

CALIFORNIA COASTAL COMMISSION

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

Th7a



Staff: J. Rabin-LB
Date: January 23, 2014

ADMINISTRATIVE PERMIT

Application No.: 5-13-0637

Applicant: Doreen Borke

Agent: Swift Slip Dock & Pier Builders, Inc.

Location: 604 South Bay Front, Newport Beach (Orange County)

Project Description: Remove existing pier, pier platform, and gangway and replace with a new 53' x 4' pier, a 10' x 12' pier platform, and a 3' x 24' gangway. A new deck surface would be installed on the existing 22' x 14' floating dock. Total water coverage would drop from 716 square feet to 700 square feet, a decrease of 16 square feet.

EXECUTIVE DIRECTOR'S DETERMINATION:

The findings for this determination, and for any special conditions, appear on subsequent pages.

NOTE: P.R.C. Section 30624 provides that this permit shall not become effective until it is reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

Thursday, February 13, 2014 – 8:30 a.m.
The Cliffs Resort Hotel
2757 Shell Beach Road
Pismo Beach, CA 93449

IMPORTANT - Before you may proceed with development, the following must occur:

Pursuant to 14 Cal. Admin. Code Sections 13150(b) and 13158, you must sign the enclosed duplicate copy acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgement and evidence of compliance with all special conditions, we will send you a Notice of Administrative Permit Effectiveness.

BEFORE YOU CAN OBTAIN ANY LOCAL PERMITS AND PROCEED WITH DEVELOPMENT, YOU MUST HAVE RECEIVED BOTH YOUR ADMINISTRATIVE PERMIT AND THE NOTICE OF PERMIT EFFECTIVENESS FROM THIS OFFICE.

CHARLES LESTER
Executive Director

By: Jeffrey Rabin
Title: Coastal Program Analyst

SPECIAL CONDITIONS: See pages five through nine.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

The Executive Director hereby determines that the proposed development is a category of development, which, pursuant to PRC Section 30624, qualifies for approval by the Executive Director through the issuance of an Administrative Permit. Subject to Standard and Special Conditions as attached, said development is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976 and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. If located between the nearest public road and the sea, this development is in conformity with the public access and public recreation policies of Chapter 3.

FINDINGS FOR EXECUTIVE DIRECTOR'S DETERMINATION:

A. PROJECT DESCRIPTION

The subject site is located at 604 South Bay Front in the City of Newport Beach (**Exhibit 1**). Large single-family residences with private docks characterize the subject site and the surrounding area (**Exhibit 2**). The proposed project would remove the existing 57' x 4' pier, 10' x 12' pier platform, and 3' x 20' gangway. Those facilities would be replaced by a new 53' x 4' pier, a 10' x 12' pier platform, and a 3' x 24' gangway. The existing 22' x 14' floating dock would remain. A new dock surface would be installed. The project would shorten the existing pier by 4 feet, which would move the pier platform 4 feet closer to the bulkhead. Total water coverage would decrease from 716 square feet to 700 square feet (**Exhibits 3 and 4**). Five existing 14" square concrete T-piles would be removed. They would be replaced by four 14" square concrete T-piles. Two existing 12" square concrete piles would be removed and replaced.

The dock project is associated with the existing single-family residence located across the public bicycle/pedestrian path from the site. The dock and related facilities will be used for boating related purposes. As required by the City of Newport Beach Harbor Resources Division, a preliminary eelgrass (*Zostera marina*) survey was conducted on July 18, 2013. Eelgrass was discovered within the project area, including the area beneath most of the existing pier platform, most of the current gangway, and next to three sides of the floating dock (**Exhibit 5**).

At the request of Commission staff, a second eelgrass survey was conducted on September 18, 2013 to pinpoint the location of the existing eelgrass. That survey showed that eelgrass was present beneath the existing pier platform and part of gangway, but the extent of the eelgrass was less than that found in the initial July 18, 2013 survey (**Exhibit 6**).

