and vessel dry storage). This figure was reduced to 20.0-percent for the period from 2005 through 2010 and it was reported by the Director of Real Estate that new “compensation resets” (commencing in 2011) for marinas are based on 25-percent of the gross receipts. This method was adopted for a total of 10 marinas that are under City jurisdiction. It was noted that this method of calculating rents allows both the City and the Lessee to benefit from increases in business and does not unduly penalize the lessee in times when business declines. It was further reported that, while all of the City properties include both uplands and tidelands, the percentage rent associated with tideland properties would not vary if the upland was under separate ownership as a majority of the income is derived from the tidelands.

It should be noted that the City recently completed Cabrillo Marina Phase II, which is part of the larger strategic plan for the Port of Los Angeles. Cabrillo Marina Phase II is a 700-slip marina and waterfront promenade covering 87 acres of land and water and was completed in December 2011 at a reported cost of \$125-million. The City retains the ownership of Cabrillo Marina Phase II and has a short-term management agreement with an outside contractor for the operation of the marina while they await responses from an RFP requesting proposal for a long-term management agreement.

#### County of Los Angeles (Marina del Rey)

Los Angeles County has jurisdiction over Marina del Rey and they have historically leased properties including the upland and tidelands based on a percentage of the gross receipts. The uplands parcels are have largely been improved with apartments, commercial uses and marine related uses. As a condition of approval, several upland parcels have been required to provide public access to the marinas (via a pedestrian promenade along the bulkhead) and in some cases they have been required to provide public parking (either on the leasehold property or on a nearby parcel). Many of the original leaseholds with a 50- and 60-year terms were entered into in the 1960’s and are expiring within the next 10- to 15-years and the County has negotiated several options to extend or lease extensions with the existing leasehold owners. The new amended and restated leases will be discussed further in Section D – Commercial Marinas.

#### Marina Operator/Developer

The marina operator interviewed reported he has an interest in several marinas between San Diego and Ventura and reports that virtually all of the marinas include both the upland and

tideland property. All of the marinas include a base rent figure with excess rent paid based on a percentage of revenue for the various uses within the marinas. He noted that he can see the positive and negative of a percentage rent lease structure from both an operator and a jurisdictional perspective. The “typical” percentage rent paid to the various jurisdictions for the tidelands that support a marina ranges from approximately 20.0- to 25.0-percent of the gross slip fee revenue. They also have gas docks, dry storage, ship yards, and other marina oriented business’s associated with their marinas. He noted that they are moving away from a base rent against percentage rent for gas docks and to a base rent against “rent per gallon” arrangement as the volatility in fuel prices unduly burdens the gas dock operators as fuel prices continue to rise. He noted that if the marina tidelands were offered for lease there would be plenty of people that would be interested if the percentage rent was in the 20.0- to 25.0-percent range, even without control of the uplands, and that this seems to be the current percentage.

#### **NEWPORT HARBOR MARINA SLIP RENTAL SURVEY**

The health of a harbor can be partially measured based on the occupancy rates and slip rentals for the marinas located within the harbor. I have surveyed several of the larger commercial marinas in the harbor to determine the current slip fees and the overall occupancy levels. The slip fees are also used in the analysis of the gross potential income and the subsequent rent that a marina operator may pay, in both absolute terms, and on a basis of the price per square foot of tidelands required to support a marina. The table on the following page is a summary of the marina’s that were surveyed in Newport Harbor. A discussion of each data item is presented on the pages following the summary table.



<b>MARINA SURVEY SUMMARY JULY 2012</b>				
<b>Data No. Name Location</b>	<b>Total Slips</b>	<b>% Occupied</b>	<b>Slip Sizes (range) Lineal Feet</b>	<b>Rental Range Monthly Rent /Lineal Foot</b>
1/ Balboa Yacht Basin 829 Harbor Island Drive	171	88%	20' – 75'	\$18.01 - \$33.51
2/ Balboa Marina 201 E. Pacific Coast Highway	132	96%	25' – 82' End ties	\$29.65 - \$55.65 \$36.25 - \$55.65
3/ Bayshore Marina 2572 Bayshore Drive	138	100%	15' – 83'	\$26.750 - \$59.00
4/ Bayside Marina 1137 & 1353 Bayside Drive	102	99%	15' – 74' Side & End ties	\$26.75 - \$62.30 \$21.90 - \$226.75
5/ Bayside Village (De Anza) 300 East Coast Highway	226	High 80%- Low 90%	12' – 50'	\$21.00 - \$38.25 Plus Facility Fee
6/ Bellport Lido Yacht Anchorage 151 Shipyard Way	239	95%	6' – 135'	\$18.25 - \$47.00
7/ Harbor Tower Marina 3335 W. Coast Highway	51	98%	20' – 82'	\$22.00 - \$48.00
8/ Newport Dunes Marina 101 N. Bayside Drive	450	99%	22' – 46'	\$23.75 - \$42.00
9/ Villa Cove Marina 1099 Bayside Drive	40	100%	22' – 60' End ties	\$25.25 - \$40.95 \$44.45

**MARINA RENTAL ONE**

**NAME:** Balboa Yacht Basin  
**LOCATION:** 829 Harbor Island Drive  
Newport Beach, California

**CONTACT:** Shannon Levin, Dave New, 949-644-3041  
**NO. OF SLIPS:** 171  
**OCCUPANCY:** 88%  
**WAIT LIST:** No  
**LIVE ABOARD:** No  
**DISTANCE TO HARBOR MOUTH:** 1.75 miles (under bridge), 2.25 miles (around B.I.)  
**BEHIND BRIDGE:** Yes - Balboa Island Bridge to east  
**UTILITIES:** Electrical hookups, Metered usage  
**AMENITIES:** Dock box, showers, restrooms

<b>SLIP LENGTH (Lineal Feet):</b>	<b>MONTHLY RENT/L.F.</b>
20 Feet	\$18.01
25 Feet	\$19.55
31 & 32 Feet	\$23.23
34 Feet	\$24.29
35 Feet	\$25.03
37 Feet	\$25.21
40 Feet	\$26.71
45 Feet	\$27.64
50 Feet	\$33.15
60 Feet	\$33.09
75 Feet	\$33.51

**COMMENTS:**

This marina is operated by the City of Newport Beach. The monthly slip fees are adjusted based on the Newport Harbor Marina Index. The location and amenities are considered good. The Balboa Island Bridge is just east of the marina between the marina and the harbor mouth; therefore, tall boats must go west around Balboa Island to reach the main channel before heading to the harbor mouth. When surveyed in 2006 the monthly slip fees per lineal foot were \$18.00 (under 39-feet), \$19.00 (40 – 49 feet) and \$23.00 (50 feet & over).

**MARINA RENTAL TWO**

**NAME:** Balboa Marina  
**LOCATION:** 201 E. Pacific Coast Highway  
Newport Beach, California

**CONTACT:** Marcy, California Recreation 949-721-0111  
**NO. OF SLIPS:** 105  
**OCCUPANCY:** 96%  
**WAIT LIST:** Yes, for select size slips  
**LIVE ABOARD:** No  
**DISTANCE TO HARBOR MOUTH:** 3.0 miles  
**BEHIND BRIDGE:** No  
**UTILITIES:** Water, Trash, Hookups, Metered Electric  
**AMENITIES:** Dock box, showers, restrooms, telephone and cable hookups, free parking

<b>SLIP LENGTH (Lineal Feet):</b>	<b>MONTHLY RENT/L.F.</b>
25 Feet	\$29.65
28 Feet	\$34.20
30 Feet (end tie)	\$36.25
32 Feet	\$34.20
33 Feet (end tie)	\$34.20
34 Feet	\$36.75
36 Feet	\$39.20
40 Feet	\$43.95
50 Feet	\$50.45
58 Feet	\$55.65
70 Feet (end tie)	\$55.65
74 Feet (end tie)	\$55.65
82 Feet (end tie)	\$55.65

**COMMENTS:**

This marina is located south of the Coast Highway Bridge at the Bayside Drive adjoining a parking lot and Linda Isle. Driving access is convenient from Coast Highway. The amenities and condition of the marina are good and are typical for the harbor. Access to the Harbor mouth is via open channel. This marina has been renovated since 2006; however, the slip fees in 2006 ranged from \$20.00 (25 feet) to \$31.50 (55 feet).

**MARINA RENTAL THREE**

**NAME:** Bayshore Marina  
**LOCATION:** 2572 Bayshore Drive  
Newport Beach, California

**CONTACT:** Marcy, California Recreation 949-721-0111  
**NO. OF SLIPS:** 138  
**OCCUPANCY:** 100%  
**WAIT LIST:** Yes, on selected spaces  
**LIVE ABOARD:** No  
**DISTANCE TO HARBOR MOUTH:** 2.5 miles  
**BEHIND BRIDGE:** No  
**UTILITIES:** Water, trash and electrical hookups included.  
Metered electric.  
**AMENITIES:** Dock box, showers, restrooms, telephone and cable  
hookups, free parking

<b>SLIP LENGTH (Lineal Feet):</b>	<b>MONTHLY RENT/L.F.</b>
15 Feet	\$26.75
17 Feet	\$26.75
20 Feet	\$26.75
23 Feet	\$26.75
26 Feet	\$28.60
32 Feet	\$34.85
39 Feet	\$37.00
60 Feet	\$56.60
64 Feet (end tie)	\$56.60
82 Feet (end tie)	\$59.00

**COMMENTS:**

This marina is located south of Coast Highway on the south shore of the Bayshore guard, gated community just east of the Balboa Bay Club. The marina lies on the Lido Channel which merges with the Main Channel providing an unobstructed course to the harbor mouth. Driving entry to the marina is via the guarded community entry providing an added measure of security to the slip tenants. The quality and condition of the amenities are considered good. When surveyed in 2006 the slip fees ranged from \$21.50 (23 feet & under) to \$45.50 (83 feet).

