

CALIFORNIA COASTAL COMMISSION

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Commission Action:



Item Th 16a

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-08-068
APPLICANT: Constantine Golovko
AGENT: Kenneth Golovko
PROJECT LOCATION: 16862 Bayview Drive, Sunset Beach (Orange County)

PROJECT DESCRIPTION: After-the-fact request for approval of the demolition of an existing non-conforming approximately 700 square foot wood deck (including support framing, decking and railing), retention of eleven (11) of sixteen (16) piles supporting the deck, re-framing the deck in the same size and configuration and request for approval to remove five (5) new unpermitted 3" galvanized pipe piles and supplemental stringers and re-deck with new pressure treated redwood planks supported by the retained piles.

LOCAL APPROVALS RECEIVED: County of Orange Encroachment Permit No. 2007-01737

SUBSTANTIVE FILE DOCUMENTS: Sunset Beach Certified Land Use Plan

LIST OF EXHIBITS

1. Location Map
2. Assessor's Parcel Map
3. Deck Framing Plan and Site Plot Plan
4. LCP Figures 13 & 14 for Channel Encroachments
5. Newport Beach Standards for Docks/Piers
6. Site Photographs

SUMMARY OF STAFF RECOMMENDATION:

The applicant is requesting after the fact approval for the demolition and replacement of a non-conforming approximately 700 sq. ft. deck over coastal waters. The site is subject to tidal action, but not to direct wave attack because the site is located within a protected channel of the harbor. The primary issues associated with this development relate to shading impacts on marine resources; and issues associated with water quality. The proposed oversized deck would provide a connection between the residence and an existing boat dock. In effect, the deck serves as a pier to reach the dock. However, the proposed deck/pier substantially exceeds the size of small piers used to reach private residential docks typically approved by the Commission. Such piers are normally limited to a maximum 6 foot wide pier, with an allowance for a widened platform up to 10 feet x 14 feet in size placed somewhere along the length of the pier. These limitations are in place in order to minimize the quantity of piles necessary to support the structure (which limits fill of coastal waters) and to minimize the amount of shading of coastal waters which can adversely impact biological productivity, including effects on eelgrass and phytoplankton. Therefore, Commission staff recommends Special Condition 1, which requires submittal of revised plans

bringing the deck/pier project into conformance with the Coastal Act by re-sizing the deck so as to conform to the limitations identified above. The applicant does not agree with the staff recommendation to limit the size of the new replacement deck/pier.

Additional issues are raised by the project typical for private recreational boating projects. Thus, Staff recommends Commission **APPROVAL** of the proposed development subject to **SEVEN (7) SPECIAL CONDITIONS**, requiring: 1) Revised Final Plans (as described above); 2) Permit Compliance; 3) Construction Responsibilities and Debris Removal; 4) BMP Program; 5) Other Agency Approvals; 6) Eelgrass Survey; and 7) *Caulerpa Taxifolia* Survey

PROCEDURAL NOTE – Standard of Review:

The proposed site is located in Sunset Beach (a certified jurisdiction), however, the proposed development is located within an area subject to the public trust and is therefore within the Commission's original permit jurisdiction under Coastal Act Section 30519(b). The standard of review for this development is therefore the Chapter 3 policies of the Coastal Act, with the appropriate local coastal program used as guidance.

STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-08-068 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

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.

I. RESOLUTION TO APPROVE THE PERMIT:

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 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:

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 this permit is reported to the Commission. 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

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, revised project plans that conform with the pier width limit (6' maximum) and the deck platform size limit (14' x 10' maximum - this would be in place of, not in addition to, the 6' pier width) that may be placed along the length of the pier, as generally depicted on Exhibit #5 Only the existing deck piles shall be used to support the new re-configured deck structure - no new piles are permitted. Remaining un-used piles shall be removed.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved revised project plans shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Permit Compliance

The permitted use of the approved development is for boating related uses only. No non-boating related uses or other type of permanent development is permitted to occupy the deck area. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions. Any deviation from the approved plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is legally required.

3. Construction Responsibilities and Debris Removal

- A. No construction materials, equipment, debris, or waste will be placed or stored where it may be subject to wave, wind, or rain erosion and dispersion.

- B. Any and all construction material shall be removed from the site within 24 hours of completion of construction and disposed of at an appropriate location.
- C. Machinery or construction materials not essential for project improvements are prohibited at all times in the subtidal or intertidal zones.
- D. If turbid conditions are generated during construction, a silt curtain will be utilized to control turbidity.
- E. 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.
- F. Divers will recover non-buoyant debris discharged into coastal waters as soon as possible after loss.
- G. Erosion control/sedimentation Best Management Practices (BMPs) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into Alamitos Bay and a pre-construction meeting to review procedural and BMP guidelines.
- H. The applicant shall dispose of all demolition and construction debris resulting from the proposed project at an appropriate location. If the disposal site is located within the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

4. Best Management Practices (BMP) Program

By acceptance of this permit, the applicant agrees that the long-term water-borne berthing of boat(s) in the existing boat dock made accessible by the approval of the proposed deck/pier 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 is prohibited. Only detergents and cleaning components that are designated by the manufacturer as phosphate-free and biodegradable shall be used, and only minimal amounts shall be used.
- 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. 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 be disposed of in a proper manner and shall not at any time be disposed of in the water or gutter.

C. Petroleum Control Management Measures. Boaters will practice preventive engine maintenance and will use oil absorbents in the bilge and under the engine to prevent oil and fuel discharges. Oil absorbent materials shall be examined at least once a year and replaced as necessary. Used oil absorbents are hazardous waste in California. Used oil

absorbents must therefore be disposed in accordance with hazardous waste disposal regulations. The boaters will regularly inspect and maintain engines, seals, gaskets, lines and hoses in order to prevent oil and fuel spills. The use of soaps that can be discharged by bilge pumps is prohibited. 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. 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.

5. Other Agency Approvals (Regional Water Quality Control Board, Army Corps of Engineers)

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, applicant shall provide to the Executive Director a copy of a permit issued by the Regional Water Quality Control Board or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the other State agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
- B. **PRIOR TO COMMENCEMENT OF CONSTRUCTION**, applicant shall provide to the Executive Director a copy of a permit issued by the U.S. Army Corps of Engineers (ACOE) or letter of permission, or evidence that no permit or permission is required. The applicant shall inform the Executive Director of any changes to the project required by the other Federal agencies. Such changes shall not be incorporated into the project until the applicant obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

6. Eelgrass Survey

- A. **Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid for a period of 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., in most instances, March 1). 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 legally required.

7. Pre-construction *Caulerpa Taxifolia* Survey

- A. Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B. The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and 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 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 applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. 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.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

Project Location

The proposed project is located on a bay channel lot at 16862 Bayview Drive, Sunset Beach, County of Orange (Exhibits #1-2). The site is designated as High Density Residential in the Sunset Beach Certified Local Coastal Program. The project site is located at the terminus of Bayview Drive and is one of five single-family residential lots at the end of the street that is perpendicular to Pacific Coast Hwy. A number of these single-family residences fronting the bay channel do not have bulkheads. The bay channel side of the site includes an approximately 700 sq. ft. deck supported by sixteen pipe piles (some of which was demolished and partly reconstructed), gangway and dock.

Public access to the bay channel is available approximately three lots southeast of the project site where the channel meets Pacific Coast Hwy. An eelgrass survey was not submitted.