Eelgrass surveys completed during the active growth phase of eelgrass (typically March through October) are valid for 60-days with the exception of surveys completed in August-October. A survey completed in August-October shall be valid until the resumption of active growth (i.e., March 1). The subject project is on the agenda for the Coastal Commission's February 2014 meeting, so the second eelgrass survey is still valid.

As required by the City of Newport Beach Harbor Resources Division, a preliminary *Caulerpa taxifolia* survey was done on July 18, 2013. No *Caulerpa taxifolia* was found. A second *Caulerpa taxifolia* survey was conducted on September 18, 2013. No *Caulerpa taxifolia* was found.

Caulerpa taxifolia surveys are valid for 90 days. The project is on the agenda for the Coastal Commission's February 2014 meeting. The *Caulerpa taxifolia* survey is not valid since more than 90 days have passed since the survey was completed. Thus, an updated *Caulerpa taxifolia* survey must be conducted prior to commencement of the project. Therefore, the Commission imposes **Special Conditions 2 and 3**, which identify the procedures to be completed prior to beginning any construction.

Also, if any *Caulerpa taxifolia* is found on the project site, **Special Condition 3** also identifies the procedures to be completed prior to beginning any construction.

Local Government and Other Approvals

The proposed project has received Harbor Permit Number 225-604 and Plan Check Number 1241-2013 from the City of Newport Beach Harbor Resources Division (**Exhibit 4**). The applicant's agent has applied for approval from the Santa Ana Regional Water Quality Control Board (RWQCB) and the U.S. Army Corps of Engineers.

The City of Newport Beach has imposed Special Condition 4 on their Harbor Permit for this project. "Only marine oriented uses are allowed on the pier, pier platform, gangway and float. Patio furniture, plants etc...are not permitted." Compliance with this City-imposed condition will contribute toward the project's consistency with Section 30233 of the Coastal Act.

As part of its Harbor Permit for the project, the City of Newport Beach also has imposed Special Condition 8, which states: "Vessels shall not encroach upon neighbor's property on either side." The City also included Special Condition 9, which says: "Vessels may not extend beyond the end of the fingers by more than the width of its beam except as otherwise noted in the Municipal Code." The City's Special Condition 10 specifies that the maximum beam of a vessel that is permitted to side-tie to the westernmost side of the float is 18'. The City's Special Condition 11 states that the maximum beam of a vessel that is permitted to side-tie to the easternmost side of the float is 5'.

B. PUBLIC ACCESS

The subject site is located on the south side of the Balboa Island in the City of Newport Beach. The nearest public access to Newport Bay is located next to the pier. Public access to the beach and along the sandy shoreline is available from the adjacent public bicycle/pedestrian path. Some of the piers may limit lateral access along the beach at high tide.

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

C. MARINE RESOURCES

The proposed recreational boat dock development and its associated structures are an allowable and encouraged marine related use. The project design includes the minimum sized pilings and the minimum number of pilings necessary for structural stability. There are no feasible less environmentally damaging alternatives available. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. Further, as proposed and conditioned, the project, which is to be used solely for recreational boating purposes, conforms to Sections 30224 and 30233 of the Coastal Act.

D. WATER QUALITY

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post-construction Best Management Practices (BMPs). As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

E. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan (LUP) for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

SPECIAL CONDITIONS:

This permit is granted subject to the following special conditions:

1. Water Quality

A. Construction Responsibilities and Debris Removal

- (1) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.
- (2) Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
- (3) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (4) Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- (5) If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- (6) Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- (7) Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- (8) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.

- (9) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (10) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (11) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (12) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (13) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (14) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away as possible from the receiving waters and storm drain inlets.
- (15) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- (16) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

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

- (1) Boat Cleaning and Maintenance Measures:
 - a. In-water top-side and bottom-side boat cleaning shall minimize the discharge of soaps, paints, and debris.

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

(2) Solid and Liquid Waste Management Measures:

- a. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits will be disposed of in a proper manner and will not at any time be disposed of in the water or gutter.