**MARINA RENTAL FOUR**

**NAME:** Bayside Marina  
**LOCATION:** 1137 & 1353 Bayside Drive  
Newport Beach, California

**CONTACT:** Marcy, California Recreation 949-721-0111  
**NO. OF SLIPS:** 102  
**OCCUPANCY:** 100%  
**WAIT LIST:** Yes, for select sizes  
**LIVE ABOARD:** No  
**DISTANCE TO HARBOR MOUTH:** 1.5 miles  
**BEHIND BRIDGE:** No  
**UTILITIES:** Water, trash and electrical hookups included.  
Metered electric.  
**AMENITIES:** Dock box, showers, restrooms, telephone and cable  
hookups, free parking

<b>SLIP LENGTH (Lineal Feet):</b>	<b>MONTHLY RENT/L.F.</b>
15 Feet (inside side tie)	\$26.35
20 Feet (inside side tie)	\$21.90
20 Feet (outside side tie)	\$26.35
22 Feet (side tie)	\$26.35
24 Feet (side tie)	\$26.75
30 Feet	\$35.60
35 Feet	\$37.35
42 Feet	\$45.40
45 Feet	\$48.15
60 Feet	\$55.65
65 Feet	\$59.00
74 Feet	\$62.30

**COMMENTS:**

This marina is located east of Jamboree Road and the Balboa Island Bridge with two non-contiguous slip sites along Bayside Drive. Other than marinas associated with yacht clubs, this marina is closest to the harbor mouth and there is a clear channel to the harbor mouth; however, the fuel docks and support facilities are further back in the harbor and not on the direct route to the harbor mouth. The quality, condition and amenities are good and are typical for the harbor. When surveyed in 2006 the slip fees ranged from \$18.00 (20', inside side tie) to \$44.50 (74 feet).

**MARINA RENTAL FIVE**

**NAME:** Bayside Village Marina (De Anza)  
**LOCATION:** 300 East Coast Highway  
Newport Beach, California

**CONTACT:** Wendy, Bayside Village 949-673-1331  
**NO. OF SLIPS:** 220  
**OCCUPANCY:** High 80% to low 90%  
**WAIT LIST:** No  
**LIVE ABOARD:** No  
**DISTANCE TO HARBOR MOUTH:** 3.75 miles  
**BEHIND BRIDGE:** Yes, Coast Highway Bridge  
**UTILITIES:** Facility Fee charged for utilities  
**AMENITIES:** Bathrooms, showers, dock box, parking

<b>SLIP LENGTH (Lineal Feet):</b>	<b>MONTHLY RENT/L.F.</b>
Under 20 Feet	\$21.00 + \$15.00/Mo. Facility Fee
20 to 24 Feet	\$21.00 + \$25.00/Mo. Facility Fee
25 to 29 Feet	\$20.00 + \$25.00/Mo. Facility Fee
30 to 32 Feet	\$25.00 + \$35.00/Mo. Facility Fee
33 to 39 Feet	\$26.00 + \$35.00/Mo. Facility Fee
40 to 45 Feet	\$32.00 + \$45.00/Mo. Facility Fee
46 to 50 Feet	\$35.00 + \$45.00/Mo. Facility Fee
Super Slips	\$35.00 + \$45.00/Mo. Facility Fee
Double Loaders	\$38.25 + \$45.00/Mo. Facility Fee

**COMMENTS:**

This marina is located on the north side of the Coast Highway Bridge at the south end of Upper Newport (Back) Bay. The bridge clearance limits marina users to those whose vessels can clear the fixed bridge structure depending on the tide. The marina adds a monthly facility fee depending on boat length for utilities and amenities. This comparable is considered to be at the low end of the quality range for marinas in Newport Harbor. When surveyed in 2006 the slip fees ranged from \$16.00 (under 20 feet) to \$34.75 (double loaders).

**MARINA RENTAL SIX**

**NAME:** Bellport Lido Yacht Anchorage  
**LOCATION:** 151 Shipyard Way  
Newport Beach, California

**CONTACT:** Bruce Inlow, Bellport 949-673-9330  
**NO. OF SLIPS:** 239  
**OCCUPANCY:** 95%  
**WAIT LIST:** None  
**LIVE ABOARD:** No  
**DISTANCE TO HARBOR MOUTH:** 3.75 miles  
**BEHIND BRIDGE:** No  
**UTILITIES:** Not included  
Electric boats are \$25.00 per month for electric  
**AMENITIES:** Restrooms, showers, storage, laundry facility

<b>SLIP LENGTH (Lineal Feet):</b>	<b>MONTHLY RENT/L.F.</b>
6 to 15 Feet	\$18.25
16 to 20 Feet	\$19.00
21 to 31 Feet	\$19.50
20 to 32 Feet	\$21.50
32 to 33 Feet	\$24.00
34 to 44 Feet	\$25.00
37 to 38 Feet	\$25.00
40 to 44 Feet	\$33.00
50 Feet	\$34.75
60 to 63 Feet	\$39.25
73 to 77 Feet	\$47.00
110 to 135 Feet	\$47.00

**COMMENTS:**

This marina is one of the larger marinas in the harbor and includes slips that can accommodate boats up to 135-feet in length. The slips are located around the perimeter of the Lido Peninsula separated by channels between the Balboa Peninsula to the south and Lido Isle to the north. The path to the harbor mouth is unobstructed, via the Newport Channel to the Main Channel. This comparable offers a variety of storage facilities and is one of two in the harbor to have garage size storage spaces. The Lido Peninsula has adjoining facilities for boat haulage, repair and dry storage. The quality, condition and amenities of the marina are considered typical for Newport Harbor. It should be not that the slip fees are based on the greater of the boat length or the slip length. When surveyed in the 2006 the slip fees ranged from \$15.25 (6 to 15 feet) and \$28.50 (110 to 135 feet).

**MARINA RENTAL SEVEN**

**NAME:** Harbor Tower Marina  
**LOCATION:** 3335 W. Coast Highway  
Newport Beach, California

**CONTACT:** Joe Bergman 949-642-4644  
**NO. OF SLIPS:** 51  
**OCCUPANCY:** 98%  
**WAIT LIST:** Yes, for larger slips  
**LIVE ABOARD:** Yes  
**DISTANCE TO HARBOR MOUTH:** 4.0 miles  
**BEHIND BRIDGE:** No  
**UTILITIES:** Electric  
**AMENITIES:** Restrooms

<b>SLIP LENGTH (Lineal Feet):</b>	<b>MONTHLY RENT/L.F.</b>
20 to 29 Feet	\$22.00
30 to 39 Feet	\$30.00
40 to 49 Feet (inside slip)	\$33.00
40 to 49 Feet (outside slip)	\$33.00
50 to 59 Feet	\$46.00
60 to 69 Feet	\$48.00

**COMMENTS:**

This marina is located on W. Coast Highway on the east side of the Newport Boulevard Bridge adjoining the turning basin at the west end of the Main Channel. The quality, condition, amenities and location of this marina are generally at the lower end of the range for marinas in Newport Harbor. When surveyed in 2006 the slip fees ranged from \$18.50 (20 to 29 feet) and \$39.00 (60 to 69 feet).



**MARINA RENTAL EIGHT**

**NAME:** Newport Dunes Marina  
**LOCATION:** 101 North Bayside Drive  
Newport Beach, California

**CONTACT:** Nancy Eldredge-Rosati 949-729-1100  
**NO. OF SLIPS:** 450  
**OCCUPANCY:** 99%  
**WAIT LIST:** No  
**LIVE ABOARD:** Yes  
**DISTANCE TO HARBOR MOUTH:** 3.75 miles  
**BEHIND BRIDGE:** Yes, Coast Highway Bridge  
**UTILITIES:** Metered electrical (\$0.18/kwh). Water & satellite TV hookups included in slip fee  
**AMENITIES:** Restrooms, showers, pool, spa, lounge, kitchen, fitness center, laundry, vending machines, storage, free parking, on-site restaurant and grocery store.

<b>SLIP LENGTH (Lineal Feet):</b>	<b>MONTHLY RENT/L.F.</b>
26 to 28 Feet @ "T" Dock	\$22.75
28 Feet @ "K" & "L" Docks	\$23.75
29 Feet and under	\$23.75
30 to 33 Feet	\$29.00
34 to 39 Feet	\$31.25
40 to 45 Feet	\$39.50
46 Feet & over	\$42.00

**COMMENTS:**

This marina is located in Upper Newport Bay at the Newport Dunes Resort. The quality, condition and amenities are very good compared to other marinas in Newport Harbor; however, the location in the Back Bay is inferior to those in the Lower Bay. Driving access to the marina is off Coast Highway via a controlled access gate. This location is limited by the clearance of the Coast Highway Bridge. When surveyed in 2006 the slip fees ranged from \$19.50 ("T" dock) and \$34.00 (46 feet and over).

**MARINA RENTAL NINE**

**NAME:** Villa Cove Marina  
**LOCATION:** 1099 Bayside Drive  
Newport Beach, California

**CONTACT:** Marcy, California Recreation 949-721-0111  
**NO. OF SLIPS:** 40  
**OCCUPANCY:** 100%  
**WAIT LIST:** Yes  
**LIVE ABOARD:** No  
**DISTANCE TO HARBOR MOUTH:** 1.5 miles (under bridge), 2.5 miles (around B.I.)  
**BEHIND BRIDGE:** Yes, Balboa Island  
**UTILITIES:** Metered electrical. Water, trash and hookups included in slip fee.  
**AMENITIES:** Restrooms, showers, dock boxes, free parking

<b>SLIP/BOAT LENGTH (Lineal Feet):</b>	<b>MONTHLY RENT/L.F.</b>
22 Feet	\$25.25
30 Feet	\$30.15
45 Feet	\$40.95
60 Feet – End Tie	\$44.45

**COMMENTS:**

This marina is located on Bayside Drive adjoining the west side of the Newport Beach Yacht Club (formerly the Shark Island Yacht Club). The Balboa Island Bridge adjoins the marina on the east. The quality and condition of the amenities are considered typical for the harbor. When surveyed in 2006 the reported slip fees ranged from \$21.50 to \$32.25 per lineal foot and there was a wait list for slips.

Conclusion – Marina Rent Survey

The marina survey presented above indicates that slip fees in the marinas surveyed have increased since my last survey in September 2006; however, the overall occupancy level has declined. The following table is a summary of the average slip fees (not the weighted average adjusted for the mix of slips) reported in September 2006 as compared to the survey completed in July 2012.

