

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: August 11, 1999
 49th Day: September 29, 1999
 180th Day: February 7, 2000
 Staff: KFS-LB
 Staff Report: October 14, 1999
 Hearing Date: November 2-5, 1999
 Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-99-297

APPLICANT: David Fournier

AGENT: Pete Swift, Swift Slip

PROJECT LOCATION: 6 Balboa Coves, Newport Beach, Orange County

PROJECT DESCRIPTION: Construction of a 10 foot by 12 foot wood pier platform to be supported by one 14 inch diameter concrete "T" piling. In addition, the existing 3 foot by 20 foot gangway will be relocated to extend from the proposed pier to the existing 10 foot by 20 foot dock float. The pier platform is proposed to be used as a staging area for boating related activities such as loading and unloading the boat and the storage of kayaks and other small marine vessels such as sabots.

LOCAL APPROVALS RECEIVED: City of Newport Beach Fire and Marine Department Approval in Concept, Harbor Permit Number 1011-6.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; City of Newport Beach Harbor Permit Policies, Coastal Development Permits 5-99-120 (Sutherland), 5-99-121 (Vance), 5-99-113 (Bradburne); 5-99-043 (Brown), 5-98-523 (Bridges).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed development subject to two special conditions. Special condition No. 1 requires minimization of construction impacts on harbor bottom and intertidal areas, appropriate storage of construction materials, removal of construction debris, and no mechanized equipment, except a barge or land-mounted crane, seaward of the bulkhead. Special condition No. 2 limits the use of the 10 by 12 foot platform solely to boating related uses.

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, is located between the nearest public road and the sea and is in conformity with the public access and public recreation policies of the Coastal Act, 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. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (c) No machinery, with the exception of a barge or land-mounted crane, shall be allowed at any time seaward of the bulkhead;
- (d) Disturbance of the harbor bottom and intertidal areas shall be minimized.

2. Use of Platform Limited to Boating Related Uses

By acceptance of this permit the applicant agrees and acknowledges that the sole use of the 10 by 12 foot platform area is limited to boating related uses and shall not be used for any other uses including but not limited to private residential patio amenities.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCATION

The applicant is proposing to construct a 10 foot by 12 foot wood pier platform. The pier platform will be supported by one 14 inch diameter concrete "T" piling. The proposed piling will result in the fill of approximately 1 square foot of open coastal waters. In addition, the existing 3 foot by 20 foot gangway will be relocated to extend from the proposed pier to the existing 10 foot by 20 foot dock float. The platform is proposed to be used as a staging area for boating related activities such as loading and unloading the boat and for the storage of kayaks and other small marine vessels such as sabots.

The subject site is located at 6 Balboa Coves, City of Newport Beach, Orange County, in Newport Harbor within the private gated community of Balboa Coves (Exhibit 1). The subject site was inspected for eelgrass and none was found.

B. MARINE ENVIRONMENT

The proposed project will involve the placement of one concrete T-pile in open coastal waters (i.e. Newport Bay). This pier platform piling constitutes fill of open coastal waters. More specifically, the proposed piling will have a total fill of approximately one square foot. Under

Section 30233 of the Coastal Act, fill of open coastal waters is only allowed when several criteria are met: (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.

In addition, the City's certified Land Use Plan states:

Residential and commercial structures (except piers and docks used exclusively for berthing of vessels) shall not be permitted to encroach beyond the bulkhead line.

The proposed project meets the first criteria because the proposed development is for recreational boating purposes. Fill of open coastal waters, such as Newport Harbor, for the construction of a boating facility is an allowable use under Section 30233(a)(4) of the Coastal Act. The proposed project requires one T-pile. The pile is necessary to support the proposed pier platform which is necessary to support a recreational boating facility. The project proposes to use a single T-pile to support the pier platform area. In this case, there is no pier area separate from the platform. Rather the pier area is comprised of the 10 by 12 foot platform. Since the platform is coincident with the pier, the same number of T-piles would be required to support the pier area whether it was widened to the 10 foot platform width or not. Therefore, no fill is required for the support of the platform. This pier platform is similar in design to development approved by the Commission under coastal development permits 5-99-043 (Brown) and 5-99-113 (Bradburne) where the pier and pier platforms were coincident with one another, where the pier platform was proposed for boating related uses, and where there was no difference in the quantity of pilings necessary to support a narrow pier versus a wider pier platform. Nevertheless, the question has arisen of whether or not the proposed 10 by 12 foot platform constitutes a bona fide boating use or would serve as private residential patio area. The City's certified Land Use Plan (LUP) policy cited above precludes residential and commercial structures (except piers and docks used exclusively for berthing of vessels) from encroaching beyond the bulkhead line.