(3) Petroleum Control Management Measures:

- a. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited.
- b. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids.
- c. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

2. **Eelgrass Survey(s)**

- A. **Pre-Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8 (except as modified by this special

condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

- B. Post-Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the “Southern California Eelgrass Mitigation Policy” Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Wildlife. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation: impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.
- 3. Pre-construction *Caulerpa Taxifolia* Survey**
- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the “project”), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Wildlife, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:
- (1) for the review and approval of the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted

through William Paznokas, California Department of Fish and Wildlife (858/467-4218) or Bryant Chesney, National Marine Fisheries Service (562/980-4037), or their successors.

- D.** If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* discovered within the project and buffer area has

been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Public Rights

The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

STANDARD CONDITIONS:

This permit is granted subject to the following standard conditions:

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

5-13-0637 (Borke)
Administrative Permit

ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

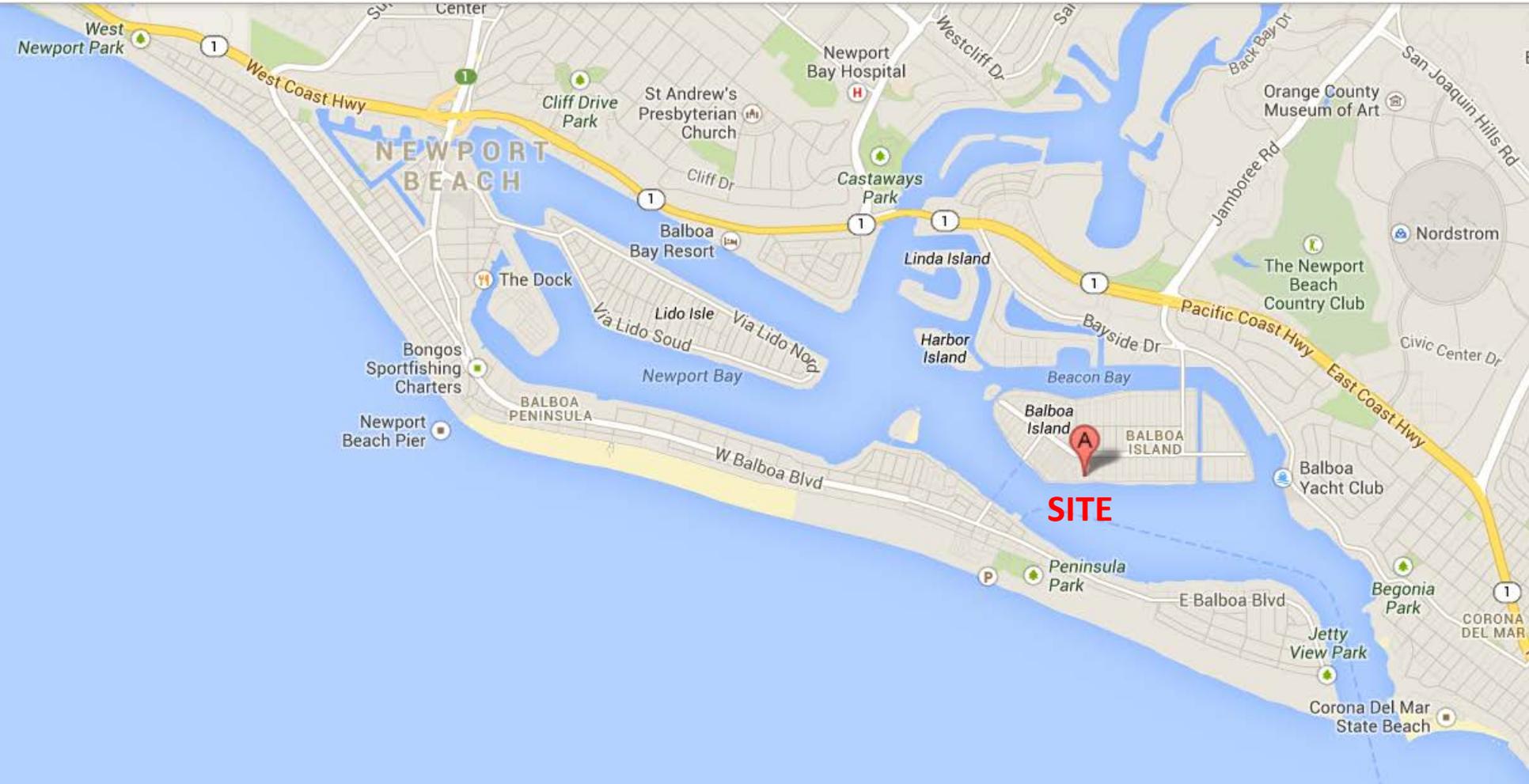
Applicant's Signature

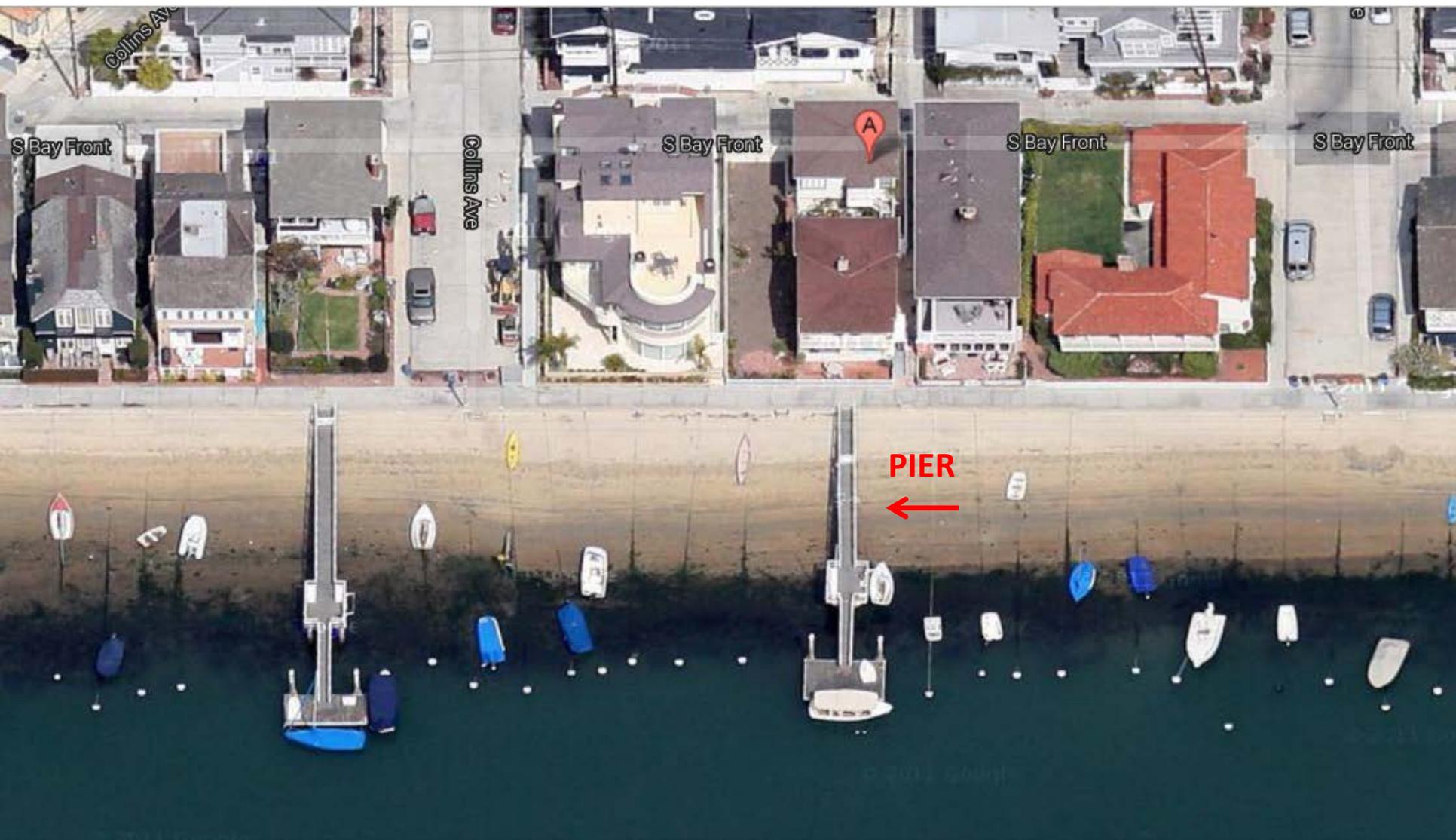
Date of Signing

604 South Bay Front, Newport Beach

CDP 5-13-0637

Exhibit 1





EXISTING

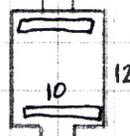
Floating Dock 308 sq ft
 Gangway 60 sq ft.
 Pier 120 sq ft.
 Approach 228 sq ft.

716 total sq ft.
 7.8 sq ft fill

extended property line (EPL)



← 2- 12" guide pile



3x20 gangway

↕ 5- 14" T pile

13 4 28

45.0

604 S. Bay Front

EPL

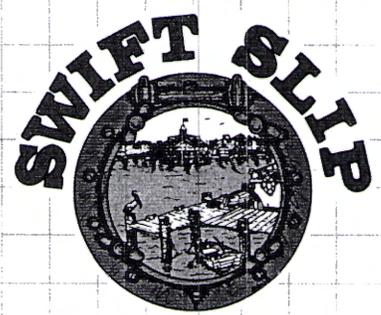
City Project Line

Pierhead line

bulkhead line

1:20

CDP 5-13-0637
 Exhibit 3



DOCK & PIER BUILDERS, INC.

CITY OF NEWPORT BEACH

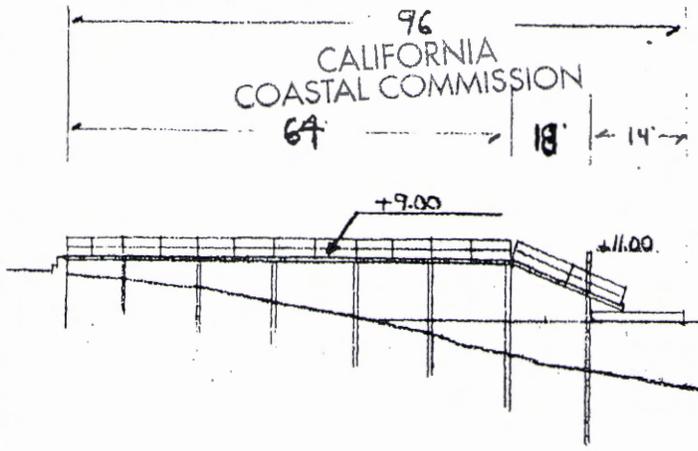
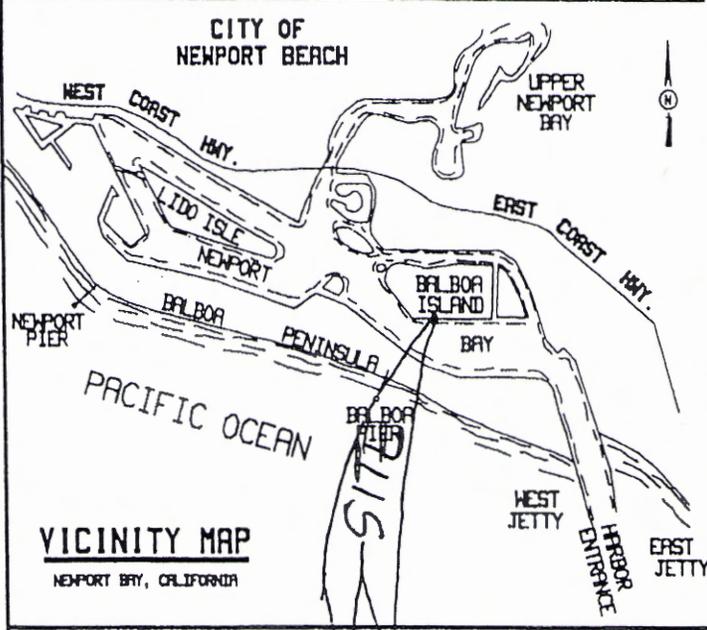
RECEIVED

South Coast Region

5-13-637

13

U.S. P/08



SOUNDINGS ARE EXPRESSED IN FEET AND DENOTE ELEVATIONS BASED ON MEAN LOWER LOW WATER.