Project Description

The applicant commenced development on the site prior to any agency approvals (Exhibit #6). The applicant was compelled to apply for an encroachment permit by a County Code Enforcement Officer. An encroachment permit was issued by the County on 12/20/07 which specifically states, *"To replace and maintain an existing raised wood and Trex deck within a portion of Orange County's Sunset Beach Waterways per attached plans and provisions and to the satisfaction of the county inspection personnel. The gangway and dock extending into the waterway are not a portion of this permit. A separate permit must be obtained for dock/gangway construction, repair, replacement, removal. Permit not valid unless accompanied by a Coastal Development Permit and a Building Permit for the wood deck."*

The applicant is seeking an after-the-fact request for approval of the demolition of an existing non-conforming approximately 700 square foot wood deck (including support framing, decking and railing), retention of eleven (11) of sixteen (16) piles supporting the deck, re-framing the deck in the same size and configuration and request for approval to remove five (5) new unpermitted 3" galvanized pipe piles and supplemental stringers and re-deck with new pressure treated redwood planks supported by the retained piles. The deck has deteriorated to the point that it needs to be replaced. No work is proposed to the existing gangway and dock which connect to the proposed deck.

The project is determined to be a replacement project as more than 50% demolition (per Public Resources Code Section 13252) was undertaken. The gangway and dock are not a part of the project. Typically, when the Commission issues a CDP for the replacement of a project with a non-conforming feature, the entire project is brought into conformance with the policies of the Coastal Act. As proposed, the project is not consistent with Chapter 3 resource protection policies of the Coastal Act and with the policies of the certified Local Coastal Program (LCP).

Additionally, the applicant claims that the pre-existing deck was constructed prior to the passage of the Coastal Act, but he has not provided any written or photographic evidence to support this claim. The new proposed replacement deck will not extend seaward of the original location. However, the Plot Plan (Exhibit #4) does not indicate where the existing dock and gangway connect to the proposed deck, nor does it depict where the channel encroachment line is in relation to the proposed deck and existing dock and gangway. Therefore, it remains unknown whether these encroachments are in compliance with the LCP policy to provide maximum public use of inland waterways in the channels by maintaining the channel encroachment line at 40 feet from the property line for this particular location.

Sunset Beach has a certified LCP. However, because the proposed project occurs seaward of the mean high tide line, it falls within the Commission's original permit jurisdiction. Thus, the Chapter 3 policies of the Coastal Act provide the standard of review. In this area, the policies of the LCP are not the standard of review, but may be used as guidance.

C. MARINE 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 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 30233 of the Coastal Act 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: ...

(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

Eelgrass

Eelgrass and *Caulerpa taxifolia* surveys are typically required when a project results in disturbance to the bottom of a waterway (e.g. for dock replacement projects involving removal or installation of new piles). Decks along Sunset Channel are not permitted in the certified Sunset Beach LCP and only 5' cantilevered decks are permitted by Huntington Beach in Huntington Harbor. Eelgrass and

Caulerpa taxifolia surveys were not submitted with the application. Therefore it is unknown whether eelgrass is present in the vicinity of the project.

The project site is, however, located in an area where eelgrass has been found in the vicinity. For example, CDP 5-04-412(Teson)approved by the Commission in 2004 for a boat dock replacement project in Sunset Channel for a neighboring property at 16841 Bayview Drive, Sunset Beach indicates “Eelgrass beds will not be disturbed by the proposed project as no disturbance of the canal bottom is proposed or permitted.” Eelgrass is also known to grow abundant among the island communities throughout Huntington Harbor (Sunset Beach Channel leads into Huntington Harbor). Thus, there is a possibility that eelgrass may also located at the subject site.

Huntington Harbor subtidal areas are mostly non-vegetated, with patches of eelgrass along a portion of the bay perimeter. Eelgrass (*Zostera marina*) is an aquatic plant consisting of tough cellulose leaves, which grows in dense beds in shallow, subtidal or intertidal unconsolidated sediments. Eelgrass is considered worthy of protection because it functions as important habitat for a variety of fish and other wildlife, according to the Southern California Eelgrass Mitigation Policy (SCEMP) adopted by the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the California Department of Fish and Game (CDFG). For instance, eelgrass beds provide areas for fish egg laying, juvenile fish rearing, and waterfowl foraging. Sensitive species, such as the California least tern, a federally listed endangered species, utilize eelgrass beds as foraging grounds. In order to ensure that the proposed project will have no adverse impacts to eelgrass or that any impacts are appropriately mitigated, the Commission imposes **Special Condition No. 6**, which requires submittal of pre and post-construction eelgrass surveys and mitigation if the project impacts eelgrass habitat.

Furthermore, the invasive, non-native algae *Caulerpa Taxifolia* (“*Caulerpa*”) may also be located within the project vicinity. This seaweed grows on sand, mud and rock surfaces from the very shallow subtidal to about 250 ft depth. Because of toxins in its tissues, *Calurpa* is not eaten by herbivores in areas where it has invaded. An infestation would have 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 *C. taxifolia* was designated a prohibited species in the United States under the Federal Noxious Weed Act. As recently as August 2000, *Caulerpa* was discovered in parts of Huntington Harbor. Warmer southern California habitats are most vulnerable, until better information if available, it must be assumed that the whole California coast is at risk. All shallow marine habitats could be impacted. Although it is unlikely that any *Caulerpa* is located at the project site, if *Caulerpa* is found, the disturbance of to the bottom of the waterway that will occur when the applicant removes existing piles may disburse the *Caulerpa* by dispersing viable tissue fragments. The Commission therefore imposes **Special Condition No. 7** to require a pre-construction survey and appropriate measures if *Caulerpa* is found.

Marine Environment Shading Impacts

The use of piles (constituting fill of coastal waters) for private decks is not a permitted use under the Coastal Act Section 30233(a). The applicant proposes to replace the pre-existing non-conforming deck platform and remove five (5) 3” galvanized pipe piles that were removed and replaced during the deck replacement work already undertaken (unpermitted), resulting in the replacement of the deck in the

same size and configuration but supported by 11 instead of 16 piles. Though as proposed, the project would not result in addition fill of coastal waters, its replacement would adversely impact marine resources.

Coastal Act Section 30230 requires that marine resources be maintained, enhanced, and where feasible, restored. A coastal development permit may be issued if the project can ensure that the uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters. The biological productivity of coastal waters is highly dependent on sunlight for photosynthesis by "lower order" green algae, phytoplankton, and diatoms that form the basis of the marine food chain. As proposed, the project in no way sustains or enhances productivity of coastal waters but in fact reduces overall coastal productivity by covering an unnecessarily large mudflat area.

Larger deck structures take up more of the bay's water area and create greater adverse effects on marine resources (e.g., shading and habitat displacement) than decks that conform to the Commission's past practices for waterfront deck platforms that serve as piers. As a consequence, there will also be a loss of foraging habitat for sight foraging marine birds such as the state and federally listed California brown pelican which is found in the project vicinity. Although the coverage of bay surface area habitat associated with this project may seem small, it is a concern because of cumulative impacts from these kinds of decks. The Commission limits the size of shoreline structures for the same reasons that cities do (to preserve open water area and protect views), but also to protect marine resources from other adverse impacts of development in the intertidal and subtidal areas of bays.

Larger decks are more damaging to marine resources than smaller decks because larger decks require more piles (fill of coastal waters) and block more of the sunlight that marine resources (such as phytoplankton, algae, and eelgrass) need. Therefore, decks associated with single-family structures should be limited in size to preserve open water areas in bays thereby minimizing shading that causes adverse impacts to marine organisms that depend on sunlight.

Non-Conforming Structures

The applicant is seeking after-the-fact approval for the demolition and replacement of an approximately 700 sq. ft. wood deck platform (approximately 24' x 24' plus 12' x 12') supported by five (5) fewer 3" galvanized pipe piles than the original deck because these piles were removed and replaced during the deck replacement work already undertaken, and replacement of such piles is inconsistent with Coastal Act Section 30233. The applicant is requesting approval of a deck platform much larger than the maximum 6 foot wide piers with 10' x 14' deck platforms associated with boat facilities (i.e. piers, gangways and docks) typically approved in other local Cities (e.g., Newport Beach, as depicted on Exhibit #5) and much larger than the 5' x 4' "landing brow" encroachment allowed in the certified County of Orange Sunset Beach Specific Plan/Local Coastal Program (Exhibit #4) for deck-like platforms proposed in the Commission's area of original jurisdiction in Sunset Beach.

