

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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W5b

Filed: September 15, 1997
49th Day: November 3, 1997
180th Day: March 14, 1998
Staff: John T. Auyong *John*
Staff Report: November 13, 1997
Hearing Date: December 9-12, 1997
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 5-97-294

APPLICANT: Robert Bogert AGENT: Swift Slip

PROJECT LOCATION: 1905 East Bay Avenue, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Replace a floating dock, install 3 new 12" guide piles, replace a 3'x23' gangway, build a new 38' long pier with a 10'x12' platform, and replace an existing wooden bulkhead with a recycled plastic bulkhead in the same location.

LOCAL APPROVALS RECEIVED:

City of Newport Beach Harbor Permit 109-1905

SUBSTANTIVE FILE DOCUMENTS:

City of Newport Beach Certified Land Use Plan; Coastal development permits A-77-652 (Sumph), 5-81-421 (Ware, Buckingham, Button, and Russell), and 5-97-236 (Wagner)

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the proposed project with special conditions regarding; (1) minimizing disturbance to intertidal areas, and use and storage of construction materials, and (2) identification of the debris disposal site.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development, located between the nearest public roadway and the shoreline, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 including the public access and recreation policies of Chapter 3, 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 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. 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.
7. 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. Construction Materials. Disturbance to sand and intertidal areas shall be minimized. Local sand, cobbles, or shoreline rocks shall not be used for back fill or construction material. All construction materials shall be stored landward of the bulkhead and shall be removed at the conclusion of construction.
2. Location of Debris Disposal Site. Prior to issuance of the coastal development permit, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the debris resulting from removal of the existing bulkhead and any construction spoils. Construction debris shall be disposed of at the approved disposal site.

IV. Findings and Declarations.

A. Project Description.

The applicant is proposing to revise an existing private, single-boat docking facility by; (1) replacing the existing float with a 41'x26' "U" shaped float, (2) installing three new twelve inch square guide piles, (3) building a new 38 foot long pier extending from the bulkhead out over the water, (4) building a new 10'x12' platform at the seaward end of the proposed pier, and (5) replacing an existing gangway with a new 3'x23' gangway which would connect the proposed float with the proposed pier platform. (See Exhibit B)

The applicant is also proposing to rebuild an existing bulkhead in the same location. The existing wooden bulkhead is deteriorating and needs replacement. The existing bulkhead was approved without special conditions by coastal development permit A-77-652 (Sumph). The existing and proposed bulkhead are stringlined with the adjacent bulkheads. The adjacent existing wooden bulkhead located at 1907 East Bay Avenue, to the east of the subject site, was approved without conditions by coastal development permit 5-81-421 (Ware, Buckingham, Button, and Russell).

The proposed replacement bulkhead would be forty feet long, approximately six inches thick, and four feet above the grade of the existing sandy beach. It would be constructed of recycled plastic. Eleven evenly spaced 5/8" anchor rods would connect the proposed replacement bulkhead with a 1'x2'x36' concrete anchor beam. (See Exhibit C) The concrete anchor beam would be located fifteen feet from the bulkhead's location. All proposed development will occur at the line of the existing bulkhead and landward (i.e. no seaward encroachment or wetland fill).

B. Conformance with Chapter 3 Policies.

1. Shoreline Protective Structures.

Section 30235 of the Coastal Act states, in relevant part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

A single-family residence exists on the subject site. In addition, residences exist on either side of the subject site. The adjacent sites also have bulkheads. The subject existing wooden bulkhead is deteriorating and needs replacement. Failure to replace the existing bulkhead would lead to eventual damage to the existing structures. Therefore, the applicant has proposed the bulkhead improvements to assure stability of the subject and adjacent sites and to protect existing structures.

Because the proposed project consists of placing the replacement bulkhead in the same location as the existing bulkhead (i.e. no seaward encroachment or wetland fill), the proposed project will not result in adverse impacts on shoreline processes or marine vegetation. The proposed project is necessary to protect existing structures.

A recycled plastic bulkhead such as the type being proposed has advantages in this instance over a wooden or concrete bulkhead. The recycled plastic would not rot and therefore last longer than a wooden bulkhead, lessening the need for future replacement.

