

CALIFORNIA COASTAL COMMISSION

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W20i

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Staff: RMR/LB
Staff Report: 01-13-99
Hearing Date: Feb. 2-5, 1999
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-98-295

APPLICANT: George Briggeman

AGENT: Construction Resources

PROJECT LOCATION: 85 Linda Island, Newport Beach, Orange County

PROJECT DESCRIPTION: Remove an existing dock and pier. Construct a new 3 foot wide by 22 foot long, 79 foot long by 32 foot wide "L" shaped dock with a 14 foot long by 10 foot wide concrete deck.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends the Commission approve the proposed development with special conditions regarding provision of Regional Water Quality Control Board approval, removal of construction debris, location of disposal site for construction debris, and a prohibition on future shoreline protective structures to protect the deck.

STAFF NOTE:

This application was scheduled for the January 14, 1999 hearing. Neither the applicant nor the applicant's agent were available at the hearing. At the hearing, staff considered a significant modification to the recommendation. Instead of proceeding with the hearing, absent the applicant or applicant's agent, the Commission trailed the application item to the January 15, 1999. On January 14, 1999 staff contacted the applicant's agent. The agent indicated that the applicant was out of town and that he (the agent) was not prepared to discuss staff's revised recommendation. Therefore, the agent requested that the item be continued to February 1999. Because these developments occurred at the last minute, staff has not had time to revise the staff report to conform with the revised staff recommendation. Therefore, the January 1999 staff report is being put forward with the original staff

recommendation. Staff will prepare an addendum staff report which will include the revised recommendation.

ISSUES OF CONTROVERSY:

Staff is recommending approval of the proposed development. In areas of Newport Beach where the private ownership extends out into the Bay or Harbor, City of Newport Beach harbor policy allows either a 5 foot cantilevered deck or a 10 foot wide by 14 foot long pile-supported deck structure. In areas of City, County or State Land jurisdictional waters this policy is not in effect and these structures are not allowed. Previously, the cantilevered or 10 by 14 decks have been approved by the Commission as waivers or administrative or consent permits with no special conditions. Staff has scheduled this application on the Regular Calendar because of the special condition requiring a deed restriction to prohibit future shoreline protective measures to protect the 10 foot by 14 foot concrete deck.

LOCAL APPROVALS RECEIVED: Approval in concept from the City of Newport Beach fire and Marine Department.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan, City of Newport Beach Harbor Permit Policies, Coastal Development Permits at 153 Harbor Island Rd (5-83-853), 1617 Bayside Dr. (5-85-112), 721 Bayside Dr. (5-97-272-W), 3 Linda Isle Dr. (A-8837), 701 Bayside Dr. (P-3310), 651 Bayside Dr. (A-3607), 440 Harbor Island Dr. (P-4715), 654 Harbor Island Dr. (P-5589), 600 Harbor Island Dr. (A-5-24-77-973), 26 Linda Isle Dr. (5-97-200-W), 27 Linda Isle (5-87-862), 22 Linda Isle Dr. (5-88-1058), 554 Harbor Island Dr. (A-2-24-77-239), 615 Bayside Dr. (P-3107), and 536 Harbor Island Dr. (A-9351).

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, is located between the sea and the first public road nearest the shoreline and 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. Future Coastal Protective Structure

Prior to the issuance of the coastal development permit, the applicant shall record a deed restriction in a form and content acceptable to the Executive Director, which shall provide that no shoreline protection devices shall be permitted to protect the 10 foot by 14 foot concrete deck which extends a maximum of 14 feet seaward of the bulkhead line. In the event that the concrete deck becomes damaged, the applicant may submit an application amendment to repair and replace the existing structure but not to place fill, additional caissons or place any hardened structures beyond the existing bulkhead underneath or seaward of the proposed 10 foot by 14 foot deck.

