

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



W15a

Filed: 8/18/12
180th Day: 2/14/13
Staff: D. Lilly-SD
Staff Report: 11/20/12
Hearing Date: 12/12-14/12

STAFF REPORT: REGULAR CALENDAR

Application No.: 6-11-24

Applicant: BAE Systems

Agent: Sandor Halvax

Location: Piers 4 & 5, near 2205 East Belt Street, at the foot of Sicard Street in San Diego Bay, San Diego, San Diego County (APN 760-022-06)

Project Description: Dredging approximately 28,700 cubic yards of bay sediment bayward and northeast of the U.S. Pierhead Line to the main ship channel to a depth of -35 feet Mean Low Lower Water to facilitate deep draft ships, and construction of a new 320 sq. ft. mooring dolphin.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The proposed project consists of dredging 28,700 cubic yards of bay sediment and construction of a new mooring dolphin to secure the safe berthing of ships while being serviced at the newly reconstructed Pier 4. The proposed dredging and new mooring dolphin are associated with a larger pier replacement project, most of which is located inland of the U.S. Pierhead Line, within the coastal permit jurisdiction of the San Diego Port District. The Port District has approved a permit for the portion of the project within its jurisdiction.

Major Coastal Act issues associated with this project include the loss of open water habitat and construction impacts to least terns. To address these potential adverse impacts the Commission staff is recommending several special conditions. **Special Condition 1** requires mitigation for open water impacts in the form of removal of the same amount of structures covering the water to assure that there is no net loss of open water area for foraging birds, etc. **Special Condition 2** is proposed to protect sensitive bird species in the area and restricts construction to occur outside of the breeding season of least terns, unless approved in writing by the California Department of Fish and Game and U.S. Fish and Wildlife Service.

In addition, Commission staff is also recommending **Special Condition 3**, that would require submission of all other required state or federal discretionary permits, such as U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and the Regional Water Quality Control Board.

Commission staff recommends **approval** of coastal development permit application 6-11-24 as conditioned.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....4

II. STANDARD CONDITIONS.....4

III. SPECIAL CONDITIONS.....5

IV. FINDINGS AND DECLARATIONS.....7

 A. PROJECT DESCRIPTION.....7

 B. BIOLOGICAL RESOURCES.....8

 C. WATER QUALITY.....11

 D. LOCAL COASTAL PLANNING12

 E. CALIFORNIA ENVIRONMENTAL QUALITY ACT.....12

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit 1 – Location Map
- Exhibit 2 – Site Plan for CCC Jurisdiction
- Exhibit 3 – Aerial View of Entire Project
- Exhibit 4 – Dredge Plan
- Exhibit 5 – Dolphin Cross-Section

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-11-24 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves coastal development permit No. 6-11-24 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Open Water Coverage Mitigation.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and written approval of the Executive Director, a final mitigation plan to compensate for all proposed impacts to open water habitat. The mitigation plan shall, at a minimum, include:
 - a. A site plan showing the area of the proposed 808 square feet of dock coverage removed from the General Dynamics property on Harbor Island and the 5,000 square feet of docks removed from the Silvergate Yacht Club on Shelter Island.
 - b. Evidence that the required mitigation has been withdrawn and accounted for in the Port District's mitigation banks.
 - c. Written agreement from the Port District that these mitigation credits from the General Dynamics property on Harbor Island Crown Point Shores and the Silvergate Yacht Club on Shelter Island shall not be used or sold as mitigation for any other project in the future.

The applicant shall undertake mitigation in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. **Timing of Construction.** To avoid potential impacts to coastal sensitive bird species during their breeding season, construction activities will not be permitted between the dates of April 1st and September 15th of any year; unless written permission from the California Department of Fish and Game and US Fish and Wildlife Service is provided to the Executive Director for review and approval.

The permittee shall undertake development in accordance with the approved final construction timing plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **Other Permits.** PRIOR TO THE COMMENCEMENT OF DREDGING, the applicant shall provide to the Executive Director, for review and written approval, copies of all other required state or federal discretionary permits (such as U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Regional Water Quality Control Board and the California Department of Fish and Game) for the development authorized by CDP #6-11-024.

The applicant shall inform the Executive Director of any changes to the project required by other state or federal agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

4. **Invasive Species.** PRIOR TO COMMENCEMENT OF DREDGING, the applicant shall provide evidence that dredging of San Diego Bay can occur without the risk of spreading the invasive green alga *Caulerpa taxifolia* as follows.