The Commission routinely approves smaller deck structures for legitimate recreational boating activities, such as for pedestrian access to floating structures, but only if such developments are found to be consistent with the Chapter 3 policies of the Coastal Act. A less environmentally damaging alternative than the applicant's proposal is a new replacement deck that conforms with the Commission's typically approved deck platform size (6 foot wide pier with 14'x 10' maximum pier platform) utilizing existing piles and removing piles that would no longer be necessary. **Special Condition No. 1** requires revised plans in order to restore greater biological productivity while still permitting impacts caused by boating activities that are allowed under the Coastal Act. Therefore, only

as conditioned to limit the size of the deck platform is the project the least environmentally damaging alternative.

For the reasons discussed above, the proposed development has been conditioned to minimize adverse effects on the marine environment by requiring a smaller deck platform. The Commission finds that the project, only as conditioned, is consistent with Section 30230 and 30231 of the Coastal Act by avoiding cumulative impacts upon sensitive marine resources and maintaining the biological productivity of coastal waters.

Project Impacts to Water Quality

The proposed project is located in and over the coastal waters of Huntington Bay. Huntington Bay is included on the Federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means the quality of the water body cannot support the beneficial uses for which the water body has been designated – in this case secondary contact recreation and aquatic uses. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency. Consequently, projects that could have an adverse impact on water quality should be examined to assure that potential impacts are minimized. The standards of review for development proposed in coastal waters are the aforementioned Chapter 3 policies of the Coastal Act. Sections 30230 and 30231 of the Coastal Act require the protection of biological productivity and water quality.

The bay channel provides an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Because of the coastal recreational activities and the sensitivity of the bay habitat, water quality issues are essential in review of this project. **Special Condition No. 4** requires participation in a Best Management Practices Program for the long-term water-borne berthing of boat(s) in the existing boat dock made accessible by the approval of the proposed deck under this CDP.

Construction Impacts to Water Quality

The protection of water quality is an important aspect of the Coastal Act. Construction will occur over and in the water. Due to the proposed project's location on the water, demolition and construction activities may have adverse impacts upon water quality and the marine environment. Storage or placement of construction materials, debris, or waste in a location subject to wave erosion and dispersion would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column.

In order to minimize adverse construction-related impacts upon marine resources, **Special Condition No. 3** provides for the safe storage of construction materials, the safe disposal of construction debris and best management practices (BMP). These BMPs are designed to minimize erosion and prevent debris from entering coastal waters. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. Divers shall remove any non-floatable debris not contained in such structures that sink to the ocean bottom as soon as possible.

The Regional Water Quality Control Board (RWQCB) oversees impacts upon water quality in the region of projects subject to their regulatory jurisdiction. Since the proposed deck project has the potential to affect water quality, the development may require review by the RWQCB. A RWQCB determination of whether the project would adversely impact water quality or whether the proposed project will not adversely impact water quality if standard construction methods and materials are used may be required. Furthermore, the project involves a structure over navigable waters and may trigger Section 10 of the Rivers and Harbors Act review by the U.S. Army Corps of Engineers. **Special Condition No. 5** requires the applicant submit the proposed project to regional and federal agencies to determine whether the project requires other agency approvals.

Only as conditioned does the Commission find that the proposed project is consistent with Section 30230, 30231 and 30232 of the Coastal Act.

C. LOCAL COASTAL PROGRAM

The project is within the Commission's original permit jurisdiction under Coastal Act Section 30519(b). The standard of review for this development is therefore the Chapter 3 policies of the Coastal Act, with the appropriate local coastal program used as guidance.

The certified County of Orange Sunset Beach Specific Plan/Local Coastal Program (LCP) set forth the following policies for structures proposed in the Commission's area of original jurisdiction in Sunset Beach. The LCP policies are part of the District Regulations for Sunset Beach Waterways (SBW) District.

Sunset Beach Waterways (SBW)

- 1) *For greater use by the general public, all channels and public waterways in existence as of February 2, 1965 shall be maintained and operated as public waterways, subject to Sections 5 through 11 of the Codified Ordinances and Codes governing County waterways. They shall be properly bulkheaded to prevent erosion and resultant land filling, and dredged to maintain navigable depth and regulated to prevent impediment of channel navigation. All navigable channels shall be retained and maintained at the present width, no part of the channels shall be filled, and no encroachments shall be allowed except for bulkheads, gangways, and docks as provided in item number 2 below.*
- 2) *In addition to a Coastal Development Permit from the State, a Public Property Encroachment Permit (encroachment permit) is required for all existing and proposed bulkheads, gangways and docks within the Sunset Beach Waterways.*

As part of the encroachment permit application process, a determination will be made for existing facilities as to whether they are in a state of good repair or a state of disrepair. Docks with inadequate floats resulting in partial submersion, sinking or listing, broken or inappropriate decking material, inadequate supports or improper fastening devices (such as PVC pipe), and illegal and unsafe electrical wiring shall be deemed to be in a state of disrepair. All existing bulkheads, gangways and docks will require an encroachment permit and be brought into a state of good repair within (2) years of the adoption of this amendment. All applications for an

encroachment permit shall be submitted to the Sunset Beach LCP Board for their review and recommendations prior to issuance of said permit.

All applications for an encroachment permit shall be submitted to the Sunset Beach LCP Board for their review and recommendations prior to issuance of said permit.

- 3) *To provide greater use of Sunset Channel from 11 Street to the northwest end of the channel, the channel encroachment line shall be 20 feet measured from bulkhead face...No deck or structure shall extend over or in front of the bulkhead in any channel, except a 4 foot by 5 foot landing or brow access to a gangway to docks.*
- 4) *To provide maximum public use of inland waterways in the channels running at 90 degrees to Pacific Coast Highway, the channel encroachment line shall be 40 feet as measured from lot property lines existing prior to January 1, 1965.*

As previously noted, the applicant commenced development on the site prior to any agency approvals. The applicant was compelled to apply for an encroachment permit by a County Code Enforcement Officer. An encroachment permit was issued by the County on 12/20/07 which specifically states, ***"The gangway and dock extending in to the waterway are not a portion of this permit. A separate permit must be obtained for dock/gangway construction, repair, replacement, or removal. Permit not valid unless accompanied by a Coastal Development Permit and a Building Permit for the wood deck."*** Additionally, the applicant did not provide proof that the application for encroachment permit was submitted to the Sunset Beach LCP Board for their review and recommendations as LCP Policy #2 requires prior to the application and issuance of an encroachment permit by the Orange County Resources and Development Management Department.

The subject site at 16862 Bayview Drive is one of about five bay front lots in Sunset Beach without a bulkhead. The Orange County Sunset Beach LCP has a specific policy for Sunset Beach Waterways (SBW). Policy #1 states in short, *"They [navigable channels] shall be properly bulkheaded to prevent erosion and resultant land filling, and dredged to maintain navigable depth and regulated to prevent impediment of channel navigation. All navigable channels shall be retained and maintained at the present width, no part of the channels shall be filled, and no encroachments shall be allowed except for bulkheads, gangways, and docks..."* Additionally, Policy #4 sets the channel encroachment line at 40 feet as measured from the edge of the property for waterways at 90 degrees to Pacific Coast Hwy which also applies to this site. Even though this site does not have a bulkhead, Policy #1 still applies to the waterway, and the policy only allows encroachment permits for bulkheads, gangways and docks; not for private decks. Therefore, the proposed replacement of a nonconforming deck is not consistent with the County's specifications regarding allowable waterfront encroachment structures. More than half of the proposed deck encroaches past the property line onto the public waterway.

