

**CALIFORNIA COASTAL COMMISSION**

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Hearing Date: June 12-14, 2013

## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-12-313

**Applicant:** Roger Prend

**Location:** 1108 West Bay Avenue, Newport Beach (Orange County)

**Project Description:** Removal of an existing boat dock system consisting of a 4' x 11' pier approach, 10' x 12' pier platform (120 square feet), 3' x 20' gangway, "U" shaped floating boat dock (501 square feet) and seven (7) 12" square concrete piles (boat dock system consisting of 725 square feet of total water coverage) and installation of a new reconfigured boat dock system consisting of a new 10' x 14' pier platform (140 square feet) supported by a 14" diameter "T" pile, 3' x 24' gangway and 304 square foot single finger floating boat dock supported by two (2) 18" diameter square concrete piles (boat dock system consisting of 516 square feet of total water coverage). Water coverage as a result the project will be decreased from 725 square feet to 516 square feet (a change of -209 square feet). The new boat dock system will comprise of Trex composite material. The new pier platform will be repositioned from its present location 11-feet bayward of the existing bulkhead to now be adjacent to the bulkhead.

**Staff Recommendation:** Approval with conditions

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### SUMMARY OF STAFF RECOMMENDATION:

Commission Staff is recommending **APPROVAL** of a boat dock system reconfiguration if it is modified to relocate the pier platform to where it will not adversely impact public access and recreational opportunities along public tidelands and to where it is less likely to be used for a non-boating-related use. Staff is recommending modification of the project because the proposed

configuration is inconsistent with Sections 30210 and 30211 of the Coastal Act regarding public access and recreational opportunities. Placing the proposed 10'x14' pier platform adjacent to and parallel to the existing bulkhead would in effect privatize the use of these public tidelands as the general public will be unable to access the area beneath the pier platform for recreational purposes. It is also inconsistent with Section 30250 of the Coastal Act since the cumulative effect of allowing the placement of the proposed pier platform along the bulkhead creates greater impediments to access to and along public tidelands that will add up over time. The proposed project is also inconsistent with Section 30233 of the Coastal Act regarding allowable fill of open coastal waters. The fill resulting from the pile to support the pier platform is not consistent with Section 30233 because the pier platform would be located adjacent to the bulkhead and would essentially serve to expand the private rear yard of the adjacent residence and serve no clear boating-related use.

Therefore, staff is recommending the Commission **APPROVE** the proposed project subject to **SIX (6) SPECIAL CONDITIONS**. **SPECIAL CONDITION NO. 1** requires that prior to issuance of the Coastal Development Permit the applicant submit revised plans for a re-design that maximizes public access along the shoreline by minimizing obstructions to lateral access and reducing the likelihood of use of the pier platform for non-boating-related purposes. **SPECIAL CONDITION NO. 2** requires pre- and post-construction eelgrass surveys. **SPECIAL CONDITION NO. 3** requires a pre-commencement of construction *Caulerpa Taxifolia* survey. **SPECIAL CONDITION NO. 4** notifies the applicant of construction practices and debris removal responsibilities. **SPECIAL CONDITION NO. 5** requires the applicant to incorporate long term water quality Best Management Practices for the operation of the boat dock system. **SPECIAL CONDITION NO. 6** states that approval of this Coastal Development Permit does not waive any public rights that may exist at the site.

Section 30600(c) of the Coastal Act provides for the issuance of Coastal Development Permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program (LCP). The City of Newport Beach only has a certified Land Use Plan (LUP) and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

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### APPENDICES

Appendix 1 – Substantive File Documents

### EXHIBITS

Exhibit #1 – Location Maps

Exhibit #2 – Aerial Pictures of Project Area

Exhibit #3 – Existing Dock System Site Plan

Exhibit #4 – Proposed Dock System Site Plan

Exhibit #5 – Existing and Proposed Elevation Plan

Exhibit #6 – Revised Dock System Site Plan as Revised by Special Condition No. 1

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission approve Coastal Development Permit No. 5-12-313 pursuant to the staff recommendation.*

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

### Resolution:

*The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned, located between the first public road and the sea, will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

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

### **III. SPECIAL CONDITIONS**

#### **1. Revised Project Plans**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of revised project plans. The intent behind the required re-design is to maximize public access along the shoreline by minimizing obstructions to lateral access and to reduce the likelihood of use of the pier platform for non-boating-related purposes. In general, the pier, pier platform, and gangway shall be placed to maximize the difference in elevation between the sand and bottom of the pier and pier platform. In addition, the pier platform and the point at which the gangway descends to the dock float shall be placed as far seaward as possible. Finally the quantity of pilings shall be minimized, and their placement and orientation shall maximize opportunities for lateral public access. The revised project plans shall be in substantial conformance with the plans submitted on November 14, 2012, except they shall be modified as follows: **1)** the 10' x 14' pier platform shall be located as far away from the existing bulkhead as is feasible; **2)** the configuration of the 10' x 14' pier platform shall be placed so that there is physical separation of at least 4-feet between the pier platform and landside private rear yard area; **3)** the pier shall be revised so that it is similar to the existing boat dock system where there is a pier approach and then the pier platform and the gangway leading to the floating boat dock; **4)** revising the proposed project also includes an option for the 10' x 14' pier platform to be removed in its entirety and replaced with a standard-width pier approach; **5)** revise the 10' x 14' pier platform so that the clearance underneath the revised pier platform will be a minimum of 6-feet, similar to the existing pier platform; **6)** revise the plan such that the "T" piles are oriented parallel to the bulkhead; **7)** orient the pier platform such that the 'short' side (i.e. the 10' side of the 10' x 14' platform) is parallel to the bulkhead; **8)** revising the proposed project as conditioned may require a minor expansion of the proposed dock float to create a gangway landing and/or piles; therefore any additional pile and/or square footage shall be the minimum amount necessary to satisfy this Special Condition; and **9)** any proposed changes to the revised project plans shall not result in extending the boat dock system bayward past the U.S. Pierhead Line; all as generally depicted on Exhibit #6 of the May 23, 2013 Staff Report. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised design from the City of Newport Beach Harbor Resources Division.

- B.** The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a

Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

**2. Eelgrass Survey**

- A. Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zoostera 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 Game. 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 Game. 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 applicants 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 Game, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicants 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 & Game (858/467-4218) or Robert Hoffman, National Marine Fisheries Service (562/980-4043), or their successors.
- D.** If *Caulerpa Taxifolia* is found within the project or buffer areas, the applicants shall not proceed with the development approved under this Coastal Development Permit until 1) the applicants provide evidence to the Executive Director that all *C. Taxifolia* discovered within the project area and all *Caulerpa Taxifolia* discovered within the buffer area have 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 applicants have 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. Construction Responsibilities and Debris Removal**

The permittee shall comply with the following construction related requirements:

- A.** No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion.
- B.** Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project.
- C.** Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- D.** Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.

