PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

BUILDING STRONG®

APPLICATION FOR PERMIT
Balboa Marina West Dredging and Expansion Project

Public Notice/Application No.: SPL-2013-00450-GS
Project: Balboa Marina West Dredging and Expansion Project
Comment Period: October 2, 2015 through November 1, 2015
Project Manager: Gerardo Salas (213-452-3417); Gerardo.Salas@usace.army.mil

Applicants
Chris Miller
City of Newport Beach, Harbor Resources
829 Harbor Island Drive
Newport Beach, California 92660

Dean Kirk
Irvine Company
550 Newport Center Drive
Newport Beach, California 92660

Contact
Adam Gale
Anchor QEA, LLC
27201 Puerta Real, Suite 350
Mission Viejo, California 92691

Location
The Balboa Marina West Dredging and Expansion Project is located at the existing Balboa Marina, 201 East Coast Highway, within Lower Newport Bay, in the city of Newport Beach, Orange County, California (at Lat/Long: 33.615859, -117.90434).

Activity
The applicant proposes to dredge and dispose of approximately 9900 cubic yards (cy) of sediment from Newport Harbor, expand the existing marina by installing a new point of public access, a new public dock with 12 public boat slips, and 24 private slips in the existing private Balboa Marina (see attached drawings). For more information, see page 3 of this public notice.

Interested parties are hereby notified an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawings. We invite you to review today's public notice and provide views on the proposed work. By providing substantive, site-specific comments to the Corps Regulatory Division, you provide information that supports the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered in the decision. This permit will be issued, issued with special conditions, or denied under Section 103 of the Marine Protection, Research and Sanctuaries Act, Section 10 of the Rivers and Harbors Act, and Section 404 of Clean Water Act. Comments should be mailed to:

Department of the Army
U.S Army Corps of Engineers, Los Angeles District
Regulatory Division
Attn: Gerardo Salas
915 Wilshire Boulevard, Suite 930
Los Angeles, California 90017

Alternatively, comments can be sent electronically to: Gerardo.Salas@usace.army.mil .

The mission of the U.S. Army Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible, and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable waters and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the U.S. Environmental Protection Agency (EPA) Guidelines (40 CFR Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

EIS Determination- A preliminary determination has been made an EIS is not required for the proposed work.

Water Quality- The applicant is required to obtain water quality certification under Section 401 of the Clean Water Act from the California Regional Water Quality Control Board. Section 401 requires any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance. The applicant submitted an application for a Water Quality Certification, which was received by the RWQCB on December 16, 2014.

Coastal Zone Management- The applicant has certified the proposed activity would comply with and would be conducted in a manner consistent with the approved State Coastal Zone Management Program. For those projects in or affecting the coastal zone, the Federal Coastal Zone Management Act requires that prior to issuing the Corps authorization for the project, the applicant must obtain concurrence from the California Coastal Commission (CCC) the project is consistent with the State's Coastal Zone Management Plan. The District Engineer hereby requests the California Coastal Commission's concurrence or non-concurrence. The applicant submitted an application for a Coastal Development Permit, which was received by the CCC on January 16, 2015.

Essential Fish Habitat (EFH)- The Corps has preliminarily determined the proposed activity may adversely affect EFH. Pursuant to Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Los Angeles District hereby requests initiation of EFH consultation for the proposed project. This notice initiates the EFH consultation requirements of the Act via abbreviated consultation. In order to comply with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), pursuant to 50 CFR 600.920(e)(3), I am providing, enclosing, or otherwise identifying the following information:

1. Description of the proposed action: see project description on page 6 of this public notice.

2. On site inspection information: The proposed project is located within a general area designated as EFH by the Coastal Pelagic Species and Pacific Coast Groundfish Fishery Management Plans (FMPs). The area is also defined as estuarine habitat, which is considered to be a habitat area of particular concern for EFH. Eelgrass (*Zostera marina*) beds have also been mapped in the project area.

Project-related impacts to EFH would be mostly temporary and minimal, localized minor increases in turbidity associated with construction. Dredging may temporarily remove benthic infauna from the dredging footprint. Fauna are typically sparse in areas between bulkheads and adjacent to docks and

floats, and infaunal communities are expected to rapidly re-colonize following dredging. Use of silt curtains during dredging would further minimize impacts to EFH.

Caulerpa (*Caulerpa taxifolia*) and eelgrass surveys were conducted on June 4 and July 19, 2013. While no Caulerpa was observed, two small eelgrass beds were mapped within the project area, totaling 515 square feet (sf). Of this total, 379.3 sf (73.7%) is located at the southern edge of the sandy beach and 135.7 sf (26.3%) is positioned south of this location, off of the southerly tip of the existing parking lot (see Figure 6). Based on this survey, approximately 515 sf of eelgrass would be adversely impacted by the proposed dredging of the shallow water habitat. This loss would be mitigated according to the California Eelgrass Mitigation Plan (CEMP) by planting in the existing Balboa Marina eelgrass mitigation site. A new pre-construction survey would establish the final amount of eelgrass likely to be impacted by dredging and construction.

3. Analysis of the potential adverse effects on EFH: Because of the minor, temporary, and localized nature of the activities proposed, the adherence to established special conditions, and the requirement to separately mitigate for any direct or indirect impacts to eelgrass, project activities would have adverse but temporary and less than substantial impacts to EFH and species managed under the Pacific Coast Groundfish and Coastal Pelagic Species FMPs. In addition, the project would result in a net decrease in shading compared to historic conditions. For these reasons, the proposed project would result in no substantial adverse effects to EFH or federally managed fisheries in California.