The document shall run with the land binding all successors and assigns, and shall be recorded free and clear of prior liens and encumbrances which 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. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

Disturbance to the harbor bottom and intertidal areas shall be minimized. The applicant agrees not to store any construction materials, oils or liquid chemicals or other waste where it is subject to wave erosion and dispersion into the harbor waters. The applicant shall remove from the beach, bulkhead and dock area any and all debris resulting from the demolition of the existing dock and the construction of the new dock. No mechanized equipment, with the exception of a barge or land-mounted crane, is allowed seaward of the seawall at any time.

3. Location of Debris Disposal Site

Prior to the 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 proposed 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 within the coastal zone a coastal development permit or an amendment to this permit shall be required before disposal can take place.

4. Regional Water Quality Control Board Approval

Prior to the issuance of the coastal development permit the applicant shall submit for 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.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The proposed development consists of the removal of ramp and dock and the construction of a 79 foot long by 32 foot wide "L" shaped dock, a 3 foot wide by 22 foot long ramp, and a 14 foot long by 10 foot wide cantilevered concrete deck. The concrete deck is proposed to be supported by four pilings, while the ramp and dock are proposed to be supported by five pilings. The proposed deck will extend a maximum of 14 feet seaward of the existing bulkhead line.

The project site is located on Linda Isle in the Newport Harbor (see Exhibit 1). Linda Isle is a private, gated island accessible from Bayside Dr. just south of where Pacific Coast Highway crosses Lower Newport Bay. The site and surrounding properties are protected by an existing bulkhead. There are docks and piers on the adjacent properties which extend to the U.S. Pierhead Line (see Exhibit 2). The waters within the U.S. Pierhead Line are under the jurisdiction of the City of Newport Beach, however, the area encompassing the proposed deck are privately owned waterways.

Staff was contacted by the Department of Fish and Game which has no comments on the proposed project. In addition, the Army Corps of Engineers sent staff a Letter of Permission (LOP) which states that the project does not require any dredging or filling and no eelgrass is impacted by the proposed development.

B. Stringline Policy and Shore Protection Structures

1. Coastal Act Policies

Section 30235 of the Coastal Act provides guidelines for the construction of structures which alter shoreline processes. It states:

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. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

2. City of Newport Beach Policies

The certified LUP did not adopt the Commission's stringline policy. The seaward extent of development on waterfront lots in Newport Beach is government by city-imposed setbacks. There are generally two setbacks which the City imposes, a setback for enclosed residential development from the bulkhead, and the bulkhead line.

Historically, the Commission and the Executive Director have not imposed the Commission's stringline guidelines on development in Newport Harbor but have used the City's setbacks for guidance. The City policies governing bulkheads and development between the bulkhead line and the pierhead line are found in the 1998 City of Newport Beach Harbor Permit Policies. This document was adopted by the City in 1964 and amended in 1998. The Harbor Permit Policies also includes guidelines for cantilevered decks and other decks, as well as a list of definitions. On Linda Isle the Commission historically has used these harbor policies as guidance in approving development. There are several definitions of note in these guidelines:

PIER: The term "Pier" shall mean any fixed or floating structure for securing vessels, loading or unloading persons or property, or providing access to the water, and includes wharfs, docks, floats or other landing facilities, and dry docks.

BULKHEAD LINES: The "Harbor Lines," as established, shall define the limit of solid filling or solid structures.

PIERHEAD LINE: The "Pierhead Lines," as established, shall define the limit for pier and float-type structures.

The general harbor regulations contains the following policy pertaining to seaward encroachment:

Only piers, floats, certain patio decks and their appurtenances shall be permitted between the bulkhead and pierhead lines.

The section on bulkheads contains the following policy:

All bulkheads in residential districts shall be installed on the established bulkhead line or at a location behind the bulkhead line that would preserve the design profile of the harbor. Any retaining or ornamental wall installed landward of the bulkhead line shall be considered a bulkhead if it also serves to contain the waters of the harbor and shall be processed in the same manner as if it were on the bulkhead line.