- E.** If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- F.** Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- G.** Non buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.
- H.** All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- I.** The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- J.** Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- K.** All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- L.** Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- M.** The discharge of any hazardous materials into any receiving waters shall be prohibited.
- N.** Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- O.** Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- P.** All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

## 5. Best Management Practices (BMPs) Program

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

### A. Boat Cleaning and Maintenance Measures:

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

### B. Solid and Liquid Waste Management Measures:

1. All trash, recyclables, and hazardous wastes or potential water contaminants, including old gasoline or gasoline with water, absorbent materials, oily rags, lead acid batteries, anti-freeze, waste diesel, kerosene and mineral spirits shall not at any time be disposed of in the water or gutter but, rather be disposed of in a manner consistent with state and/or federal regulations.

### C. Petroleum Control Management Measures:

1. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters shall regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited;
2. If the bilge needs more extensive cleaning (e.g., due to spills of engine fuels, lubricants or other liquid materials), the boaters will use a bilge pump-out facility or steam cleaning services that recover and properly dispose or recycle all contaminated liquids; and

3. Bilge cleaners which contain detergents or emulsifiers will not be used for bilge cleaning since they may be discharged to surface waters by the bilge pumps.

## **6. 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 subject property including, but not necessarily limited to, the tideland and submerged land beneath the development approved by this Coastal Development Permit. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

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

The Commission hereby finds and declares:

### **A. PROJECT LOCATION AND DESCRIPTION AND STANDARD OF REVIEW**

#### **1. PROJECT LOCATION AND DESCRIPTION**

The subject site is located at 1108 West Bay Avenue in the City of Newport Beach, Orange County (Exhibits #1-2). Single-family residences and associated private boat dock systems characterize the subject site and the surrounding area. The proposed project involves the following: removal of an existing boat dock system consisting of a 4' x 11' pier approach, 10' x 12' pier platform (120 square feet), 3' x 20' gangway, "U" shaped floating boat dock (501 square feet) and seven (7) 12" square concrete piles (boat dock system consisting of 725 square feet of total water coverage) (Exhibit #3 & 5) and installation of a new reconfigured boat dock system consisting of a new 10' x 14' pier platform (140 square feet) supported by a 14" diameter "T" pile, 3' x 24' gangway and 304 square foot single finger floating boat dock supported by two (2) 18" diameter square concrete piles (boat dock system consisting of 516 square feet of total water coverage) (Exhibit #4-5). Water coverage as a result of the proposed project will be decreased from 725 square feet to 516 square feet (a change of -209 square feet). Additionally, the number of piles will be decreased from seven (7) to three (3). The new boat dock system will be comprised of Trex composite material. The new pier platform will be repositioned from its present location 11-feet bayward of the existing bulkhead to now be adjacent to the bulkhead.

Table follows on next page.

	<u>Existing</u>	<u>Proposed</u>
Pier Approach	4' x 11' = 44 square feet	n/a n/a
Pier Platform	10' x 12' = 120 square feet'	10' x 14' = 140 square feet'
Gangway	3'x 20' = 60 square feet	3' x 24' = 72 square feet
Floating Boat Dock	501 square feet	304 square feet
Total Water Coverage	725 square feet	516 square feet
Piles	(7) 12"	(2) 18" (1) 14" "T" Pile

The proposed boat dock system meets the City of Newport Beach Harbor Permit Policy. The existing boat dock system does not currently extend past the U.S. Pierhead Line and the proposed dock also would not extend past the U.S. Pierhead Line, similar to the boat dock systems in the adjacent area as can be seen on the aerial photograph of the site provided as Exhibit #2.

The applicant states that the proposed project is to replace an approximately 42-year old deteriorating structure with a modified configuration (from an existing "U" shape to an "T" shape) that provides more space on either side of the floating boat dock for navigation to adjacent properties and for cost and cost of future maintenance reasons. The applicant also states that the configuration change allowed for the fewest amount of piles.

The Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. The applicant has applied for a permit from the U.S. Army Corps of Engineers.

## 2. STANDARD OF REVIEW

The City of Newport Beach has a certified Land Use Plan (LUP) but the Commission has not certified a Local Coastal Program (LCP) for the City. As such, the Coastal Act polices are the standard of review with the certified LUP providing guidance.

**B. PUBLIC ACCESS AND RECREATION**

Section 30210 of the Coastal Act states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30250 of the Coastal Act states, in pertinent part:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.*

The waters of Newport Bay are a very popular recreational boating area. Sandy shoreline areas along the bay are also used for access/recreation. The proposed project includes the reconfiguration of an existing private boat dock system associated with residential development. This private boat dock system is located on public tidelands that are administered by the City of Newport Beach pursuant to a tidelands grant. Although the placement of private boat docks systems on public tidelands has been found by the City to be consistent with the tidelands grant, it is important to assure that such boat dock systems and additions thereto are not being placed in a location that would adversely impact public access to and along the shoreline and public use of recreational waters. Sections 30210 and 30211 of the Coastal Act protect the public's right to access the shoreline and water and recreational opportunities.

There is no direct public pedestrian access to public tidelands through the private residential lot at the subject site. Public pedestrian access to public tidelands is available approximately 70-feet east of the project site at the 11<sup>th</sup> Street, street end (Exhibits #1-2). From this access point, members of the public may access the beach/public tidelands and, for example, launch a kayak. Or, at lower tides, it is possible to walk under the residential piers for strolls down the beach. The aerial photographs provided in Exhibit #2 clearly show sandy beach areas covered by residential dock

structures. The public can also access the beach/public tidelands area seaward of the subject site by watercraft or by swimming to the site.

The proposed change in configuration of the existing pier platform would create a greater impediment to public access of public tidelands than the current pier configuration. Placing the proposed 10' x 14' pier platform adjacent to the existing bulkhead would in effect privatize the use of these public tidelands as the general public will be unable to access the area beneath the pier platform for recreational purposes. Nearest the bulkhead, the current pier approach with pier platform configuration has a 3'-6" headroom clearance underneath a standard-4-foot wide pier approach. As the beach slopes to the water underneath the existing pier, the headroom clearance grows to approximately 6-feet. All told, the area underneath the existing pier and pier platform between the bulkhead and gangway is approximately 23-feet wide, with 3' 6" to 6-feet of headroom clearance (Exhibit #5). The proposed project would significantly reduce both the headroom clearance underneath the pier and pier platform, as well as the width of that area. The headroom clearance would be reduced to –at most- approximately 3' -6", thus impacting public access underneath the pier platform. The width of the passable space would also be reduced down to 14-foot wide.