- 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 applicant shall undertake a survey of the project area (includes and any other areas where the bottom could be disturbed by project activities) 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 Game, 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 written 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 & Game (DFG) (858-467-4218) or the National Marine Fisheries Service (NMFS) (562-980-4043).
 3. If *Caulerpa* is found, then the NMFS and DFG contacts shall be notified within 24 hours of the discovery.
- d. If *Caulerpa* is found, prior to the commencement of dredging, the applicant shall provide evidence to the Executive Director for review and written approval either that the *Caulerpa* discovered within the project and/or buffer area has been eradicated or that the dredging project has been revised to avoid any contact with *Caulerpa*. No changes to the dredging project shall occur without a Coastal

Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION/HISTORY

The proposed project consists of dredging 28,700 cubic yards of bay sediment and construction of a new mooring dolphin to secure the safe berthing of ships while being serviced at the newly reconstructed Pier 4. The proposed dredging and new mooring dolphin are associated with a larger pier replacement project, most of which is located inland of the U.S. Pierhead Line, within the coastal permit jurisdiction of the San Diego Port District.

The BAE Systems ship repair facility is located on the eastern side of San Diego Bay, south of the Coronado Bridge. Pier 4 is located at the base of Sicard Street (see Exhibit #1). The project as a whole consists of demolition and replacement of the existing Pier 4 with a newer, more modern pier that will allow BAE Systems to maintain and repair the current fleet of military and commercial ships. This overall project includes landside and waterside redevelopment of the Pier 4 site, including removal of existing revetments along the shoreline, relocation of shoreline infrastructure, construction of three new bulkhead sections, demolition of the existing Pier 4 and Pier 5 structures, reconstruction of Pier 4 (Pier 5 would be permanently removed), removal of five existing drydock mooring dolphins, construction of a new mooring dolphin, and dredging a total of approximately 41,908 cubic yards of bay sediment to a depth of -35 mean low lower water to accommodate Navy ships. In total, the project would remove approximately 20,269 sq.ft. of in-water structures (piers and dolphins) and would construct approximately 26,944 sq.ft. of new in-water structures. The Port District has approved a permit for the portion of the project within its jurisdiction. Past permits done for this ship repair facility include construction of a mooring dolphin located approximately 150 feet bayward of Pier 3 and the U.S. Pierhead Line (CDP #6-09-38).

Only two of the above listed project components are subject to this review as they are located bayward of the U.S. Pierhead line, which divides Port and Coastal Commission jurisdiction—28,700 cubic yards of dredging, and installation of the new mooring dolphin (see Exhibit #2). The mooring dolphin is a fixed structure to accommodate ships whose length exceeds the pier structure and is intended to assist in mooring these larger vessels. The new dolphin will be situated approximately 140 ft offshore of the west end of the proposed new pier and will consist of a 16 ft x 20 ft x 3 ft thick concrete deck supported by eight 24-inch octagon piles and 16 fender piles.

The dredging is planned to occur in three phases. Phase A, which is entirely within the Commission's jurisdiction except for a small portion next to Pier 4, will include the dredging of approximately 28,700 cubic yards (cy) of bay sediment for ocean disposal (see Exhibit #4). The sediment would be disposed of by barge at the United States

Environmental Protection Agency (EPA) approved ocean disposal site commonly known as LA-5 Ocean Dredged Material Disposal Site or LA-5.

The Phase B dredging is all located shoreward of the U.S. Pierhead Line and is within the jurisdiction of the Port District. The Port has issued a coastal development permit for its portion of the project (CDP 2012-04). Phase B of the dredging, located on the north side of the pier, consists of the removal of approximately 13,208 cy, of which approximately 6,952 cy of bay sediment is anticipated for ocean disposal and approximately 6,256 cy may be disposed of out of the tidelands (upland) at a landfill. Phase C involves approximately 4,250 cy of dredging for upland landfill disposal. Phase C and a portion of Phase B dredging would be located within the Cleanup and Abatement Order R9-2012-0024 remedial footprint issued by the Regional Water Quality Control Board (RWQCB).

The project has received approval from the State Lands Commission. **Special Condition #3** requires that prior to the commencement of dredging, the applicant provide copies of all other required state or federal discretionary permits (such as U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and Regional Water Quality Control Board) for the proposed development.

Chapter 3 of the Coastal Act is the standard for review for the portion of the project within the Commission's jurisdiction.

