

RECORD PACKET COPY

*Handwritten initials: JW, LB*

PETE WILSON, Governor

STATE OF CALIFORNIA - THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

South Coast Area Office  
200 Oceangate, 10th Floor  
Long Beach, CA 90802-4302  
(562) 590-5071

Filed: 03-10-98  
49th Day: 04-28-98  
180th Day: 09-06-98  
Staff: RMR/LB **RMR**  
Staff Report:  
Hearing Date: May 12-15, 1998  
Commission Action:



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-98-072

APPLICANT: Jan & Jerry Barto

AGENT: Eric Mossman

PROJECT LOCATION: 759 Via Lido Soud, Newport Beach, Orange County

PROJECT DESCRIPTION: Demolition of a two-story single-family residence and construction of a 5,261 square foot single-family residence with a 627 square foot garage. Grading consists of 480 cubic yards of cut for a basement level.

Lot area:	4,047 sq. ft.
Building coverage:	2,664 sq. ft.
Pavement coverage:	820 sq. ft.
Landscape coverage:	563 sq. ft.
Parking spaces:	3
Zoning:	R1
Plan designation:	
Project density:	
Ht abv fin grade:	24

LOCAL APPROVALS RECEIVED: Approval in concept from the City of Newport Beach

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan, Coastal Development Permits 5-97-409 (Haskell), 5-97-348 (Hezlep), Preliminary Geotechnical Investigation by P.A. & Associates dated September 17, 1997

SUMMARY OF UNRESOLVED ISSUES:

Staff informed the applicant's agent of the proposed special conditions and the agent did not object to these conditions. Therefore, there are no unresolved issues.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project with special conditions regarding conformance with geotechnical recommendations, assumption of risk, location of disposal site for cut dirt, evidence of Regional Water Quality Control Board Approval, and future improvements to the bulkhead.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, 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, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies 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. Assumption of Risk

Prior to the issuance of the coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazards from liquefaction, waves and flooding and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project for any damage due to natural hazards.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

#### 2. Conformance with Geotechnical Recommendations

Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, grading, foundation and basement plans. The approved foundation plans shall include plans for the foundation, retaining walls, subdrains and footings. These plans shall include the signed statement of the geotechnical consultant certifying that these plans incorporate the recommendations contained in the geotechnical investigation prepared by P.A. & Associates, Inc. on September 17, 1997.

The approved development shall be constructed in accordance with the plans approved by the Commission. Any deviations from said plans shall be submitted to the Executive Director for a determination as to whether the changes are substantial. Any substantial deviations shall require an amendment to this permit or a new coastal development permit.

#### 3. Evidence of Regional Water Quality Control Board Approval

Prior to issuance of the coastal development permit, the applicant shall submit, subject to the review and approval of the Executive Director, a discharge permit or other written evidence of approval from the California Regional Water Quality Control Board, Santa Ana Region, for discharge of water into Newport Bay for the purpose of constructing a subterranean basement.

#### 4. Disposal of Cut Dirt

Prior to the issuance of the coastal development permit the applicant shall submit, for the review and approval of the Executive Director, a letter stating where the applicant intends to dispose the excess cut dirt. If the disposal site is in the coastal zone, a coastal development permit may be required.

#### 5. Improvements to Bulkhead

If, in the course of demolition and construction, the applicant uncovers structural problems with the existing bulkhead infrastructure which requires remediation, the applicant shall immediately notify the Executive Director in writing for a determination as to whether any proposed construction on or near the bulkhead requires a coastal development permit or an amendment to this permit. No improvement to the bulkhead shall occur prior to such Executive Director determination and any necessary permit or permit amendment from the Coastal Commission.

#### IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

##### A. Project Description

The proposed development consists of the demolition of an existing two-story single-family residence and the construction of a 24 foot high, three story (including basement) 5,261 square foot single-family residence with a 627 square foot garage. The proposed basement is 1,033 square feet, the first floor 2,037 square feet, and the second floor 2,191 square feet. The proposed development conforms with all applicable setbacks including a 10 foot setback from the bay. A site plan is included as Exhibit 3.

