

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: September 22, 1998
49th Day: November 10, 1998
180th Day: March 21, 1999
Staff: KFS-LB ~~AS~~
Staff Report: October 15, 1998
Hearing Date: November 3-6, 1998
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-98-317

APPLICANT: Newport Beach Townhome Owners Association

AGENT: Shellmaker, Inc.
Marine Consulting and Design

PROJECT LOCATION: 4401-4465 West Pacific Coast Highway, City of Newport Beach, Orange County

PROJECT DESCRIPTION: The applicant proposes to demolish and replace in the same configuration an existing 22 slip marina. This development includes the removal and replacement of piers, ramps, pilings, and dock floats. One ramp will be lengthened and the associated pier moved to bring the structure up to present standards. All other structures will be removed and replaced to match the present configuration. No dredging is proposed. Approximately 3.9 cubic yards of soil will be discharged into coastal waters during re-installation of the pilings.

LOCAL APPROVALS RECEIVED: Approval in Concept, City of Newport Beach Fire and Marine Department, dated May 22, 1998.

OTHER AGENCY APPROVALS RECEIVED: Letter of approval from California Regional Water Quality Control Board, Santa Ana Region...dated August 5, 1998; U.S. Army Corps of Engineers, Los Angeles District, Letter of Permission (LOP) Number 98-00670-YJC; Letter stating project conforms with NWP18 from Mr. Richard J. Schubel, Chief of Regulatory Branch, Los Angeles District, U.S. Army Corps of Engineers to applicant...dated September 21, 1998; Letter of no objection from California Department of Fish and Game...dated September 9, 1998.

SUBSTANTIVE FILE DOCUMENTS: Coastal development permit 5-95-011 (Newport Beach Townhome Owner's Association, 5-94-166 (Haseko Marina Development Inc.), 5-95-160 (The Irvine Company), 5-98-254 (California Recreation Company).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed development with two special conditions: 1) the applicant shall minimize land disturbing activities to sand and intertidal areas to protect water quality and the marine environment; and 2) the applicant shall dispose of construction debris at an Executive Director approved legal 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 will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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 effects 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 Responsibilities and Debris Removal

To protect water quality and the marine environment the applicant shall minimize disturbances to sand and intertidal areas. Disturbances shall be minimized by the following: (a) no local sand, cobbles, or shoreline rocks, shall be used for construction material; (b) storage of all construction materials and equipment landward of the beach, preferably on an impervious surface and in a manner which prevents their movement via runoff, or any other means, into coastal waters; (c) no machinery may be placed in the intertidal zone at any time; (d) removal of any and all construction equipment, materials and debris from upland and intertidal areas at the conclusion of construction.

2. Location of Debris Disposal Site

PRIOR TO ISSUANCE OF A 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 demolition and construction debris resulting from the proposed project. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone a coastal development permit or an amendment to this permit shall be required before disposal can take place.

IV. Findings and Declarations:

The Commission hereby finds and declares:

A. Project Description and Location

The existing and proposed marina is a private, commonly owned recreational boating facility for members of the Newport Beach Townhome Owner's Association, located at 4401-4465 West Pacific Coast Highway, City of Newport Beach, Orange County (Exhibit 1). Membership is composed solely of townhome owners. No public access is available to this marina. This facility is located seaward of the existing bulkhead.

The applicant is proposing to remove an existing 22 slip marina and construct a new 22 slip marina in the same configuration (Exhibit 2). This development includes the removal and replacement of piers, ramps, guide pilings, and dock floats. These structures are deteriorated or were damaged during severe weather in 1995. One ramp will be lengthened and the associated pier moved to bring the structure up to present standards. All other structures, including 22 guide pilings, will be removed and replaced to match the present configuration. No dredging is proposed. However, since 'jetting' will be used to re-install the pilings, approximately 3.9 cubic yards of fill material will be discharged into coastal waters. Jetting is the use of water, forced under pressure, to displace soil required to install the pilings. The existing and proposed marina cover approximately 0.9 acres of water and will not increase the coverage of navigable waters. The proposed marina will be contained within the same harbor permit line as the existing marina and so will extend no further channelward than the existing development.