The City has policies concerning exceptions. Among these exemptions are:

PATIO DECKS: In areas where the waterways are privately owned, and within Promontory Bay, patio type decks may be cantilevered beyond the established bulkhead lines subject to the following conditions:

- A. The maximum projection of patio deck encroachments beyond the bulkhead line shall be limited to five feet.

Section 5a of the Harbor Permit Policies provides that the Marine Department can approve and issue permits which conform to the standard harbor drawings. The standard harbor drawings include provision for a maximum 10 foot by 14 foot deck on private waterways in the City of Newport Beach as part of the overall dock system.

Linda Isle is a private, gated community with access to it from the mainland by Aloha Dr. Exhibit 3 shows that the island is horseshoe shaped. The waters inside the horseshoe are private waterways. The waters between the island and PCH are private waterways. The channel between the island and Bayside Drive are private waterways. However, the waters on the southern horseshoe are county tidelands and are not private. Exhibit 3 shows a parcel map of the area. Exhibit 4 is the assessors parcel map. As can be seen from these exhibits, the site is located on waters between the horseshoe, which are private waterways.

3. Proposed Project

The proposed development consists of the removal of an existing dock and pier and the construction of a new 3 foot by 22 foot ramp, 79 foot long by 32 foot wide "L" shaped dock with a 14 foot by 10 foot concrete deck. The concrete deck extends a maximum of 14 feet seaward of the bulkhead and is a maximum of 10 feet wide. A 3 foot wide by 22 foot long ramp connects the concrete deck with the dock. The applicant is proposing to install 5 pilings for the new dock and four pilings for the concrete deck. The dock is located within the U.S. Pierhead Line (see Exhibit 2).

4. Project Analysis

The proposed development is located on Linda Isle, an area where the private property jurisdiction extends out beyond the bulkhead line into harbor waters. The City of Newport Beach, the Executive Director and the Commission have approved permits for development extending beyond the bulkhead line on Linda Isle and other specified areas of Newport

Harbor. The City and the Commission do not approve development such as decks extending seaward of the bulkhead in waters of Newport Harbor which are in the public domain.

Specifically, there are Commission approvals for cantilevered decks extending five feet beyond the bulkhead at 153 Harbor Island Rd (5-83-853), 1617 Bayside Dr. (5-85-112), 721 Bayside Dr. (5-97-272-W), 3 Linda Isle Dr. (A-8837), 701 Bayside Dr. (P-3310), 651 Bayside Dr. (A-3607), 440 Harbor Island Dr. (P-4715), 654 Harbor Island Dr. (P-5589), and 600 Harbor Island Dr. (A-5-24-77-973).

Permits issued for 10 foot by 14 foot piers/decks include: 26 Linda Isle Dr. (5-97-200-W), 27 Linda Isle (5-87-862), 22 Linda Isle Dr. (5-88-1058), 554 Harbor Island Dr. (A-2-24-77-239), 1615 Bayside Dr. (P-3107), and 536 Harbor Island Dr. (A-9351).

Staff documented these instances by reviewing the application address files and the permit record files in the South Coast Office. However, there are probably more examples of decks and cantilevered decks in the areas of Linda Isle, Harbor Island and Bayside Dr., because project descriptions in agendas and permit logs which mention piers may also be referring to the 10 foot by 14 foot decks.

The Commission routinely approves the installation of boating dependent facilities, i.e., floating docks, ramps and boat slips, between the bulkhead line and the U.S. Pierhead Line. The typical boating structure includes a ramp extending from the bulkhead to the dock. The Commission does not routinely approve the placement of reinforced concrete deck structures beyond the bulkhead line in Newport Harbor, except in the areas where private property extends out into the harbor.

On bayfront property in Newport Beach the City imposes setbacks landward from the bulkhead line for enclosed residences. This setback line then becomes the line for seaward encroachment of enclosed residence living area. This often happens on coastal bluffs as well where some communities or subdivisions where blufftop setbacks become the residential seaward line of development. However, both the City imposed setbacks from the bulkhead and the bulkhead line do form de facto seaward lines for development on Linda Isle. There is a difference between the Commission's stringline policy and the use of setbacks to restrict seaward development. The stringline is calculated on a line drawn from the corners of adjacent structures. For setbacks, the applicant can build out to a set line without regard to the adjacent structures. The criteria for bulkheads is that the Commission does not permit the seaward encroachment of bulkheads and the use of backfill. Bulkheads either have to be replaced in the same location or moved landward.