A recycled plastic bulkhead would also interface better with the adjacent wooden bulkheads. This is because the recycled plastic bulkhead can be made thin enough to match the thickness of the adjacent wooden bulkhead. Further, the recycled plastic would consist of tongue-in-groove panels, like the adjacent wooden bulkhead, so the proposed bulkhead panels would fit into the panels of the adjacent bulkhead. In contrast, a thicker concrete bulkhead would not match the adjacent bulkheads as much.

Therefore, the Commission finds that the proposed development is consistent with Section 30235 of the Coastal Act.

2. Water Quality.

Section 30231 of the Coastal Act states:

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

a. Bulkhead Replacement.

The proposed bulkhead replacement involves construction adjacent to the marine environment of Newport Harbor. The proposed bulkhead would be made of recycled plastic. Recycled plastic has advantages over the wood material of the existing bulkhead on the subject site. Unlike wood, recycled plastic does not have to be treated with creosote to minimize deterioration. Creosote is a substance which has been found to be potentially harmful to marine life and water quality.

However, in order to protect the marine environment from degradation, all construction materials and machinery shall be stored away from the water. In addition, construction materials not essential for the project improvements shall not be placed in the harbor. Existing local sand, cobbles, or shoreline rocks shall not be used for backfill or construction material as per Special Condition No. 1.

Further, removal of the deteriorated seawall would create unwanted debris. In order to prevent adverse impacts on marine resources, the debris must not be allowed to enter the marine environment. In order to assure that the debris is disposed of properly, the location of the disposal site must be identified and approved as acceptable. As a condition of approval, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the debris resulting from removal of the existing bulkhead and any construction spoils.

In addition, on October 15, 1997, the California Regional Water Quality Control Board, Santa Ana Region ("RWQCB"), informed the applicant in writing that the proposed bulkhead replacement met RWQCB criteria for Minor Dredging Projects based on the criteria in its Resolution 96-9. The RWQCB letter indicates that the proposed project would not result in impacts to eelgrass or other sensitive coastal resources. The RWQCB letter also indicates that permanent net effects to waters of the state is zero. The RWQCB thus waived discharge requirements for the proposed bulkhead replacement pursuant to its Resolution 96-9.

Therefore, the Commission finds that, as conditioned, the proposed bulkhead replacement would be consistent with Section 30231 of the Coastal Act.

b. Boat Dock Revisions.

The proposed boat dock revisions are similar to the types of boat dock revisions in Newport Harbor for which the Executive Director has issued numerous De Minimis Waivers. This is because these types of routine boat dock revisions have no significant adverse impact to water quality. Therefore, the Commission finds that the proposed boat dock revisions are consistent with Section 30231 of the Coastal Act.

3. Wetland Fill.

Section 30233 of the Coastal Act states, in relevant 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:

(4) 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.

The applicant is also proposing modifications to an existing private boat dock in Newport Harbor. The proposed modifications involve the installation of three new twelve inch guide piles in the floor of Newport Harbor. This would result in the fill of three square feet of open coastal waters. The proposed fill is for a boating facility, an allowable use under Section 30233. The

Commission has previously found pilings to be self-mitigating, since the surface of the piles provides habitat which mitigates the loss of soft-bottom habitat. The proposed bulkhead replacement would not result in wetland fill. Therefore, the Commission finds that the proposed project is consistent with Section 30233 of the Coastal Act.

4. Public Access.

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) adequate access exists nearby . . .

(b) For purposes of this section, "new development" does not include:

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

The subject site is a bulkheaded, harborfront lot located between the nearest public roadway and the shoreline on the eastern portion of Balboa Peninsula. In this area of Newport Beach, the property lines extend into the water. Vertical public access exists nearby, two lots (approximately twenty yards) to the west of the subject site via the "K" Street street-end. Public recreational opportunities and public lateral access exist at the public beach on the ocean side of Balboa Peninsula, four blocks to the south of the subject site. The proposed development would not result in direct adverse impacts, neither individually nor cumulatively, on physical vertical or lateral public access.