B. BIOLOGICAL RESOURCES

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30233 states, in part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities. [...]

The EIR for the project includes requirements for habitat protection, including monitoring of noise impacts to marine mammals, requirements for turbidity curtains, silt

curtains during shoreline work, testing for the invasive species *Caulerpa taxifolia*, and correction of any identified impacts. The EIR determined that in total, the project would result in approximately 7,969 sq.ft. of new bay coverage. New structures covering the water can potentially impact habitat used by seabirds, including the endangered California least tern and California brown pelican by blocking the water surface from the view of foraging seabirds. Shadows cast by overwater structures affect both the plant and animal communities below the structures. Fish rely on visual cues for spatial orientation, prey capture, schooling, predator avoidance and migration. The reduced-light conditions found under an overwater structure limit the ability of fishes, especially juveniles and larvae, to perform these essential activities. Shading from overwater structures may also reduce prey organism abundance and the complexity of the habitat by reducing aquatic vegetation and phytoplankton abundance.

The above cited Coastal Act provisions set forth a number of limitations on what development projects may be allowed in coastal wetlands, sensitive habitat areas, and coastal waters, or that may affect coastal resources. For analysis of whether a filling, diking or dredging project is allowable under the Coastal Act, there are three general tests:

- that the purpose of the filling, diking, or dredging is for one of the specific uses allowed;
- that the project has no feasible less environmentally damaging alternative; and
- that feasible mitigation measures have been provided for all remaining unavoidable impacts to minimize adverse environmental effects.

In the case of the subject proposal, the proposed development is an expansion of a coastal-dependent industrial facility permitted under Section 30233. Relative to alternatives, three alternatives were reviewed by the applicant. These included the no project alternative, the pier rehabilitation alternative and the reduced project alternative. The Commission has reviewed these alternatives and concluded that the proposed project represents the least environmentally damaging alternative while still meeting the objectives of the project.

As mitigation for this impact, the applicant is proposing to use “credits” for dock structures removed previously in the Port District. The Port District has indicated that in 1994, 4,808 square feet of dock coverage was removed from the General Dynamics property on Harbor Island. In 2005, 5,000 square feet of docks were removed from the Silvergate Yacht Club on Shelter Island. None of this square footage of dock was replaced, and, thus, is proposed as mitigation for the BAE Pier 4 project.

The Commission’s ecologist has reviewed the proposed mitigation and determined that it will adequately offset the proposed increase in open water coverage. The fact that the removal of the docks was years ago means that the benefits of that increased open water area have accrued since then, which is a positive environmental impact. Staff at the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers (ACOE) have also tentatively approved the proposed mitigation for open water coverage.

However, if a credit system for open water coverage mitigation is going to be established, it is important that the Port accurately tracks and reports use of the credits, so mitigation credits are not double-counted. Special Condition #1 requires submittal of a final open water mitigation plan that documents the proposed mitigation site and provides evidence that the required mitigation has been withdrawn and accounted for in the Port's mitigation banks.

A current issue around the world and specifically in San Diego waterbodies is the presence of the invasive green alga, *Caulerpa taxifolia* that has been discovered within Agua Hedionda Lagoon in north San Diego County. *Caulerpa* is a tropical green marine alga that is popular in the aquarium trade because of its attractive appearance and hardy nature. In 1984, this seaweed was introduced into the northern Mediterranean. From an initial infestation of about 1 square yard it grew to cover about 2 acres by 1989, and by 1997 blanketed about 10,000 acres along the coasts of France and Italy. Genetic studies demonstrated that those populations were from the same clone, possibly originating from a single introduction. This seaweed spreads asexually from fragments and creates a dense monoculture displacing native plant and animal species. In the Mediterranean, it grows on sand, mud and rock surfaces from the very shallow subtidal to about 250-ft depth. Because of toxins in its tissues, *Caulerpa* is not eaten by herbivores in areas where it has invaded. The infestation in the Mediterranean has had serious negative economic and social consequences because of impacts to tourism, recreational diving, and commercial fishing.

Because of the grave risk to native habitats, in 1999 *Caulerpa* was designated a prohibited species in the United States under the Federal Noxious Weed Act. AB 1334, enacted in 2001 and codified at California Fish and Game Code Section 2300, forbids possession of *Caulerpa*. In June 2000, *Caulerpa* was discovered in Agua Hedionda Lagoon, and in August of that year an infestation was discovered in Huntington Harbor in Orange County. Genetic studies show that this is the same clone as that released in the Mediterranean. Other infestations are likely. Although a tropical species, *Caulerpa* has been shown to tolerate water temperatures down to at least 50° F. Although warmer southern California habitats are most vulnerable, until better information is available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted.