4. Proposed minimization, conservation, or mitigation measures: Eelgrass impacts would be mitigated pursuant to the provisions of the CEMP. The proposed mitigation site is the current Balboa Marina Eelgrass Mitigation Site on Bayside Drive (see Figure 6). Potential mitigation sites within or adjacent to the project impact area were considered and evaluated for suitability. It was determined that these sites would be unsuitable for eelgrass mitigation for a variety of reasons (sites located directly within the construction footprint are generally too deep, subject to unfavorable currents and tidal conditions, and have poor substrate).

5. Conclusions regarding effects of the proposed project on EFH: Based on the project description and EFH assessment provided by the applicant, the proposed project would result in the loss of 515 sf of eelgrass, and the disturbance of approximately 32,042 square feet of substrate from dredging activities. Furthermore, the affected substrate would likely consist of soft-bottom sediments, with little or no hard rock substrate affected. However, this would be mitigated by the creation of 2,212 sf of newly created waters and substrate.

Therefore, it is my initial determination the proposed activity may adversely affect but would not have a substantial adverse impact on EFH or federally managed fisheries in California waters. My final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NOAA Fisheries. If I do not receive written comments (regular mail or e-mail) within the 30-day notification period, I will assume concurrence by NOAA Fisheries with the proposed mitigation measures.

Cultural Resources- The latest version of the National Register of Historic Places has been consulted and this site is not listed.

The project entails dredging and expanding existing marina infrastructure. The site was occupied for approximately 40 years by a floating vessel that housed the Ruben E. Lee Riverboat restaurant and later by the Newport Harbor Nautical Museum. However, the vessel was dismantled and removed from the site in 2008. In 2009, the aging marina was renovated, and the current boat docks,

slips, and gangways were constructed on the waterside portion of the site. Upland excavation would occur in previously disturbed and developed areas. Additionally, the waterside portion of the project site is located in Newport Harbor and the Lower Newport Bay channel, which have been subjected to water-bottom dredging on numerous occasions. Thus, both the land and water-bottom surfaces of the project site are developed and disturbed. Furthermore, the City of Newport Beach has no record of reported archaeological resource discoveries associated with the project site (City of Newport Beach, 2007). Therefore, the proposed project will have no potential to effect any sites listed, or eligible for listing, in the National Register of Historic Places, or otherwise of national, state, or local significance because the site is located in intertidal and subtidal areas of Newport Bay.

Endangered Species- The California least tern (*Sternula antillarum browni*), a federally listed endangered species, uses open sandy or gravelly shores with light-colored substrates, little vegetation, and nearby fishing waters for nesting. The California least tern does not breed or nest near the project site but forage in Upper Newport Bay and nearshore coastal waters during their April-to-September breeding season. During this period, adults forage on juvenile baitfish and take their prey back to their fledglings. California least tern forage within several miles of their nesting sites at Bolsa Chica Marsh and Upper Newport Bay. The nearest least tern nesting sites are located approximately 2.5 miles west (upcoast) at the mouth of the Santa Ana River and 4.2 miles northeast in Upper Newport Bay near the Jamboree Road Bridge. Adults are known to forage throughout upper Newport Bay. Limited foraging habitat may be present in the vicinity of the project site in lower Newport Bay; however, it is unknown whether terns forage in this heavily-disturbed area.

Dredging would be conducted over a period of approximately 4 weeks, up to 6 days per week, which would include mobilization and demobilization of dredging equipment. It is possible that dredging could occur outside of the October-to-April window for such activities. If dredging or other construction activities that could result in disturbances to the California least tern occur during the nesting season of April to September, daily monitoring would be performed by a qualified biologist. The biologist would advise the applicants and contractor of appropriate methods to minimize or avoid impacts to the California least tern and their habitat. The biologist would have the ability to halt all work should dredging or construction activities result in disturbances to the California least tern. This method was employed during the prior redevelopment of Balboa Marina, and no impacts to California least tern were identified during construction. The applicants are also proposing use of a silt curtain during dredging.

Due to the distance between the project site and the known nesting sites, the limited foraging habitat available in the vicinity of the project site, and the limited amount of turbidity and noise expected as a result of the proposed project, the Corps is proposing to make a “no effect” determination to federally listed species.

The federally threatened green sea turtle (*Chelonia mydas*) occasionally occurs in the near shore environment offshore of Orange County; however, their occurrence within Newport Bay is rare. Because Newport Bay has a productive eelgrass system, green sea turtles may occasionally use sea grass beds as one source of their nutritional requirements, but this occurrence would be rare. No green sea turtles have been observed in the project area by Coastal Resources Management, Inc. biologists during their surveys conducted on June 4 and July 19, 2013, and the potential for green sea turtles to be in the project area is extremely low. Therefore, the project would have no effect on the green sea turtle.

Preliminary determinations indicate the proposed activity would not affect federally-listed endangered or threatened species, or their critical habitat. Therefore, formal consultation under Section 7 of the Endangered Species Act does not appear to be required at this time.

Public Hearing- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

Basic Project Purpose- The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the applicant's project is water dependent (i.e., requires access or proximity to or siting within the special aquatic site to fulfill its basic purpose). Establishment of the basic project purpose is necessary only when the proposed activity would discharge dredged or fill material into a special aquatic site (e.g., wetlands, pool and riffle complex, mudflats, coral reefs). There are no special aquatic sites within the proposed project area. Therefore, establishment of a basic project purpose is not necessary.

