

**CALIFORNIA COASTAL COMMISSION**

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Staff Report: 9/22/99  
Hearing Date: 10/12-15/99  
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER: 5-99-243**

**APPLICANT: Fletcher Jones, Jr.**

**AGENT: Fleetwood B. Joiner**

**PROJECT LOCATION: 37 Linda Isle, Newport Beach, Orange County**

**PROJECT DESCRIPTION: Demolition of an existing single family residence and construction of a new 5981 square foot, 3 story (including basement), 24 feet high, single family residence with an attached 408 square foot, two car garage. The proposed project includes a 445 square foot basement. One hundred and sixty five (165) cubic yards of grading is proposed to accommodate the basement.**

**LOCAL APPROVALS RECEIVED: Newport Beach Approval in Concept No. 962-99**

**SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Preliminary Foundation Soils Exploration, prepared by Geo-Etka, Inc. dated May 10, 1999; Coastal Development Permits 5-98-072 (Barto); 5-97-417 (Davies); 5-97-409 (Haskell); 5-97-348 (Hezlep); 5-97-118 (Stern)**

**SUMMARY OF STAFF RECOMMENDATION:**

The proposed project includes construction of a single family residence on an island lot in Newport Harbor. Staff recommends that the Commission approve the proposed project subject to five special conditions: 1) conformance with geotechnical recommendations, 2) recordation of an assumption of risk deed restriction, 3) identification of the location of disposal site for the excess cut material, 4) evidence of Regional Water Quality Control Board approval, and 5) notification to the applicant that if the need for remediation improvements to the bulkhead become apparent during the proposed development, a coastal development permit may be required.

**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. Conformance with Geotechnical Recommendations

A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the Preliminary Foundation Soils Exploration report prepared by Geo-Etka, Inc., dated May 10, 1999. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

#### 2. Assumption of Risk

A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from liquefaction, waves, and flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

B. **PRIOR TO 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 incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction 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 Commission amendment to this coastal development permit.

#### 3. Disposal of Cut Material

Prior to issuance of the coastal development permit the applicant shall submit, for the review and approval of the Executive Director, a letter identifying the location of the

disposal site of the excess cut material. If the disposal site is in the coastal zone, a coastal development permit may be required.

#### **4. 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, written evidence from the Regional Water Quality Control Board demonstrating that the Regional Water Quality Control Board has approved the proposed project. If the Regional Water Quality Control Board requires any substantial changes to the project, as approved by the Commission, the changes shall be submitted to the Executive Director for a determination as to whether the changes require an amendment to this permit. Any changes that require an amendment shall not occur without an amendment to this permit.

#### **5. Improvements to Bulkhead**

If in the course of demolition and construction of the existing single family residence, the applicant uncovers structural problems with the existing bulkhead infrastructure (beyond that permitted in this staff report) which require 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 approval of any necessary permit or permit amendment from the Coastal Commission. Moreover, additional work on the bulkhead may require the approval of the California Department of Fish and Game, the Army Corps of Engineers and the Regional Water Quality Control Board.

### **IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

#### **A. Project Description and Location**

The applicant proposes to demolish an existing single family residence and construct a new 5981 square foot, 3 story (including basement), 24 feet high (above existing and finished grade), single family residence with an attached 408 square foot, two car garage. The proposed project also includes a 445 square foot subterranean basement. One hundred and sixty five (165) cubic yards of grading is proposed to accommodate the basement. The project meets the City's required 10 foot setback from the bulkhead.

The subject site is a bayfront lot with an existing bulkhead located on Linda Isle in Newport Harbor. No improvements are proposed to the existing bulkhead. However the City of Newport Beach requires that when a bayfront structure is demolished and reconstructed, the bulkhead infrastructure be exposed and examined to determine whether the bulkhead remains functional. For this reason, an informational special condition requires 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.

**B. Geologic Hazards**

Section 30253 of the Coastal Act addresses 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 Preliminary Foundation Soils Exploration was prepared for the proposed development by Geo-Etka, Inc. on May 10, 1999. The report included subsurface exploration, logging and soil sampling, and laboratory testing to determine the existing soil conditions at the site and to provide data and specific recommendations relative to the foundation design for the proposed development.

The subject site has a level surface and is bounded on the north by Linda Isle Drive, on the south by a bulkhead, on the east and on the west by residential development. The on site soil is composed of a layer of silty sand to the depth of 47 feet. Ground water was noted at a depth of 10 feet below existing grade.

In the Soils Exploration report the consultant notes that there is a risk of liquefaction at the site. The Soils Exploration report states:

Soil liquefaction is a phenomenon in which saturated cohesionless soils undergo a loss of strength during severe ground shaking and acquire a degree of mobility sufficient to permit ground deformation.