B. Previous Commission Action on Site

Coastal Development Permit 5-95-011

On July 11, 1995 the Commission approved a coastal development permit (5-95-011) for the demolition of existing patio decks, landscaping, walkways and a damaged concrete seawall. These structures were replaced with new reinforced concrete caisson deadmen, new concrete sheet piles with tie rods connecting the deadmen, walkways, patios, seawall, backfill, and earth anchors installed in the undamaged portion of the seawall.

Special conditions included minimizing disturbance to coastal waters and habitat by controlling the placement of construction materials, requiring approval of the construction debris disposal site by the Executive Director, and demonstration of project approval by the Regional Water Quality Control Board.

C. Marine Resources

Water Quality and Construction Impacts

The proposed project is the reconstruction of an existing 22 slip marina located in coastal waters. Due to the proposed project's location on the water, the proposed work may have adverse impacts upon water quality and the marine environment.

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.

In order to assess impacts upon water quality, the proposed project was submitted to the California Regional Water Quality Control Board (RWQCB) for their review and

approval. The RWQCB determined that water quality would not be affected by the proposed project if standard construction practices were utilized. Since construction of the proposed project will require the use of heavy machinery and require the stockpiling of construction materials the Commission finds it necessary to identify, at minimum, the permittee's responsibilities regarding project construction. In order to protect the marine environment from degradation, special condition number one requires that no local sand, cobbles, or shoreline rocks be used for construction material, that all construction materials and equipment are stored landward of the bulkhead, on impervious surfaces only, that all construction materials or waste are stored in a manner which prevents their movement via runoff, or any other means, into coastal waters, that no machinery may be placed in the intertidal zone at any time, and that any and all construction equipment, materials and debris are removed from upland and intertidal areas at the conclusion of construction. In addition, demolition of existing structures will generate debris that will not be recycled into the proposed development. Since the applicant has not identified a disposal site and in order to prevent impacts to coastal waters, special condition number two requires that all demolition debris be disposed of at a legal site approved by the Executive Director. Choice of a site within the coastal zone shall require an amendment to this permit or a new permit.

The proposed project will maintain the present use and is not expected to create additional adverse impacts on marine resources. Additionally, the Regional Water Quality Control Board has reviewed the project and determined that no significant adverse effects will occur upon water resources as a result of the project. However, the Commission finds it necessary to identify the permittee's responsibilities regarding construction and has conditioned the project accordingly. Therefore, only as conditioned does the Commission find that the proposed project conforms with Sections 30230 and 30231 of the Coastal Act.

Fill of Coastal Waters and Loss of Marine Habitat

The proposed project will involve the removal and replacement of 22 existing concrete guide pilings in coastal waters. These guide piles, and any soils displaced during their installation, constitute fill of coastal waters. Under Section 30233 of the Coastal Act, fill of coastal waters is only allowed when several criteria are met, including (a) the project must fall within one of the use categories specified; (b) the proposed project must be the least environmentally damaging alternative; and (c) feasible mitigation measures to minimize adverse environmental effects must be provided. 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:

(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 proposed project meets the first criteria because it is the replacement of an existing boating facility. A boating facility is an allowable use under Section 30233 of the Coastal Act.

Next, the proposed project is the replacement of a boating marina in the same existing configuration. Alternatives to the proposed project include no project or a change to the existing configuration.

Under the no project alternative, the applicant could only pursue simple maintenance repair activity. However, simple maintenance repair could not feasibly repair the docks, nor bring them up to present engineering and safety standards. Simple maintenance would only prevent further deterioration of the docks. In addition, marine habitat would not significantly benefit from the no project alternative since this alternative would necessitate that the structure remain in place. Continued, safe use of the facility for marine recreational purposes would be precluded without replacement of the dock system. Therefore, the dock system must be replaced.

The second alternative, replacement of the dock system in a new configuration, would result in significant changes to the existing guide piling layout. As a result, the shadow or shading pattern cast by the docks would be altered. Changes to the piling layout would increase impacts to soft bottom habitat, while changes to the shading pattern could affect subsurface vegetation already adapted to the existing pattern.