Name Location	Average Slip Fees		Percent Change
	9/2006	7/2012	
Balboa Yacht Basin	\$20.00	\$26.31	31.5%
Balboa Marina (rebuilt)	\$24.11	\$43.19	79.1%
Bayshore Marina	\$29.00	\$37.97	30.9%
Bayside Marina	\$30.66	\$39.26	28.0%
Bayside Village (De Anza)	\$24.43	\$28.14	15.2%
Bellport Lido Yacht Anchorage	\$21.25	\$29.44	38.5%
Harbor Tower Marina	\$28.42	\$35.33	24.3%
Newport Dunes Marina	\$25.36	\$30.29	19.4%
Villa Cove Marina	\$26.17	\$32.11	22.7%

All of the marinas interviewed indicate that slip fees have increased between 2006 and 2012. All the parties interviewed noted that there has been a shift in demand and there has been a greater percentage increase in the slip fees for larger slips as the average boat size has increased. During this time period the overall occupancy in the Harbor declined slightly and all of the operators noted that they no longer have long waiting lists for slips and some marina tenants have determined that it is more cost effective to move their vessel to marinas in other harbors. The following is a summary of the change in occupancy between September 2006 and June/July 2012.

Name Location	Total Slips	Reported Occupancy		Vacant Slips
		9/2006	7/2012	
Balboa Yacht Basin	171	100%	88%	20
Balboa Marina (rebuilt)	105	100%	95%	5
Bayshore Marina	138	100%	100%	--
Bayside Marina	102	100%	99%	1
Bayside Village (De Anza)	220	100%	+90%	+20
Bellport Lido Yacht Anchorage	239	100%	95%	12
Harbor Tower Marina	51	100%	98%	1
Newport Dunes Marina	450	100%	99%	5
Villa Cove Marina	40	100%	100%	--
<b>Total</b>	<b>1,516</b>	<b>100%</b>	<b>95.8%</b>	<b>64</b>

The survey respondents reported occupancy levels for the individual marinas between approximately 90- and 100-percent. When considered in aggregate a total of 1,516 slips were included in nine marinas with approximately 64 slips available, suggesting that the overall harbor-wide occupancy is in the range of 95-percent. The operator of four marinas noted that as

of the first week in July their overall occupancy for their four marinas was 98.2-percent. These findings will assist in the analysis presented later in the report.

It should be noted that several marina operators, some not included in the above survey, report that they have vacancy in the 10-percent range and that they are constantly losing tenants and struggling to keep their existing tenants as boat owners have become more apt to move to a different harbor to save on slip fees. It was noted that due to the overall vacancy, both in Newport Harbor and harbors to the north and south, prospective tenants have more options and tend to be somewhat transitory.

### **SECTION A – COMMERCIAL ENTITIES @ FIXED LOCATIONS (Gas Docks, etc...)**

#### Introduction

This category of properties includes those that operate at “fixed” location with the city and are located in the tidelands. Exhibit “A” of the agreement specifically identifies the gas and there are two gas docks in the city.

#### Location

There are two gas docks operating within Newport Harbor that have been specifically identified for this assignment. While there may be other commercial entities operating from fixed locations in the harbor they were either not identified or are addressed in another section of this report. The location and description of the fuel docks, based on a combination of information provided by the City and my research of the city files, are summarized in the following table.

<b>Name Location</b>	<b>Improvements</b>
Hills Boat Service Inc. 813 E. Bay Avenue Newport Beach	Pier, floats, office, storage, gas pumps, refrigerated box
Island Marine Fuel 406 S. Bayfront Balboa Island	Pier, floats, office, storage, gas pumps, refrigerated box

#### Description – 813 E. Bay Avenue

The fuel dock at 813 E. Bay Avenue is located on the south side of the bay, just east of the Balboa Pavilion. Based on a review of the City records the fuel dock occupies tidelands that are approximately 120-feet wide at the Bulkhead and Pierhead lines and extend approximately 80-feet from the Bulkhead to the Pierhead line. In addition they extend an additional 20-feet beyond the Pierhead for the width of the property. The aerial photograph provided by the City indicates that the area from the Bulkhead to the Pierhead contains 9,650 square feet, and the area that extends beyond the Pierhead line contains 2,910 square feet, with a gross tideland area of 12,560

square feet. Based on the aerial photograph it appears that the fuel dock occupies approximately one-third of the tideland parcel and that the balance is open and uses for vessel storage and a dinghy basin. The improvements included a fuel dock with pumps, a pier with a storage area and an office/store. The fuel tanks are reported be under a concrete slab on the upland parcel and have a 40,000 gallon capacity. Based on the Assessor's Plat Map the upland parcel contains approximately 3,180 square feet and provides the location for the fuel tanks and surface parking. An aerial photograph and a drawing of the improvements, taken from the City files, is included in the Addenda at the end of this section for reference.

#### Description – 406 S. Bayfront

The fuel dock at 406 S. Bayfront is located on the north side of the harbor, just west of the Balboa Island Ferry, on Balboa Island. Based on a review of the City records the fuel dock occupies tidelands that extend 80-feet from the Bulkhead line to the Pierhead line, and based on the aerial photograph the width varies as they are defined by the "shadow" of the pier and dock area and contain 1,360 square feet of tidelands. The tidelands also extend an additional 20-feet from the Pierhead line into the bay with a width of approximately 113 feet, with an area of 2,260 square feet. The total tidelands area is 3,620 square feet. A representative of the Sate Lands Commission notes that they do not apply tideland rent based on the "shadow" of the improvements, rather it is based on a rectangle the width of the improvements at the pierhead and the bulkhead (often the width of the upland parcel) and the depth from the bulkhead to the pierhead (or as far as the improvements extend beyond the pier head). In the case of this property the improvements extend approximately 113 feet at pierhead and the depth from the bulkhead to the pierhead is 80 feet; therefore, the tidelands rent would be applied to 9,040 square feet (113' x 80') of tidelands plus the 2,260 square feet that extend beyond the pierhead, or a total of 11,300 square feet. The improvements included a fuel dock with pumps, a pier with a store/office and a refrigerated box. The upland parcel at 406 S. Bayfront measures 30.48-feet at the bulkhead (boardwalk), a uniform depth of 88.35-feet and a gross area of 2,631 square feet. The upland parcel is separated from the tidelands by the boardwalk that defines the perimeter of Balboa Island. An aerial photograph and a drawing of the improvements, taken from the City files, are included at the end of this section for reference.

#### Gas Dock Rental Survey

The table on the following page is a summary of the fuel docks that were surveyed to establish the current market rent for the fuel docks specifically identified. A summary of the data follows and my conclusions relative to the gas docks follows the table.

FUEL DOCK RENTAL SURVEY JULY/AUGUST 2012						
Data No. Location	Lease Date	Upland Tideland (Sq.Ft.)	Use	Lease Type	Base Rent Total Rent \$/Sq.Ft.	Percent Rent or \$/gallon
1/ High Seas Fuel Dock San Diego	1995 Adj. 2005	U: 13,800 T: 33,075	Fuel Dock & Sales	Base + Fixed	\$0.23 \$1.49 (combined)	D: \$0.0075/Gal. G: \$0.04/Gal.
2/ Pearson Marine Fuel San Diego	1994 Adj. 2004	U: 4,000 T: 32,900	Fuel Dock	Base + Fixed	\$0.623 \$1.21 (combined)	D: \$0.0075/Gal. G: \$0.04/Gal.
3/ Oceanside Harbor Fuel Dock Oceanside	1989 Adj. 2005	U: 5,658 T: N.Av.	Fuel Dock + Mini Mart	Base + Percent	Not Disclosed	D: 3.0% G: 3.0%
4/ Dana Point Fuel Dock Dana Point	1995 Adj. 2008	U: 22,000 T: 18,000	Fuel Dock	Base + Percent	\$1.77 \$4.28 (combined)	D: 6.0%* G: 6.0%*
5/ McCormix Santa Barbara	2003	U: N. Av. T: 1,344	Fuel Dock	Base + Fixed	\$28,500 N.Av.	D: \$0.04/Gal. G: \$0.04/Gal.
6/ Del Rey Fuels Marina del Rey	2006	U: 14,769 T: 52,989	Fuel Dock	Base + Percent	\$2.03 N.Av. (combined)	6.0% (all fuels)
7/ Mariner's Point Huntington Harbor	2010	T: 7,500	Fuel Dock	Base + Fixed	\$1.19 N.Av.	\$0.015/Gal. to 100,000 Gals. \$0.02/Gal. over 100,000 Gals.

\* Originally 10% at lease commencement, adjusted in 2005/06 to reflect increasing fuel prices.

### Conclusion – Gas Dock Market Rent

Based on the market data uncovered and the interviews completed, the gas docks pay rent based on a fixed minimum annual rent with excess rent paid based on either on a fixed price per gallon or based on a percentage of their gross sales that exceed the base rent (natural breakpoint). It should be noted that when the rent is based on a percentage of the gross sales, the sales figures are calculated exclusive of any sales or excise taxes. The table includes the reported “base” rent per square foot (combined upland & tideland) set forth in the lease agreements and the total rent paid (where available) including all “additional rent” that is based on either percentage rent for any fuel sales and sale of other goods or services or the “fixed” rent per gallon of fuel sold.

The fuel docks included in the survey include an annual “base” rent and pay either percentage rent, or rent per gallon sold, when it exceeds the base rent. The base rent is a fixed fee that has been broken down to a rent per square foot of combined land and water area. The exception is **Comparable Seven**, which is located in Huntington Harbor and includes just the tideland and the operator has the right to the upland parcel that houses the storage tanks. This comparable includes 7,500 square feet (75’ x 100’) of tidelands with a base rent of \$8,900 per annum (“breakpoint”), against charges of \$0.015 per gallon of the first 100,000 gallon of fuel sales (gas or diesel), and \$0.02 per gallon thereafter and five percent of all other gross income. This comparable is a “new” 15 year lease that commenced in April 2010. The lessee had operated from this location since 1965 when it entered into a 15-year lease with three 10-year options that expired in March 2012. For the “breakpoint” to be met requiring that the lessee pay rent above the annual base would require the sale of 470,000 gallons of fuel.

**Comparable Rental Six** is located in Marina del Rey and required that the existing facilities be demolished and replaced with a new facility, including a 1,400 square foot building, a 1,600 dock kiosk, a public promenade along the bulkhead line, and a marina with a fuel dock, 8 single slips, a water taxi berth, a dinghy basin and a large vessel guest dock. The lease commenced in May 2006 with a \$137,500 base rent and percentage rent for fuel (gas, diesel, mixed fuels) sales (6.0%), slip fees (25%), dry storage (20%), new boat sales (1.0%), sport fishing (6.0%), charter boats and bareboat charters (4.5%), bait sales (4.0%), and chandlery and boating supplies (2.0%).