In addition, the proposed project involves the replacement of an existing bulkhead with a new bulkhead in the same location (no seaward encroachment). Because Section 30212(b)(4) of the Coastal Act does not require the provision of public access for reconstruction or repair of a seawall in the same location, the provision of public access is not required with the proposed project. Therefore, the Commission finds that no public access is necessary with the proposed development. Thus, the Commission finds that the proposed development would be consistent with Section 30212 of the Coastal Act.

C. Local Coastal Program.

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a local coastal program ("LCP") which conforms with the Chapter Three policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was originally certified on May 19, 1982. As conditioned, the proposed development is consistent with the water quality policies of Chapter Three of the Coastal Act. Therefore, the

Commission finds that approval of the proposed development, as conditioned, would not prejudice the City's ability to prepare a local coastal program consistent with the Chapter Three policies of the Coastal Act.

D. California Environmental Quality Act.

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment.

The proposed development is located in an urban area. Development already exists on the subject site. All infrastructure necessary to serve the site exist in the area. The proposed bulkhead replacement would not result in seaward encroachment. The proposed project has been conditioned in order to be found consistent with the water quality policies of Chapter Three of the Coastal Act. Mitigation measures requiring; (1) minimizing disturbance to intertidal areas, and use and storage of construction materials, and (2) identification of the debris disposal site; will minimize all significant adverse impacts.

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

9572F:jta

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SEE 889 MAP

ORANGE CO.