Overall Project Purpose- The overall project purpose serves as the basis for the Corps' 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, and which allows a reasonable range of alternatives to be analyzed. The overall project purpose for the proposed project is to improve public access to the project site as well as provide general improvements to commercial and recreational access and opportunities at the site and in Newport Harbor.

Additional Project Information

Baseline information- The existing site includes a parking lot in the uplands, fronting the existing private Balboa Marina, to the south and a beach to the northwest. Pacific Coast Highway traverses east to west immediately north of the project site (see Figure 1). The parking lot is enclosed by ornamentally landscaped vegetation, and access to the water is restricted by an approximately 3-foot-high aluminum gate. To the west of the parking lot is the relic dock location of the Newport Beach Riverboat, including the concrete loading platform. The platform is an enclosed bulkhead structure with exposed soil supporting various herbaceous, non-native plant species. The Newport Beach Riverboat, also known as the Reuben E. Lee, was a restaurant located on a barge modeled to look like a riverboat encompassing an area of approximately 11,862 sf, and was formerly tied in place from the 1960s through 2007 (see Figure 2). In 2008, the barge was removed in preparation for the proposed project described herein.

In 2009, the Irvine Company completed the first phase of rebuilding Balboa Marina by replacing the 27,550 sf marina with a smaller 20,951 sf marina, which resulted in a net decrease of approximately 6,599 sf. The proposed project described herein is the second phase of the two-phase Balboa Marina project.

Under existing conditions, the Balboa Marina provides 105 slips for boats ranging in length from 22 feet to 58 feet, including four transient slips available to the general public. Since 2009, the Irvine Company determined that providing security for the private lessees while still providing open access to the four public slips can be challenging. The primary purpose and benefit of the project is the development of a new public boat dock in an area of Newport Harbor which is more easily accessible to the public than the four transient public boat slips currently available in the private Balboa Marina.

Project description- The proposed project would construct a new public dock and gangway, providing approximately 12 public boat slips, including eight new boat slips and four transient boat slips that would be relocated to the public dock from the existing private Balboa Marina. In the private

Balboa Marina, 24 private boat slips accommodating a range of vessel sizes and a new gangway are proposed to be added (see Figure 3). Development of the new public transient dock and private dock expansion would temporarily impact 32,042 square feet of non-wetland navigable waters of the United States, require dredging approximately 9,900 cy of sediment, and the removal of 1,300 cy of upland soils (see Figure 4 and 5).

Material from the project site would be mechanically dredged, likely via clamshell or excavator type dredges, with dredged material placed into a barge for disposal. Dredging is anticipated to be conducted five days a week for approximately four weeks, which would include mobilization and demobilization. Silt curtains would be deployed around the dredge site and barge to confine suspended sediment particles from drifting beyond the project site when bottom sediments are disturbed. Dredging would take place during normal working hours per Newport Beach Municipal Code or as otherwise allowed depending on tide cycles. The Southern California Dredged Material Management Team approved sediments from the project site for disposal at either the LA-3 Ocean Dredged Material Disposal Site (ODMDS) or an approved upland facility. All dredged material would be transported via barge pushed by a tugboat to LA-3 ODMDS. It is anticipated that five to eight barge trips per week (for approximately four weeks) would be required, depending on the size of the barge. During the dredging phase, dredge equipment may need to be staged within the navigation channel outside the pierhead line. The project would implement all appropriate best management practices (BMPs).

Finally, in order to accommodate the proposed number of boat slips, a riprap embankment would be constructed approximately 15 feet landward of the existing riprap embankment, along the western edge of the project site. A short concrete gravity wall would sit on top of this revetment to provide a clean edge interface with the landside property. Project construction is expected to occur for 15 months between early 2017 and spring 2018.

Proposed Mitigation– The proposed mitigation may change as a result of comments received in response to this public notice, the applicant's response to those comments, and/or the need for the project to comply with the 404(b)(1) Guidelines. In consideration of the above, the proposed mitigation sequence (avoidance/minimization/compensation), as applied to the proposed project is summarized below:

Avoidance: With implementation of the project, the new private and public/transient docks would result in approximately 9,272 sf of new over-water coverage; however, the proposed project also includes replacing the existing riprap embankment that would be reconstructed 15 feet landward of the existing embankment. This replacement would result in removing existing fill material and increasing 3,212 sf of waters of the United States. Since the 2008 Balboa Marina redevelopment, inclusive of this phase, there is a net decrease in shaded waters by approximately 766 sf.

Minimization: With implementation of the BMPs outlined below, the proposed action would avoid or minimize any temporary construction-related potential effects to water quality, EFH, and federal listed species:

- The project applicants would conduct a preconstruction Caulerpa survey within 30 to 90 days prior to dredging and a post-construction Caulerpa survey within 30 to 90 days after project construction is complete. Surveys would be consistent with the National Marine Fisheries Service Caulerpa Control Protocol. If this species is found, protocols for the eradication of Caulerpa would be implemented to remove this species from the project site.

- Prior to commencing construction activities, the applicants would ensure that dredging and excavation operations are surrounded with a silt curtain to reduce the level of turbidity. The curtain would be maintained in good condition throughout dredging and construction activities.

- A silt curtain would be deployed during pile-jetting operations and dredging.

- The applicants would comply with required water quality monitoring requirements during dredging that are determined by the RWQCB.

- The applicants would conduct a visual scan before commencing any pile driving operations to ensure no mammals or turtles are within the immediate vicinity of pile hammering and would employ "soft start" techniques for any impact pile driving.

- If dredging or other construction activities that could result in disturbances to the California least tern occur during the nesting season of April to September, daily monitoring would be performed by a qualified biologist.