In response to the threat that *Caulerpa* poses to California's marine environment, the Southern California *Caulerpa* Action Team, SCCAT, was established to respond quickly and effectively to the discovery of *Caulerpa* infestations in Southern California. The group consists of representatives from several state, federal, local and private entities. The goal of SCCAT is to completely eradicate all *Caulerpa* infestations.

If *Caulerpa* is present, any project that disturbs the bottom could cause its spread by dispersing viable tissue fragments. In its approval of the Glorietta Bay Master Plan, the Commission determined that the plan should have a requirement that prior to commencement of any in water development that involves disturbance of the water bottom, surveys must be done of the project area and a buffer area to determine the

presence of the invasive alga *Caulerpa taxifolia*. The survey protocol must be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.

In order to assure that the proposed project does not cause the dispersal of *Caulerpa*, and adverse impacts to the biological productivity of the bay, **Special Condition #4** has been attached. **Special Condition #4** requires the applicant, prior to commencement of dredging, to survey the project area and any other areas where the bottom could be disturbed by project activities, for the presence of *Caulerpa*. If *Caulerpa* is found to be present in the project area, then prior to commencement of any dredging, the applicant must provide evidence that the *Caulerpa* within the project site has been eradicated (the applicant could seek an emergency permit from the Executive Director to authorize the eradication) or that the dredging project has been revised to avoid any disturbance of *Caulerpa*. If revisions to the project are proposed to avoid contact with *Caulerpa*, then the applicant shall consult with the local Coastal Commission office to determine if an amendment to this permit is required.

Another potential impact identified in the project EIR is impacts to least terns from construction noise and activity if construction were to occur during the tern breeding season. **Therefore, Special Condition #2** prohibits construction within the Commission's permit jurisdiction between April 1 and September 15 of any year; unless written permission from the California Department of Fish and Game and US Fish and Wildlife Service is provided to the Executive Director for review and approval.

Therefore, as conditioned, all impacts to sensitive coastal resources will be adequately mitigated or avoided, consistent with the above-cited resource protection policies of Chapter 3 of the Coastal Act.

C. WATER QUALITY

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff...

Approximately .70 acres of sediment dredging (Phase C and a portion of Phase B), both of which are outside of the Commission's permit jurisdiction, would be located within the Cleanup and Abatement Order R9-2012-0024 remedial footprint issued by the Regional Water Quality Control Board (RWQCB). The project includes implementation of best management practices and mitigation measures of the RWQCB Order. In its approval of its portion of the project, the Port found that the Pier 4 replacement project has been coordinated with the RWQCB staff and will not aggravate the overall cleanup effort, nor will it adversely impact the dredging sites involved. In addition, staff at the RWQCB have tentatively approved issuance of a 401 permit. A water quality monitoring plan has

been prepared for the project that requires construction BMPs that include monitoring for sediments, turbidity, and impacts to wildlife, and correction of any identified impacts. Therefore, the proposed project is not expected to have any adverse impact on water quality.

D. LOCAL COASTAL PLANNING

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the Port of San Diego to continue to implement its certified Port Master Plan.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing timing of construction and mitigation for open water impacts will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS

- San Diego Unified Port District Certified Port Master Plan
- Certified EIR for the BAE Systems Pier & Replacement Project dated April 1, 2012

(G:\San Diego\Reports\2011\6-11-024 BAE systems Pier 4 dredging stfrpt.doc)