Regarding liquefaction at the subject site, the Soils Exploration report states:

Soil liquefaction caused by strong earthquake shaking may result in seismic settlement (ground subsidence). Such a subsidence is expected to occur in a relatively uniform manner across the site. Using the charts by Ishihara (1993), we estimated that total seismic settlement, if measurable at the ground surface, would be between 1-inch and 6-inches, depending on the thickness of the layers that liquefy. Localized differential settlements on the order of up to two thirds of the total settlements anticipated can be assumed.

The Soils Exploration report includes recommendations to address the potential liquefaction threat at the site, including the use of poured-in-place caissons, tied together by means of grade beams.

The Soils Exploration report also provides recommendations relative to the proposed basement. The floor of the basement is proposed to be 10 feet below existing grade. Groundwater was found at 10 feet below existing grade. The Soils Exploration report states that the basement walls and floor must be water proofed for high tide conditions. The report also makes recommendations regarding excavation and shoring for the basement. Regarding the proposed basement the Soils Exploration report states: "It is understood that an excavation depth of about 10 feet will be required to accomplish the planned construction. It is anticipated that excavation of the existing earth material will be accomplished fairly readily with normal excavation equipment."

The Soils Exploration report further states: "the construction of this project will not affect the stability of the surrounding structures, such as walls, electric poles, etc., provided all precautions needed are followed." The Soils Exploration report concludes that "the site is suitable for its intended use, namely a residence with a basement. In designing the proposed structures, the criteria given in the design section should be adhered to."

To assure geologic stability and structural integrity and to minimize risks to life and property, the Soils Exploration report's recommendations must be incorporated into the design and construction of the proposed project. Therefore, as a condition of approval the applicant shall submit grading, foundation and basement plans signed and stamped by the soils consultant indicating that the recommendations contained in the Preliminary Foundation Soils Exploration report, prepared by Geo-Etka, Inc. have been incorporated into the design of the project.

In addition, development in lower Newport Bay does involve a risk of flooding and liquefaction during a seismic event, as noted in the Soils Exploration report. The construction of a below grade basement on a harbor-fronting lot poses greater 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 at or below the water table is involved, the permit must also be conditioned for the recordation of an "assumption of risk" deed restriction. The "assumption of risk" deed restriction puts the current and potential future owners of the property on notice that the subject site with the proposed development is at greater than ordinary risk from the above described hazards.

Finally, the applicant is proposing to remove 165 cubic yards of material resulting from the basement excavation. The applicant has indicated that the location of the disposal site for this material is not known at this time. In order to assure that the future placement of this material does not adversely impact any coastal resources, a special condition of approval requires that the applicant submit a letter, subject to the review and approval of the Executive director, stating where the material will be disposed. If the cut material will be disposed of at a site within the coastal zone, a coastal development permit may be required.

Only as conditioned for conformance with the recommendations contained in the Soils Exploration report, recordation of an assumption of risk deed restriction, and identification of the disposal site for the cut material, and does the Commission find that the proposed development conforms with Section 30253 of the Coastal Act.

**C. 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.

(emphasis added)

Construction of the proposed basement will require dewatering of the site. The excess water is proposed to be pumped over the existing bulkhead into lower Newport Bay. This could result in adverse impacts to the quality of waters in lower Newport Bay. 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. 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." To assure that the proposed dewatering will not adversely impact the waters of Lower Newport Bay, the permit must be conditioned to obtain approval from the Regional Water Quality Control Board for the discharge of water into lower Newport Bay.

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

**D. Public Access and Recreation**

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea includes a specific finding that the development is in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act. The proposed development is located between the sea and the first public road.

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.

Sections 30210, 30211 and 30212 of the Coastal Act require that new development provide maximum public access and recreation, not interfere with the public's right of acquired access, and provide public access from the nearest public roadway to the shoreline and along the coast except under certain circumstances. The subject site is located on Linda Isle in Newport Harbor. Linda Isle is a private gated community. No public access exists in the project vicinity. The nearest public access exists along the public walkway around Balboa Island and on the public walkways on Lido Island. The proposed development, replacement of an existing single family residence with a new single family residence, will not create new adverse impacts on coastal access and recreation. Therefore, the Commission finds that the proposed development does not pose significant adverse impacts on existing public access and recreation and is consistent 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 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 Chapter 3 policies of the Coastal Act.

The Commission certified the Land Use Plan for the City of Newport Beach on May 19, 1982. As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan and with the Chapter 3 policies of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for Newport Beach 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**

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 amendment to the coastal development 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 quality policies of Sections 30253 and 30231 of the Coastal Act. Mitigation measures, in the form of special conditions which require conformance with geologic recommendations, recordation of an assumption of risk deed restriction, identification of the disposal site for the excess cut material, 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.