The proposed residence is a bay-front lot located on Lido Island in Newport Bay, in the City of Newport Beach (see exhibits 1 and 2). Shoring and dewatering will be required for subterranean excavation and construction. No improvements are proposed to the existing bulkhead, however the City of Newport Beach requires that when a bayfront structure is demolished and reconstruction is proposed, the bulkhead infrastructure be exposed and examined. For this reason, staff included a special condition requiring the applicant to inform the Executive Director if work on or near the bulkhead is required so that the Executive Director can make a determination as to whether a coastal development permit or coastal development permit amendment is required.

In recent months there has been an increase in the number of applications for residences with basements adjacent to Newport Harbor. Applications for demolition and construction of new residences without basements were processed via the waiver process. However, because of the potential dangers from liquefaction and flooding of subterranean rooms at or under the water table, projects with basements are now being processed as Regular Calendar permits with special conditions.

##### B. Geologic Hazards

Section 30253 of the Coastal Act concerns geologic stability and safety. It states in part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

A geotechnical investigation was conducted by P.A. & Associates on September 17, 1997. The geotechnical investigation included subsurface exploration, logging and soil sampling, laboratory testing and geotechnical review and analysis.

The proposed site is flat and bounded on the west by Newport Channel. The geotechnical report indicates that the soils underlying the site are saturated to a depth of 8 feet, and that the site should be considered for moderate liquefaction potential. The report concludes that the ground water level is found at a depth of 6 feet below existing grade.

The geotechnical report indicates that the proposed development is feasible providing the report conclusions are included in the design and construction of the project. In the conclusion section of the geotechnical report the consultant notes that there is a risk of liquefaction at the site. Because of this potential threat the geotechnical report includes recommendations concerning installation of a stiffened foundation to offset danger from liquefaction, waterproofing of the basement slab and walls, use of shoring during excavation of the basement level, and recommendations for dewatering of the site during construction of the basement level.

The conclusions of the geotechnical report include a statement that the development of the property is geotechnically feasible and safe if the recommendations of the report are followed in design, construction and long-term maintenance of the property. The geotechnical report also concludes that construction of the proposed development will not adversely affect the adjoining properties if the geotechnical recommendations concerning shoring and de-watering are followed.

To assure geologic stability and structural integrity and to minimize risks to life and property, the geotechnical report's recommendations must be incorporated in the proposed project's design and construction. Therefore, this staff report includes a special condition requiring that the applicant submit foundation and basement plans signed and stamped by the geotechnical consultant.

In addition, development in lower Newport Bay does involve some risk of flooding and liquefaction during a seismic event, as noted in the geotechnical report. The construction of a below grade basement on a harbor-fronting lot poses additional risks of damage from flooding and liquefaction hazards than does construction of homes without subterranean basements. Therefore, the Commission finds that because of the project's location fronting the bay and because a basement below the water table is involved, the permit must also be conditioned for the recordation of an "assumption of risk" deed restriction.

Finally, the applicant will be removing some 480 cubic yards of dirt resulting from the basement excavation. The applicant has not indicated where this dirt will be disposed of. In order to assure that the future placement of this dirt does not adversely impact any coastal resources, a special condition of

this permit requires that the applicant submit a letter stating where the dirt will be disposed. If the cut dirt will be disposed of at a site within the Coastal Zone, a coastal development permit may be required.

Only as conditioned for submittal of an assumption of risk deed restriction, identification of the disposal site for cut dirt, and conformance with geotechnical recommendations does the Commission find that the proposed development conforms with Section 30253 of the Coastal Act.