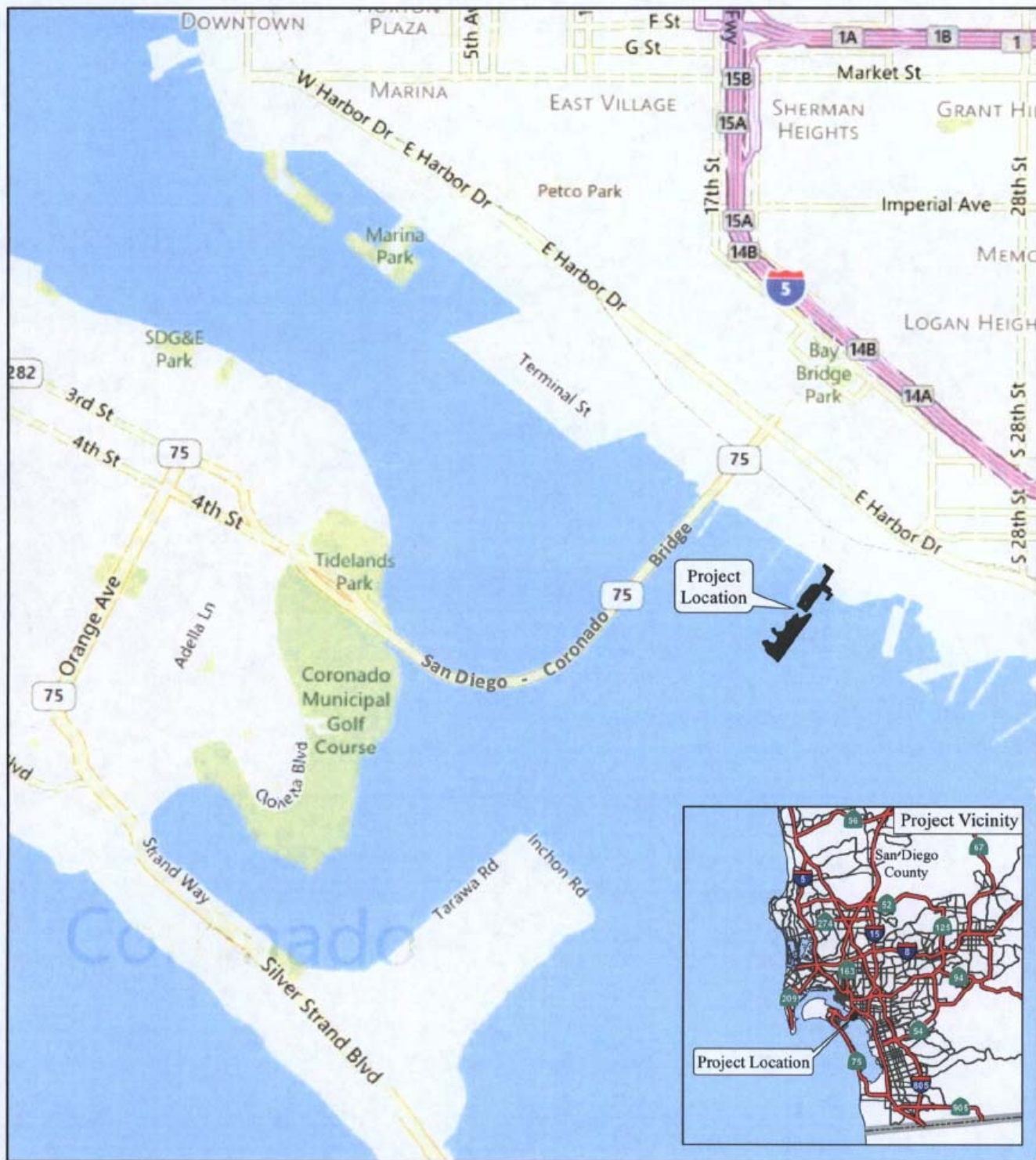


EXHIBIT NO. 1