The reduction in headroom and width underneath the pier is due to the elimination of the pier approach in the proposed design and placement of the pier platform adjacent to the bulkhead. The current design, with 11-foot long pier approach and the 12-foot long pier platform located farther away from the bulkhead is preferred because the platform and the beach are at an elevation and location where the public is more likely to be able to walk underneath it, thereby presenting less of an impediment to lateral pedestrian access.

Furthermore, the quantity, type and orientation of the pilings are important with regard to public access. Fewer, more narrow piles means fewer obstructions. In this case there is an overall reduction in the quantity of piles and, in that regard, the project has a benefit. However, of particular importance is the orientation of proposed "T" piles. The top end of the "T" can create an impediment to access and interfere with headroom under the pier and pier platform, especially if oriented perpendicular to the bulkhead. In this case, the applicant's proposal does place the "T" pile parallel to the bulkhead instead of perpendicular to it thus minimizing adverse impacts upon public access.

Section 30250 of the Coastal Act requires that new development be located where it will not have cumulative adverse effects on coastal resources. The lack of a pier approach and proposed location of the pier platform would add to the cumulative adverse effects on public access. Although a single addition of a pier platform may not seem to create significant adverse impacts, the cumulative adverse effect of allowing the placement of such pier platforms in this configuration along the bulkhead will add up over time. It should be remembered that there are hundreds of private residential boat dock systems in Newport Harbor. If each were permitted to install similarly designed pier systems it would increase adverse impacts upon public access, which is inconsistent with the Sections 30210 and 30211 of the Coastal Act.

In order to minimize adverse impacts to public access presented by the proposed project, the location of the pier platform should be revised to be located as far away from the existing bulkhead

as possible so that public access along the beach/public tidelands underneath the pier platform is provided similar to the existing situation. This revision should also take into account the positioning of the “T” pile (parallel vs. perpendicular to the bulkhead) since they could additionally impact public access. Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to, prior to permit issuance, submit revised project plans for the review and approval of the Executive Director which minimizes obstructions to lateral access. In general, the pier, pier platform, and gangway shall be placed to maximize the difference in elevation between the sand and bottom of the pier and pier platform. In addition, the pier platform and the point at which the gangway descends to the dock float shall be placed as far seaward as possible. Finally the quantity of pilings shall be minimized, and their placement and orientation shall maximize opportunities for lateral public access. Such revisions, would revise the project so as to avoid adverse impacts to public access and also not result in cumulative adverse impacts and therefore resulting in a project that is consistent with Sections 30210, 30211 and 30250 of the Coastal Act.

### CONCLUSION

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30211 and 30250 of the Coastal Act with regard to the public’s right of access to the sea and not interfere with recreational opportunities on public tidelands and would avoid cumulative impacts.

### **C. FILL OF COASTAL WATERS**

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

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

...

*(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*

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

The proposed project includes removal of an existing boat dock system and installation of a new reconfigured boat dock system. The proposed new pier platform is to be supported by one (1) new 14” diameter “T” pile. The proposed single finger floating boat dock is to be supported by two (2) new 18” diameter piles. The three (3) piles which support the new platform and boat dock are proposed to be located in coastal waters. Placement of the piles will result in fill of coastal waters. Thus, the project must be reviewed for conformance with Section 30233 of the Coastal Act. In order to be consistent with Section 30233, a project that involves filling in open coastal waters must meet the three-prong test. The use must be one of the uses specifically allowed, it must be the least environmentally damaging alternative, and it must provide adequate mitigation to offset any impacts

created by the project. As proposed, the project fails to qualify for approval under Section 30233; but, as modified by the conditions, the project can be found allowable under Section 30233 of the Coastal Act.

## 1. ALLOWABLE USE

The proposed project includes one (1) new 14" diameter "T" pile to support the new pier platform and two (2) new 18" diameter piles to support the new floating boat dock.

The piles for the pier platform and floating boat dock are proposed to be located in the open coastal waters of Newport Bay. Since the two (2) 18" diameter piles will support the floating boat dock, this associated fill would be consistent with Section 30233(a)(3) of the Coastal Act since it is for a boating-related use. However, the fill resulting from the one (1) 14" diameter pile to support the pier platform is not consistent with Section 30233(a)(3) of the Coastal Act since the location of the proposed pier platform adjacent to the rear yard essentially creates an expanded private rear yard area over the water that is not associated with a boating related use.

The Commission has typically allowed pier platforms in association with floating docks only when a pier is an integral part of the overall boat dock project and then only when the pier platform (a widened area on the pier) does not create the need for additional piles (fill) beyond those which are already necessary to support the pier. The proposed pier platform would be located adjacent to the bulkhead and would not be an integral part of the boat dock project since it would essentially serve to instead expand the private rear yard over the water that serves no clear boating-related use. Therefore, the fill resulting from the one (1) 14" diameter pile for the new pier platform is not consistent with Section 30233(a)(3) of the Coastal Act. In order to be consistent with Section 30233(a)(3) of the Coastal Act, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to, prior to permit issuance, submit revised project plans for the review and approval of the Executive Director which revises the location of the pier platform to where it will be an integral part of the boat dock system and not essentially to serve as an expansion of the private rear yard over the water and not intended for any boating-related use.

The floating boat dock and its supporting piles constitute a boating-related use, which is an allowable use for which fill may be permitted in open coastal waters, other than wetlands, consistent with Section 30233(a)(3) of the Coastal Act. However as proposed, the pier platform and its supporting piles are not associated with a boating-related use. As conditioned the pier platform will be relocated to where it will more clearly serve for boating related purposes. Therefore, as conditioned, the proposed fill resulting from placement of the three (3) piles supporting the pier platform and floating boat dock is consistent with Section 30233(a)(3) of the Coastal Act.

## 2. ALTERNATIVES

The placement of the three (3) proposed piles for the pier platform and floating boat dock will result in fill of coastal waters. The placement of the three (3) proposed to secure the

floating boat dock and pier/pier platform is the minimum amount of construction necessary to safely anchor the pier platform and floating boat dock. Fewer and/or smaller piles would not adequately secure the floating boat dock and the boat berthed therein. By using the least number of piles necessary, coupled with the smallest footprint, to accomplish the goal of securing the floating boat dock and pier platform, the three (3) proposed piles represent the least environmentally damaging feasible alternative. However, as discussed above, while the two (2) new 18” diameter piles result in fill to support the new floating boat dock consistent with Section 30233(a)(3) of the Coastal Act, the proposed fill resulting from the (1) new 14” diameter “T” pile to support the new pier platform is not allowable since it is not a boating related use. Instead the fill is to support what essentially becomes an extension of the rear yard over the water that is not associated with a boating-related use. Therefore, only as conditioned by the Commission (**SPECIAL CONDITION NO. 1**) would the Commission find the proposed project consistent with Section 30233(a)(3) of the Coastal Act in that the proposed fill would be justified and find the proposed alternative meets the requirements of Section 30233 that any project involving fill of coastal waters be the least environmentally damaging feasible alternative.