Under the proposed alternative, the dock and guide piling layout remain the same. However, the U.S. Army Corps of Engineers has determined that the proposed project will result in the fill of coastal waters by approximately 3.9 cubic yards. The Corps determined that this amount is minor and could be authorized under nationwide permit NWP 18, an Army Corps permit for minor discharges (less than 27 cubic yards) of dredge or fill material into waters of the United States. Furthermore, it should be noted that the re-installation of the pilings will result in the temporary disturbance to the existing vertical substrate. The guide pilings provide a vertical substrate for mollusks and other marine organisms. However, the proposed project is self-mitigating since all of the vertical substrate will be replaced, in-kind. Therefore, no long-term impact will occur to this habitat. Finally, eelgrass, a sensitive resource, is commonly found in the shallow waters of coastal harbors. However, no eelgrass was found in the project area according a statement in the *Letter of Permission* issued by the U.S. Army Corps of Engineers. In addition, the California Department of Fish and Game examined the proposed project and determined that there will be no significant effect upon existing marine resources and habitats in the project area. Therefore, the proposed project is the least environmentally damaging, preferred alternative.

The City of Newport Beach, California Department of Fish and Game, and the U.S. Army Corps of Engineers have concluded that the proposed project will not adversely affect the marine environment. In addition, the proposed project will maintain the present, preferred use under Section 30233 of the Coastal Act, is the least environmentally damaging alternative, and does provide feasible mitigation measures.

Therefore, the Commission finds the proposed project is consistent with Section 30233 of the Coastal Act.

D. Land Use Plan

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

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The proposed development is consistent with the policies of the certified Land Use Plan. Therefore, the Commission finds that approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program (Implementation Plan) for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

E. California Environmental Quality Act

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

The project is located in an existing harbor in an urbanized area. Development already exists on the subject site. The project site does not contain any known sensitive marine resources, therefore the impacts arising from the proposed project will be minimal. In addition, the proposed development has been conditioned, as follows, to assure the proposed project is consistent with the resource protection policies of the Coastal Act: restrictions on the placement of construction materials and use of on-site resources as construction material; and restriction of material disposal to a land facility. As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and is consistent with CEQA and the policies of the Coastal Act.

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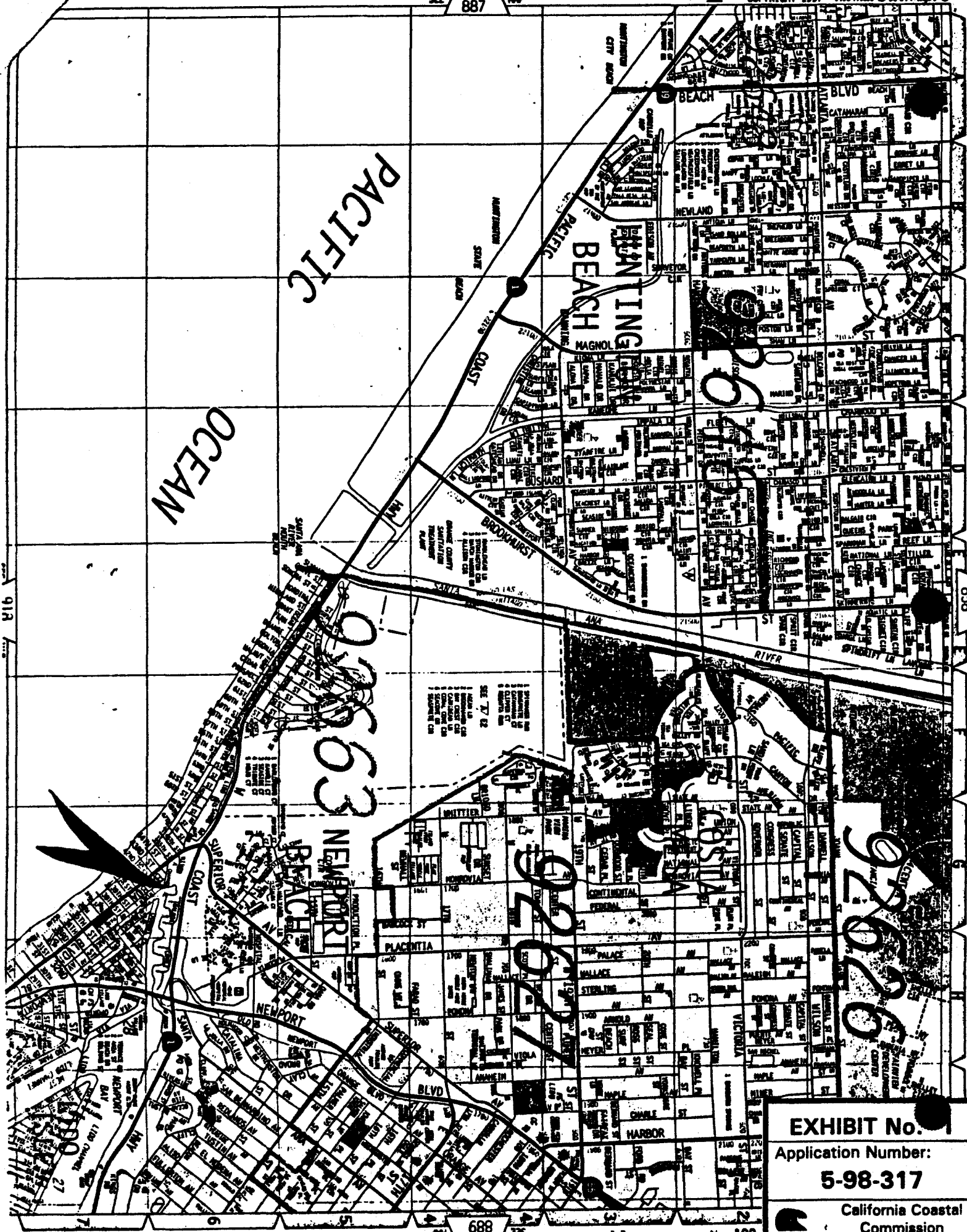