5-99-243 Jones stfrpt RC 10.99 mv

Jones Residence  
37 Linda Isle, Newport Beach, CA

Vicinity Map

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South Coast Region

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CALIFORNIA  
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VICINITY MAP

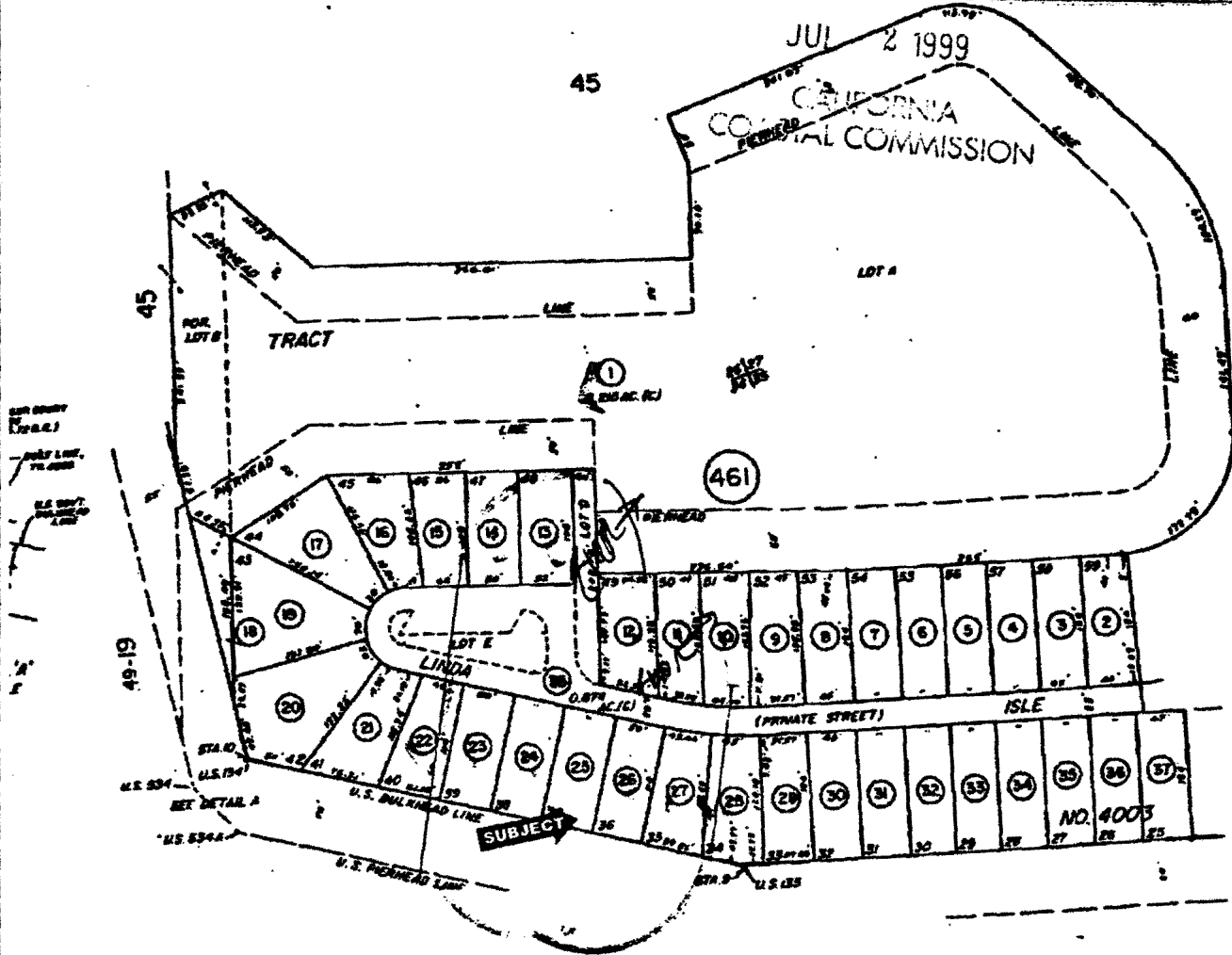
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Exhibit A

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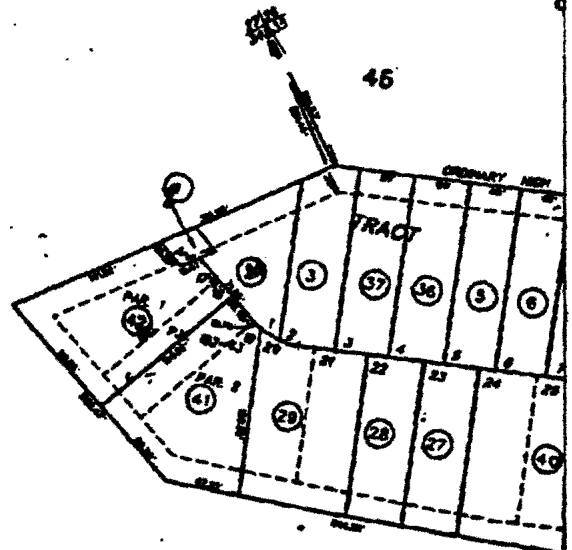
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MARCH 1977