The docks that are leased on a “fixed” basis include a “rent” per gallon of fuel dispensed that ranges from \$0.0075 to \$0.04 per gallon of diesel fuel, \$0.015 to \$0.04 per gallon of gasoline and the most recent lease does not distinguish between diesel and gas. Based on the interviews conducted it was reported that many of the jurisdiction are going away from a “percent of sales” rent for fuel docks due to the fluctuations, volatility and increases in fuel prices. It was noted that this is based on the fact that one operator in a jurisdiction may be paying a tidelands rent based on price per gallon and the rent does not fluctuate with gas prices, while another vendor in the same jurisdiction that has a lease tied to a percent of sales is placed as competitive disadvantage as fuel prices increase and based on the increase in fuel prices they are paying more per gallon for tideland rent. Even in a jurisdiction with just one fuel dock (Dana Point Harbor) the County reduced the percentage rent being paid from 10-percent of gross sales to 6.0-percent because the increasing cost of fuel was impacting the operator’s ability to maintain margins the made the business viable.

As previously noted the **State Lands Commission** has jurisdiction the state’s tide and submerged lands along the coastline extending from the shoreline out to three miles offshore. They include tidelands that are widely defined as “recreational” properties and use a

methodology that applies a rent per square foot to the “recreational” tideland area based on a survey of slip fees in proximate commercial marinas. In their methodology they use an “average” berth size (length), multiplied by the average berth rate per lineal foot, which results in the average “berthing fee” per month (then it is annualized). The annualized “berthing fee” is converted to an absolute tidelands rent (for the square footage of tideland required to support a “typical” berth) at a 9.0-percent rate of return for a commercial use in “recreational” tidelands. The absolute tidelands rent is then divided by the square footage of tideland required to support the typical berth, which results in the rent per square foot for tidelands area. The rent per square foot is then applied to the applicable tideland area. The analysis, based on the results of my survey of marinas in Newport Harbor, using the State Lands Commission methodology is presented below.

The first step is to establish the weighted average slip fee for proximate commercial marinas. Based on the marina survey previously presented, the following table is the calculation of the weighted average slip fee for Newport Harbor as of the date of my survey.

Name Location	Total Slips	Average Slip Fee /LF
Balboa Yacht Basin	171	\$26.31
Balboa Marina (rebuilt)	105	\$43.19
Bayshore Marina	138	\$37.97
Bayside Marina	102	\$35.58
Bayside Village (De Anza)	220	\$28.14
Bellport Lido Yacht Anchorage	239	\$29.44
Harbor Tower Marina	51	\$35.33
Newport Dunes Marina	450	\$30.29
Villa Cove Marina	40	\$35.20
<b>Weighted Average</b>		<b>\$31.62</b>

When the weighted average calculated above is adjusted for the overall occupancy (95.0%) of the marinas included, the effective weighted average is \$30.04 per lineal foot ( $\$31.62 \times 0.95$ ), which is rounded to \$30.00.

Based on the survey data presented, the analysis assumes an average slip length of 36 feet, a 50/50 mix of sailboats and powerboats and a 50/50 mix of single- and double-berth layouts. Based on The State Department of Boating and Waterways publication entitled “*Layout and Design Guidelines for Small Craft and Berthing Facilities*”, a total of 1,180 square feet of tidelands is required per 36-foot slip. The following table a calculation of the number of square feet of tidelands required for a 36-lineal foot slip.

	Single Berth	Double Berth	Average Sq.Ft.
Sailboat	1,183.9 SF	1,042.9 SF	1,113.40 SF
Powerboat	1,316.1 SF	1,175.1 SF	1,245.60 SF
<b>Average Sq.Ft.</b>	<b>1,250 SF</b>	<b>1,109 SF</b>	<b>1,179.5 SF</b>



Using the methodology employed by the State Lands Commission, the following is the calculation of the rent per square foot for the tidelands associated with the “commercial” use of “recreational” tidelands.

36’ Average Berth x \$30.00/LF Average Slip Fee:	\$1,080.00	per month
Monthly Average Annualized:	<u>        x 12</u>	months
Average Annual Slip Fee:	\$12,960.00	per year
Annual Rate of Return to Tidelands - Commercial:	<u>        x 0.09</u>	
Absolute Annual Gross Tidelands Rent (average berth):	\$1,166.40	per year
Tidelands required to support Average Berth:	<u>    -:- 1,180</u>	Sq.Ft.
Conclude Annual Rent per Sq.Ft. of Tidelands:	\$0.99	per Sq.Ft.

The above analysis suggests that the rent for the “commercial” use of “recreational” tidelands is \$0.99 per square foot. This compares with the indication from the most recent lease (Comparable 7) at \$1.19 per square foot of tidelands. Comparable Seven is similar to fuel docks in Newport Harbor as it does not include the upland parcel in the tidelands lease and the tanks are located on the upland parcel.

As a check of this conclusion, I have used the per gallon figures from the most recent lease in Huntington Harbor and applied it to the tidelands associated with the fuel dock at 813 E. Bay Avenue to determine the number of gallons that would be sold to reach the “breakpoint” based on the minimum rent of \$0.99 per square foot of tidelands.

12,560 Sq.Ft of Tidelands @ \$0.99/Sq.Ft.	\$12,434
Less - 100,000 Gallons @ \$0.015/Gallon:	<u>    - 1,500</u>
Remaining Base Rent to reach “Breakpoint”:	\$10,934
Divided by Rate after initial 100,000 gallons - \$0.02	<u>    -:- 0.02</u>
Remaining Gallons to reach “Breakpoint”:	546,700
Add back first 100,000 gallons:	<u>    +100,000</u>
Total Gallons to reach Base Rent “Breakpoint”:	646,700

The above analysis indicates that with a “Base” rent of \$0.99 per square foot of tidelands, against a rent of \$0.105 for the first 100,000 gallons sold, and \$0.02 per gallon over 100,000 gallons, the “breakpoint” would be met at the sale of 646,700 gallons of fuel (combined gas & diesel).

The two gas docks are able to provide essentially the same services and are directly across the bay from each other; however, the tidelands associated with the gas dock at 401 S. Bayfront only include the “shadow” of the pier, dock and float. When the Fair Market Rent figure of \$0.99 per square foot is applied to the tidelands that reflect the “shadow” of the improvements, the base rent for 401 S. Bayfront is \$3,583 (3,620 Sq.Ft. x \$0.99). If the same figure was applied to the

rectangular tidelands as described above, the total base rent would be \$11,187 (11,300 Sq.Ft. x \$0.99), which is more in line with the base rent for the 813 E. Bayfront gas dock. When applied to just the “shadow”, the figure of \$11,187 equates to \$3.09 per square foot of tidelands, which is in-line with the total rent figures (\$1.21 to \$4.38 per Sq.Ft.) set forth in the survey table on page 33. Using the base rent per square foot and applying it to the two tidelands as defined in the aerial photographs would put the fuel dock at 813 E. Bay at a competitive disadvantage; therefore, the base rent in absolute terms should be applied equally to both properties set against the rent per gallon of \$0.015 for the first 100,000 gallons and \$0.02 per gallon over 100,000 gallons.

Based on the above analysis, I have concluded that the **Fair Market Rent for the tidelands associated with a gas dock is \$0.99 per square foot per annum, against a rent per gallon of \$0.015 per gallon for the first 100,000 gallons (combined gas & diesel) and \$0.02 per gallon in excess of 100,000 gallons (combined gas & diesel).**

**I have concluded the annual base rent for the fuel dock at 813 E. Bay Avenue is \$12,434.00, against a rent per gallon of \$0.015 per gallon for the first 100,000 gallons (combined gas & diesel) and \$0.02 per gallon in excess of 100,000 gallons (combined gas & diesel).**

**I have concluded the annual base rent for the fuel dock at 406 S. Bayfront is \$11,187.00, against a rent per gallon of \$0.015 per gallon for the first 100,000 gallons (combined gas & diesel) and \$0.02 per gallon in excess of 100,000 gallons (combined gas & diesel).**

Conclusion – Other Commercial Entities @ Fixed Locations

As previously discussed, Exhibit A to the contract for services did not specifically identify other commercial entities that operate from a fixed location; however, many of these exist in the Harbor and Tidelands, including the Pavilion and the restaurants located on the Balboa Pier and the Newport Pier. The following table is a summary of the market data uncovered that applies to different commercial entities at fixed locations that were not specifically described in Exhibit A.