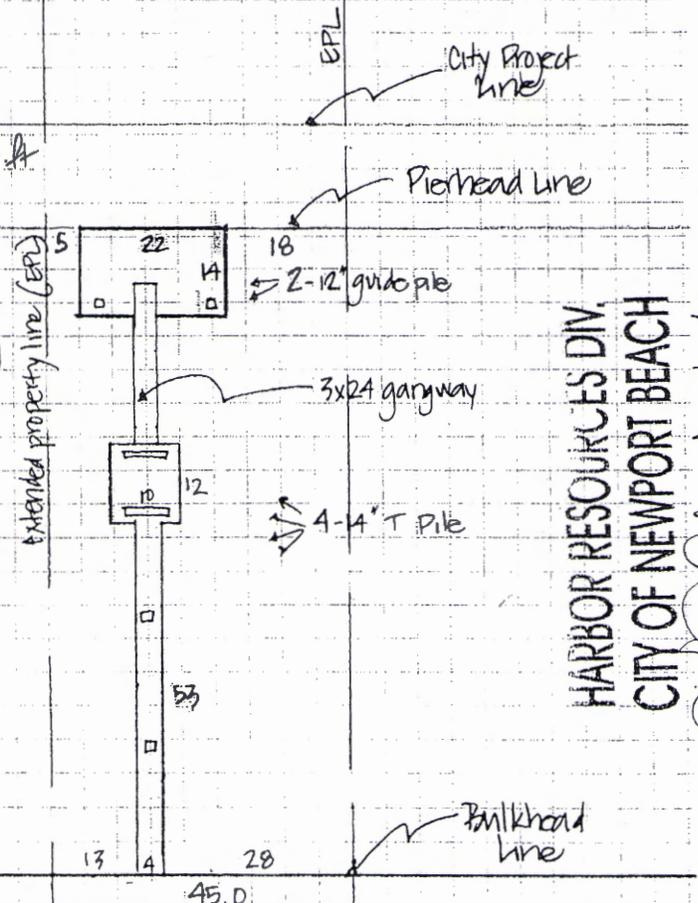
- EEL GRASS INSPECTION**
- Eelgrass within 15' of project
 - Eelgrass within 15 - 30' of project
 - No Eelgrass in project area

Signature
7/18/13 1700
Inspection Date & Time

PROPOSED

Floating Dock 300 sq. ft.
Gangway 72 sq. ft.
Pier 120 sq. ft.
Approach 212 sq. ft.

712 sq. ft. total
6.7 sq. ft. fill



HARBOR RESOURCES DIV.
CITY OF NEWPORT BEACH

7/30/13

SCOPE OF WORK:

- Remove existing approach, pier, and gangway for a total of 408 sq. ft.
- Replace with new 404 sq. ft. approach, pier, and gangway for a decrease of 4 sq. ft. overwater coverage.
- Remove 2 - 12" square concrete guide pile and 5 - 14" T square concrete T pile.
- Remove 2 - 12" square concrete guide pile and 4 - 14" T square concrete T pile for a decrease of 1.1 sq. ft. of fill.
- Re-deck existing 308 sq. ft. floating dock.