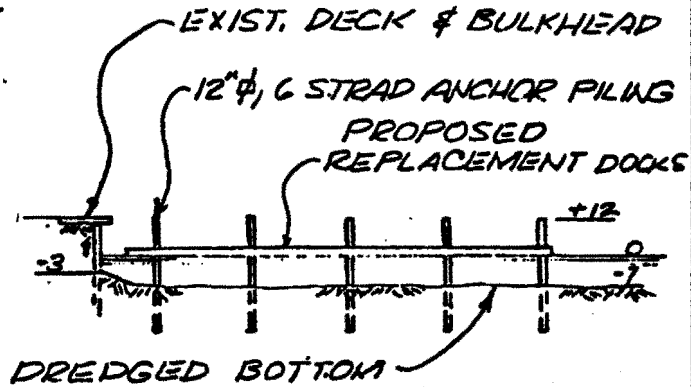
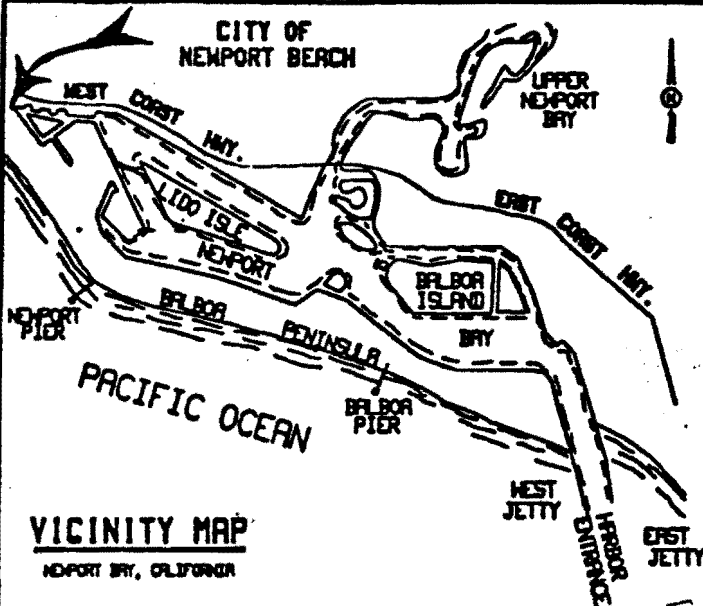
EXHIBIT No.