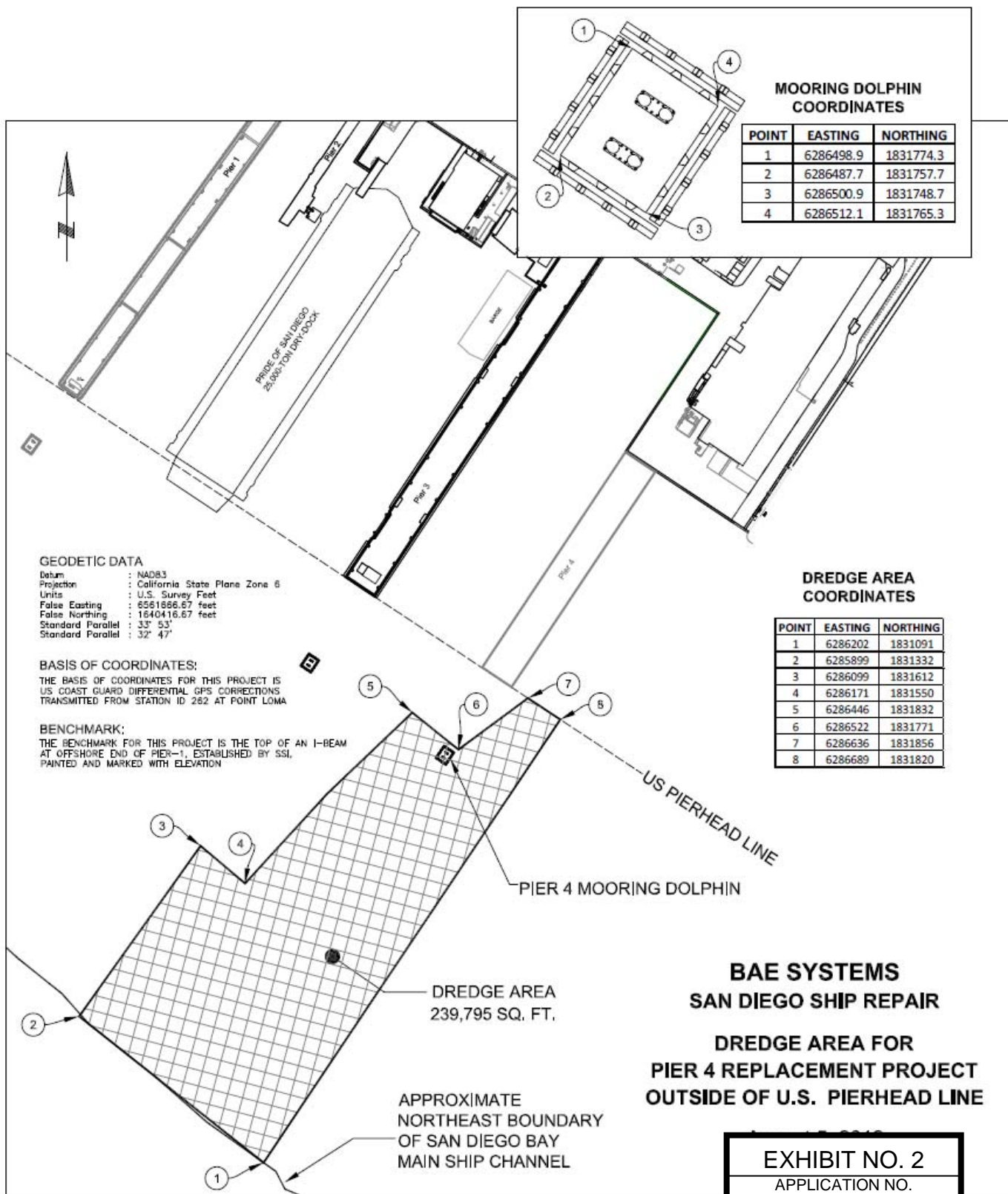
APPLICATION NO.