In addition, there is the question of whether allowing this type of structure means that a resident might be able to fortify or place shoreline protective structures in front of the decks to protect them, as per Section 30235 of the Coastal Act.

5. Seaward Encroachment of Development

In most cases the Commission does not permit the placement of deck structures seaward of the bulkhead line. The bulkhead line acts as the seaward extent of development. No hardened structures would be required to protect the rear yard improvements because of

the existing bulkhead. However, in the case of private waterways, the City policies do allow the placement of 5 foot cantilevered decks and 10 foot by 14 foot pile-supported decks/platforms beyond the bulkhead. The Commission also has a policy of approving 5 foot cantilevered decks in Huntington Harbor. Staff was concerned whether the City had policies in place limiting the size of these deck structures and whether approval of a 10 by 14 deck might lead to approvals of much larger decks. However, the criteria in the harbor drawings show that the City limits the size of these decks is limited to a 10 foot wide by 14 foot long (seaward of the bulkhead) deck.

The City of Newport Beach's harbor development policies are included in subsection 2 of this staff report. Clearly, the City of Newport Beach allows for the installation of cantilevered decks (5 feet) and 10 foot by 14 foot decks in areas where the waterways are privately owned. The waterways in Linda Isle are privately owned. Therefore, this type of development is allowable under the City's harbor policies. In addition, the Executive Director and the Commission have approved at least 20 previous permits for five foot cantilevered decks and 10 foot by 14 foot decks. Three of these previous Commission approvals are for 10 foot by 14 foot decks at residences in Linda Isle, the latest being 5-97-200 at 26 Linda Isle Dr.

6. Future Shoreline Protective Structures

As to the question of further shoreline protective measures to protect these decks, the City of Newport Beach Harbor Permit Policies clearly state that the "Bulkhead Line" shall define the limit of solid filling or solid structures. However, the Coastal Act does not provide this distinction. Instead, Section 30235 of the Coastal Act specifies under what conditions shore protection structures are allowed. This section specifies that construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures. Under the Coastal Act if the Commission approves a structure then that structure becomes eligible for protection under Section 30253. For this reason, the Commission finds that the applicant shall comply with a special condition stating that no shoreline protection measures shall be taken to protect decks beyond the bulkhead line at the locations where these decks are permitted under the City of Newport Beach Harbor Permit guidelines. If the decks become damaged they can be repaired or replaced but no shoreline protective structures can be placed seaward of the bulkhead under or seaward of the decks. Only as conditioned does the Commission find the proposed development consistent with Section 30253 of the Coastal Act.

C. Filling of Open Coastal Waters

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:

- (l) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
 - (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.
 - (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.
 - (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
 - (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
 - (7) Restoration purposes.
 - (8) Nature study, aquaculture, or similar resource dependent activities.
- (b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

Section 30108.2 of the California Code of Regulations provides a definition of "fill":

"Fill" means earth or any other substance or material, including pilings placed for the purposes of erecting structures thereon, placed in a submerged area.

The applicant is proposing to remove an existing ramp and dock and construct a new ramp, dock and concrete deck seaward of the bulkhead. Four pilings are required to support the 10 foot wide by 14 foot long reinforced concrete deck and five pilings are necessary to support the proposed 79 foot long by 32 foot wide dock. Exhibit 2 shows the existing ramp, the neighboring docks and the proposed deck, ramp and dock. The exhibit refers to the concrete deck as a concrete deck. The exhibit also shows that the concrete deck is seaward of the bulkhead. The proposed concrete deck connects with the new ramp which connects with the dock.