Application Number:

5-98-317

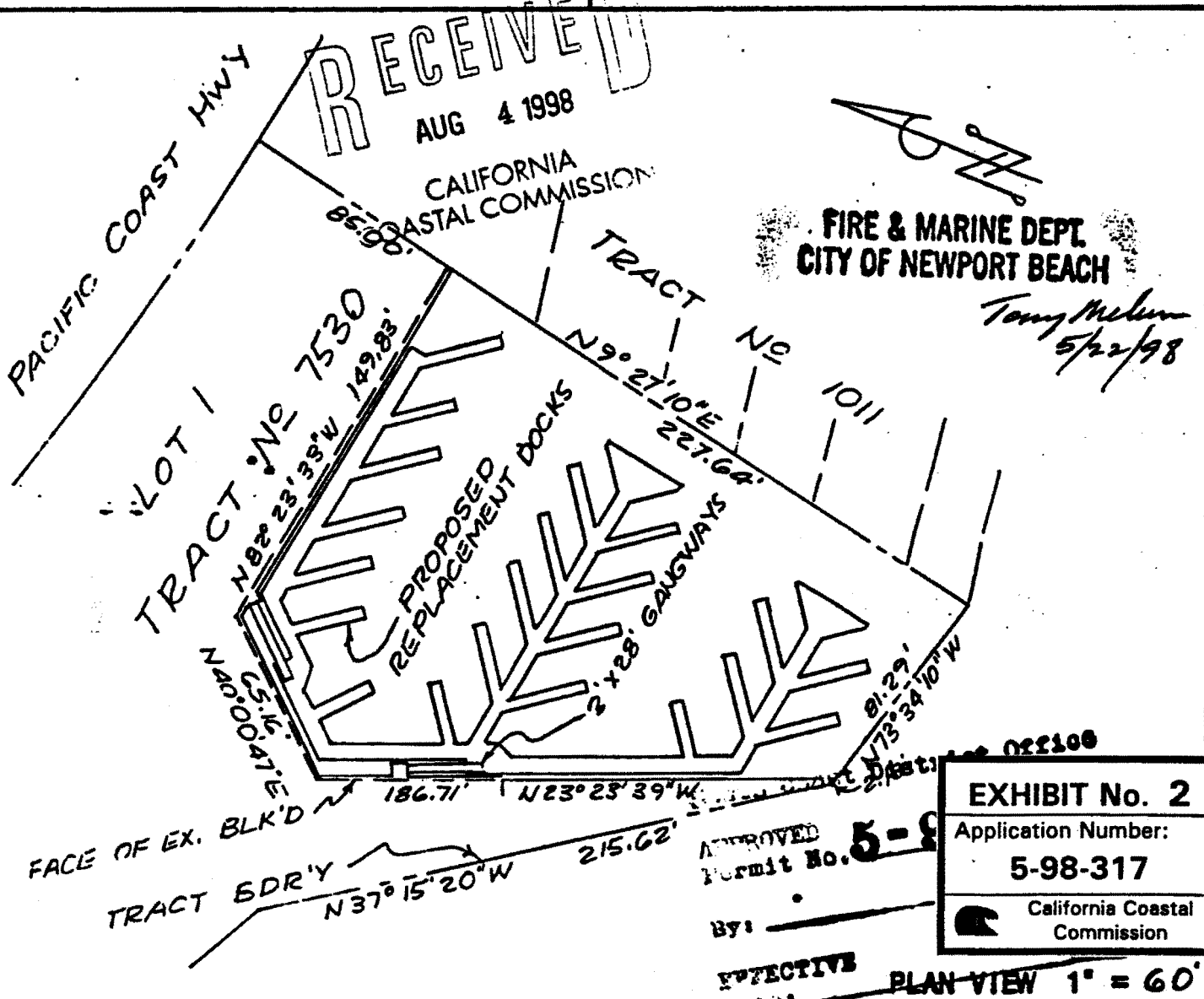
California Coastal Commission

CITY OF NEWPORT BEACH



PROFILE 1" = 60'

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



APPLICANT'S NAME NEWPORT BEACH TOWNHOMES

JOB ADDRESS 4401-4465 W. COAST HWY

DATE 4.5.98