CDP 5-13-0637
Exhibit 4





Preliminary Survey July 18, 2013

Figure 2. Proposed Dock for 604 S Bay Front, Newport Beach

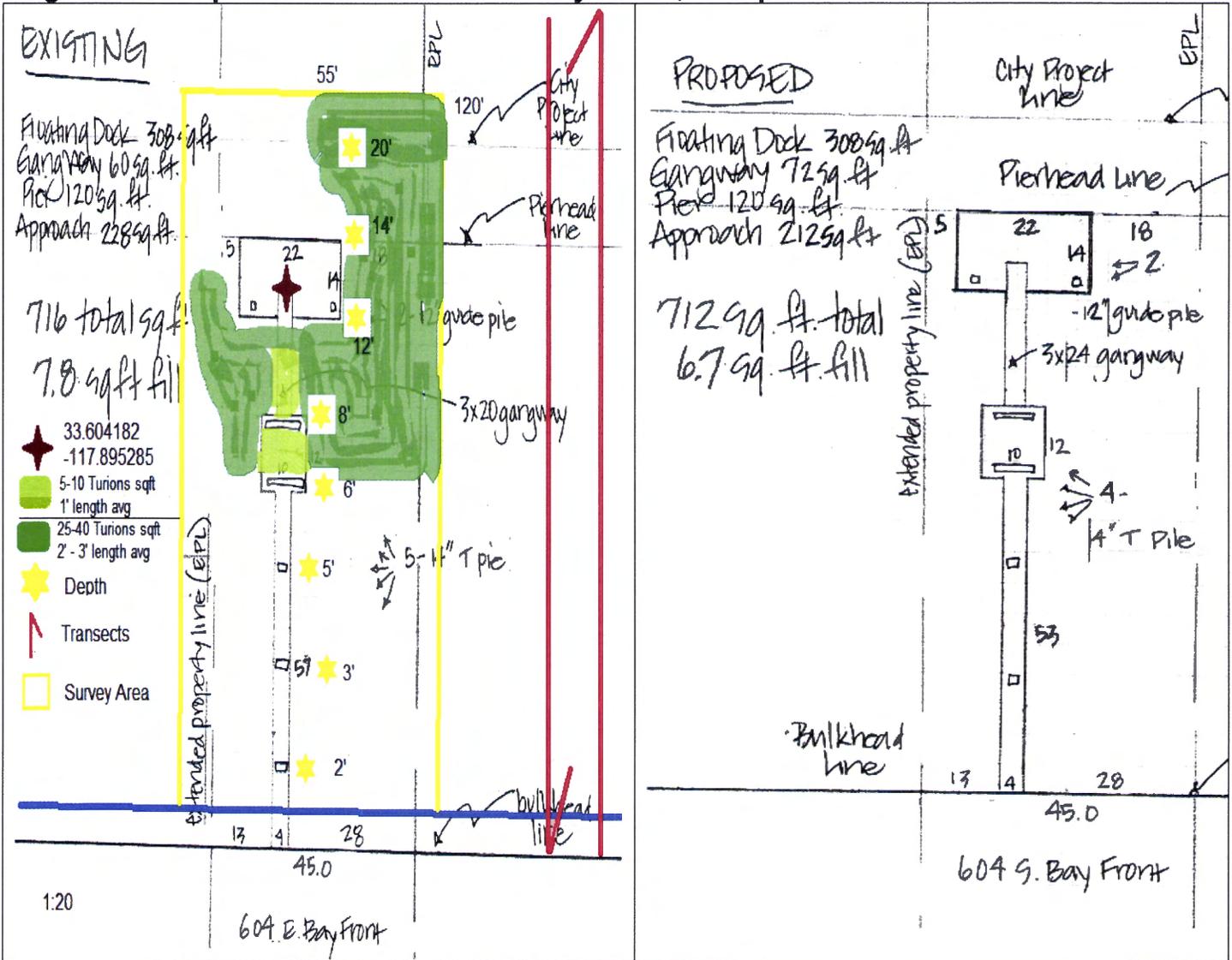


Figure 3. Eelgrass Underwater



**CDP 5-13-0637
 Exhibit 5**



Preliminary Survey September 18, 2013