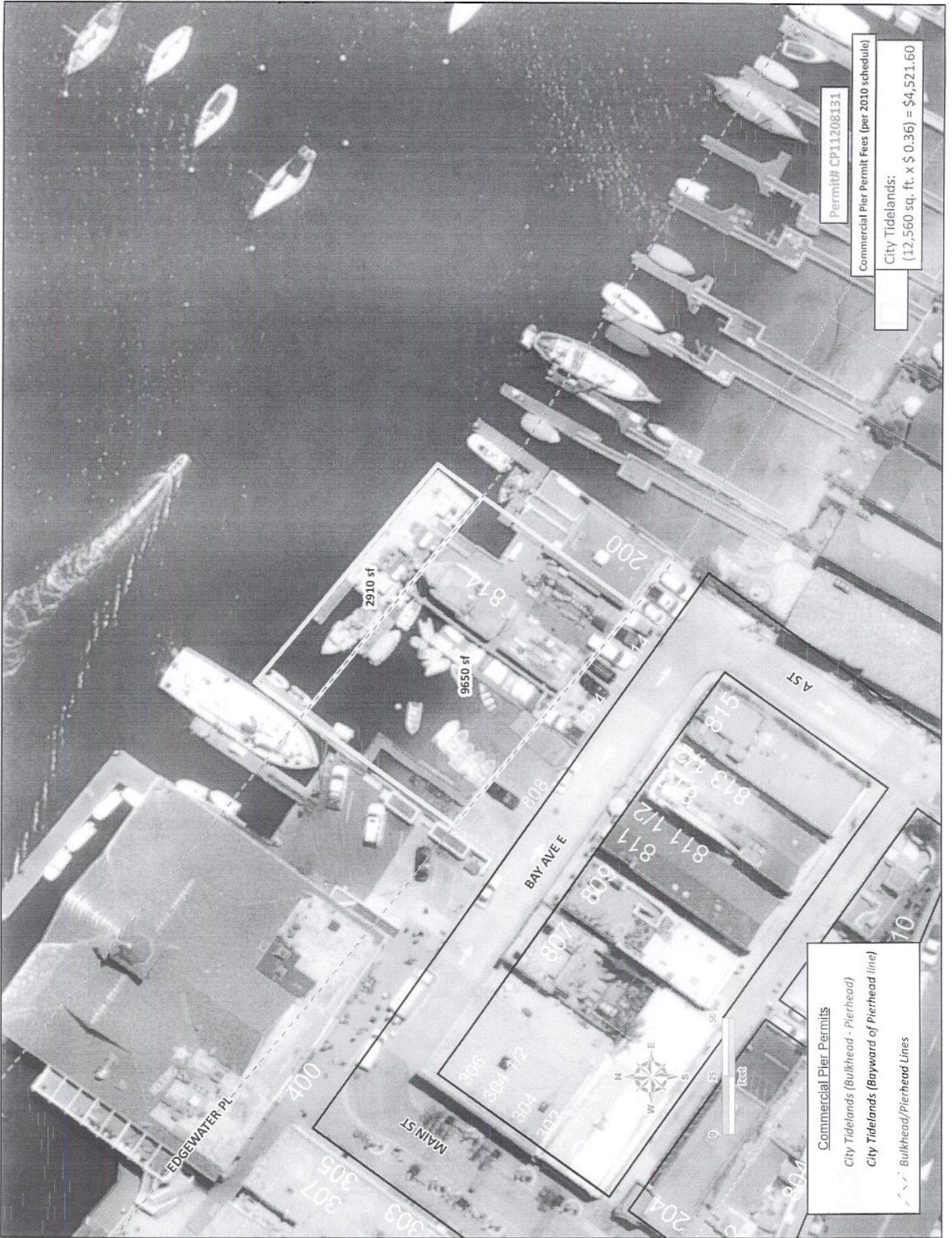
Jurisdiction	Restaurants		Chandlery /Retail	Service /Repair	Grocery	Off-site Bev.	Coin Op	Other
	Food	Bev.						
S.D. Port Auth.	3.0%	5.0%	4.0%	5.0%	3.0%	3.0%	5.0%	
City of S.D.	3.0%	5.0%	6.0%	4.0%			25-50%	10.0%
Oceanside			6.0%	6.0%	6.0%	6.0%	20.0%	6.0%
Dana Point*	9.0%	9.0%	3.0%	4.0%		9.0%	20.0%	1.0%-9.0%
Newport (BBC)	3.0%	5.0%	5.0%					10.0%
Long Beach					5.0%			5.0%
Port of L.A. (San Pedro)	3.0%	5.0%	3.5%		3.0%			
L.A. County	3.0%	5.0%	3.5%		3.0%	5.0%		
Ventura County	3.0%	5.0%			3.5%	3.5%		
Santa Barbara		3.5%	6.0%	2%-6.0%	6.0%	6.0%	6.0%	10%

\* Depending on location, Dana Point charges an additional 1.0% for Common area maintenance & 1/4% for parking management

As illustrated in the above table, there are some variations within the data and complete data was not available from each of the jurisdictions interviewed; however, there does appear to be a central tendency among the data presented. It should be noted that in most cases these jurisdictions are leasing both the upland and tidelands parcels. As noted above, in many parts of Newport Harbor the City only has jurisdictions over the tidelands; therefore, in my opinion the market lease rates for the various uses would tend toward the lower end of the indicated ranges: 3.0-percent of the food sales; 5.0-percent of the beverage sales; 5.0 percent of ship chandlery and retail sales; 6.0 percent of boat services and repairs; 5.0 percent of grocery sales and the sale of beverages for off-site consumption.

Addenda – Section A

Aerial Photographs



Permit# CP11208131

Commercial Pier Permit Fees (per 2010 schedule)

City Tidelands:  
(12,560 sq. ft. x \$ 0.36) = \$4,521.60

2910 sf

9650 sf

EDGEWATER PL

BAY AVE E

MAIN ST

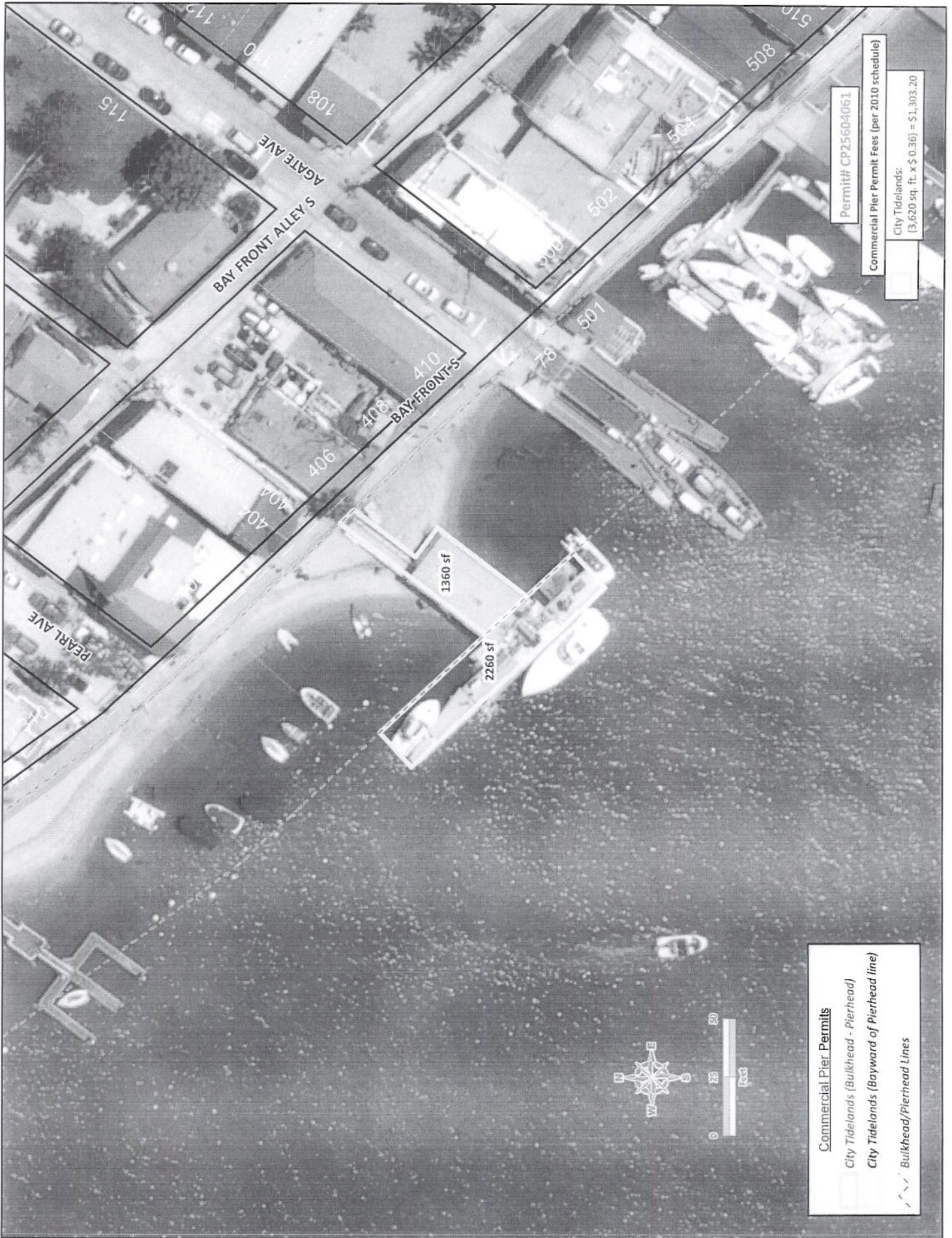


Commercial Pier Permits

City Tidelands (Bulkhead - Pierhead)

City Tidelands (Bayward of Pierhead line)