### 3. MITIGATION

Only as conditioned (**SPECIAL CONDITION NO.1**) would the project be considered an allowable boating-related use. As conditioned, it can be found that the project design for the new floating boat dock and new pier platform includes the minimum sized pilings and the minimum number of pilings necessary for structural stability of the floating boat dock and pier platform. Therefore, the three (3) piles will provide hard substrate that can be used by some marine life. Although, this isn’t equivalent to the habitat being impacted, there are no feasible less environmentally damaging alternatives available. The project site was surveyed for eelgrass and none was found to exist at the site. Section 30224 of the Coastal Act requires that recreational boating use of coastal waters be encouraged by, among other things, providing berthing space in existing harbors. 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 conditioned, the project, which is to be used solely for boating-related purposes, conforms to Sections 30224 and 30233 of the Coastal Act.

### CONCLUSION

Thus, as conditioned, the Commission finds that the proposed project consistent with Section 30233 of the Coastal Act.

## **D. MARINE RESOURCES AND WATER QUALITY**

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30230 of the Coastal Act requires that marine resources including biological productivity be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. In addition, Sections 30230 and 30231 require that the quality of coastal waters be maintained and protected from adverse impacts.

### **1. MARINE RESOURCES/BIOLOGICAL PRODUCTIVITY**

Until recently, the City's Harbor Permit Policy limited pier platforms to a maximum size of 10' x 14' (140 square feet). The Commission also required pier platforms to be similarly limited as a means of limiting fill of coastal waters and water coverage that reduces light and decreases the biological productivity of coastal waters. Coastal waters covered by structures also impede wildlife foraging activities. Currently, the subject site has a 4' x 11' pier approach that leads to a 10' x 12' pier platform. The proposed new 10' x 14' pier platform will be repositioned from its present location 11-feet bayward of the existing bulkhead to now be adjacent to the bulkhead. The new pier platform is consistent with the City's policy but it does result in a larger sized platform than the existing that results in additional water coverage that in turn potentially adversely impacts biological productivity. While the new pier platform itself may result in additional water coverage, overall water coverage actually decreases from 725 square feet to 516 square feet (a change of -209 square feet) as a result of this project. Therefore, additional coastal waters are being opened up with the project. However, while water coverage is being decreased with the project and marine resources being restored, the proposed pier platform would be located adjacent to the bulkhead and would not be an integral part of the boat dock project since it would essentially serve to instead expand the private rear yard over the water that serves no clear boating-related use. The fill resulting from the piling to support the new pier platform is not consistent with Section 30233(a)(3) of the Coastal Act

as the fill is not for a boating-related use (To be discussed elsewhere in the Staff Report). Therefore, while the proposed project results in decreased water coverage and restores marine resources, it is still consistent with Section 30233(a)(3) of the Coastal Act since the fill is not for a boating-related use.

Therefore, the Commission imposes **SPECIAL CONDITION NO. 1**, which requires the applicant to, prior to permit issuance, submit revised project plans for the review and approval of the Executive Director which revises the location of the pier platform to where it will be an integral part of the boat dock system and not serve as an expansion of the private rear yard over the water and which is not intended for any boating-related use.

The proposed project includes measures to help assure protection of coastal waters and marine resources. Measures proposed include: all parts of the proposed boat dock are to be constructed off-site on land and transported via trailer and then by water to the subject job site where they will be floated into place and assembled by hand using hand tools, keeping in-water work to a minimum. In addition, in order to assure that all impacts to water quality are minimized, special conditions are imposed that specify and impose construction phase and post construction measures to avoid adverse impacts on marine resources.

## 2. EELGRASS

Eelgrass is a marine flowering plant that grows in soft sediments within coastal bays and estuaries. Eelgrass canopies consist of shoots and leaves approximately 1 to 3 feet long that typically attract marine invertebrates and fish species. Under normal circumstances, a diverse community of benthic organisms (e.g. clams, crabs, and worms) lives within the soft sediments that cover eelgrass root and rhizome mass systems. Eelgrass beds also function as a nursery for many juvenile fish – including species of commercial and/or sporting value such as California halibut and corbina. Eelgrass beds are also important foraging areas for piscivorous seabirds that pursue fish attracted to eelgrass cover. Eelgrass is also an important ecological contributor to the detrital (decaying organic material) food web of bays and estuaries as the decaying plant material is consumed by many benthic invertebrates and converted to primary nutrients by bacteria.

An eelgrass survey took place on October 12, 2012 as required by the City of Newport Beach Harbor Resources Division and none was found. 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 project is agendaized for the June 2013 Coastal Commission Hearing so the eelgrass survey no longer continues to be valid. Therefore, a subsequent eelgrass survey will be required prior to beginning any construction. Therefore, the Commission imposes **SPECIAL CONDITION NO. 2**, which identifies the procedures necessary to be completed prior to beginning construction in case the survey expires prior to commencement of construction. In addition, the special condition identifies post-construction eelgrass procedures. These conditions will ensure that should impacts to eelgrass occur (though none are expected), the impacts will be identified and appropriate mitigation required. Therefore, as conditioned, the Commission finds that the proposed development will not result in significant impacts to eelgrass.

## 2. CAULERPA TAXIFOLIA

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

A pre-construction *Caulerpa Taxifolia* survey was completed on October 12, 2012 as required by the City of Newport Beach Harbor Resources Division and none was found. *Caulerpa Taxifolia* surveys are valid for 90 days. The project is agendaized for the June 2013 Coastal Commission Hearing and by this time the *Caulerpa Taxifolia* survey would not continue to be valid since 90-days have passed since the survey was completed. Thus, an up-to-date *Caulerpa Taxifolia* survey must be conducted prior to commencement of the project. In order to assure that the proposed project does not cause the dispersal of *Caulerpa Taxifolia*, the Commission imposes **SPECIAL CONDITION NO.3**, which requires the applicant, prior to commencement of development, to survey the project area for the presence of *Caulerpa Taxifolia*. If *Caulerpa Taxifolia* is present in the project area, no work may commence and the applicant shall seek an amendment or a new permit to address impacts related to the presence of the *Caulerpa Taxifolia*, unless the Executive Director determines that no amendment or new permit is required.