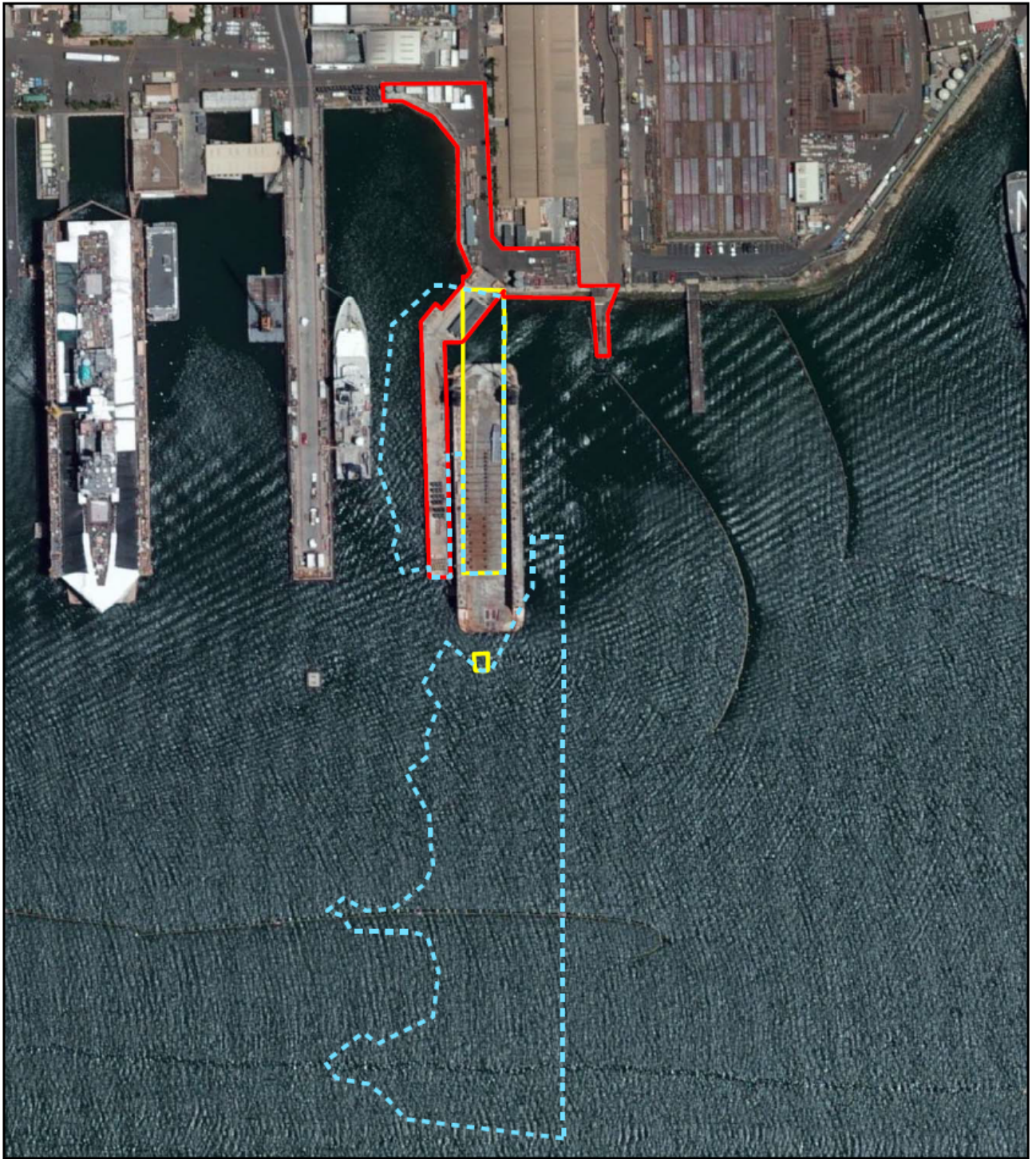
6-11-24

Location Map



California Coastal Commission





LSA

LEGEND

- Demolition Work Area
- Pier 4 and Dolphin After Replacement
- Dredge Area

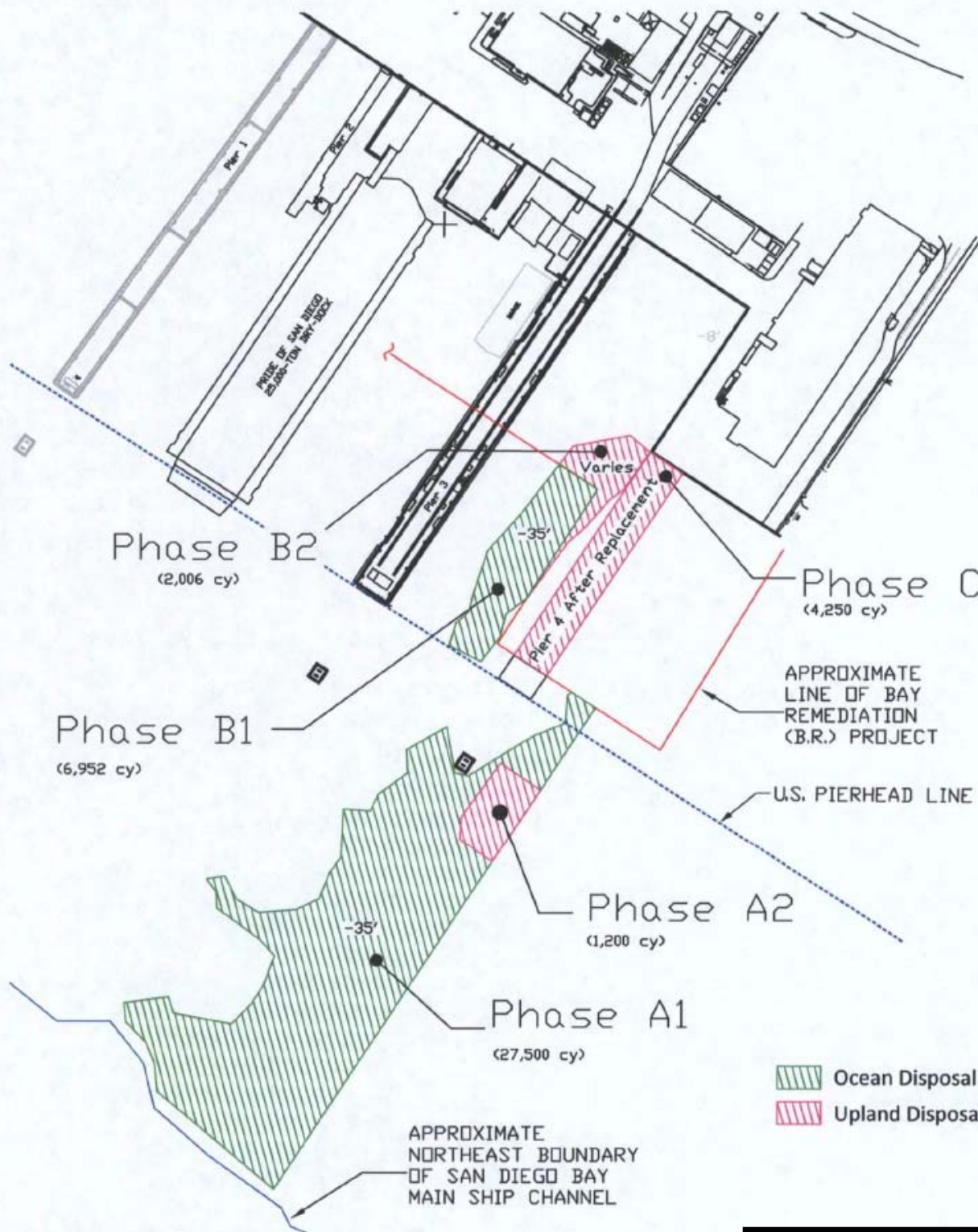


0 100 200
FEET

SOURCE: Bing Maps (c.2008)