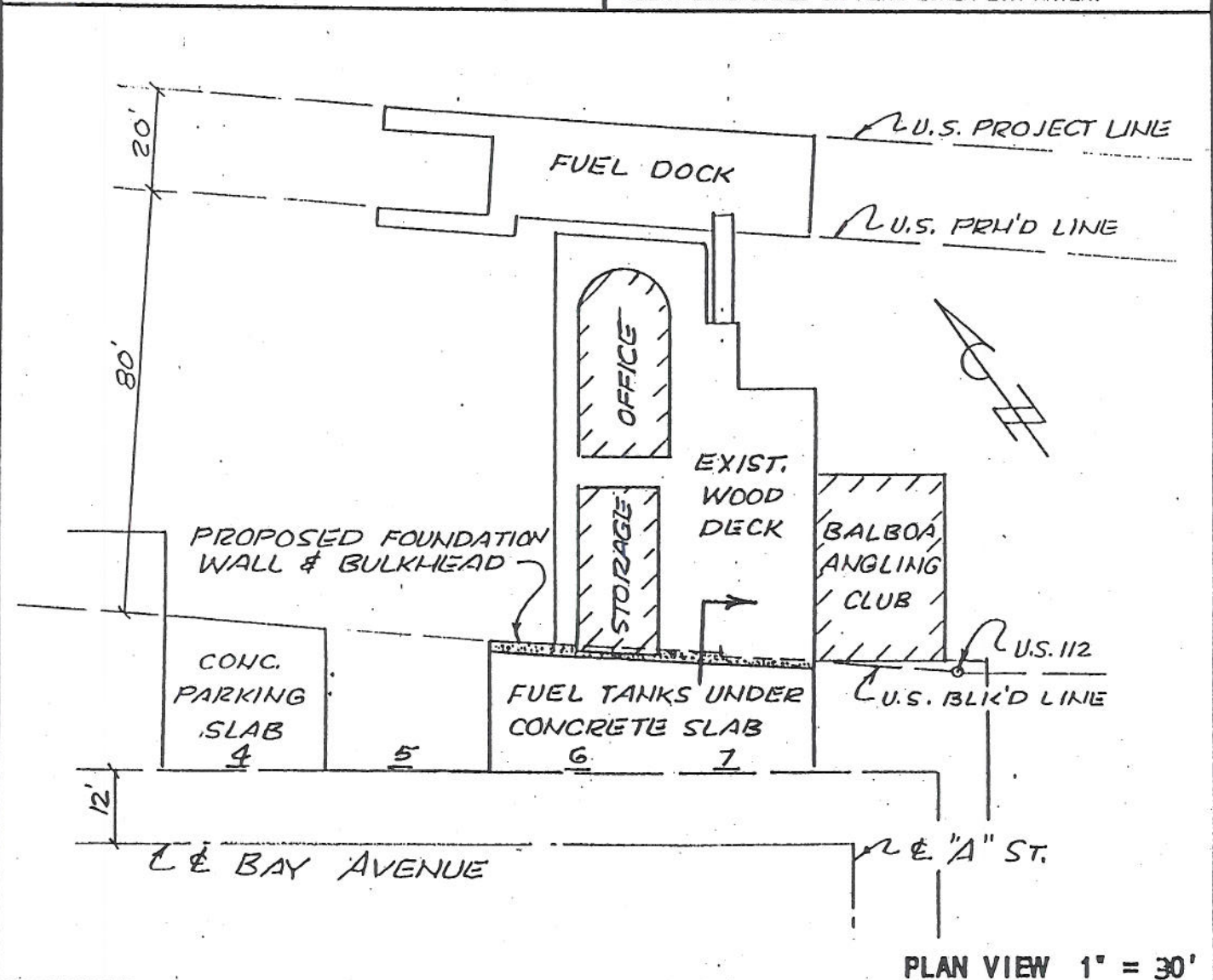
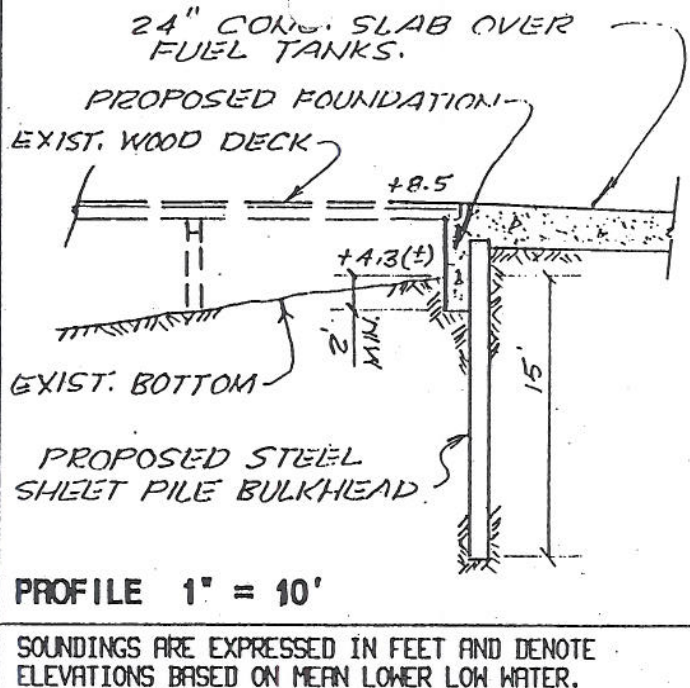
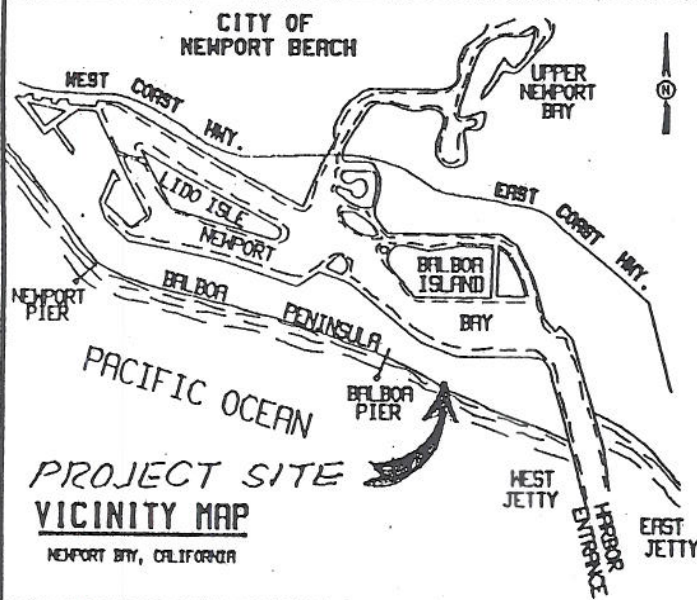
Bulkhead/Pierhead Lines



Dock Drawings



# CITY OF NEWPORT BEACH

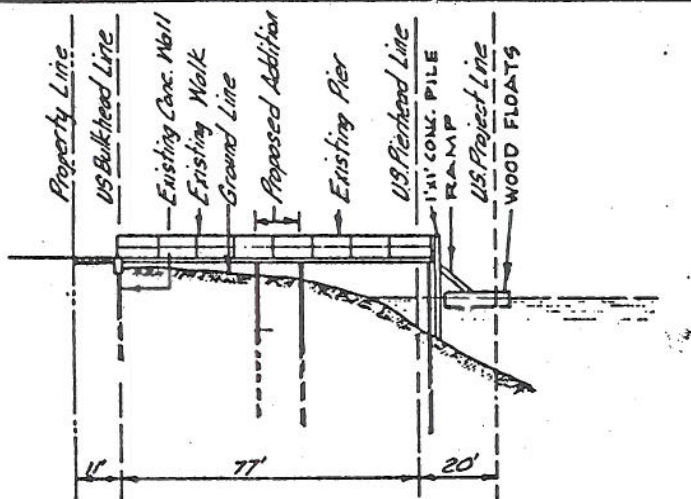


APPLICANT'S NAME GARY HILL

JOB ADDRESS 814 E. BAY AVE

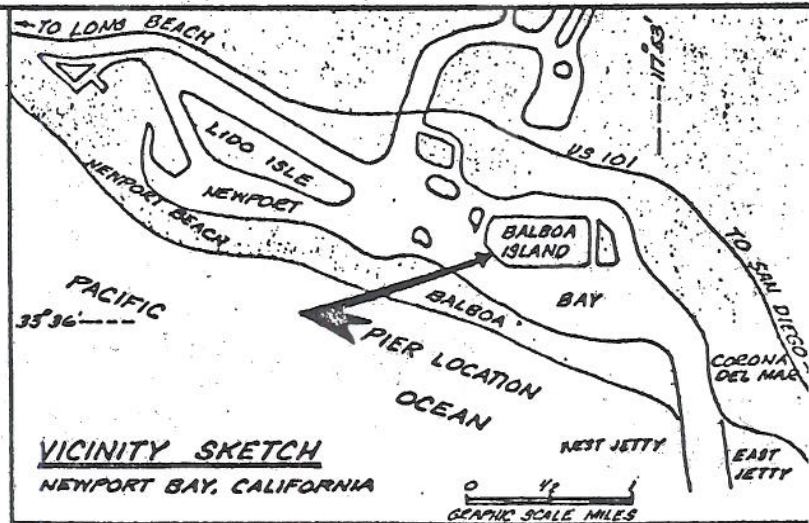
DATE 2/6/95

256-406



**SECTION THROUGH PIER**

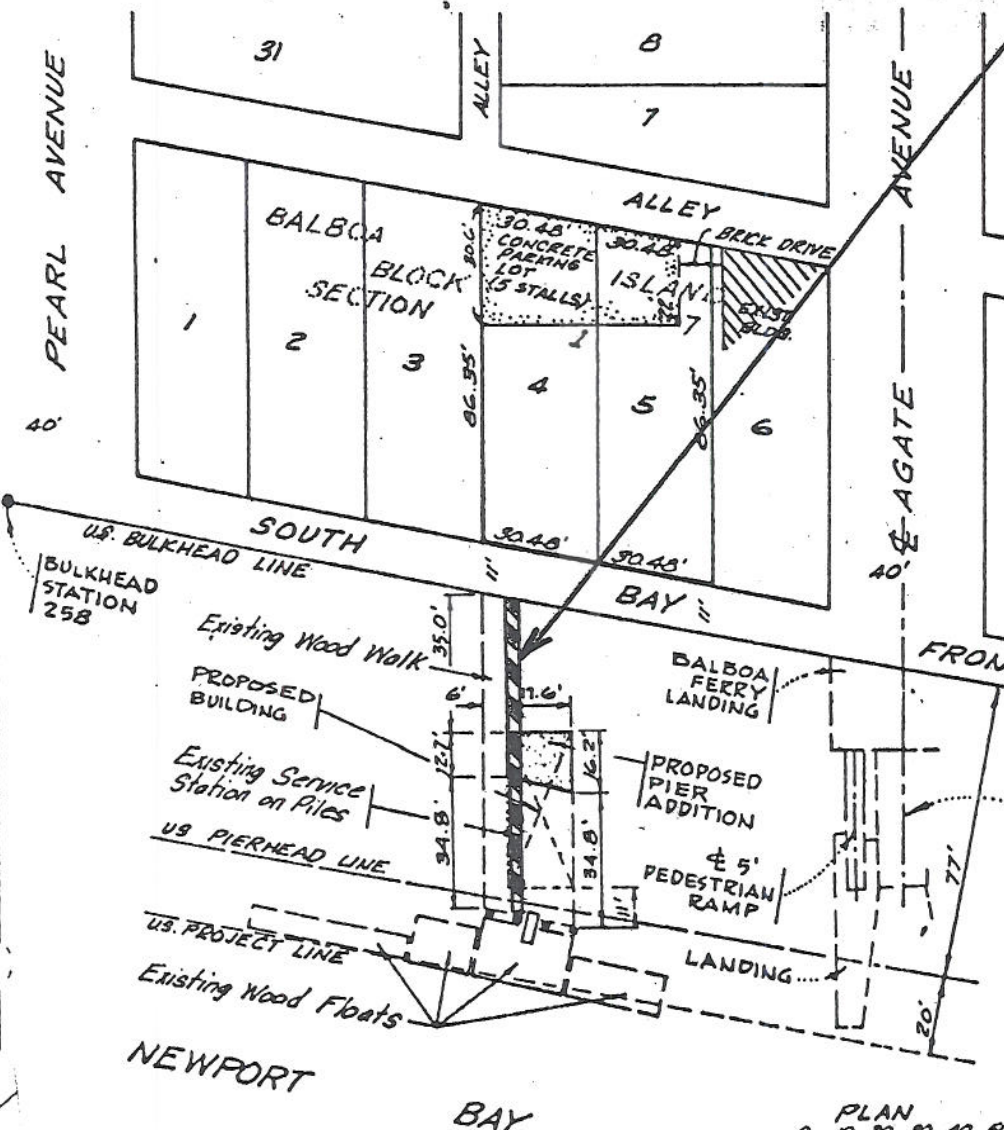
HORIZ. SCALE: 1" = 50'  
VERT. SCALE: 1" = 30'



**VICINITY SKETCH**

NEWPORT BAY, CALIFORNIA

*Soundings are expressed in feet and denote depths below Mean Lower Low Water. Maximum range of tide approximately 10 ft. Harbor Lines are established in this section of Newport Bay.*