#### C. Marine Resources

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. (emphasis added)

The applicant is proposing to dewater the site in order to construct a subterranean basement. In this case unregulated groundwater discharges could enter Newport Harbor because of the Harbor's proximity to the project site. Newport Harbor (Lower Newport Bay) is a critical coastal water body 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 beneficial recreation and aquatic uses. The listing is from the California Regional Water Quality Control Board, and endorsed by the U.S. Environmental Protection Agency. Further, the California Regional Water Quality Control Board has targeted the Newport Bay watershed, which includes Newport Harbor, for increased scrutiny as a higher priority watershed under its new Watershed Initiative. The excess water is proposed to be pumped over the existing bulkhead directly into lower Newport Bay. This could result in adverse impacts to the quality of waters in lower Newport Bay. For this reason, the permit must be conditioned to obtain approval from the Regional Water Quality Control Board for the discharge of water into lower Newport Bay. Section 30412 of the Coastal Act provides that the Regional Water Quality Control Boards have the "primary responsibility for the coordination and control of water quality."

Therefore, as conditioned to obtain approval from the Regional Water Quality Control Board, the Commission finds that the proposed development conforms with Section 30231 of the Coastal Act regarding water quality.

#### D. Public Access/Recreation

Section 30212 of the Coastal Act states in 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:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

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

(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.

(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

The subject site is a bayfront lot on Lido Island. The site is adjacent to a small lot-sized park on the bay, providing public access to the harbor (see Exhibits 2 and 3.)

The proposed development consists of the demolition of an existing single-family residence and the construction of a single-family residence in a community developed with single-family residences.

The proposed development does not constitute an intensification of use and would not result in significant adverse impacts to coastal access and recreation. Therefore, the Commission finds that the proposed development conforms with Section 30212 of the Coastal Act.

#### E. 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 which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was certified on May 19, 1982. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan. Therefore, approval of the proposed development will not prejudice the ability of the City of Newport Beach to prepare a Local Coastal Program [Implementation Plan] that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

#### F. Consistency with the California Environmental Quality Act (CEQA).

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 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 proposed project has been conditioned in order to be found consistent with the geologic hazards and water resource protection policies of the Coastal Act. Mitigation measures; special conditions requiring conformance with geologic recommendations, submittal of an assumption of risk deed restriction, identification of the disposal site for excess cut dirt, approval from the Regional Water Quality Control Board and provision for a future permit for bulkhead work if necessary, will minimize all adverse effects. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified effects, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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Reference: USGS NEWPORT BEACH, CALIFORNIA, 7.5 MIN. QUAD. MAP, PHOTOREVISED 1981

Scale: 1 = 24,000



FIGURE NO.:

1



TITLE:	SITE VICINITY MAP	
PROJECT:	759 VIA LIDO SOUD, LIDO	
PROJECT NO.:	97122-101	DATE: 9-17

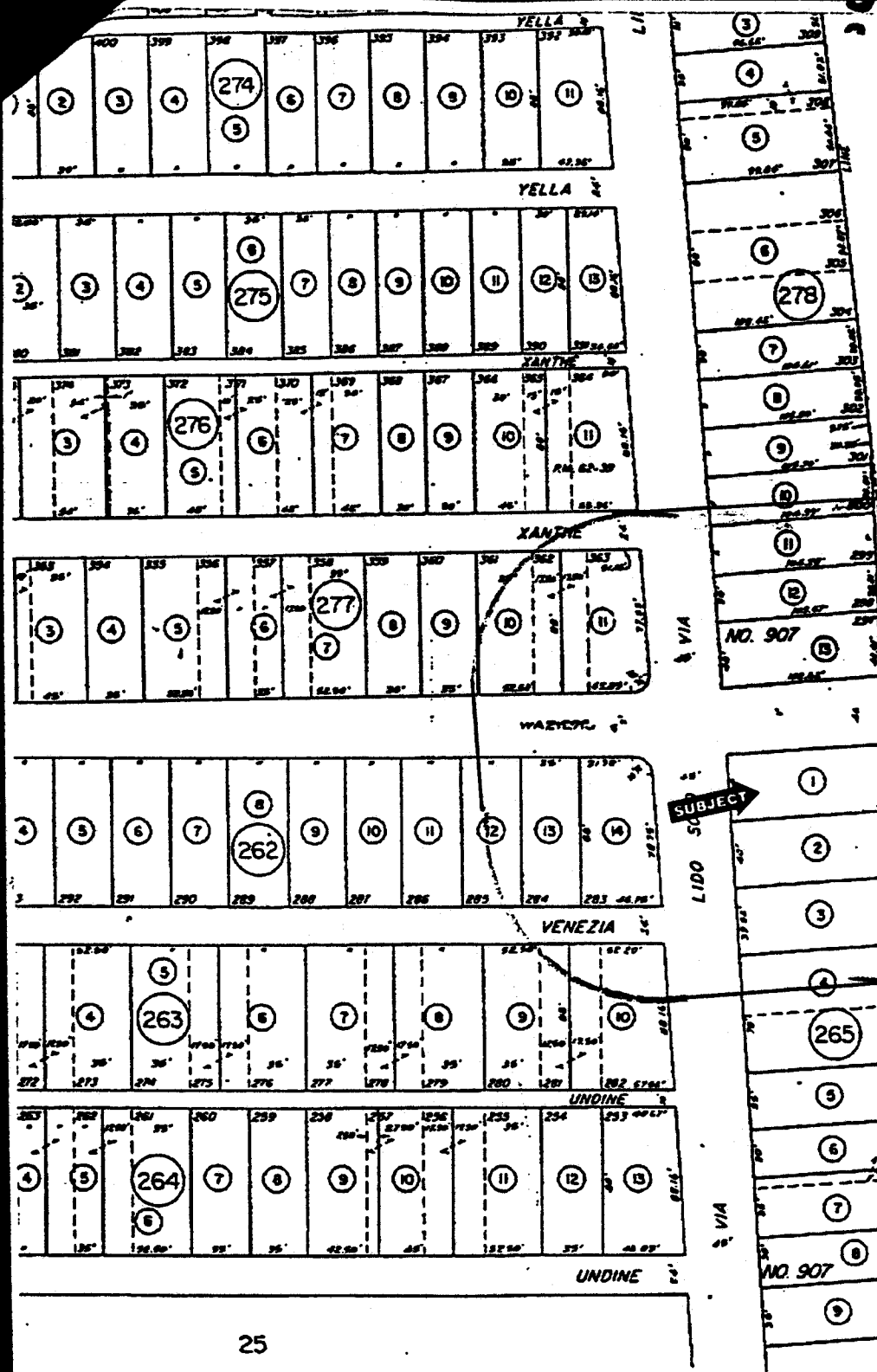
**EXHIBIT NO. 1**

APPLICATION NO. **5-98-072**

**VICINITY**

California Coastal Commission

5-98-072  
**RECEIVED**  
 MAR 10 1998  
 CALIFORNIA  
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25 TO 36 INC.