The Army Corps of Engineers issued a Regulatory Guidance Letter in 1990. Although the letter expired in 1993, it provides guidance on the Army Corp's policy of when a piling is or is not considered to constitute filling of coastal waters. The letter states:

For some years, the Army Corps of Engineers, as a matter of policy, has taken the position that pilings do not ordinarily constitute fill material and that the placement of pilings do not ordinarily constitute a discharge of fill material under the Clean Water Act.

Historically, pilings were generally used for traditional pile-supported structures such as decks and bridges where the effect, purpose, and function of the pilings were not to replace an aquatic area with dry land or to change the bottom elevation of a waterbody.

The letter concludes that in some situations pilings are considered fill. In these instances, the pilings are placed so close together that sedimentation rates are increased and result in the replacement of aquatic area or change in the bottom elevation. In addition, piling projects are analyzed to determine if the functional use and effect of the pilings constitutes fill.

The Corp's policy is that no mitigation is required for pilings (except for marinas) because although the pilings do displace some harbor bottom and water column, the pilings themselves provide habitat for marine organisms.

The pilings are not closely spaced and do not serve the functional equivalent of fill, according to the Army Corps definition. It is the Commission's policy that placement of pilings constitutes fill. In this instance the applicant's plan show that four pilings are required for the concrete deck and five pilings are required for the dock. The deck, ramp and dock are all facilities associated with recreational boating. Additionally, the pilings themselves are self-mitigating in that they provide habitat for marine organisms. Finally, the use of pilings to support a recreational pier, in this instance, is the least damaging alternative. Therefore, the use of fill for pilings for recreational boating use is an allowable use under Section 30233(a)(4) of the Coastal Act.

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.

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.

The proposed development is located on Linda Isle in the Lower Newport Bay portion of Newport Harbor. Linda Isle is a private, pre-Coastal Act, locked-gate community in Newport Harbor.

The proposed development consists of the removal of an existing dock and ramp and the construction of a new dock, ramp and concrete deck for a private recreational boat. No work is proposed on the residence. The proposed development is a normal improvement for single-family residences in this area. The proposed development will not adversely impact existing navigation. The development will have no adverse impacts on coastal access and recreation.

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. Public vertical and lateral access does not exist in the immediate project vicinity. Linda Isle is a private residential island in Newport Harbor. The private nature of the island precludes public access and recreation to the harbor frontage within the community. In addition, the waterfront in this area is dominated by private boat docks and ramps, further limiting public access to the waterfront in the subject area. The community was in existence prior to the Coastal Act.

In this case the proposed improvement, is the replacement of a private boating recreational dock with a private boating recreational dock. The proposed development does not constitute an intensification of use. The proposed development will not create additional significant adverse impact to public beach access. Therefore, the Commission finds that the proposed development does not pose significant adverse impacts on public access and recreation and is consistent with Section 30212 of the Coastal Act.

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

E. 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 project site is waterfront property in Newport Harbor. The existing development is protected by a bulkhead. The applicant is proposing to demolish an existing ramp and dock and construct a new ramp, dock and concrete deck. The Army Corps LOP (see Exhibit 6) indicates that no eelgrass is present at the site. However, the applicant has not provided approval from the Regional Water Quality Control Board. Regional Water Quality Control Board approval is necessary to assure that the project has been reviewed and will not adversely affect water quality in the harbor. Special condition number 4 of this staff report requires the applicant to submit Regional Water Quality Control Board approval prior to issuance of the coastal development permit.

The development is located on the water and there is always the possibility that materials from demolition or construction may end up in the harbor waters. In order to prevent adverse impacts to marine waters from construction and demolition, special conditions 2 and 3 provide for the safe storage of construction materials and the disposal of demolition end-products.

Only as conditioned for provision of Regional Water Quality Control Board approval, storage of construction materials and equipment, removal of demolition and construction debris and disposal of the aforementioned debris does the Commission find that the proposed development is consistent with Section 30230 of the Coastal Act.

F. Land Use Plan

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 regarding development in coastal waters. 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).