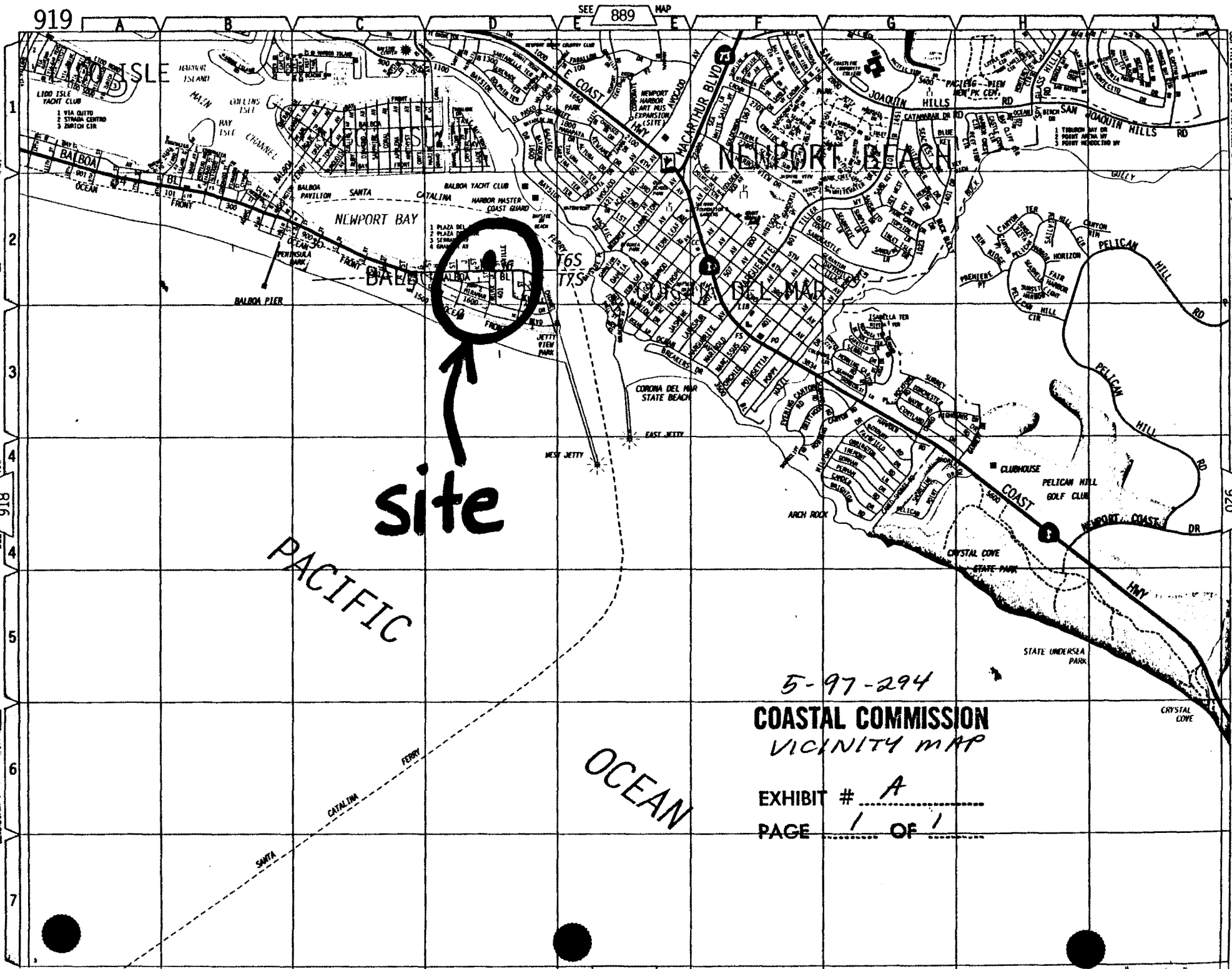
SEE 801 MAP

SEE 918 MAP

SEE 831 MAP

DETAIL

DETAIL



5-97-294
COASTAL COMMISSION
VICINITY MAP

EXHIBIT # A
PAGE 1 OF 1

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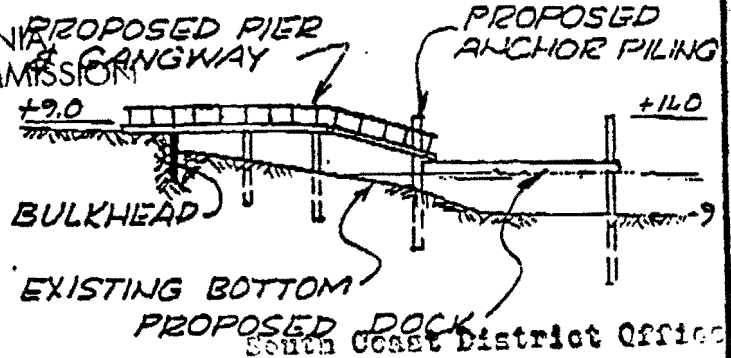
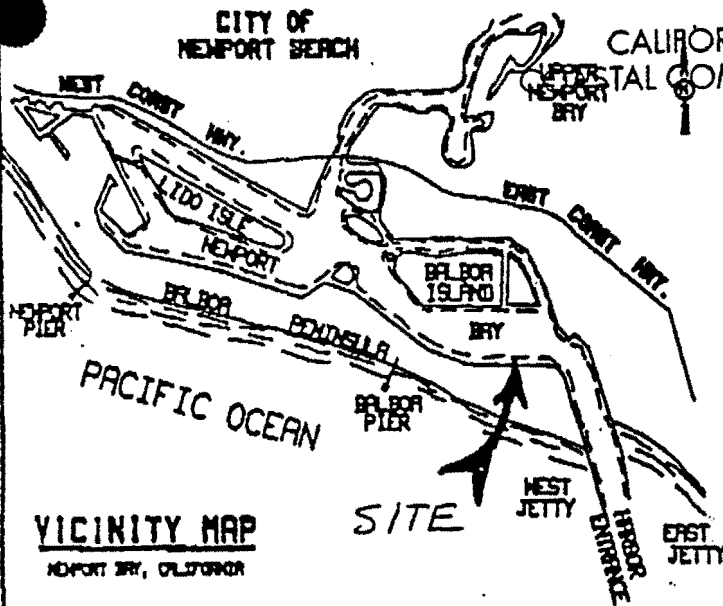
SEE 920 MAP