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 CONDITION NO. 4**, which requires, but not limited to, appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission imposes **SPECIAL CONDITION NO. 5**, which requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms to Sections 30230 and 30231 of the Coastal Act.

## CONCLUSION

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

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

Section 30604(a) of the Coastal Act provides for the issuance of Coastal Development Permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be used if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan (LUP) was effectively certified on May 19, 1982. The Certified LUP was updated on November 15, 2012. The City currently has no Certified Implementation Plan (IP). Therefore, the Commission issues Coastal Development Permits within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3. As conditioned, the proposed project will conform with Coastal Act Policy Sections 30210 and 30211 regarding public access and recreational opportunities, Section 30250 regarding avoidance of cumulative impacts, and Section 30233 regarding allowable fill of open coastal waters. The proposed development, as conditioned, is consistent with Chapter 3 policies of the Coastal Act and with the LUP. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

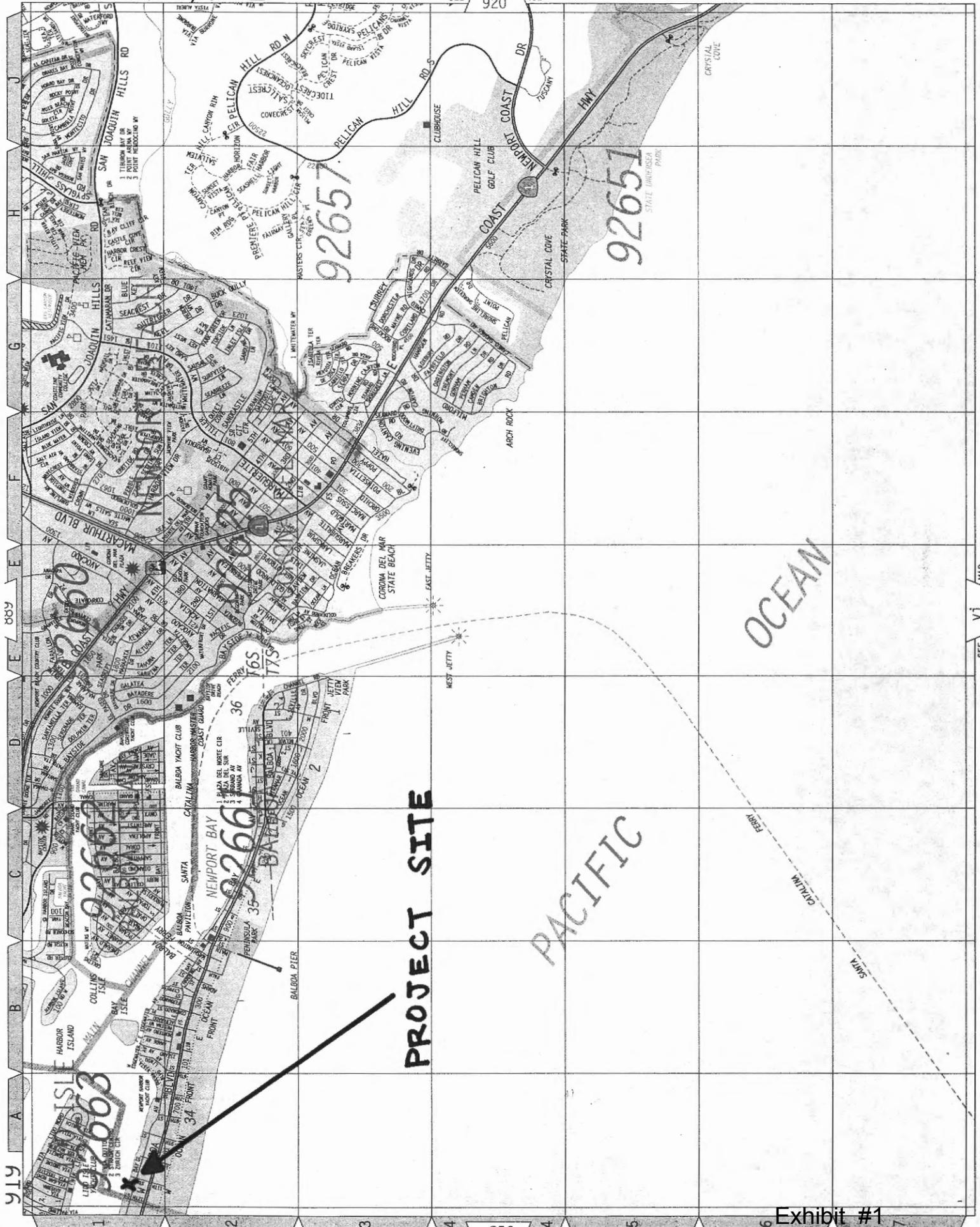
**F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

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

In this case, the City of Newport Beach Harbor Resources Division is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Newport Beach Harbor Resources Division determined that the proposed development is ministerial or categorically exempt on October 25, 2012. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the public access and recreational opportunities policies, the avoidance of cumulative impacts policy and the allowable fill of open coastal waters policy of the Coastal Act. 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 can be found consistent with the requirements of the Coastal Act to conform to CEQA.

## APPENDIX 1

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach Certified Land Use Plan; City of Newport Beach Harbor Permit Policies; City of Newport Beach Harbor Resources Division Permit/Approval in Concept Harbor Permit No. 116-11081 and Plan Check No. 1933-2012 dated October 25, 2012; Letter from Commission Staff to Swift Slip Dock & Pier Builders dated December 14, 2012; Letter from Swift Slip Dock & Pier Builders to Commission staff dated January 8, 2012; and *Preliminary Eelgrass (Zostera marina) Survey Report and Caulerpa Taxifolia Survey 1108 West Bay Ave., Newport Beach, CA* prepared by Dive Works dated October 12, 2012.