- Prior to issuing construction permits, the applicants would prepare, and the City would review and approve, a Stormwater Pollution Protection Plan (SWPPP) in compliance with the RWQCB's Section 402 National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit.

- Prior to operation of the marina proposed herein, the applicants would develop a project-specific final Water Quality Management Plan (WQMP) and SWPPP. The final WQMP would be designed consistent with the current Orange County Drainage Area Management Plan and the intent of the non-point source NPDES Permit for Waste Discharge Requirements for the County of Orange, Orange County Flood Control District, and the incorporated cities of Orange County within the Santa Ana Region. Collectively, the final WQMP and SWPPP are required to identify and implement an effective combination of erosion control and sediment control measures (i.e., BMPs) to reduce or eliminate discharge to surface water from stormwater and non stormwater discharges.

Compensation: Permanent Eelgrass impacts would be mitigated pursuant to the provisions of the CEMP. The proposed mitigation site is the current Balboa Marina Eelgrass Mitigation Site on Bayside Drive (Figure 7). The final amount of eelgrass mitigation would be based on the results of a new preconstruction Eelgrass survey. Potential mitigation sites within or adjacent to the project impact area were considered and evaluated for suitability. It was determined that these sites would be unsuitable for eelgrass mitigation for a variety of reasons (sites located directly within the construction footprint are generally too deep, subject to unfavorable currents and tidal conditions, and have poor substrate).

Proposed Special Conditions

Special Conditions would be added based on public notice comments and environmental considerations.

For additional information, please contact Gerardo Salas at 213-452-3417 or via e-mail at Gerardo.Salas@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.

Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

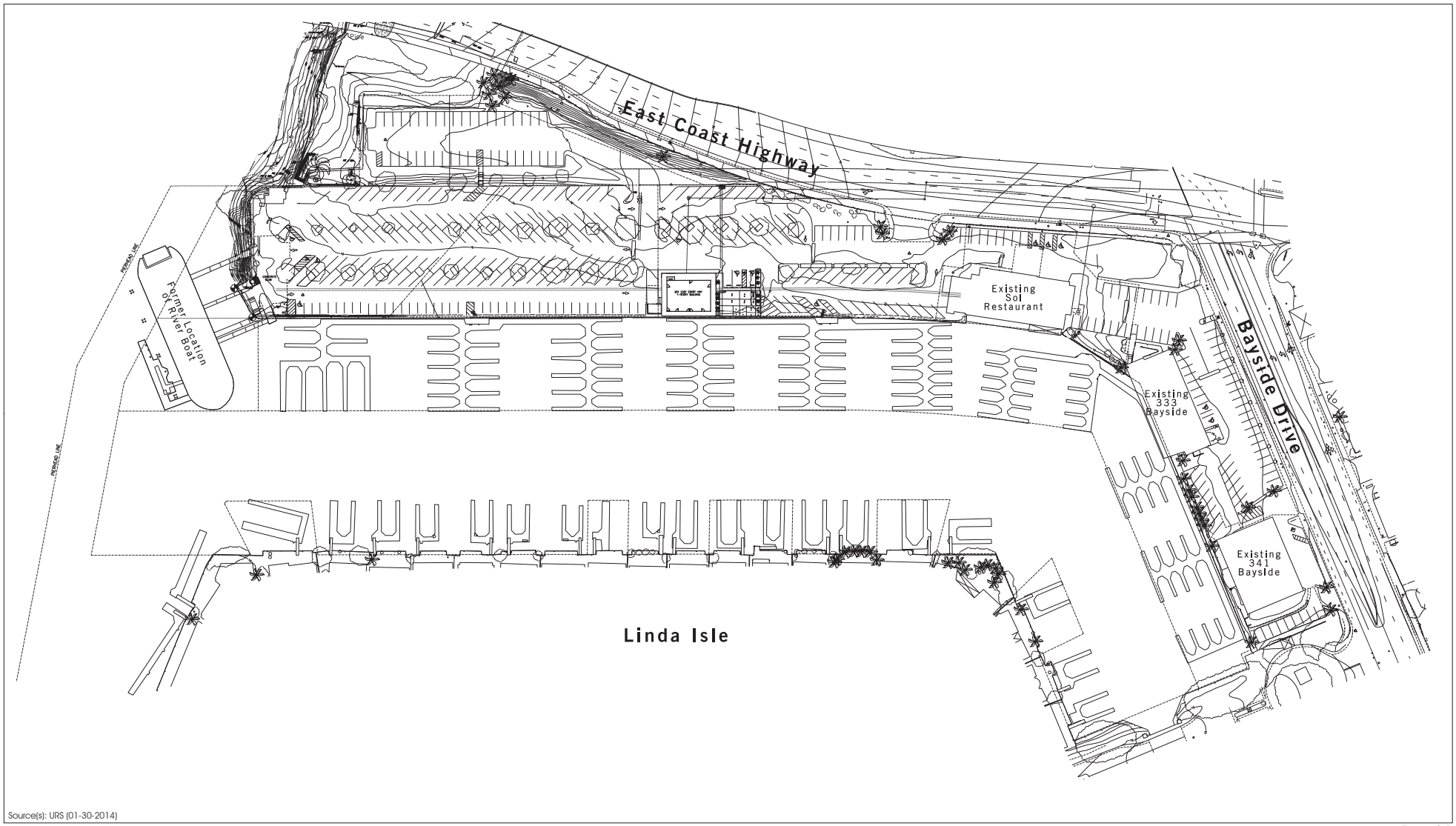
DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
915 WILSHIRE BOULEVARD, SUITE 930
LOS ANGELES, CALIFORNIA 90017