#109-1905

RECEIVED

CITY OF NEWPORT BEACH

SEP 15 1997

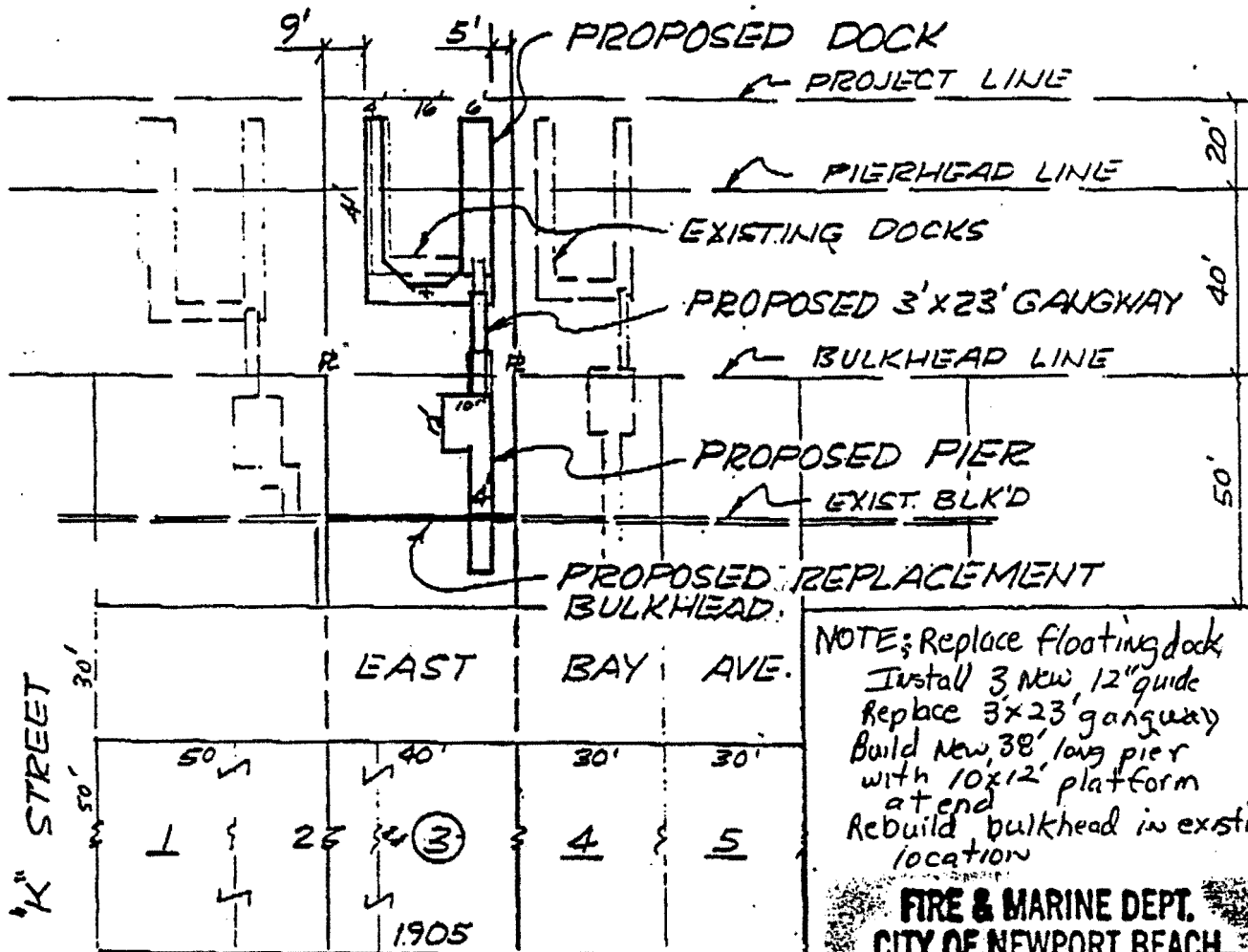


South Coast District Office

5-97-294

PROFILE 1" = 40'