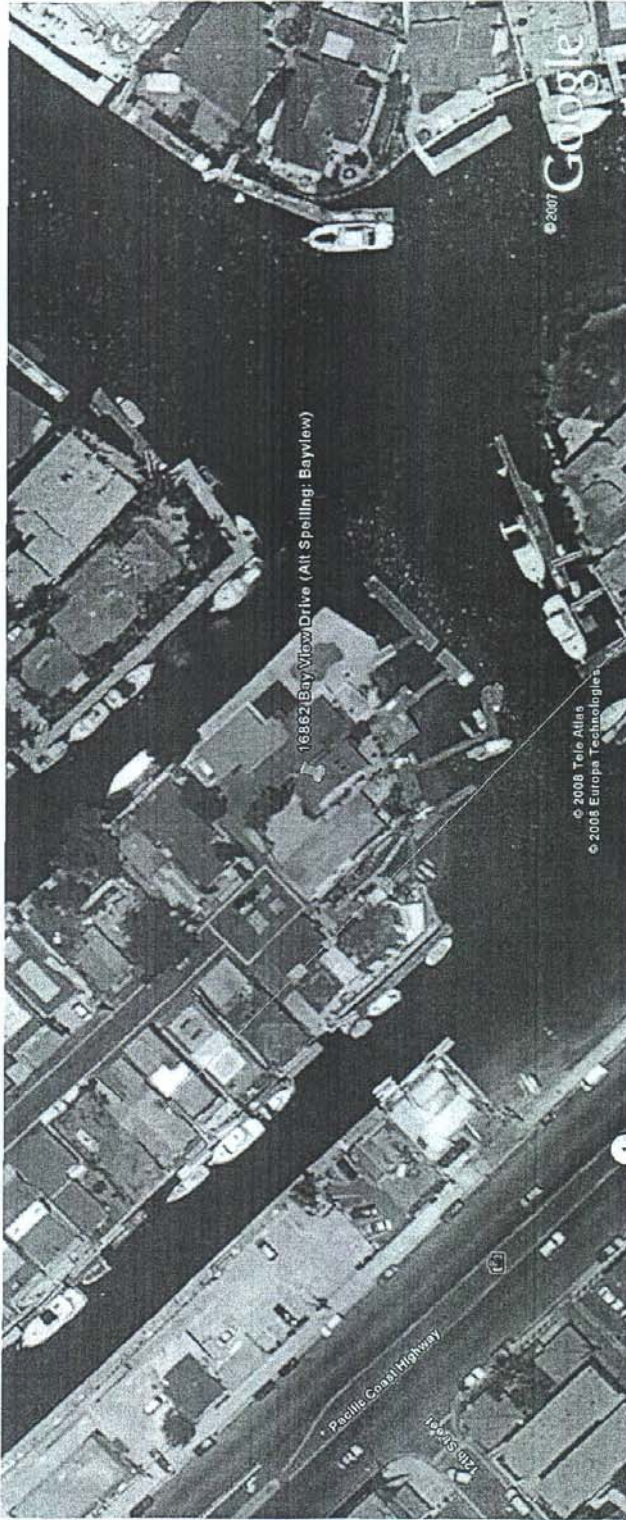
Under the LCP policies, the applicant may have a deck leading up to the property line, then obtain an encroachment permit for a gangway and dock. Further LCP guidance may be found in Figure 13 (Exhibit #4) depicting the allowable 5 foot by 4 foot "landing brow" attached to the gangway, pier and dock as specified by the County's LCP channel encroachment policy for bulkhead lots. It is conceivable then to permit a 5 foot by 4 foot "landing brow" with an encroachment permit that attaches to the gangway for a non-bulkhead lot. However, the proposed new deck is at least a 24' x 30' platform on a lot without a bulkhead. The deck serves more as an extension of the backyard than a "landing brow" or pier for boating purposes. The proposed deck replacement in its existing size and configuration is clearly not consistent with the LCP policy.

The County's LCP states that the County seeks to insure the highest quality of water in the bay and along their beaches. As conditioned, the proposed project is not expected to create additional adverse impacts to marine resources, water quality and the marine environment and therefore attempts to insure the highest quality of water in the Bay and along the beaches.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of Title 14 of the California Code of 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 further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

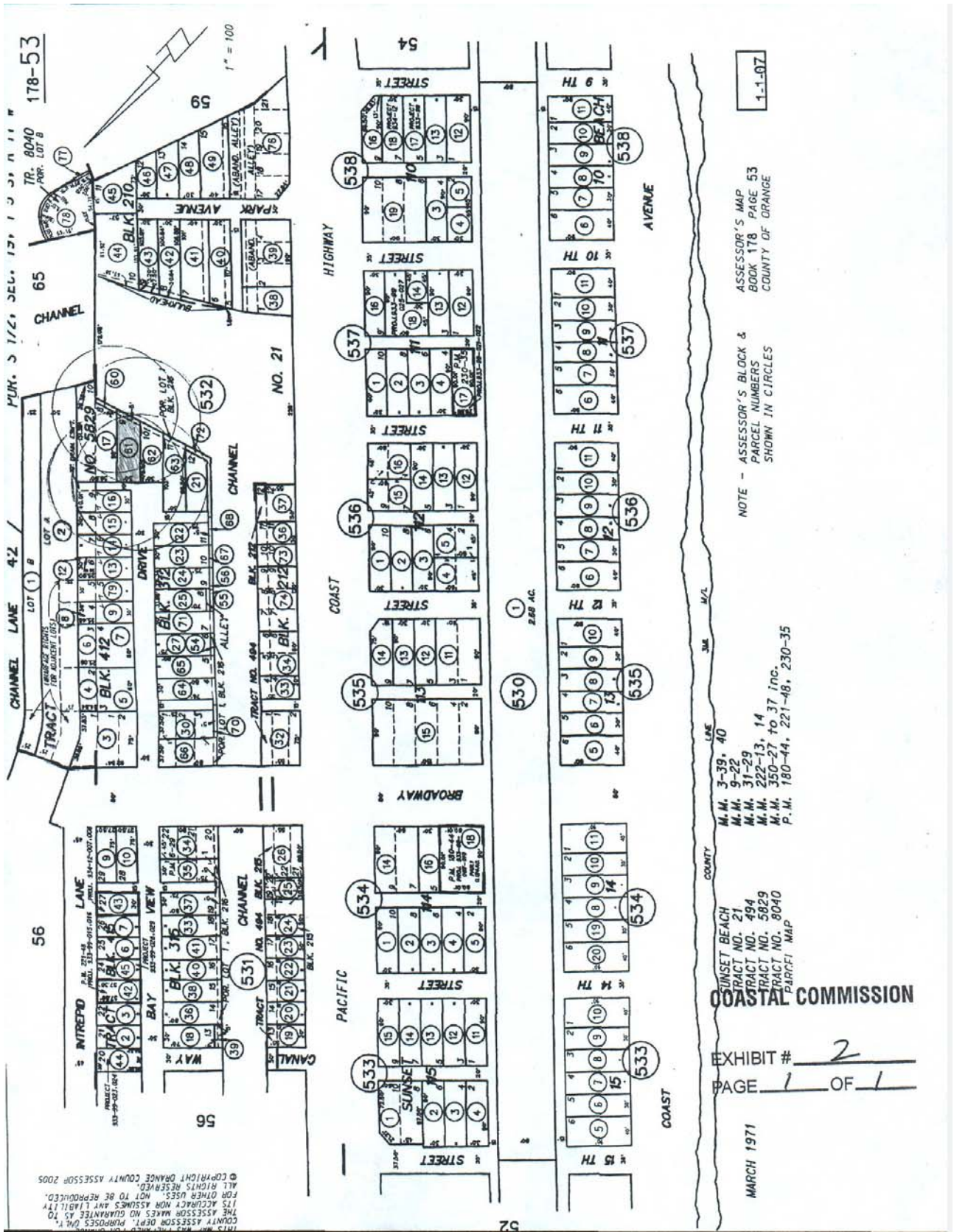
The project as proposed by the applicant is not the least environmentally damaging feasible alternative and cannot be found consistent with the requirements of the Coastal Act to conform to CEQA. However, the proposed replacement of a non-conforming structure has been conditioned to require a smaller deck platform that can be found consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging alternative and is consistent with CEQA and the policies of the Coastal Act. Conditions imposed are: 1) Revised Project Plans; 2) Permit Compliance; 4) BMP Program; 5) RWQCB and US Army Corps of Engineer approval or proof that approval from these agencies is not required; 6) Eelgrass survey and, if necessary, mitigation; and 7) *Caulerpa Taxifolia* survey. As conditioned, no feasible alternatives or further feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment.