WWW.SPL.USACE.ARMY.MIL/MISSIONS/REGULATORY

Source(s): ESRI, CASIL, Tiger Files (USCB)

NOT TO SCALE

Figure 1



Source(s): URS (01-30-2014)

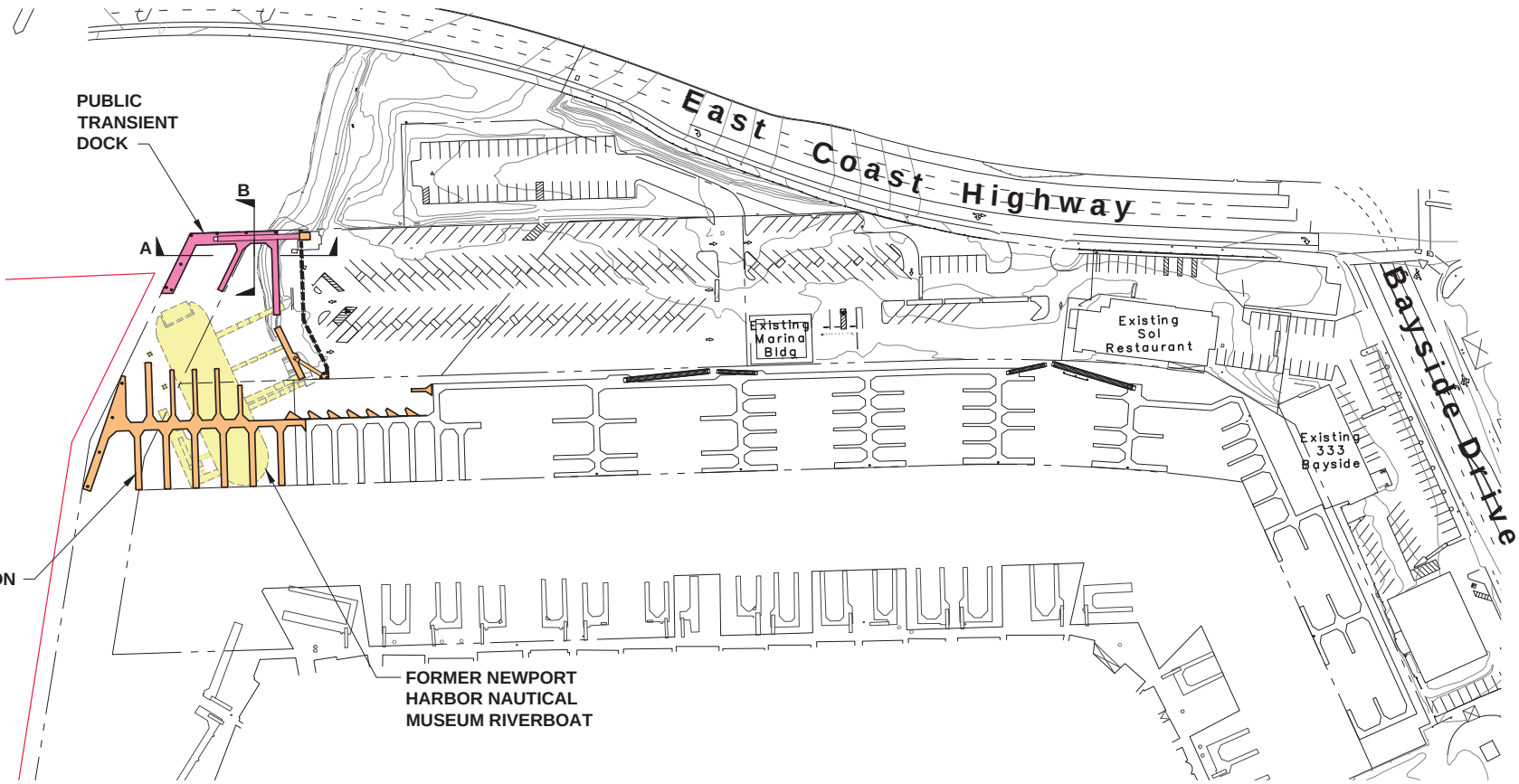
NOT TO SCALE

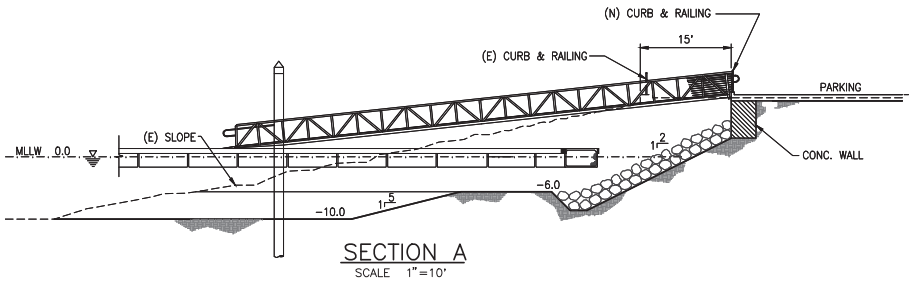
MARINA EXISTING CONDITIONS

Balboa Marina West
Lead Agency: City of Newport Beach

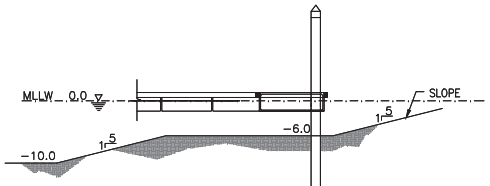
August 18, 2014

Figure 2





SECTION A
SCALE 1"=10'