Existing private, residential boating facilities in Newport Harbor often consist of a pile-supported pier with platform area, a gangway, and a rectangular or "U" shaped float. The City's Harbor Permit Policies limit the size of the platforms to 10 feet by 14 feet. Piers are fixed, pile-supported structures which extend from dry land areas to water areas which connect to a gangway that leads to a float. The length of a pier depends on the size of the boat, the amount of draft the boat needs, and the depth of the water. The overall length of a boat dock is limited by the City's Harbor Permit Policies (HPP). The HPP do not allow docks

to extend channelward of the adjudicated U.S. Pierhead Line, except in certain specified areas where, due to the bottom configuration and/or the width of the channel, they are allowed to extend to the adjudicated U.S. Project Line.

Piers and gangways in Newport Harbor are typically 3 to 4 feet wide. The docks or floats vary in size and configuration depending largely upon the type and size of boat to be docked. The majority of boat docks in Newport Harbor have platforms. Based upon a site visit, review of aerial photos of the harbor, conversations with the Newport Beach Fire and Marine Safety Department staff, and review of prior waivers and coastal development permits, Commission staff confirmed the approval of several platforms. Commission staff observed that while some of the existing platforms in Newport Harbor contained lockers, small boats, kayaks, and boating equipment or were empty, others had tables and chairs or benches, flower pots, etc. Staff also observed that while some of the platforms were supported by pilings at each corner, other platforms and piers were supported by a single row of "T" shaped piles.

The applicant has indicated that the platform will be used solely for boating purposes. Specifically, the applicant proposes to use the pier platform as a staging area to facilitate the loading and unloading of equipment and supplies to the boat as well as a storage area for kayaks and other small marine vessels. Based on the uses proposed by the applicant, the Commission finds that the proposed pier platform does constitute a boating facility. As a boating facility, the proposed pier platform is a use specifically allowed under Section 30233(a)(4) of the Coastal Act.

Although as proposed the pier platform constitutes a bona fide boating facility, there is the possibility that additional uses may be contemplated in the future. If a future use did not constitute a legitimate boating use, the issue of fill (in the form of piles supporting the pier platform) for a non-allowable use is raised. For example, the pier platform area could be converted to private residential patio use by the placement of chairs or tables. In order to assure that this does not happen, special condition No. 2 is required. Special condition No. 2 limits the use of the pier platform solely for boating related purposes.

In addition to the use-related issue, Section 30233 of the Coastal Act also requires that any project involving fill of open coastal waters be the least environmentally damaging feasible alternative. One way to reduce environmental damage to open coastal waters is to minimize the quantity of fill. Some pier platforms in Newport Harbor have been constructed using two T-piles centered under the platform area rather than a single pile at each of the four corners. Although the T-piles have a slightly larger diameter than the single piles, the use of two T-piles rather than four single piles results in less fill. In this case, the proposed project only requires one T-pile to support the pier platform because one end of the pier platform is connected to the bulkhead,. In addition, the project has been designed in conformance with the Department of Boating and Waterways Guidelines, and uses only the piles necessary to support recreational boating facilities. Therefore, since the proposed project minimizes the quantity of fill of coastal waters, the Commission finds that the proposed project is the least environmentally damaging feasible alternative.

Finally, Section 30233 of the Coastal Act also requires that feasible mitigation measures to minimize adverse environmental effects must be provided. The proposed project meets this requirement because the proposed piling will provide habitat for marine organisms such as mollusks.

The proposed project will result in the fill of open coastal waters for a boating facility, which is an allowable use under Section 30233 of the Coastal Act. In addition, the proposed project 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.

C. PUBLIC ACCESS

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

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.

Section 30224 of the Coastal Act states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Sections 30210, 30211 and 30212 of the Coastal Act require that new development provide maximum public access and recreation, avoid interference 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 within Newport Harbor in the private locked gate community of Balboa Coves. Therefore, no public access is available in the immediate project vicinity. However, public access and recreation opportunities exist nearby at a public park adjacent to Channel Place and the end of River Avenue (Exhibit 1).

The proposed development consists of construction of a new boat dock within the U.S. Pierhead Line. The proposed development will not adversely impact navigation. The development will not create 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.