16862 Bay View Drive (Alt Spelling: Bayview)
Orange County Property Permit: 2007-01737 Orange County Structural Permit: RS080151

COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 1



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 ITS ACCURACY NOR ASSUMES ANY LIABILITY.
 THE ASSESSOR MAKES NO GUARANTEE AS TO
 COUNTY ASSESSOR DEPT. PURPOSES ONLY.

COASTAL COMMISSION

EXHIBIT # 2
 PAGE 1 OF 1

MARCH 1971

SUNSET BEACH
 TRACT NO. 21
 TRACT NO. 494
 TRACT NO. 5829
 TRACT NO. 8040
 PARCEL MAP
 M.M. 3-39-40
 M.M. 9-22
 M.M. 31-29
 M.M. 222-13, 14
 M.M. 350-27 to 37 inc.
 P.M. 780-44, 221-46, 230-35

NOTE - ASSESSOR'S BLOCK & PARCEL NUMBERS SHOWN IN CIRCLES

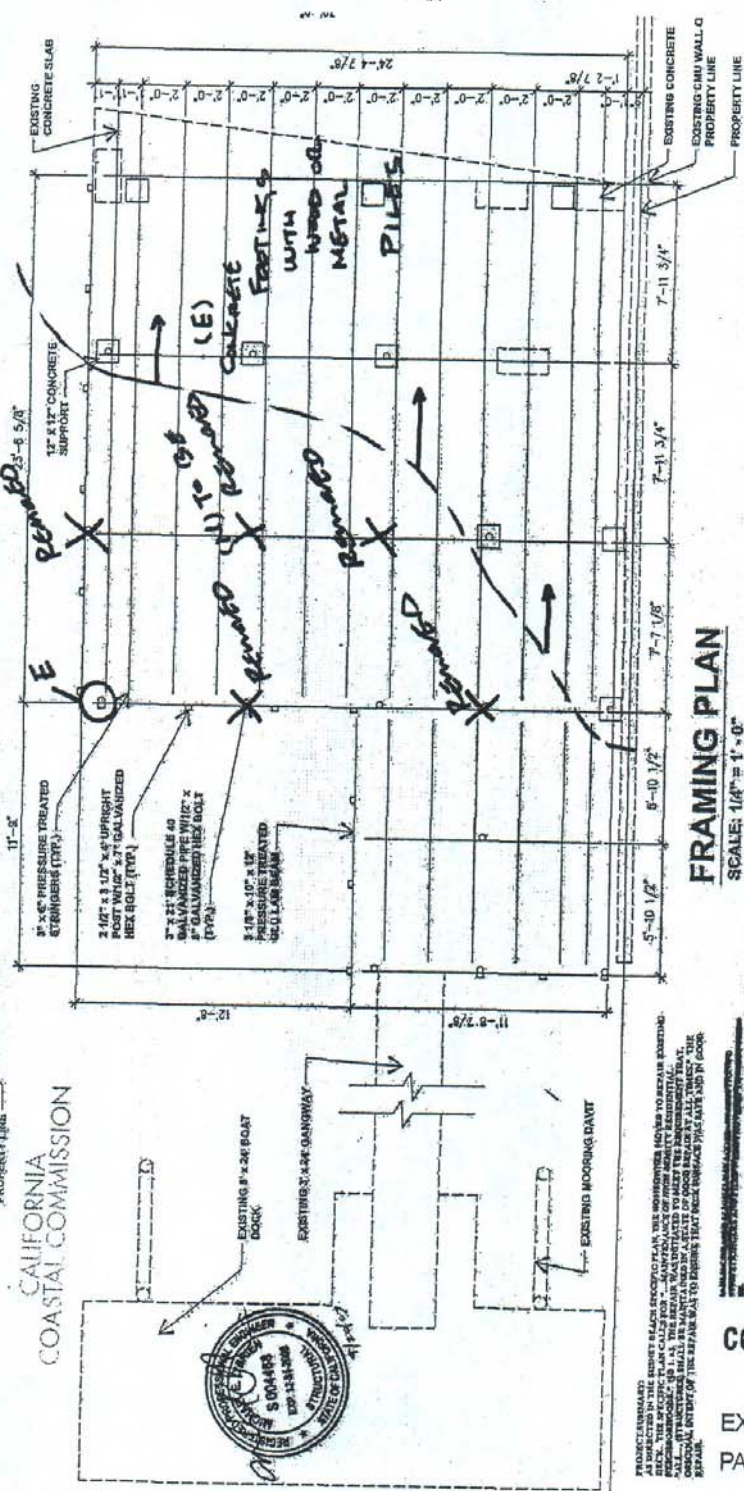
ASSESSOR'S MAP
 BOOK 178 PAGE 53
 COUNTY OF ORANGE

1-1-07

RECEIVED
 South Coast Region

OCT 22 2008

CALIFORNIA
 COASTAL COMMISSION



FRAMING PLAN
 SCALE: 1/4" = 1'-0"

REMOVE TREATED MATERIAL

LINDA GOLOVKO
16862 BAYVIEW DRIVE
SUNSET BEACH, CA 90742

COASTAL COMMISSION

EXHIBIT # 3
 PAGE 1 OF 2

PROJECT PREPARED BY: GOLOVKO ARCHITECTURE, INC. (SEE SHEET 17 OF 17). THE DRAWING IS TO BE USED IN CONJUNCTION WITH THE PERMITS AND CONDITIONS OF THE PERMIT. THE DRAWING IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE DRAWING IS NOT TO BE USED FOR ANY OTHER PURPOSE. THE DRAWING IS NOT TO BE USED FOR ANY OTHER PURPOSE.