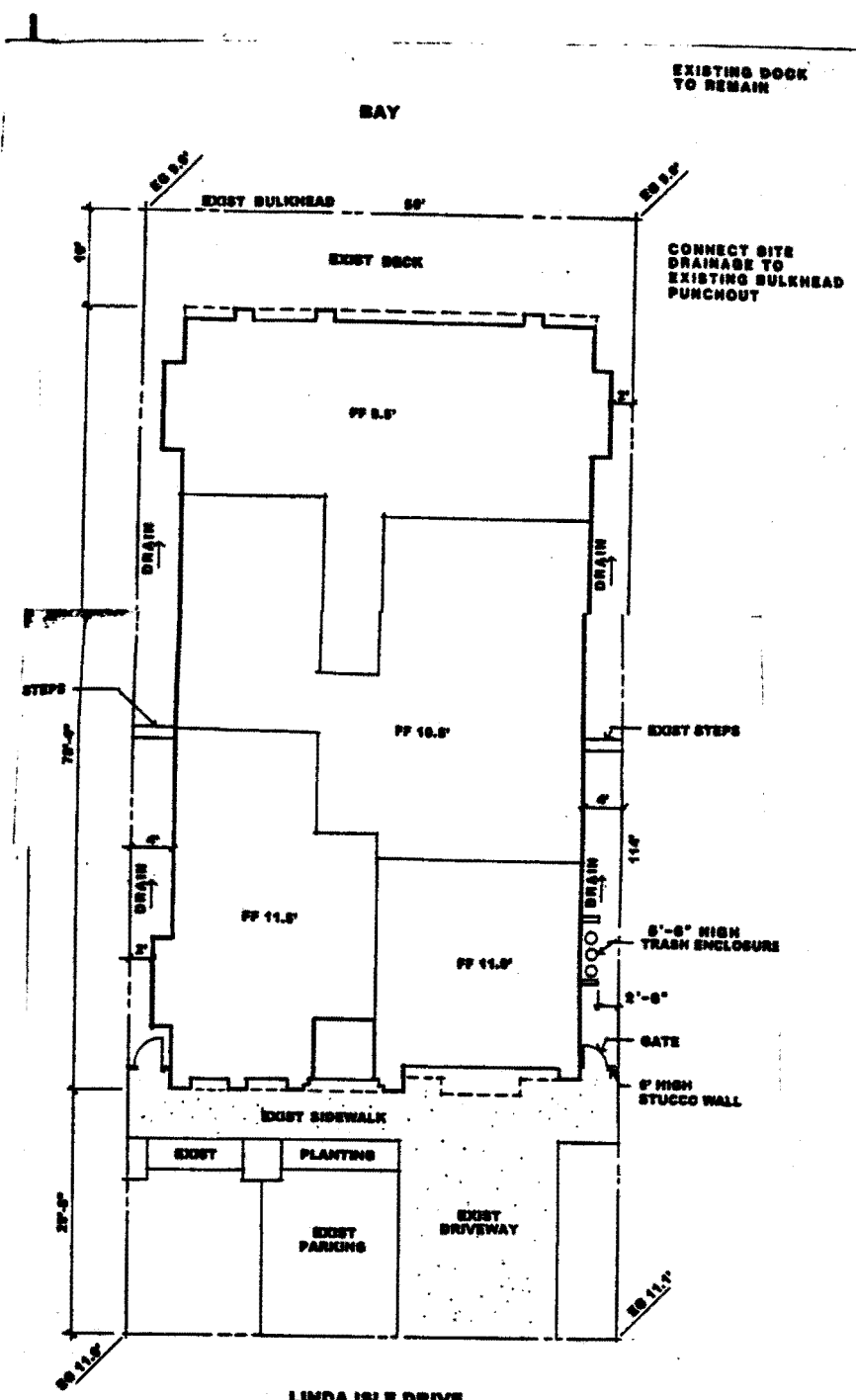
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5-99-243  
Exhibit B

TRACT NO. 4003




ALLOWABLE BUILDING AREA - 42' x 77' x 2 = 6,534 sq  
 ACTUAL BUILDING AREA -

BASEMENT	446 S.F.
FIRST FLOOR	2,740 S.F.
GARAGE	408 S.F.
SECOND FLOOR	2,786 S.F.
TOTAL	6,380 S.F.

**PLOT PLAN**  
 1/8" = 1'-0"

LEGAL DESCRIPTION: LOT 87 TRACT 4008

  
 5-97-243  
 Exhibit C

MAY 26 1999



FLEETWOOD B. JOIN  
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