**INDICATES LOCATION OF PIPES AND WIRING WHICH ARE TO BE REPLACED.**

BY: H.S. BEEK  
DATE: 3/13/91

RAUB, BEIN, FROST AND ASSOCIATES  
136 ROCHESTER STREET  
COSTA MESA, CALIFORNIA

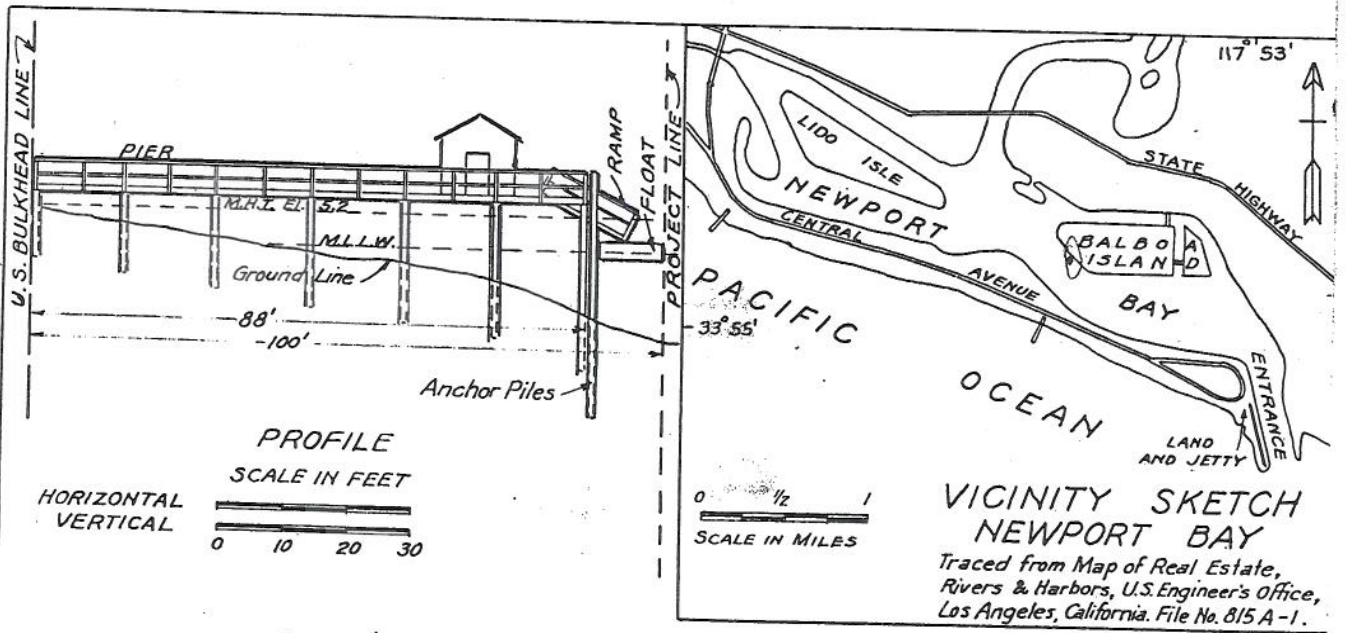
**PROPOSED  
PIER ADDITION**

NEWPORT BAY  
NEWPORT BEACH CALIFORNIA

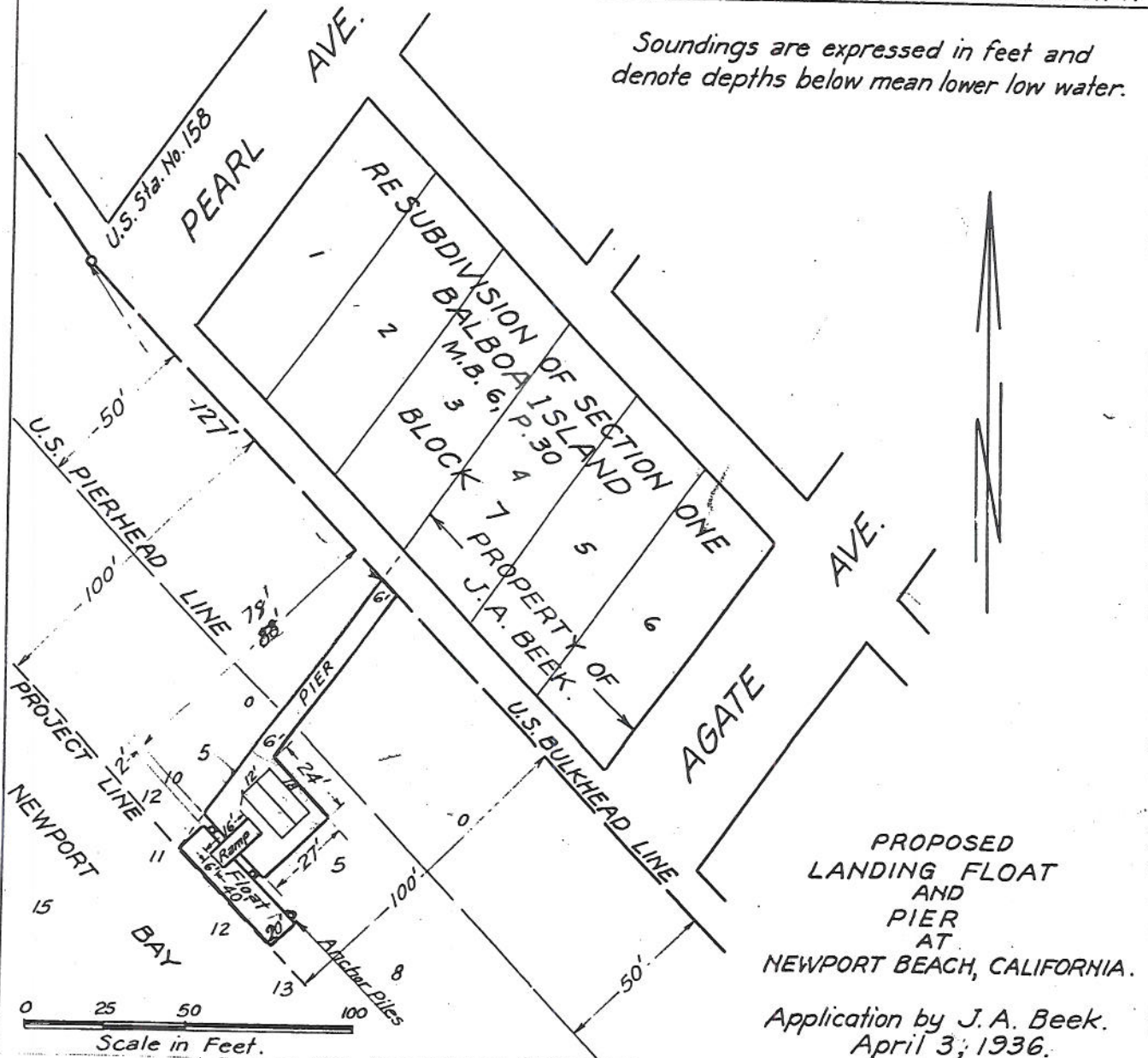
Application By: J.A. BEEK  
Date: 5 JAN 67  
410 SOUTH BAY FRONT  
BALBOA ISLAND  
NEWPORT BEACH CALIF



KA-276-R



Soundings are expressed in feet and denote depths below mean lower low water.



## SECTION D – COMMERCIAL PIERS

### Introduction

This section is identified as “Commercial Piers”, which are defined in Chapter 17.01.030(M)(5a) of the City Municipal Code, as:

The term “commercial pier” shall mean a pier adjacent to commercially or non residentially zoned property with single or multiple berths which are rented or leased, including any pier used in connection with marinas, charter facilities, yacht clubs, yacht sales, rental facilities and boat yards. For purposes of this chapter, multiple piers which are adjacent to a lot or parcel of land occupied by a multifamily dwelling or dwelling units that are income generating, and structures adjacent to commercially zoned uplands that are business or income generating in nature, shall be deemed commercial.

The City Municipal Code, Chapter 17.01.030(J)(3) defines the term “Marina” as:

... a commercial berthing facility (other than moorings or anchorage) in which five or more vessels are continuously wet-stored (in water) and/or dry stored (on land/racks) for more than thirty (30) days.

For clarification purposes only, Chapter 17.01.030(M)(5b) of the Municipal Code defines a “noncommercial pier” as:

...a pier used for private recreational purposes by the owner or occupant(s) of the abutting residentially zoned upland property.

Newport Harbor is unique in that the City of Newport Beach controls and administers the tidelands properties; however, they do not control and administer the upland property as the upland properties throughout most of the harbor are privately owned. In most harbors in Southern California the entity that has jurisdiction and control of the tidelands also controls the uplands parcels and they are generally developed in conjunction with each other. The marinas generally require that parking and facilities for the boat owners (parking, showers, restrooms, etc...) be provided to maximize the rent that they can command and to meet zoning codes.

There is very limited data with respect to the rent the rental rates that are paid for just the tideland properties for the development of commercial piers and/or commercial marinas. There are two marinas within Newport Harbor that do not include the uplands parcels. Both are administered by the County of Orange as the Lessor. The first is Newport Marina (formerly Swales Anchorage) and the second is the Bayshore Marina, both of which are located in the Bayshores neighborhood of Newport Beach and were included in the rent survey presented on pages 19 through 29. According to the County representative and a review of the lease the Bayshore Marina tidelands are leased for 20-percent of the gross revenue (based on a lease that is dated 12/2004) and the

Newport Marina was leased in October 2011 and the lease rate is \$72,000 per year, or approximately 20-percent of the gross income. These two leases will be discussed further later in this section. A county controlled property (Newport Dunes) that is in Newport Harbor that includes both tideland and upland parcels includes a marina that is leased for 25-percent of the gross revenue. The County also leases the uplands and tidelands at the Sunset Aquatic Marina in Huntington Harbor and the tidelands used for marina purposes are leased at an initial rate (commencing in 1994) of 25-percent of gross revenue and the percentage escalates to 35-percent of the gross revenue over the term of the lease. While the number of data points is somewhat limited, did not all commence concurrently, they have the same Lessor, four different Lessee's, the overall terms and leasing policies for all four County properties is relatively similar and reflective of the overall discount associated with leasing just the tidelands exclusive of the uplands parcel.

#### Description

There are several commercial piers/marinas located throughout the harbor that range from a few slips adjacent to a small commercial building with no upland support facilities to full service marinas that provide full support facilities – parking, restrooms, showers, storage, etc... In general, the commercial piers located in the city are those that are not associated with a residence on the upland parcel.