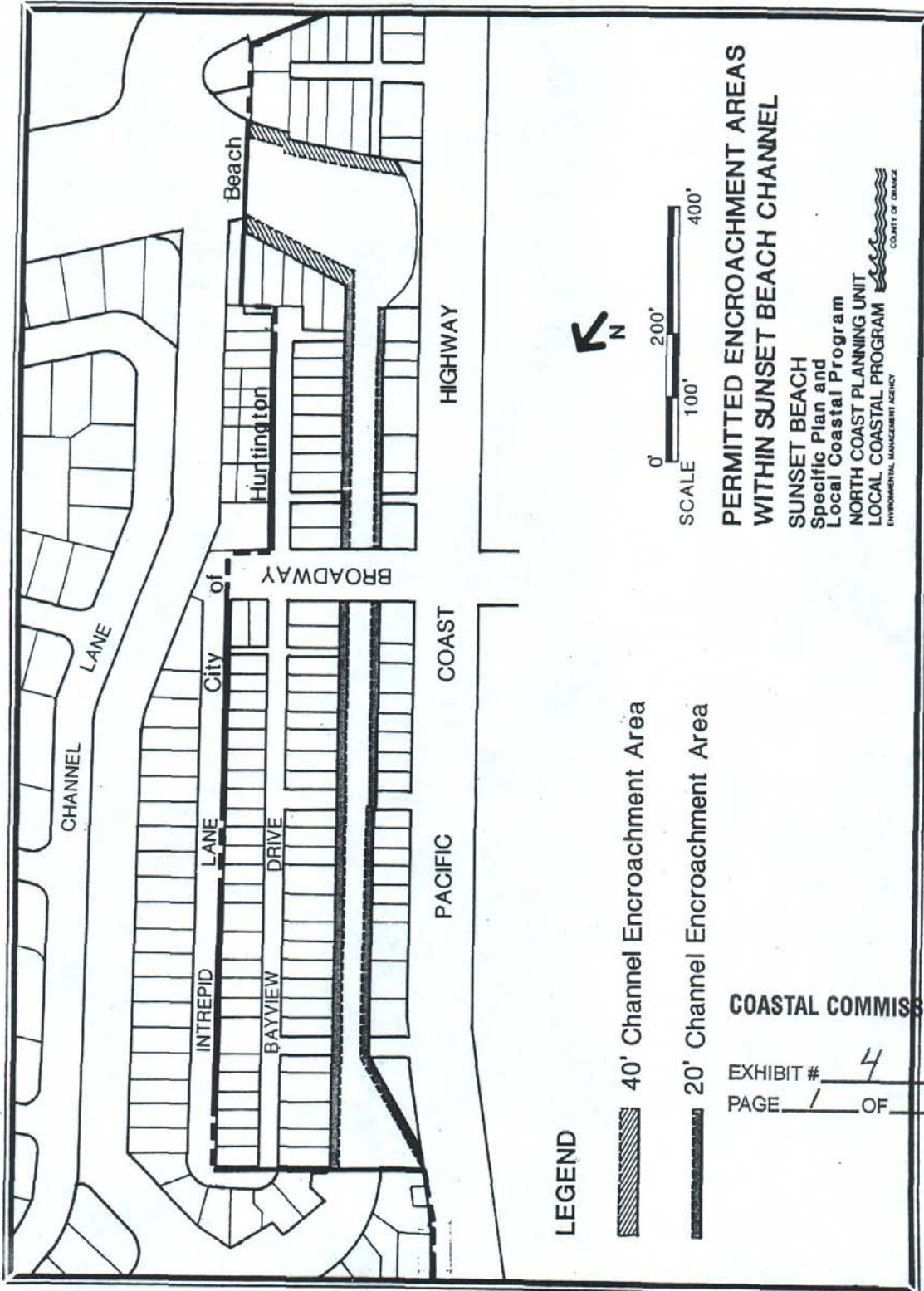
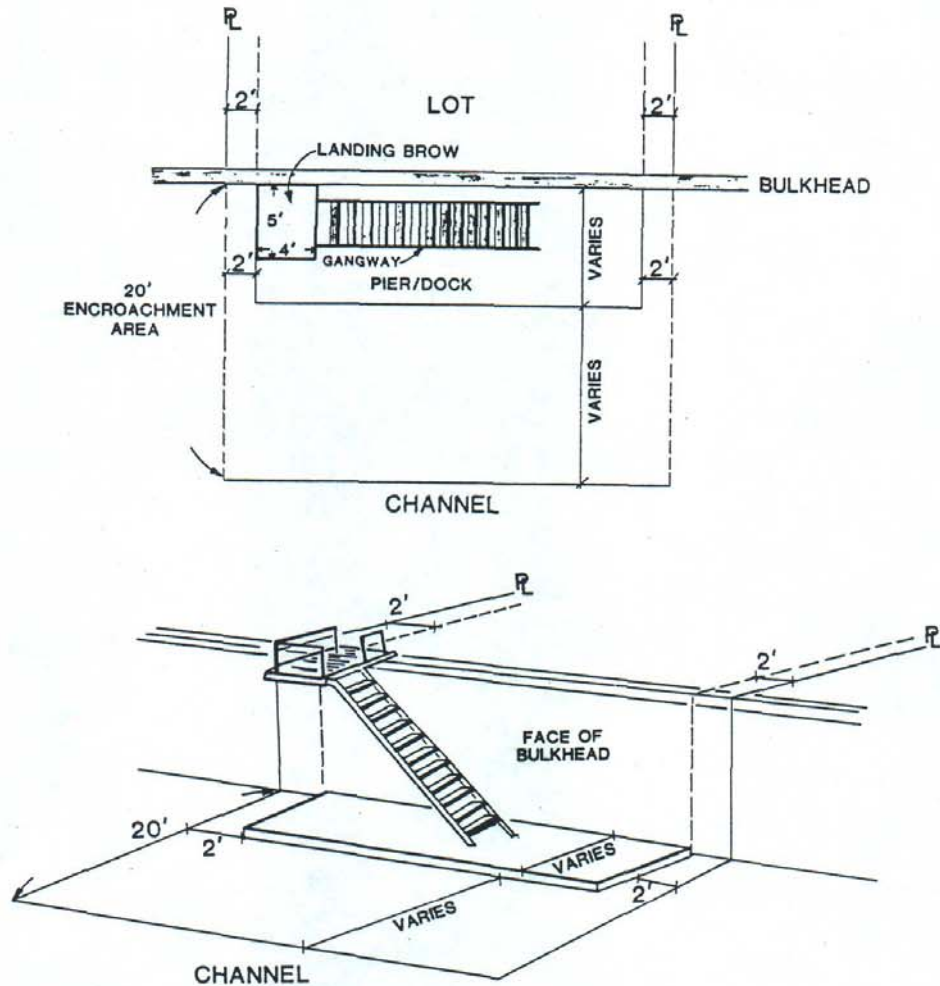