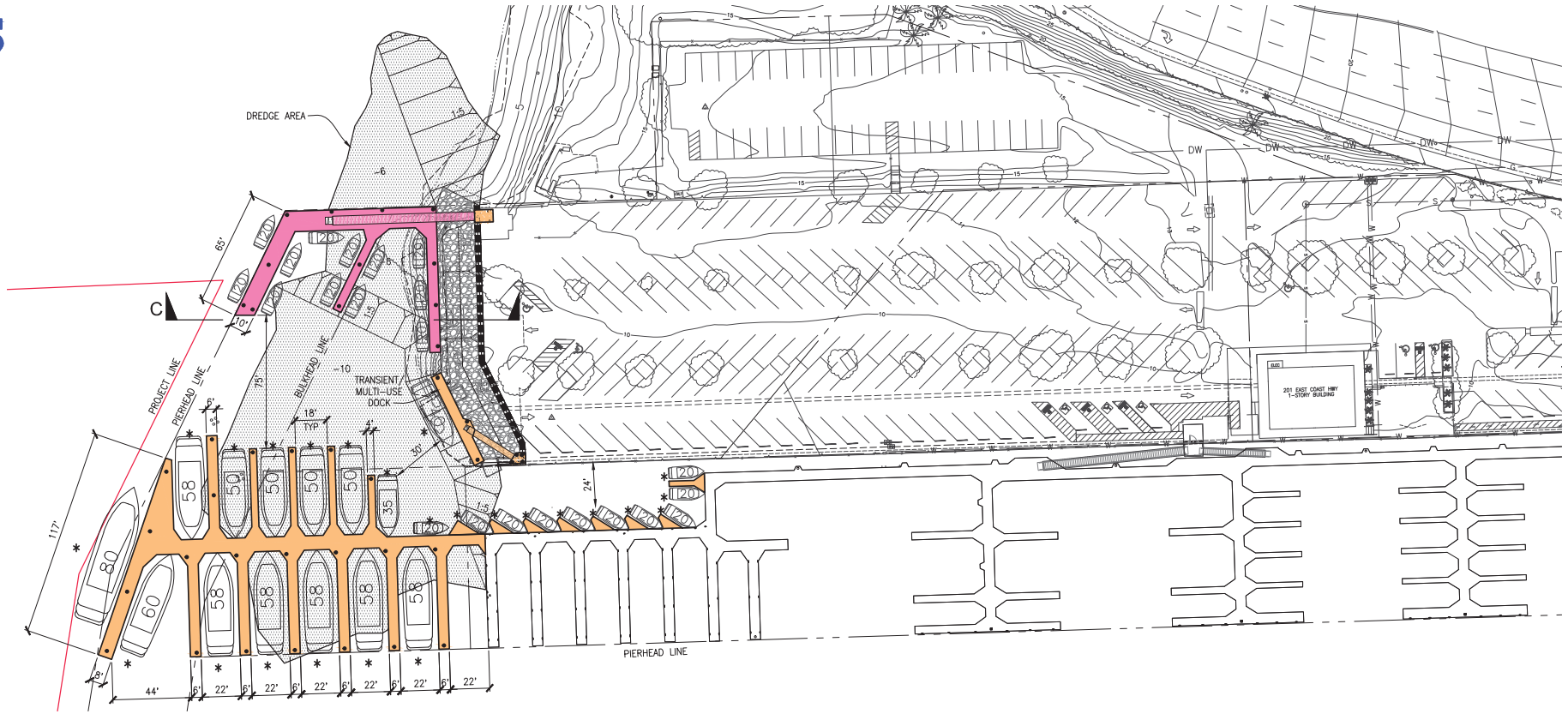
SECTION B
SCALE 1"=10'

Public Transient Dock and Marina Expansion
CONCEPTUAL SITE PLAN

CITY OF NEWPORT BEACH / IRVINE COMPANY JOINT PROJECT

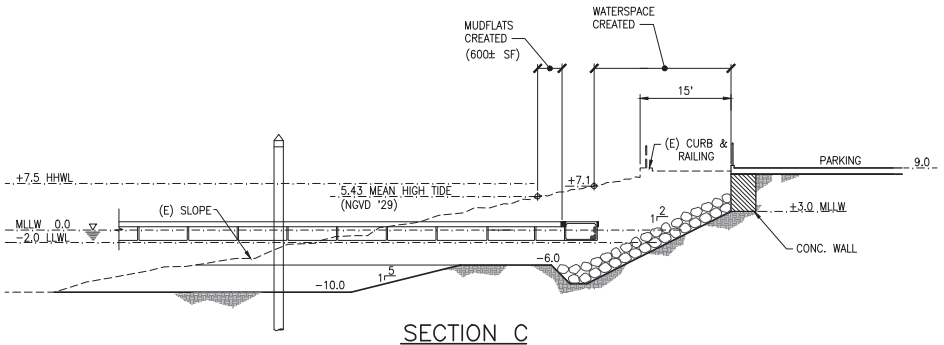
BALBOA MARINA WEST

Figure 3



PROPOSED BOAT COUNT	
PRIVATE DOCK	14 (35' & Over) 10 (20' Electric) 24 Total
PUBLIC DOCK	12 (20' class transient equivalents)

* NEWLY CREATED BOAT SLIP



SECTION C
SCALE 1"=10'