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

FIRE & MARINE DEPT.
CITY OF NEWPORT BEACH

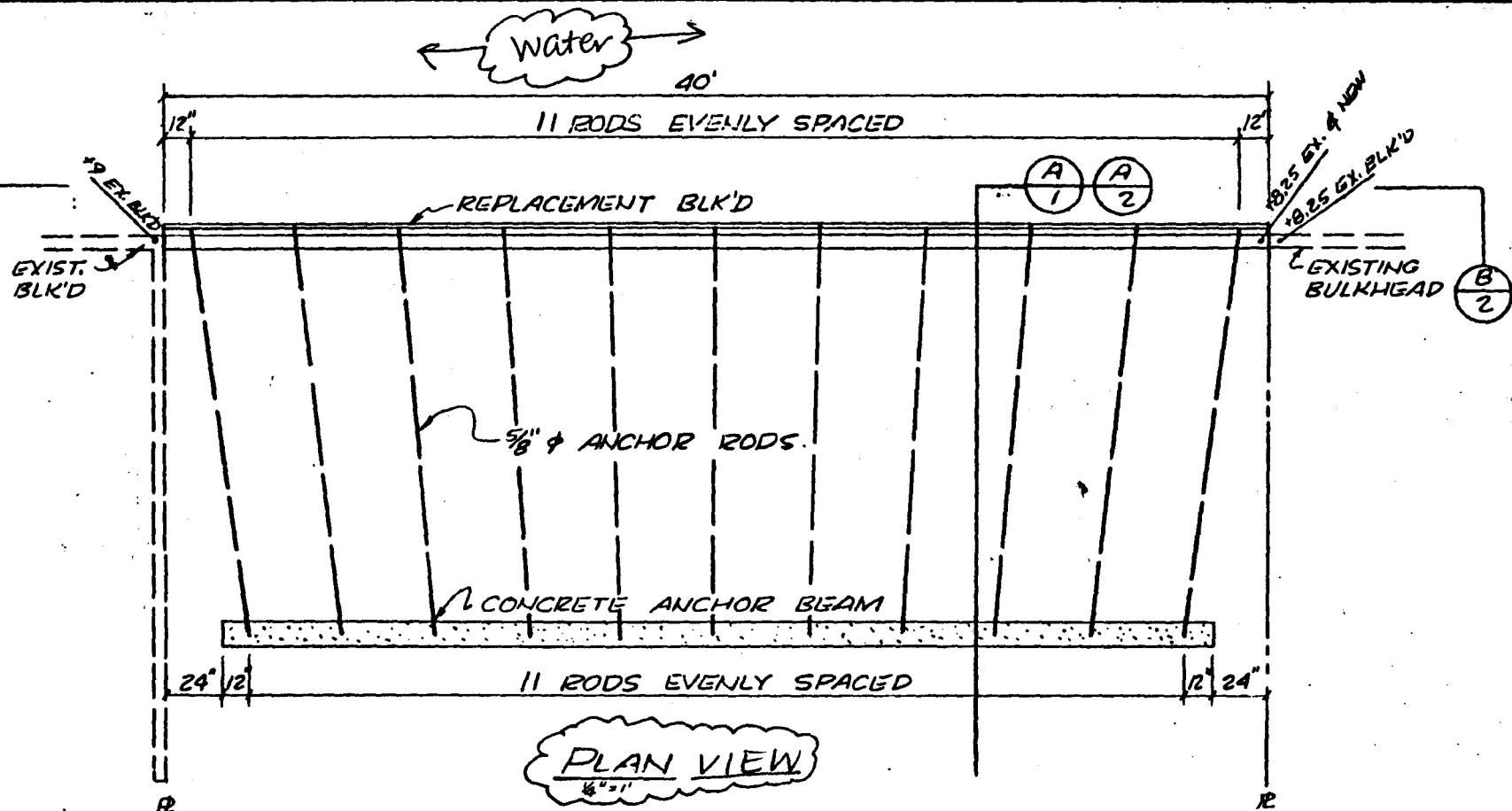
Tony Nelson 9/9/97

PLAN VIEW 1" = 40'