**PROJECT SITE**

PACIFIC

OCEAN

919

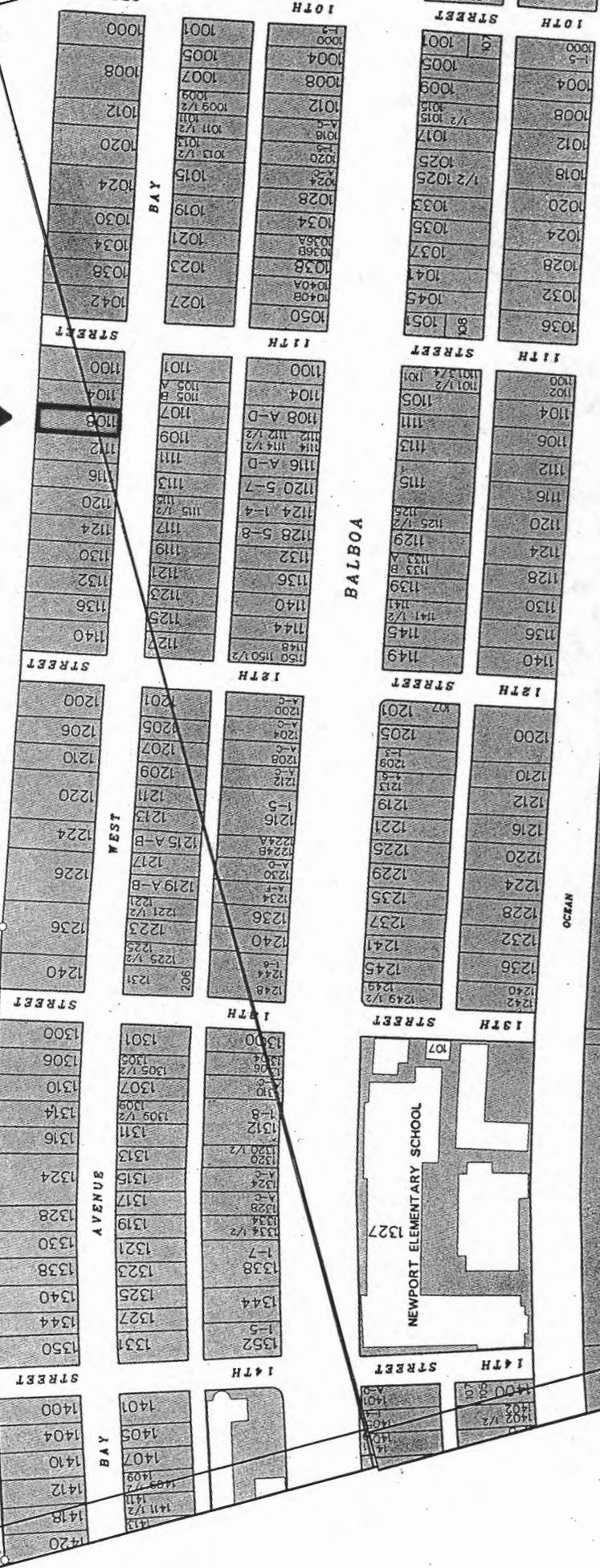
889

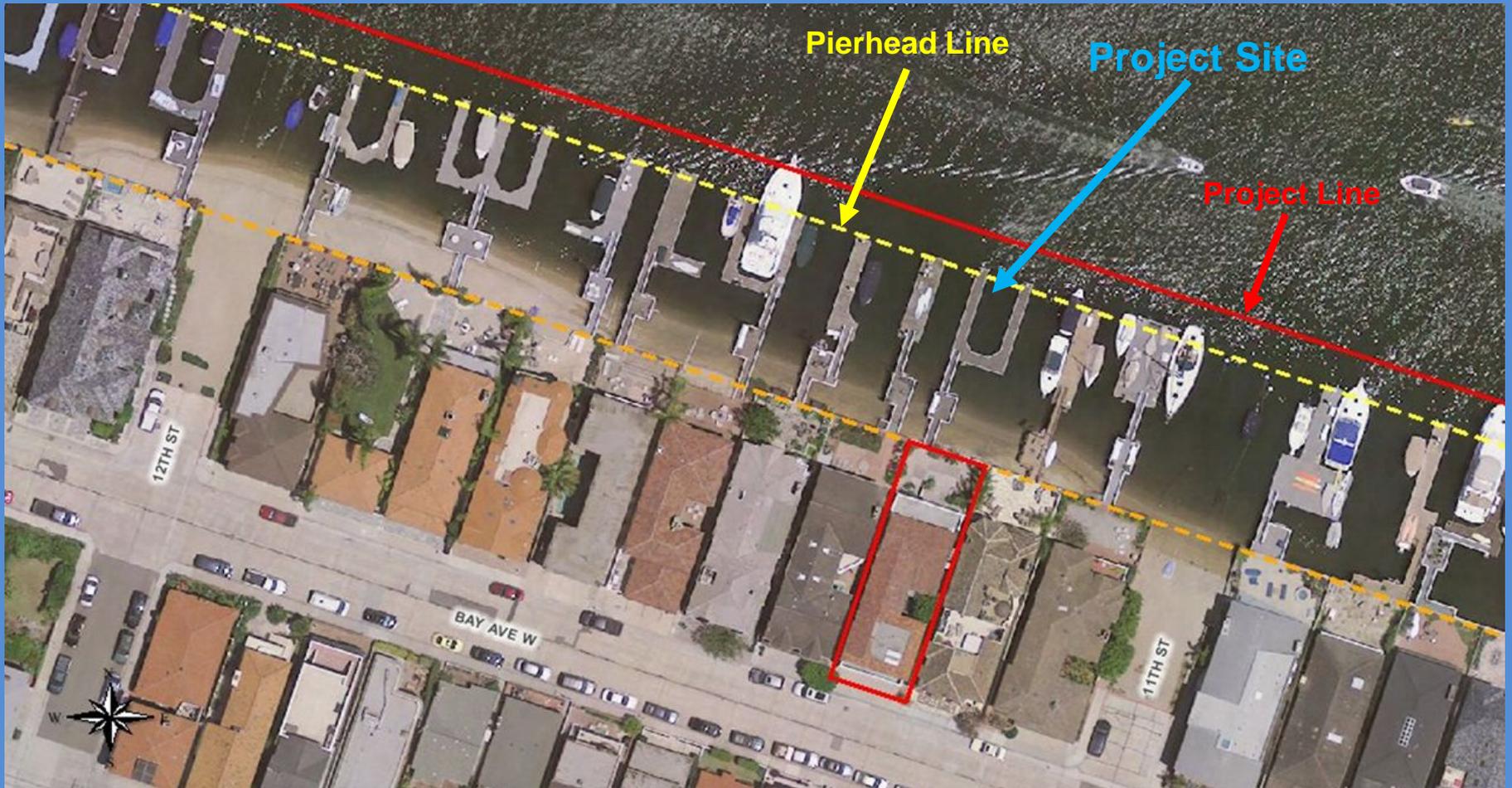
CHANNEL

PROJECT SITE



US 517  
US 517  
US 517  
US 517

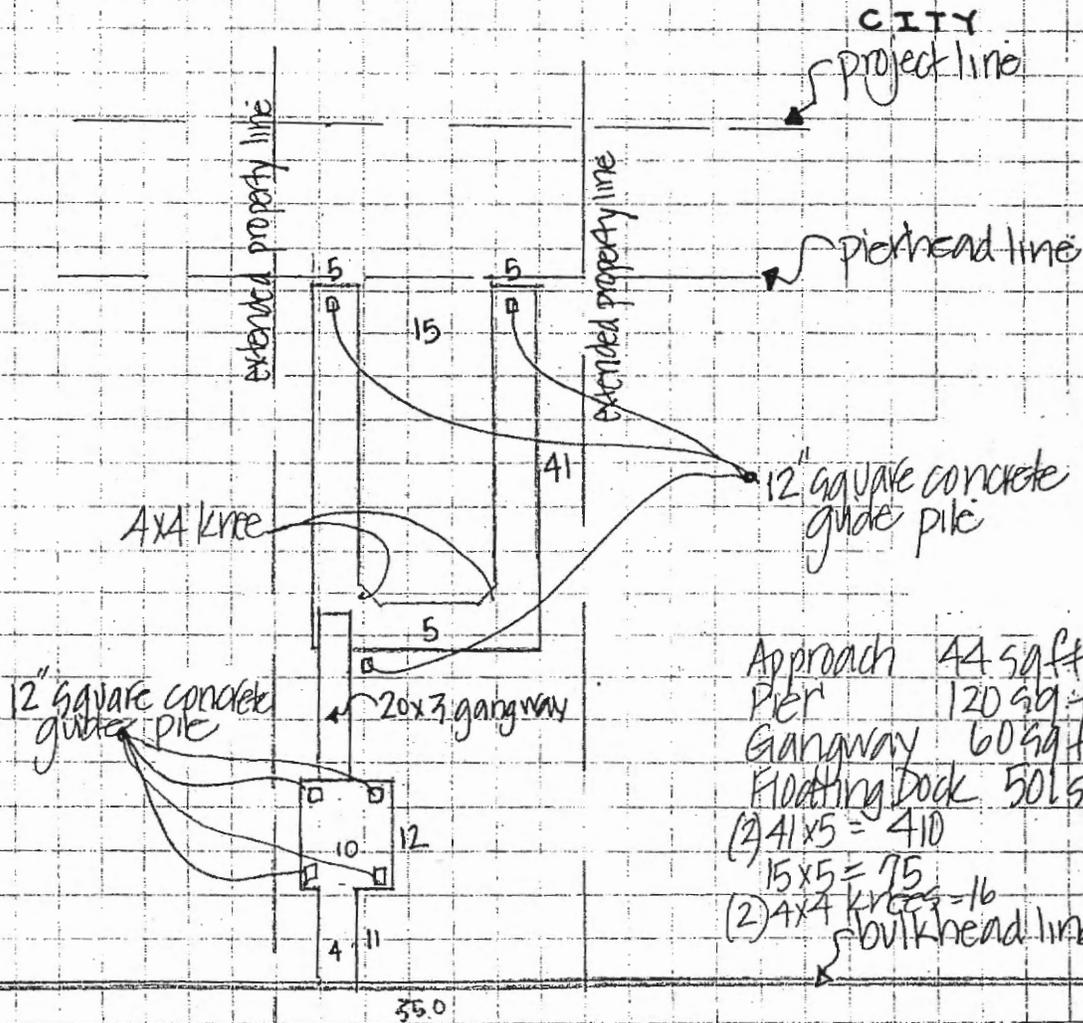




EXISTING

EXISTING  
 PLAN

725 sq. ft. overwater coverage



1108 W. Bay Ave.  
 Newport Beach

EXISTING



DOCK AND PIER  
 BUILDERS

# PROPOSED PLAN

PROPOSED  
516  
TOTAL SQ FT.

City project  
LINE 100.0'

bulkhead  
LINE 80.0'