Figure 12

CRITERIA FOR SUNSET BEACH CHANNEL ENCROACHMENTS

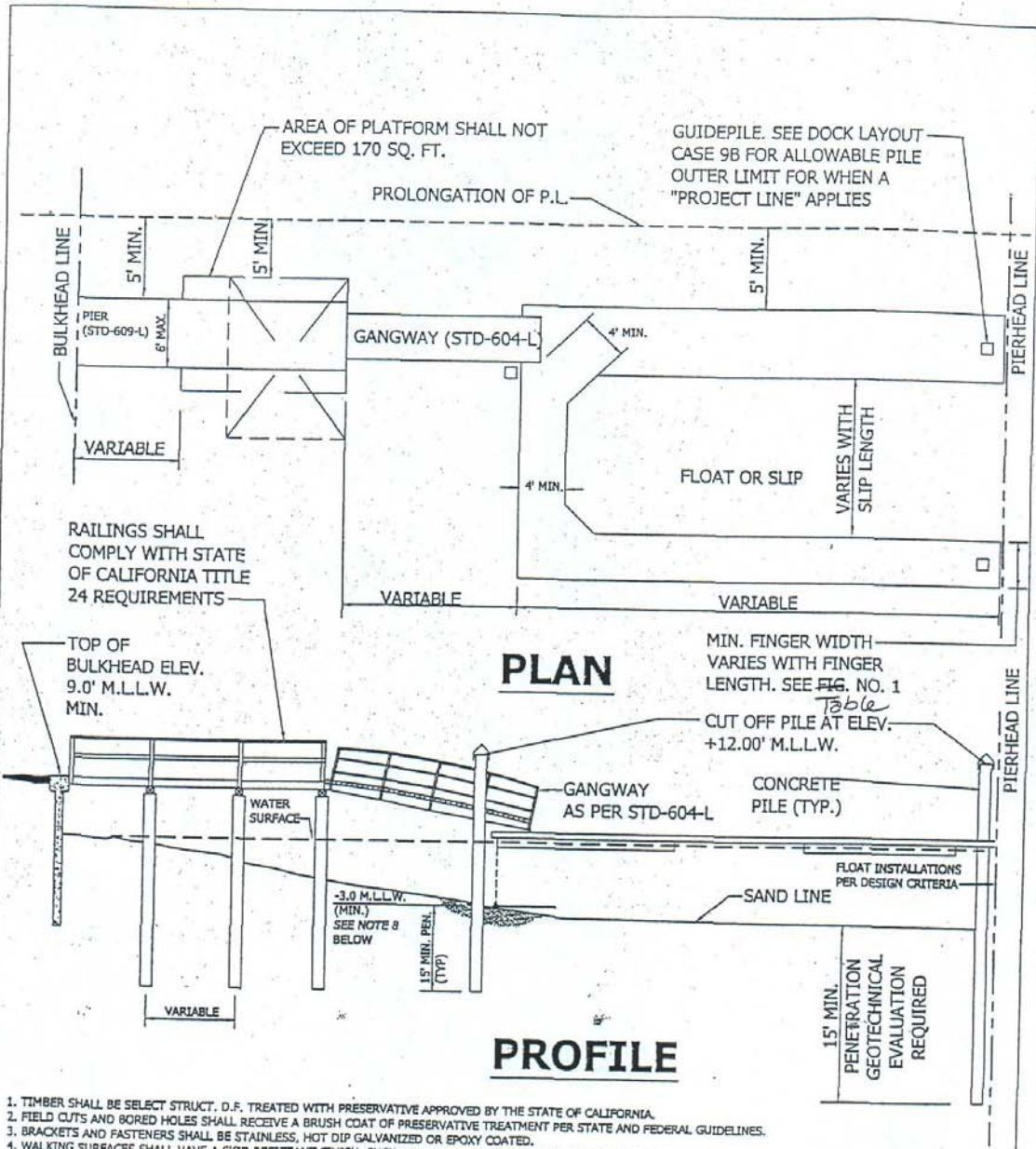


NOTE: Dimensions shown are maximum allowable for landing brow, and encroachment area and minimum allowable for side setback from each property line. This drawing is presented as general criteria for the installation of dock facilities and shall not be used in lieu of plans and specifications.

COASTAL COMMISSION

EXHIBIT # 4
PAGE 2 OF 2

Figure 13



1. TIMBER SHALL BE SELECT STRUCT. D.F. TREATED WITH PRESERVATIVE APPROVED BY THE STATE OF CALIFORNIA.
2. FIELD CUTS AND BORED HOLES SHALL RECEIVE A BRUSH COAT OF PRESERVATIVE TREATMENT PER STATE AND FEDERAL GUIDELINES.
3. BRACKETS AND FASTENERS SHALL BE STAINLESS, HOT DIP GALVANIZED OR EPOXY COATED.
4. WALKING SURFACES SHALL HAVE A SKID RESISTANT FINISH, SUCH AS UNPAINTED TIMBER, GRIT ON TIMBER, OR OTHER SURFA DEEMED APPROPRIATE FOR THE INTENDED SERVICE, BY THE CITY OF NEWPORT BEACH.
5. NON-STRUCTURAL MEMBERS MAY BE ALTERNATIVE MATERIALS SUCH AS PLASTIC DIMENSIONAL LUMBER. SUBMIT PRODUCT SPE TO CITY OF NEWPORT BEACH FOR APPROVAL.
6. SEE STD-609-L & STD-612-L FOR GANGWAY AND HANGER BRACKET DETAILS.
7. LOCATION OF PLATFORM, GANGWAY, SLIP & FLOATS IS OPTIONAL PROVIDING PROPER SETBACKS ARE MAINTAINED.
8. UNDER EXTREME LOW WATER CONDITIONS, PONTOON MAY CONTACT MUDLINE. VERIFY IF PONTOONS AND DOCK SYSTEM CAN

COASTAL COMMISSION

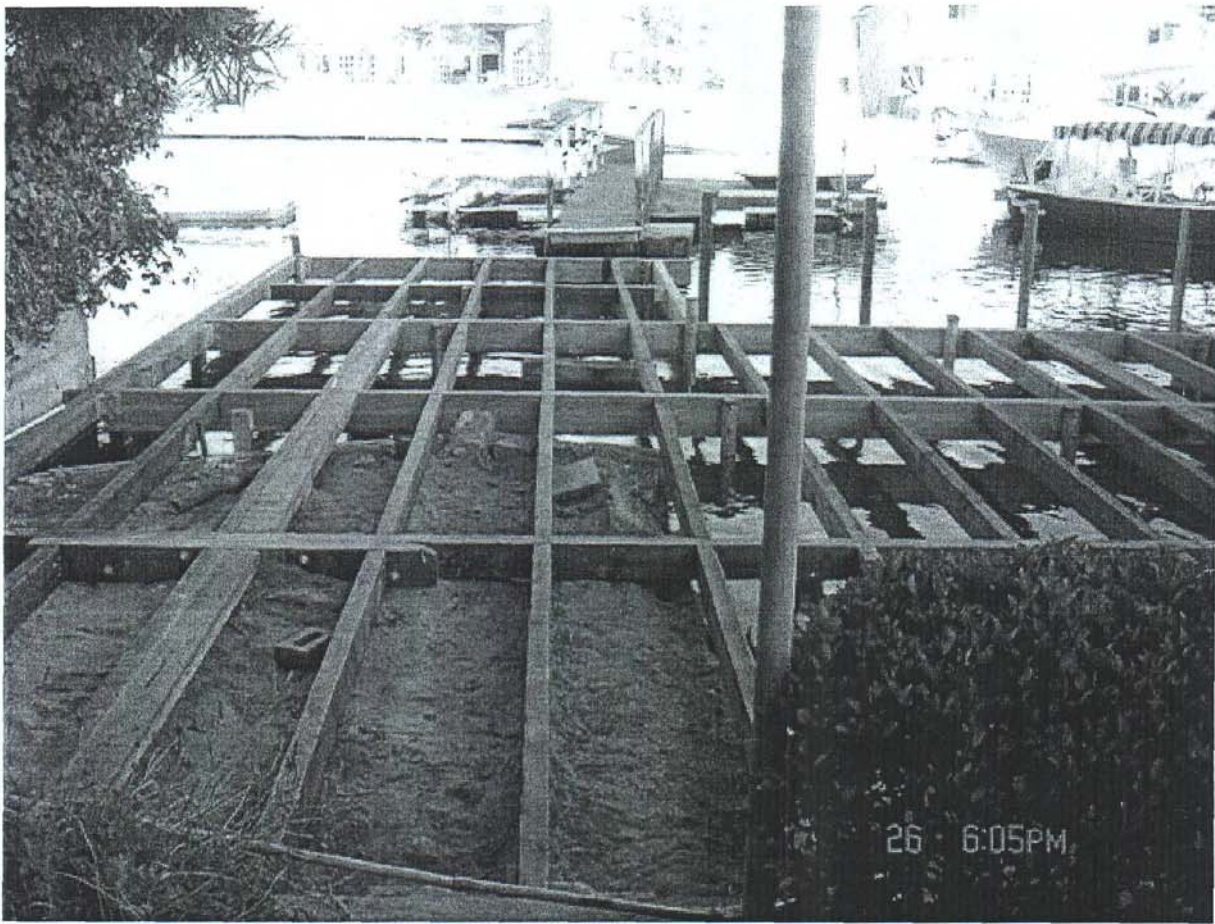
CITY OF NEWPORT BEACH BUILDING DEPARTMENT	APPROVED: _____ EXHIBIT # <u>5</u> PAGE <u>1</u> OF <u>1</u>
SINGLE RESIDENTIAL USE FLOAT WITH PIER	Drawn: R OKADA Date: JULY 2004 Scale: N.T.S. DRAWING NO. STD-608-L