0 10' 20' 30' 60'
GRAPHIC SCALE

CITY OF NEWPORT BEACH / IRVINE COMPANY JOINT PROJECT

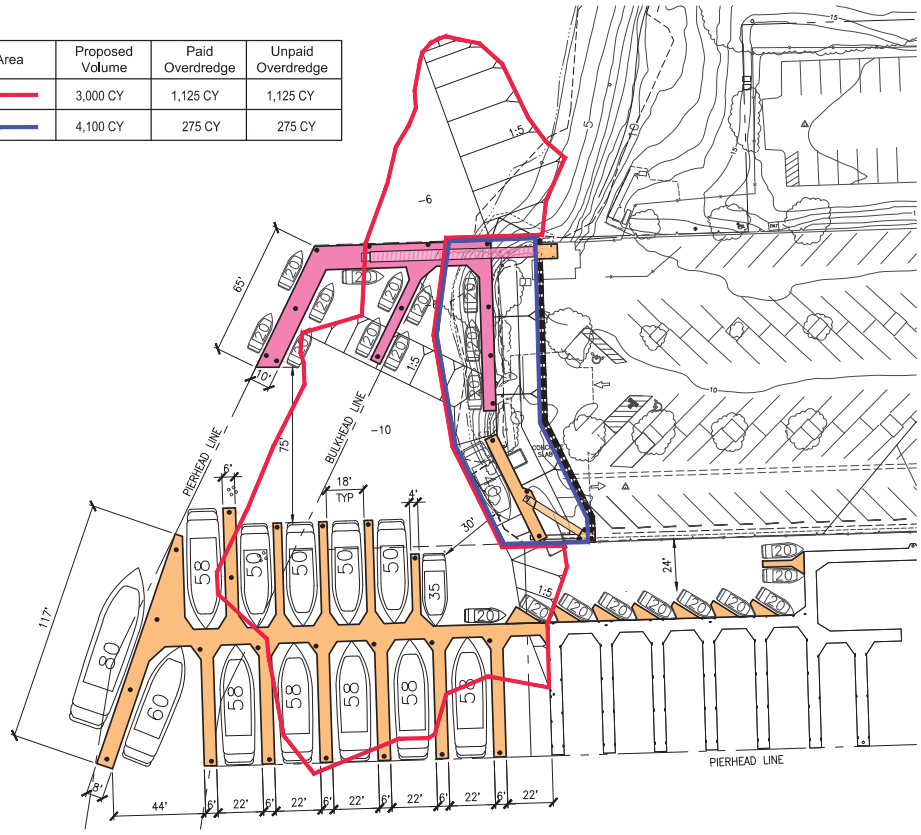
Public Transient Dock and Marina Expansion
CONCEPTUAL DOCK PLAN

BALBOA MARINA WEST
11/10/20..

Figure 4

URS

Area	Proposed Volume	Paid Overdredge	Unpaid Overdredge
A	3,000 CY	1,125 CY	1,125 CY
B	4,100 CY	275 CY	275 CY



0 10' 20' 30' 60'