FIGURE 1-2

EXHIBIT NO. 3
APPLICATION NO.
6-11-24
Aerial view of entire project area
 California Coastal Commission



CROSS SECTION OF DOLPHIN

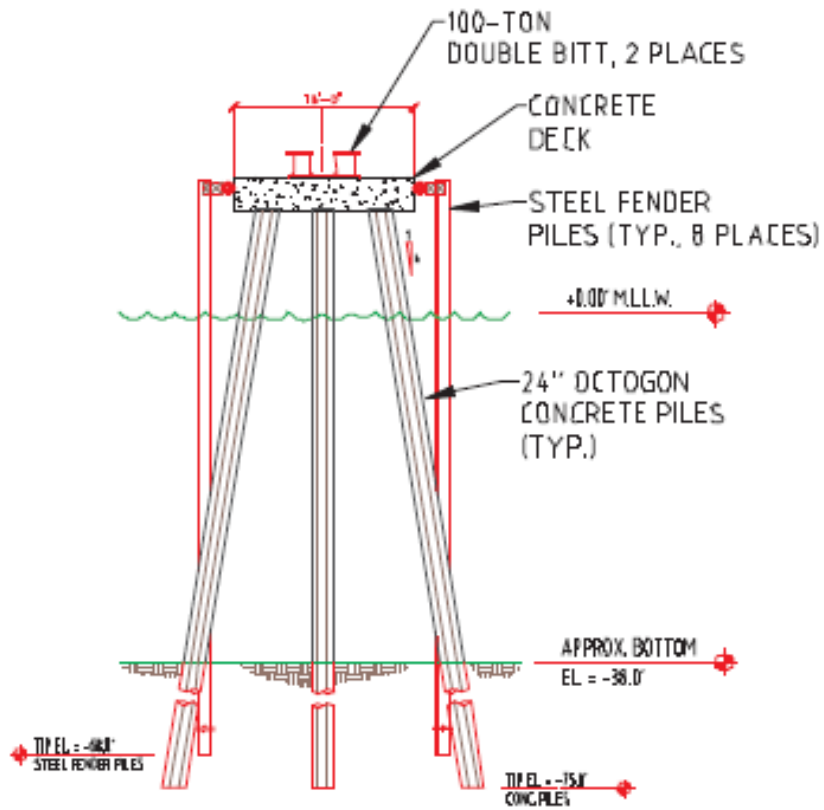


EXHIBIT NO. 5

APPLICATION NO.

6-11-24

Dolphin Cross-Section



California Coastal Commission