APPLICANT'S NAME ROBERT BOGERT

JOB ADDRESS 1905 E. BAY AVE

DATE 11.12.96



PLAN VIEW

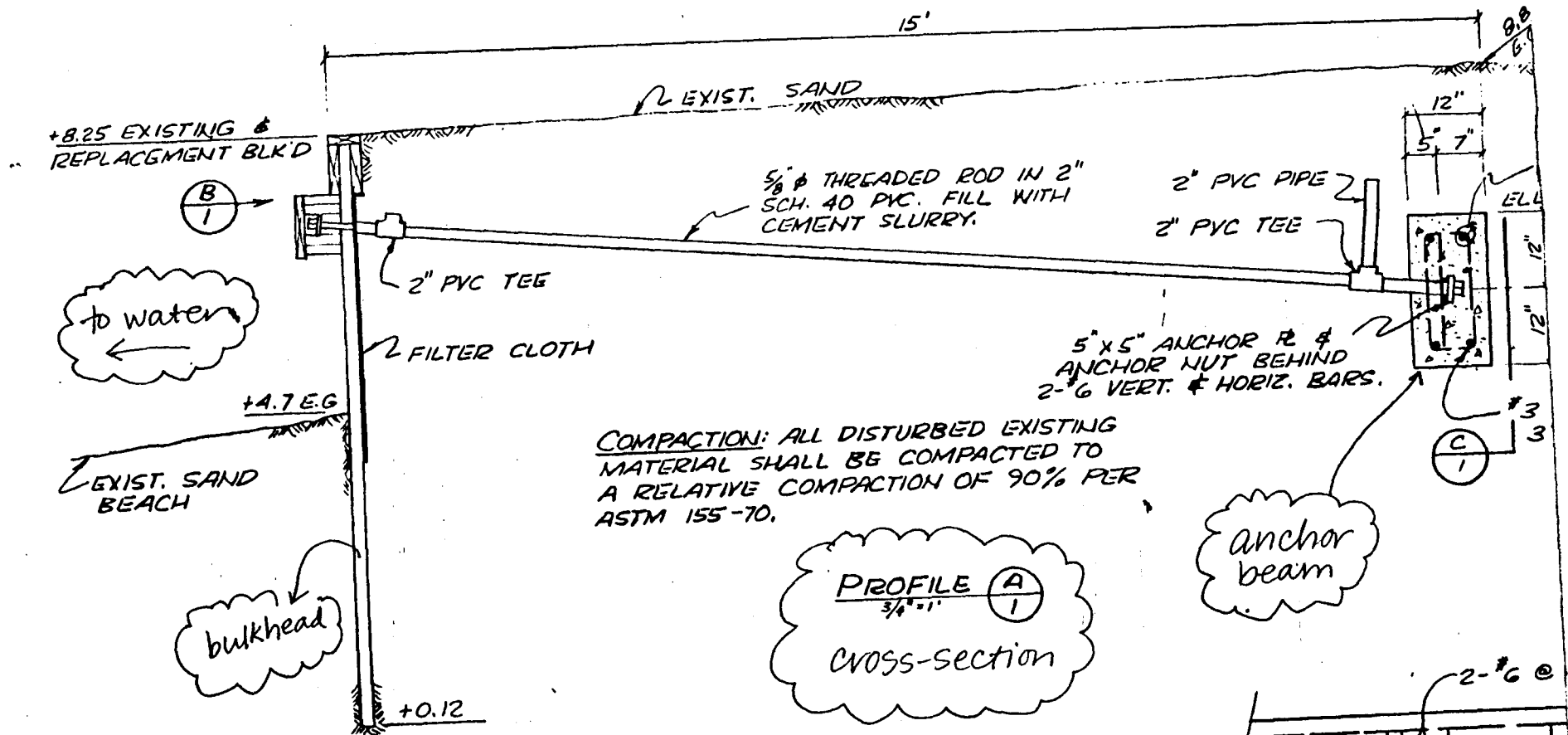
5-97-294

COASTAL COMMISSION
Bulkhead Plans

EXHIBIT # C

PAGE 1 OF 2

204 A
T. & B
FILL W
PLASTIC I
5"
MAL'B
P.



COMPACTION: ALL DISTURBED EXISTING MATERIAL SHALL BE COMPACTED TO A RELATIVE COMPACTION OF 90% PER ASTM 155-70.

PROFILE (A) 1

CROSS-SECTION

INSPECTION

PERIODIC OR CONTINUOUS SPECIAL INSPECTION BY A CITY CERTIFIED DEPUTY INSPECTOR IS REQUIRED FOR THE FOLLOWING:

- SITE CONCRETE WORK (ANCHOR BEAM)
- INSPECT SHEET PILE FOR LENGTH & DAMAGE.
- T & G LOCKING OF PANELS.
- ANCHOR ROD TENSIONING.
- GROUTING OF PVC SLEEVES.

5-97-294
COASTAL COMMISSION
Bulkhead plans

EXHIBIT # C

PAGE 2 OF 2

DETAIL (C) 1