GRAPHIC SCALE

Public Transient Dock and Marina Expansion
CONCEPTUAL DREDGING PLAN

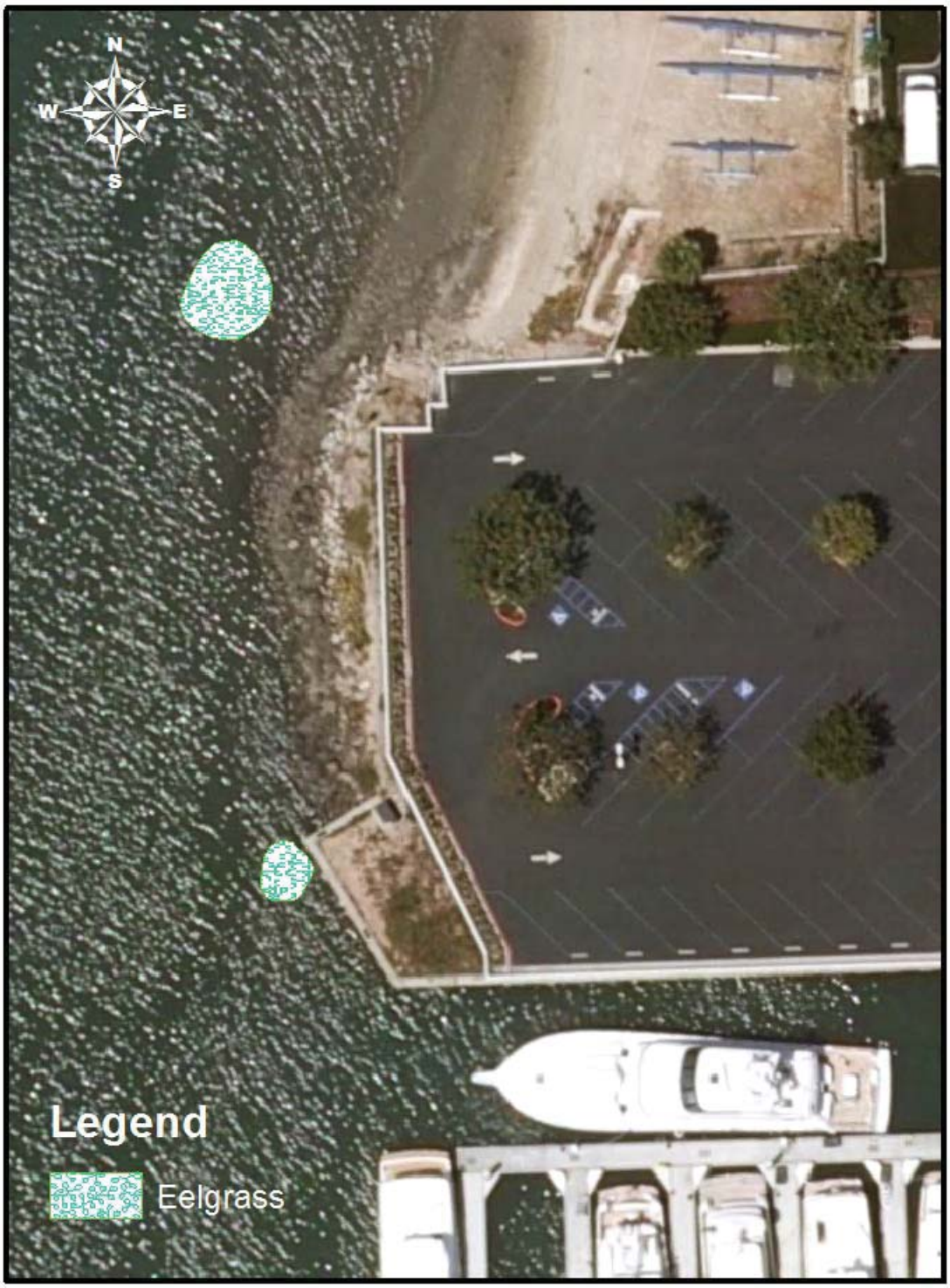
BALBOA MARINA WEST

11/10/2014

CITY OF NEWPORT BEACH / IRVINE COMPANY JOINT PROJECT

Figure 5

Figure 6 Location of Eelgrass in the Project Area and Vicinity



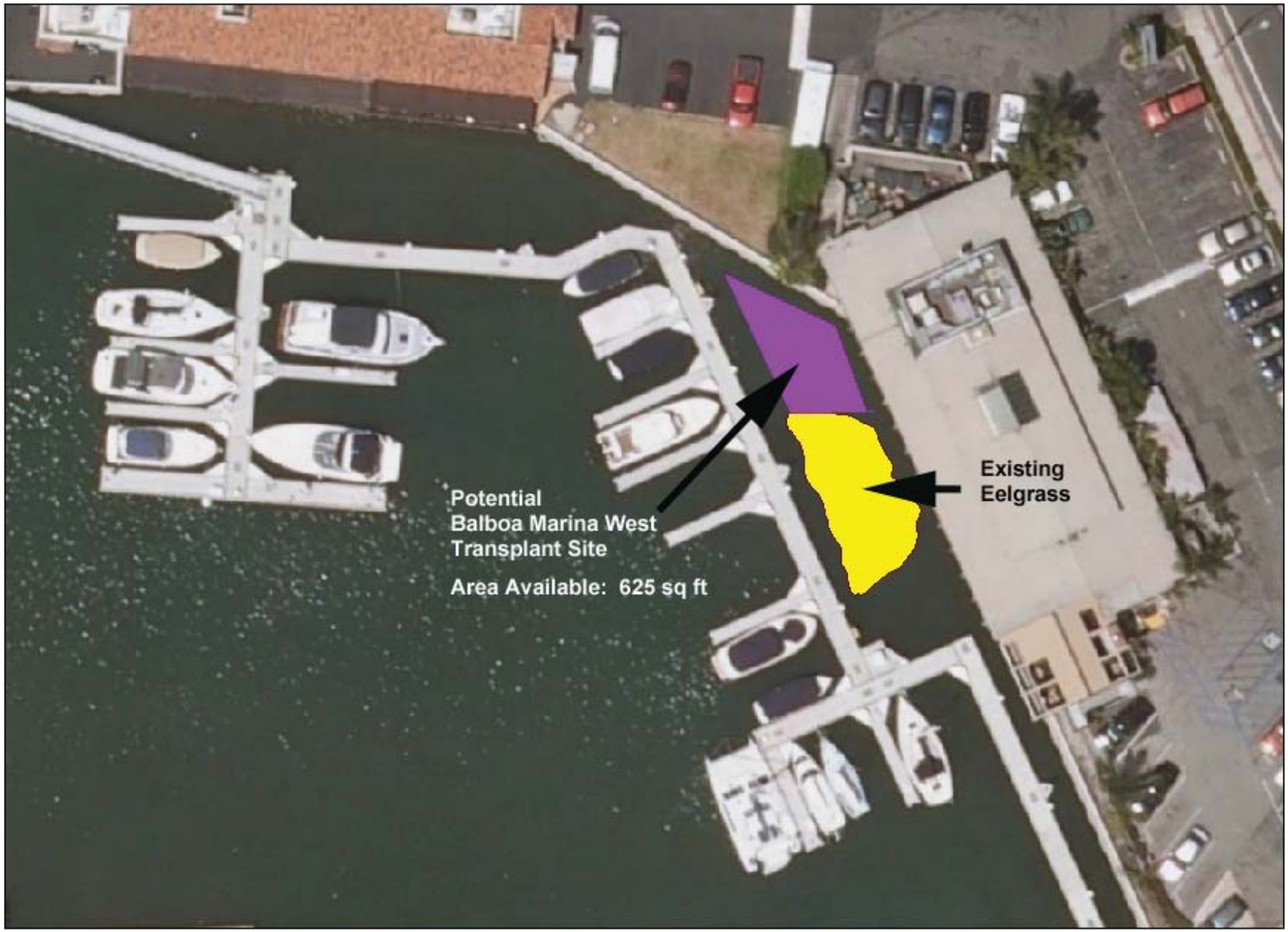


Figure 7 - Location of Balboa Marina West Eelgrass Mitigation