Figure 2. Proposed Dock for 604 S Bay Front, Newport Beach

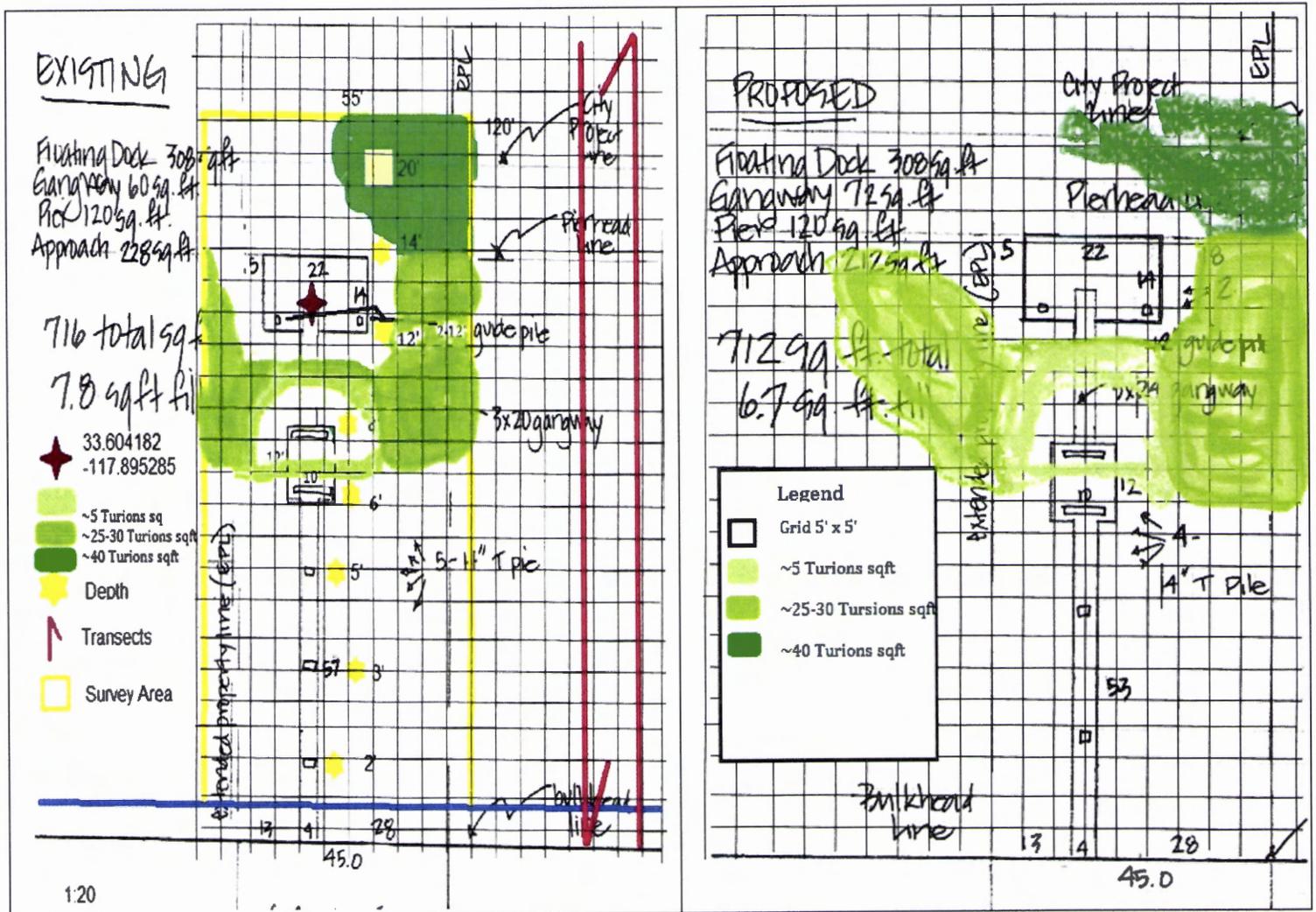


Figure 3. Eelgrass under Platform

RECEIVED
 South Coast Region
 OCT 17 2013
 CALIFORNIA
 COASTAL COMMISSION



**CDP 5-13-067
 Exhibit 6**