In addition, the proposed development is a recreational boating facility. Recreational boating facilities are an encouraged use under Section 30224 of the Coastal Act. Therefore, the proposed development is consistent with Section 30224 of the Coastal Act.

D. WATER QUALITY

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.

The applicant is proposing to construct a new recreational boating facility on the water in Newport Harbor. The approval from the City of Newport Beach indicates that no eelgrass is present at the subject site.

Due to the proposed project's location on the water, the proposed work 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. In order to avoid adverse construction related impacts upon marine resources, special condition 1 outlines construction related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

Only as conditioned for appropriate storage of construction materials and equipment does the Commission find that the proposed development is consistent with Section 30230 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. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's 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 proposed project has been conditioned for consistency with the marine resource protection policies of Sections 30230 and 30233 of the Coastal Act. Mitigation measures, in the form of special conditions require 1) removal of construction debris and minimization of construction impacts, and 2) limiting the use of the 10 by 12 foot platform solely for boating related purposes, will minimize all adverse effects. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which will lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.



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COASTAL COMMISSION

5-99-297

EXHIBIT # 1

PAGE 1 OF 2

PARK

STATE PROPERTY

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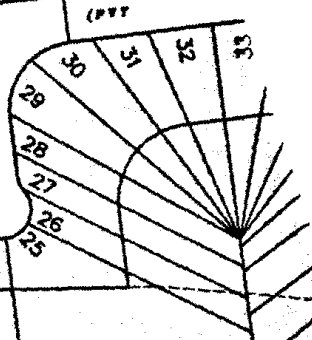
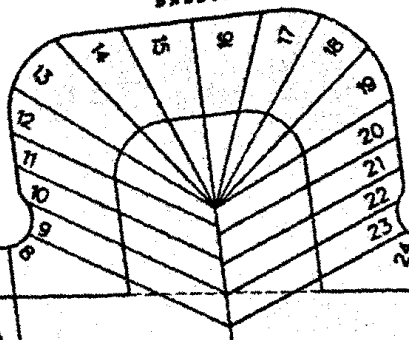
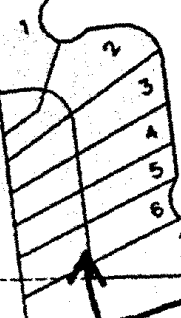
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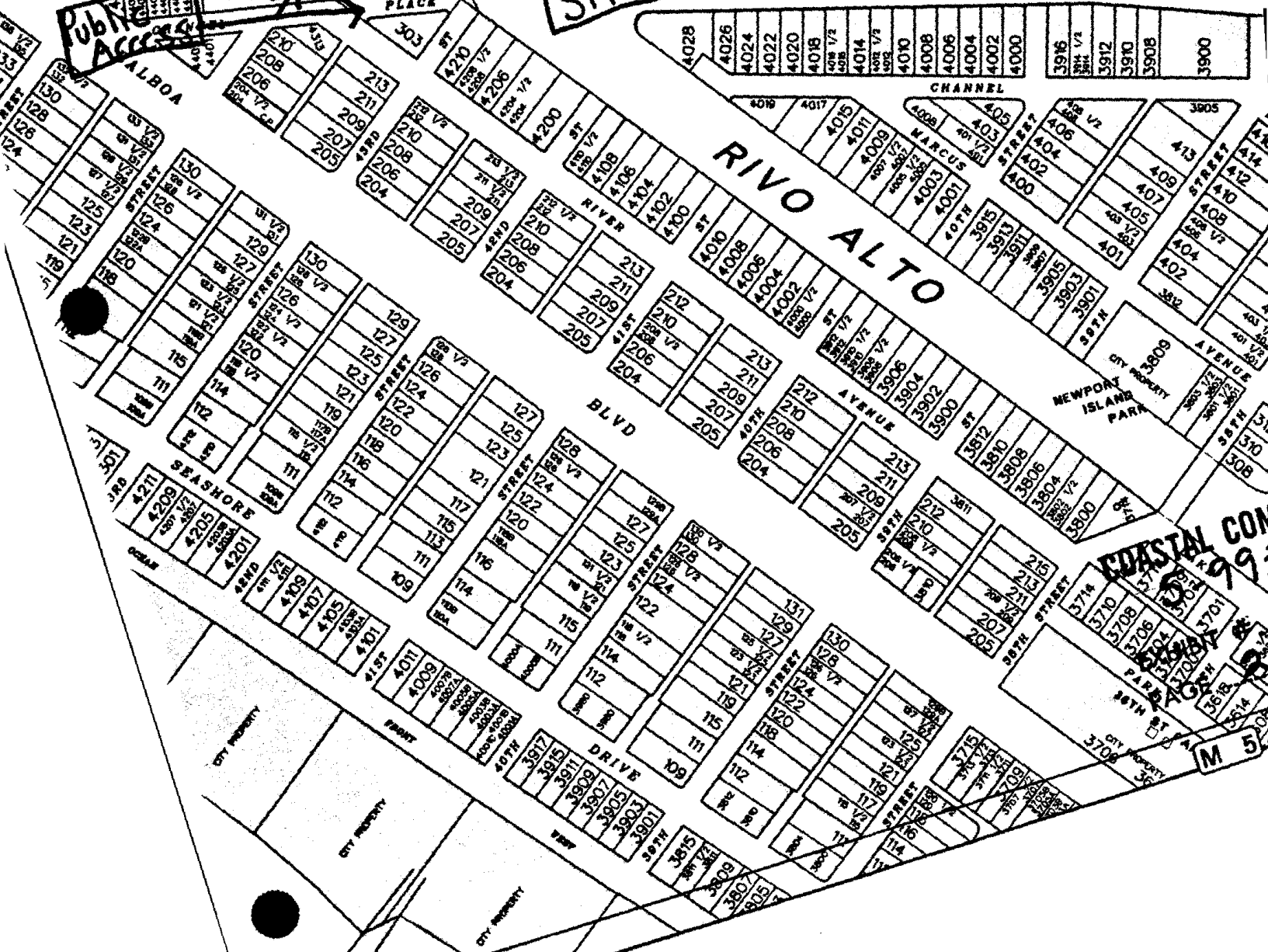
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CHANNEL PLACE PARK