F:\SE\5113\3113\CAD_STD\STD-608-L.dwg



COASTAL COMMISSION

EXHIBIT # 6
PAGE 1 OF 5



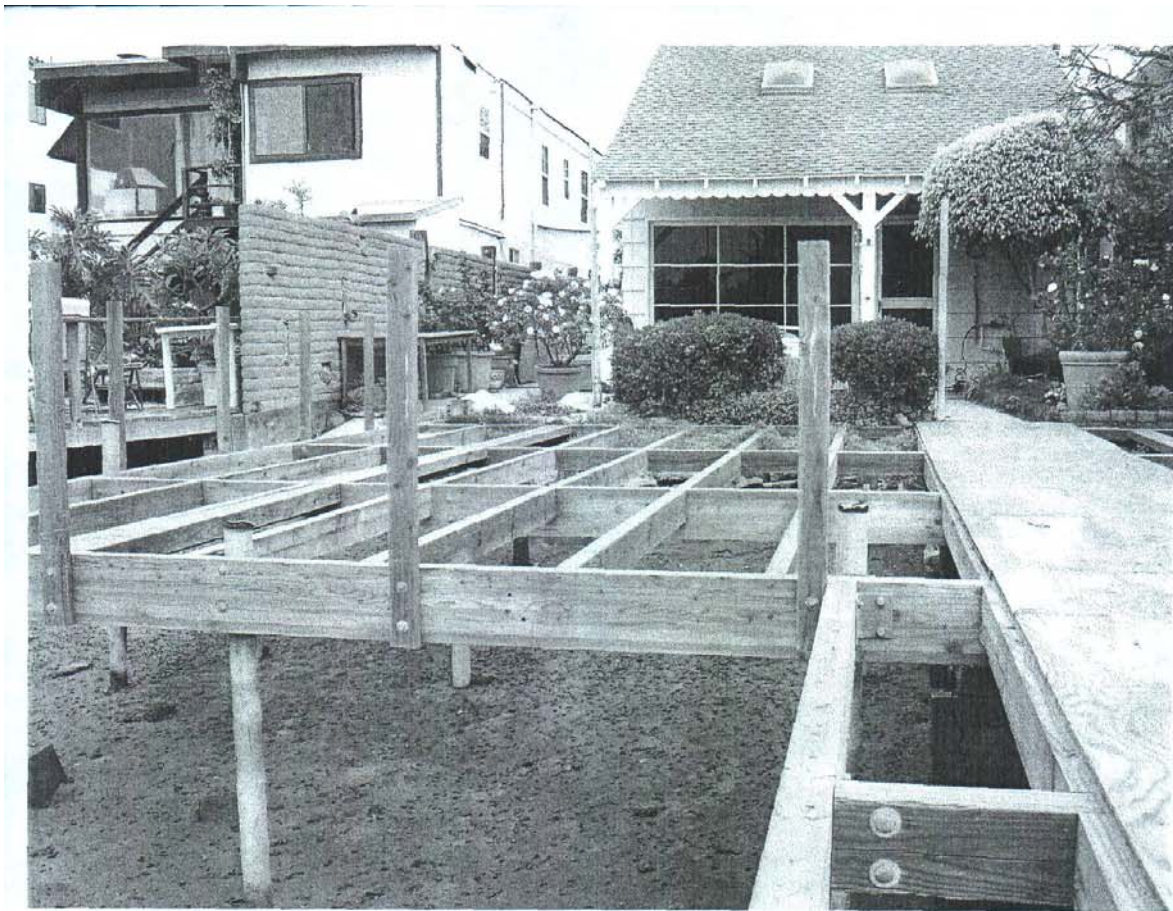
COASTAL COMMISSION

EXHIBIT # 6
PAGE 2 OF 5



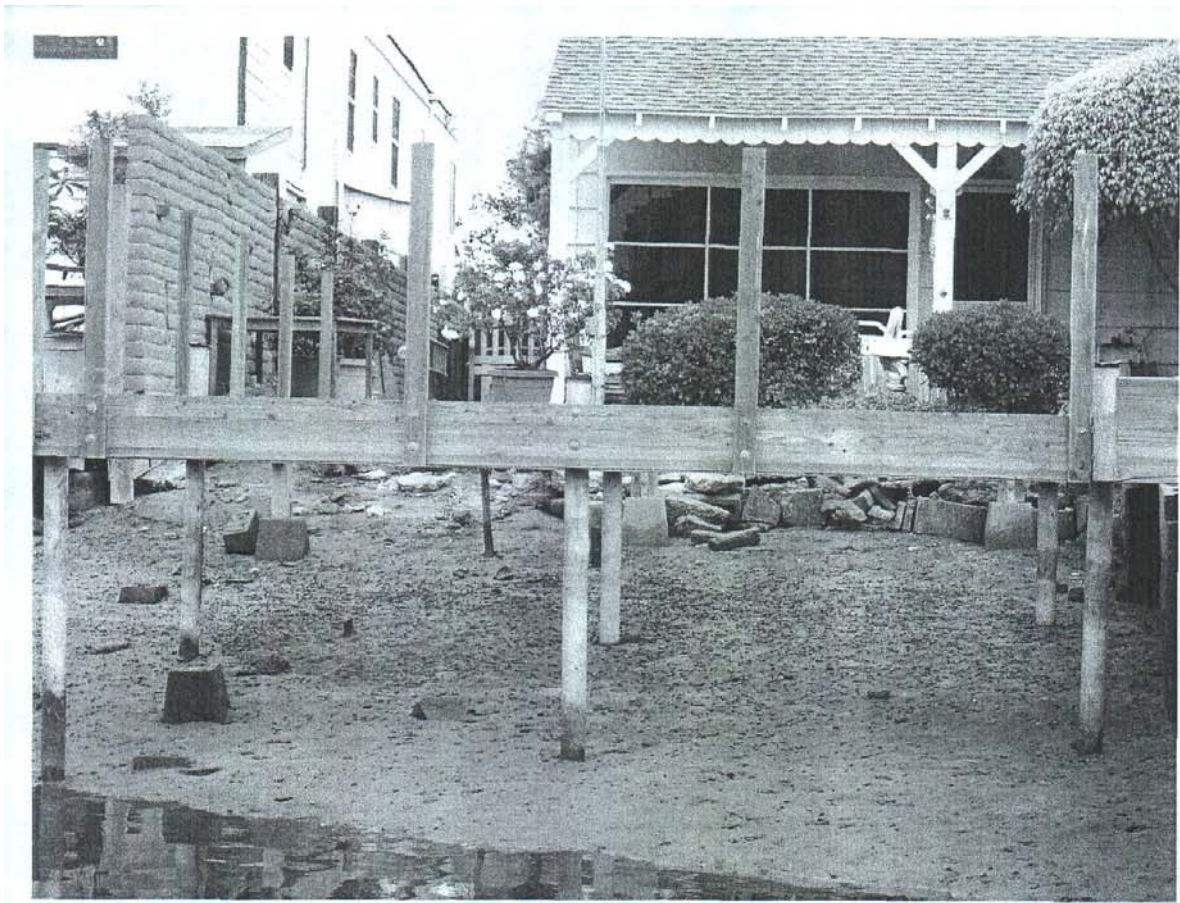
COASTAL COMMISSION

EXHIBIT # 6
PAGE 3 OF 5



COASTAL COMMISSION

EXHIBIT # 6
PAGE 4 OF 5



COASTAL COMMISSION

EXHIBIT # 6
PAGE 6 OF 6