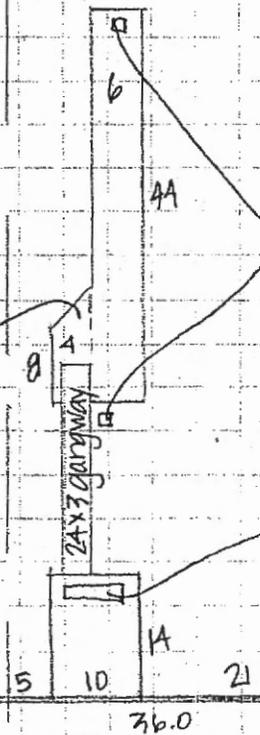
4x4 knee

18" square concrete  
guide pile

14" square concrete  
"T" pile

bulkhead

0.0

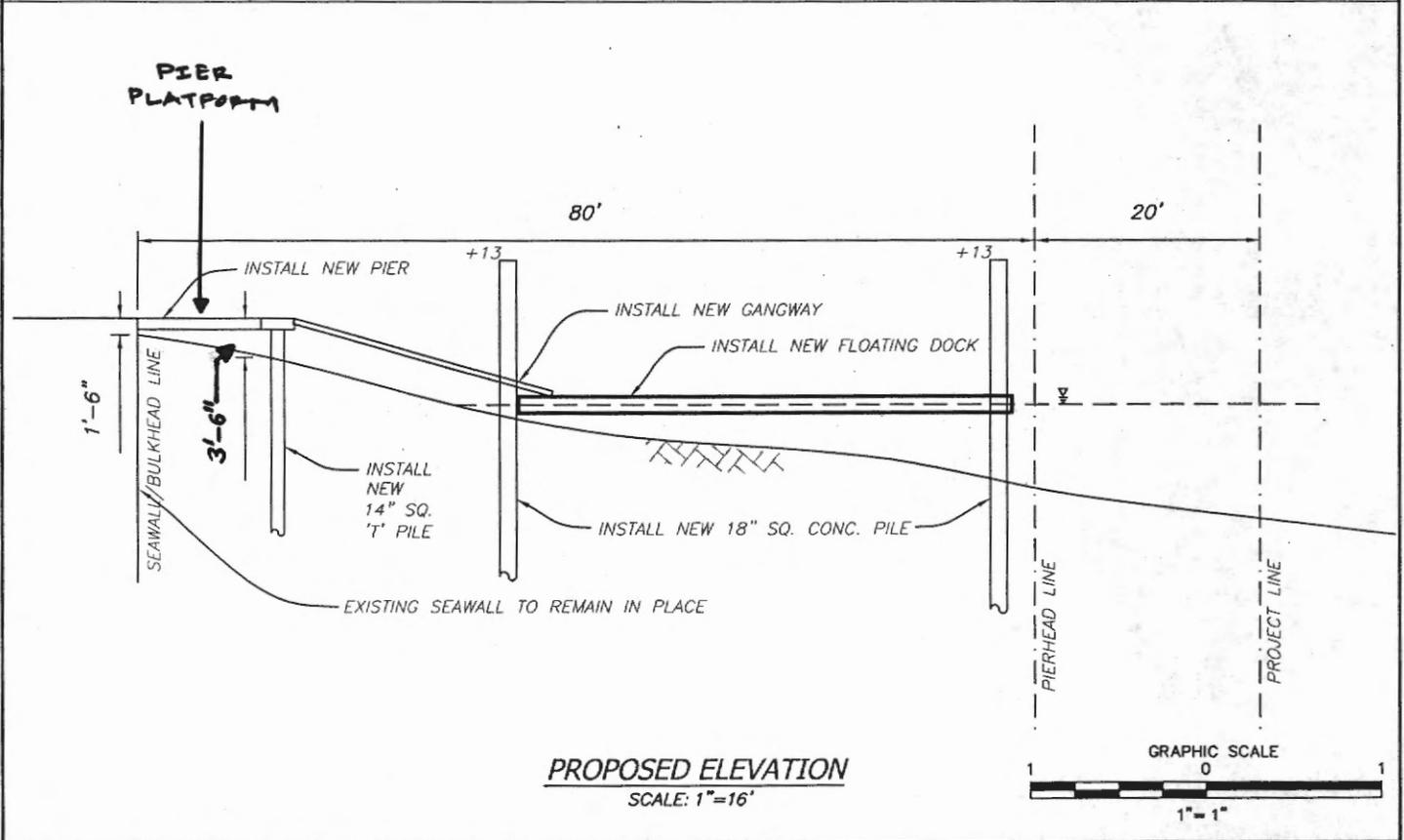
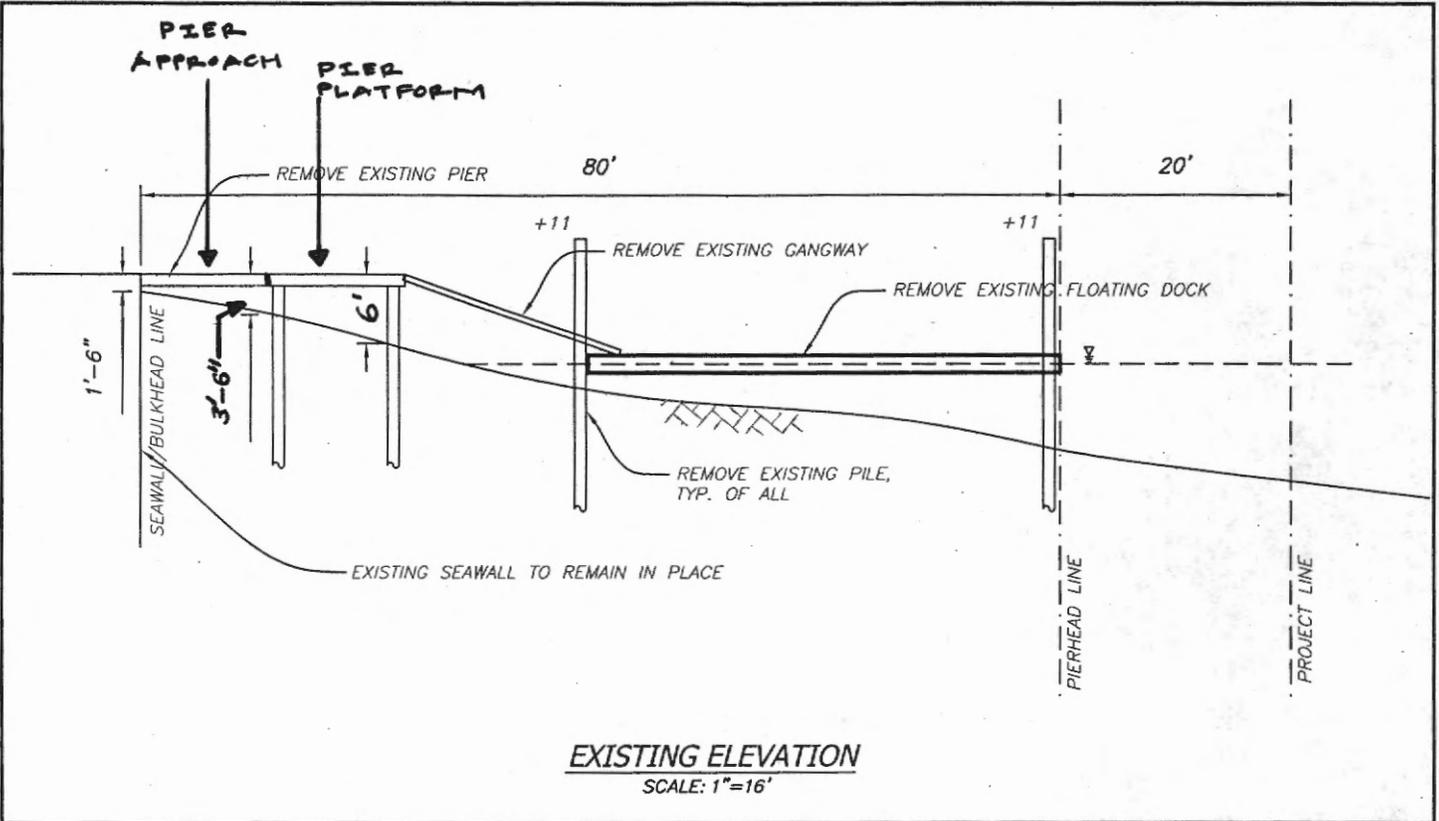


Pier 140 sq ft  
 Gangway 72 sq ft  
 Dock 304 sq ft  
 44x6 = 264  
 8x4 = 32  
 4x4 knee = 8

1108 W. Bay Ave  
Newport Beach, Calif.



**DOCK & PIER  
BUILDERS, INC.**



<p><b>BLUEWATER DESIGN GROUP</b></p> <p>Planning and Engineering Services</p>  <p>For Marinas and Waterfront Resorts</p>	PROJECT: <b>ROGER PREND</b>		JOB #: <b>2335 - A</b>	SHEET NO. <b>L-1</b>	
	CLIENT: <b>SWIFT SLIP</b>		DESIGNED BY: <b>PT</b>	PAGE <b>1</b> OF <b>1</b>	
	SUBJECT/COMMENTS: <b>EXISTING VS. PROPOSED ELEVATION</b>		CHECKED BY: <b>TB</b>	DATE: <b>01-10-2013</b>	

2027 Placentia Avenue, Costa Mesa, California 92627  
(949) 631-3121 • Fax (949) 631-3122

# REVISED PLAN PER SPECIAL CONDITION NO. 1

city project  
LINE 100.0'

perhead  
LINE 80.0

18" square concrete  
guide pile

bulkhead  
0.0

Pier  
Gangway  
Dock

1108 W. Bay Ave  
Newport Beach, Calif.



**DOCK & PIER  
BUILDERS, INC.**