SITE

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Public Access

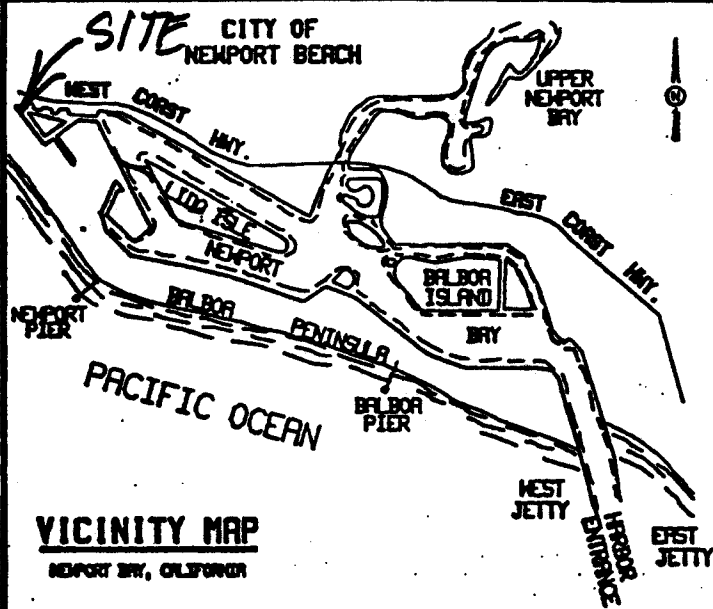


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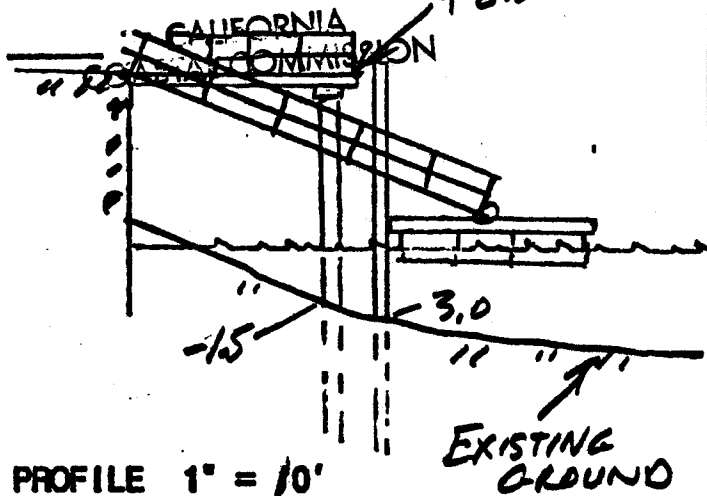
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CITY OF NEWPORT BEACH