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

ASSESSOR'S MAP BOOK 423 PAGE 26 COUNTY OF ORANGE

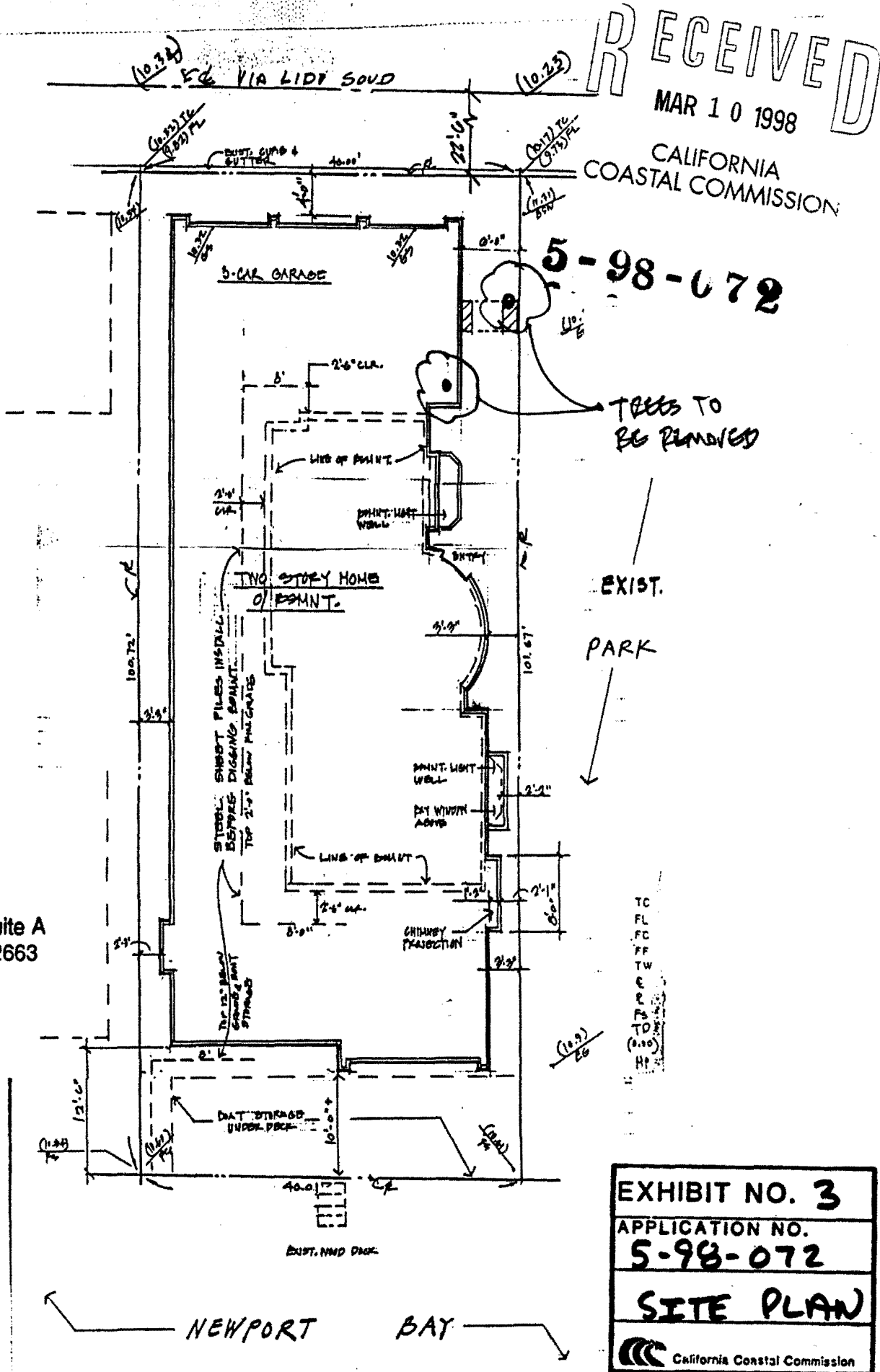
**Ownership Map**

**EXHIBIT NO. 2**  
 APPLICATION NO. 5-98-072  
 Assessors  
 MAP  
 California Coastal Commission

CUSTOM RESIDENCE FOR  
**JAN & JERRY BARTO**

Located at:  
 759 Via Lido Soud, Lido Island  
 Newport Beach, California

Eric F. Mossman  
 Architect AIA  
 2800 Lafayette Ave., Suite A  
 Newport Beach, CA 92663