#### Commercial Pier/Marina Rental Survey

The following table is a summary of the marina's that were surveyed to establish the current market rent for the commercial piers located in Newport Harbor. A discussion of each data item is presented on the pages following the summary table.

<b>COMMERCIAL PIER/MARINA LEASE SUMMARY JUNE/JULY 2012</b>					
<b>Data No. Jurisdiction Location</b>	<b>Lease Date Type</b>	<b>Property Type</b>	<b>Parcel Area (Sq.Ft.)</b>	<b>Annual Base Rent (\$/Sq.Ft.)</b>	<b>Marina Rent (% of gross)</b>
1/ County of Orange Newport Marina 2888 Bayshore Drive Newport Beach	11/2011 New Lease	Tidelands	50,175	\$1.44	Not Applicable
2/ County of Orange Bayshore Marina 2572 Bayshore Drive Newport Beach	12/2004 New Lease by prior Tenant	Tidelands	100,057	\$1.65	20.0%
3/ Unified Port of San Diego Point Loma Marina 4960 Marina Drive Dan Diego	2/2006 New Lease	Tidelands Uplands Combined	163,285 <u>75,650</u> 238,935	Sliding Scale from \$0.10 to \$1.15	22.0%
4/ Unified Port of San Diego Pier 32 Marina 3201 Marina Way National City	4/2006 New Lease	Tidelands Uplands Combined	724,412 <u>175,975</u> 900,387	Sliding Scale from \$0.01 to \$0.11	Sliding Scale from 7.5% to 16.5%
5/ County of Los Angeles Neptune Marina & Apartments 14100 Marquesas Way Marina del Rey	8/2008 New Option	Tidelands Uplands	523,074 (combined)	±\$0.95 (combined)	25.0%
6/ County of Los Angeles Tahiti Marina & Apartments 13900 Tahiti Way Marina del Rey	1/2012 Amended & Restated Lease	Tidelands Uplands	484,973 (combined)	±\$1.52 (combined)	25.0%
7/ County of Los Angeles Holiday Harbor 13915 Panay Way Marina del Rey	7/2008 New Option	Tidelands Uplands	252,895 (combined)	±\$0.85 (combined)	25.0%
8/ County of Los Angeles Marina Bay Club Apartments 14015 Tahiti Way Marina del Rey	8/2009 New Option 11/2011 Renewal	Tidelands Uplands	246,044 (combined)	±\$2.54 (combined)	25.0%
9/ Ventura Port District Sondermann-Ring W/S Anchors Way @ Schooner Drive Ventura Harbor	Current Option	Tidelands Uplands	914,760 (combined)	Not Available	25.0%

Discussion – Commercial Piers/Marinas – Survey of Comparable Lease Data

**Lease Data One** is the most recent agreement uncovered in Newport Harbor. It is a three year lease between the County and Palmo Investments for the tidelands under the Newport Marina (formerly Swales Anchorage). The Lessee owns the upland parcel and an adjoining apartment building, which they acquired in the 1990's when they purchased the leased fee interest in the land from The Irvine Company. The former leasehold owner (Farwell Family) had a leasehold interest in the land and operated the apartments and marina (operated under a Tidelands Agreement with the County since 1971 that converted to 20% of gross in 1990) until the ground lease expired in June 2011. At the time the Farwell ground lease expired Palmo became the successor-in-interest to the marina improvements. Palmo negotiated an Interim Tidelands Lease that has a three year term with no renewal options. The tidelands were taken in an "as-is" condition and the Permitted Use is for a "commercial boating facility containing approximately forty-three (43) slips"; however, the former marina operator reported a total of 55 slips. The annual rent is \$72,000 and is flat for the three year term. The County representative noted the fixed rent is approximately 20-percent of the prior year's gross revenue. The most recent County audit was completed in 2006 and the reported gross revenue for Swales Anchorage (they paid 20% of gross) was \$360,350, resulting in an annual rent of \$72,070. All of the operating expenses and maintenance and repair, including dredging and repairs to the sea wall, are the responsibility of the Lessee and the dock improvements revert to the County at the end of the lease. The Lessee has applied for a dredging permit and anticipated the dredging would commence in July 2012.

**Lease Data Two** is a lease between the County of Orange and The Irvine Company for the Bayshore Marina. The lease commenced in December 2004 and The Irvine Company was the prior operator of Bayshore Marina and is the owner of the upland property ( $\pm$ 1.38 acres) that includes a strip of water/tidelands between the bulkhead line and the seawall that defines the seaward property line of the adjoining residential properties. The upland parcel is in the Bayshores guard gated residential community and includes a parking lot and restroom facilities. The tidelands is a 100,057 square foot strip that supports 138 slips that range in size from 15-feet to 82-feet with slip fees from \$26.75 to \$59.00 per lineal foot. The lease has a 20-year term with a 20-year option to renew. The minimum base rent is \$165,000 per year against 20-percent of the gross revenue, whichever is greater. The minimum rent is adjusted every three years based on the greater of the change in CPI, or 75-percent of the average of previous three years rental payments. The Lessee is responsible for all dredging, maintenance and repair, utilities, insurance and taxes and the dock improvements revert to the County at the end of the lease. The most recent audit by the County was completed in 2004. At that time the gross revenues were

\$1,208,875 and the Lessee paid \$247,434 (20.47%) in rent, which equates to \$2.47 per square foot of tidelands (\$247,434 :- 100,057 Sq.Ft.). Based on my 2006 survey compared to the current survey, slip fees (depending on length) have increased between 23.7- and 37.2-percent. The County reports The Irvine Company paid approximately \$310,000 in tidelands rent in 2011/12. This indicates that gross slip fee revenue was approximately \$1,550,000 (\$310,000 :- 0.20) and that the rent per square foot of tidelands was \$3.10 (\$310,000 :- 100,057 Sq.Ft.). It was noted by the County representative that the prior lease established the annual rent based on a “formula” that took into consideration the square footage of tidelands, land values in the area and rates of return. It was reported that the rent being paid under the “formula” amounted to 18.3- to 19.0-percent of the gross revenues.

**Lease Data Three** is a Lease between the Unified Port of San Diego and a developer/operator for tidelands/upland parcel that has been developed with a 50-space marina and approximately 26,000 square feet of commercial, restaurant, marine related offices, marina support facilities, a public park with amphitheater, pedestrian pier, promenade and parking lot. The upland parcel contains approximately 75,650 square feet with approximately 163,285 square feet of water. The lease has a 40 year term with a minimum rent that is stepped up from \$25,000 in year 1, \$200,000 in year 2, \$250,000 in year 3 and \$275,000 in years 4 through 10 versus the following percentage rents (as % of gross revenue):

Service	% Rent
Boat slips, dock lockers, dingy & dry storage	22.0%
Food, off-site beverages, fish sales & grocery	3.0%
On-site beverage, merchandise, minor marine services & owned vending machines	5.0%
Ship chandlery	4.0%
Boat charters, water taxi & sales and rental of fishing equipment	6.0%
Boat & breakfast operations	7.0%
Boat rentals, marine related office rentals, sailing school, recreation & misc.	10%
Parking	10%
Bicycle rentals	15%
Boat sales	\$5.22/ft.
Vending machine commissions	25%
Lottery tickets	0.5%
Telecommunication uses	50%

The minimum rent is adjusted every 5 years based on the CPI with rent reviews every 10 years. The minimum construction cost was set at \$7,000,000; however, the actual construction costs were not disclosed. The lease commenced in 2006 and the new marina was constructed and the slips in the marina range from 31-feet to 100-feet with end ties from 51- to 178-feet. The current slip fees range from \$18.50 to \$32.00 per lineal foot. This marina is approximately 3-miles from the open ocean with no bridge obstructions.



**Lease Data Four** is a lease between the Unified Port of San Diego and a developer/operator that commenced in 2006. The property includes 175,975 square feet of land area and approximately 724,412 square feet of water located in the Port District's jurisdiction in National City. The developer completed construction of a 250 slip marina with four buildings totaling approximately 8,650 square feet and 220 parking spaces. A Port District representative reports that the Port recognized that the surrounding National City neighborhood is less desirable than the neighborhoods closer to the harbor mouth and that the marina is approximately 11 miles from the harbor mouth and established a lower base rent and lower percentage rent than is typical in the Port. The base rent was \$2,000 in year one, \$10,000 in year 2, \$12,000 in year 3, and \$50,000 in years 4 through 10. The percentage rent for the marina was phased in based on occupancy at 7.5-percent until the marina was 90-percent occupied for 12 consecutive months at which time it increases to 12-percent. When it reaches 95-percent occupancy for a period of 12 months the rent is increased to 15-percent and after it reaches 98-percent occupancy it increases to 16.5-percent of gross revenues. Once the percentage rent reaches the increased percentage it does not go back down. The lease includes several other percentage rental rates that are similar to the figures set forth in the discussion of Comparable Three. The slips in the marina range in size from 28-feet to 65-feet with monthly slip fees ranging from \$13.10 to \$18.60 per lineal foot, with side ties at \$6.50 per lineal foot and end ties at \$21.50 per lineal foot.

**Data Item Five** is a lease option between the County of Los Angeles and the current leasehold owner (Legacy Partners Neptune Marina, LP) of the upland and tidelands located at 14100 Marquesas Way in Marina del Rey. The property is identified as the Neptune Marina Apartments and includes Parcel 10R that is improved with a 136-unit apartment and 184 slip marina and Parcel FF, which is a public parking lot that is not controlled by the Lessee. The County does not distinguish between the between the uplands and tidelands and the combined property contains 523,074 square feet (Parcel 10R); however, the square footage of Parcel FF is not identified. The existing 60-year lease for Parcel 10R expires in February 2022 and it was noted that the Option was the result of the Lessee's proposal for a lease extensions and new lease that was received in response to the release of an RFP. The option gives the lessee a 39-year lease extension (Amended and Restated Lease) through February 2061 and the lessee intends to demolish the existing improvements and construct a 526 unit apartment complex (including 81 affordable housing units) and a 161 slip marina with 7 end-ties. If the Lessee exercises the option for Parcel FF (New Lease) it will have a concurrent term as the Amended and Restated Lease for Parcel 10R and they will be permitted to move some of their required on-site parking to Parcel FF and requires construction of a public docks for the County in the harbor and pay half the cost of establishing a wetland park in the area (Parcel 9U). The total development cost is "not less than