1011-6
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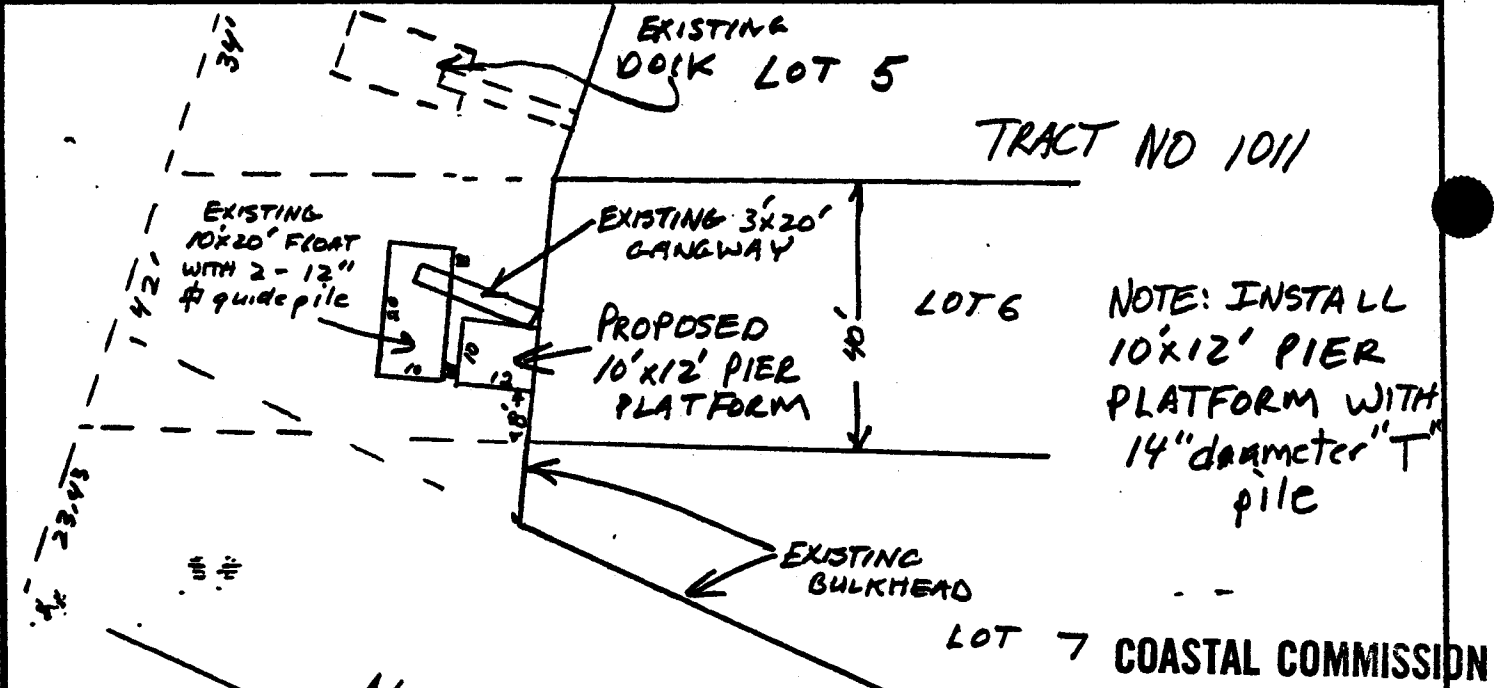


VICINITY MAP
NEWPORT BAY, CALIFORNIA



PROFILE 1" = 10'

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



NOTE: INSTALL 10'x12' PIER PLATFORM WITH 14" diameter "T" pile

- EEL GRASS INSPECTION**
- NO EEL GRASS
 - EEL GRASS IN THE PROJECT AREA

David Fournier
SIGNATURE

1011-6 PERMIT# 6-21-99 DATE

FIRE & MARINE DEPT. BY: *[Signature]*
CITY OF NEWPORT BEACH
EFFECTIVE
DEPLAN VIEW 1" = 0'

EXHIBIT # 2
PAGE 1 OF 1
South District Office
APPROVE: *[Signature]* DOCK 5 - 99-297
Permit No. _____

APPLICANT'S NAME DAVID FOURNIER JOB ADDRESS #6 BALBOA COVES DATE 6-15-99