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5-98-072

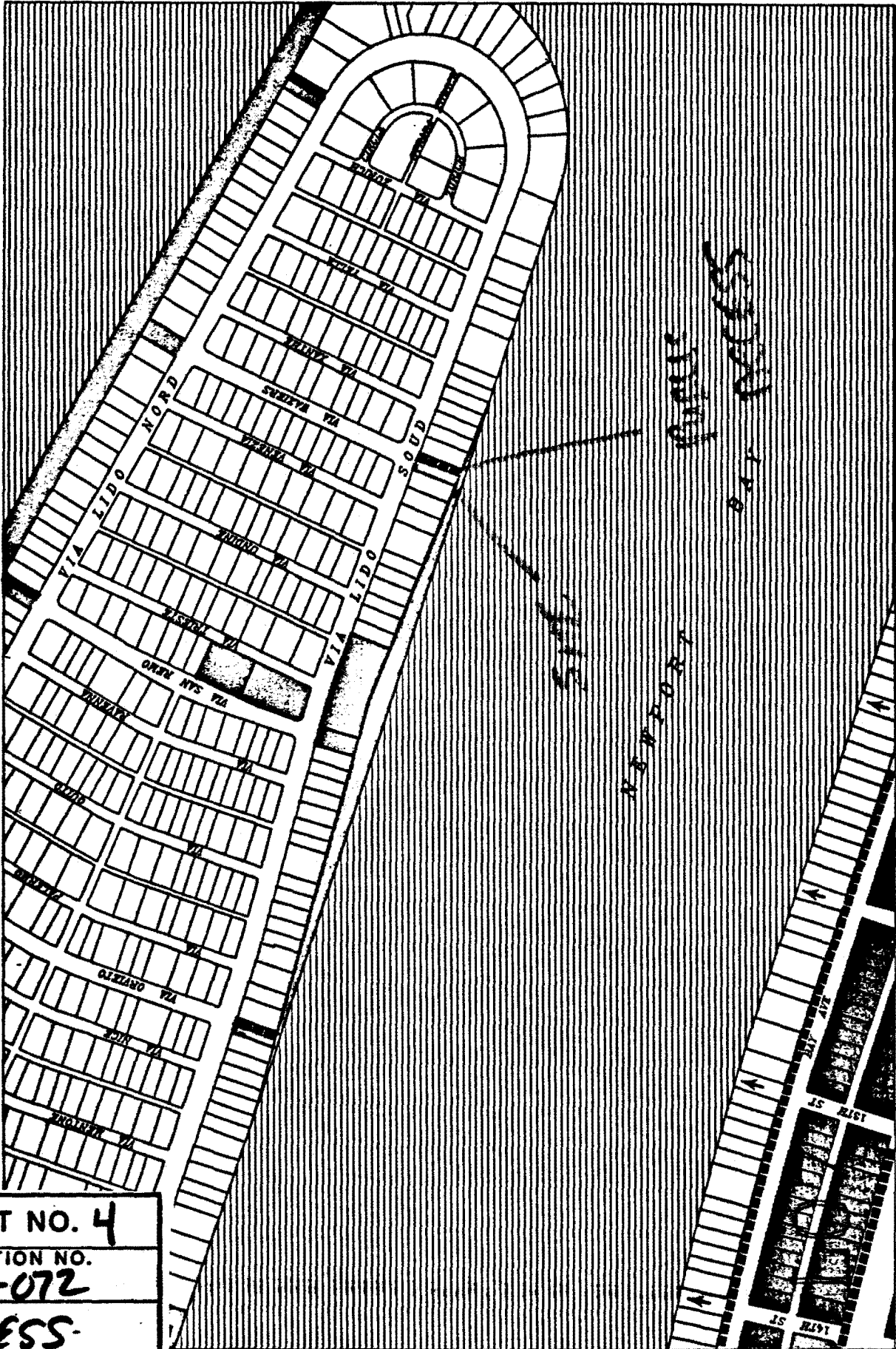
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<b>EXHIBIT NO. 3</b>
APPLICATION NO. <b>5-98-072</b>
<b>SITE PLAN</b>
California Coastal Commission



**SITE/GRADING PLAN**

NEWPORT BAY



**EXHIBIT NO. 4**  
 APPLICATION NO.  
**5-98-072**  
**ACCESS**