G. 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 marine resource protection policies of Section 30230 of the Coastal Act and Section 30235 of the Coastal Act. Mitigation measures; special conditions requiring removal of construction debris, provision of Regional Water Quality Control Board approval, mitigation of construction impacts and prohibition on future shoreline protective structures 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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EXHIBIT No. 1

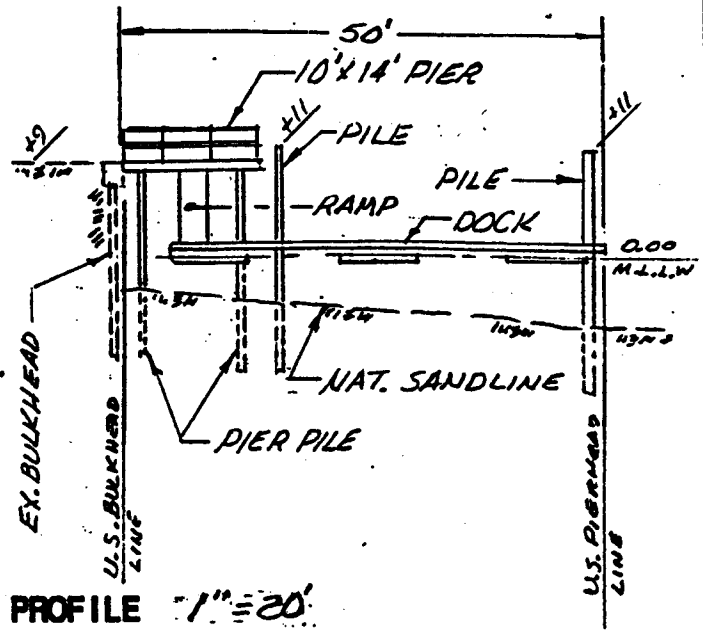
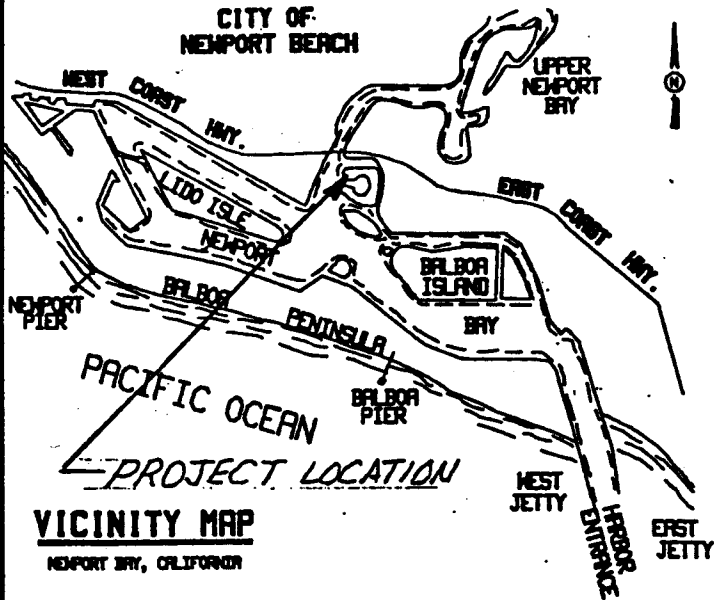
Application Number:

5-98-295

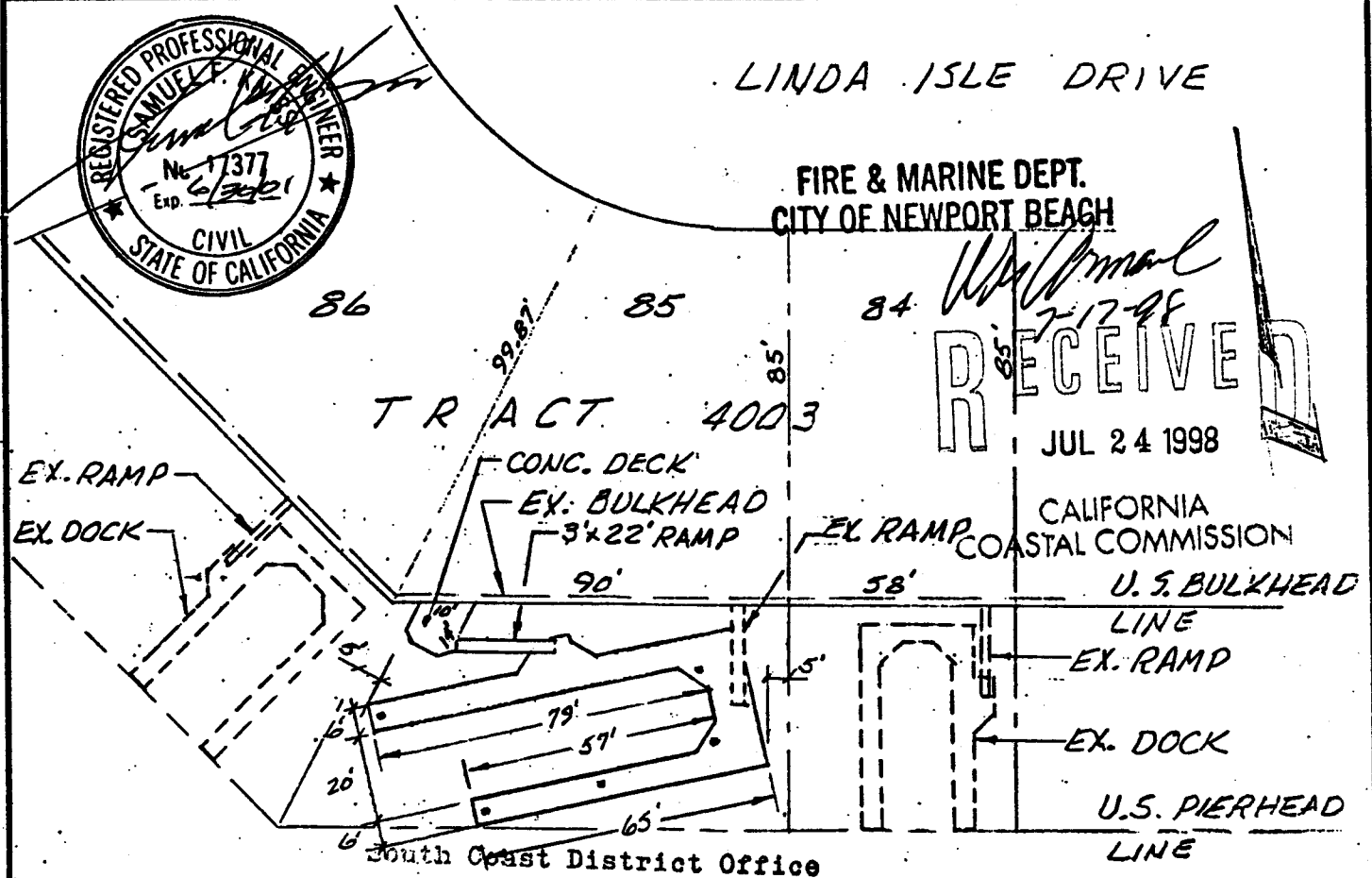
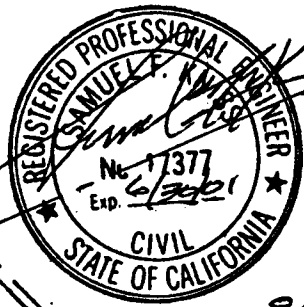
Vicinity Map

California Coastal
Commission

CITY OF NEWPORT BEACH



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



APPROVED Permit No. **5-98-295**

By: NEWPORT BAY

EFFECTIVE Date:

SAM F. KNISS
C-17377
19 GATE
IRVINE, CA. 92614
(714) 733-8430

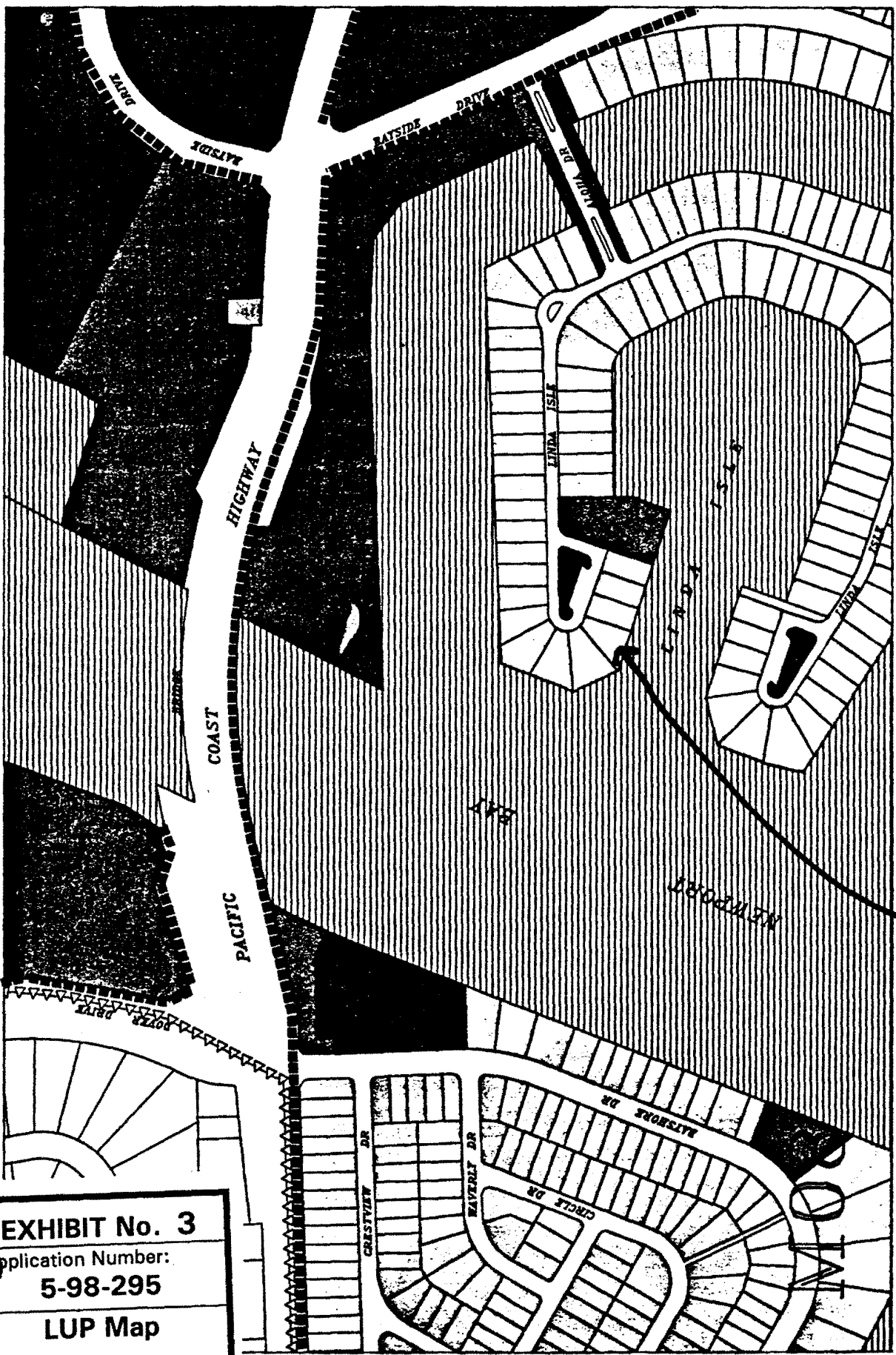
APPLICANT'S NAME: GEORGE BRIGGEMAN JOB ADDRESS: 85 LINDA ISLE

EXHIBIT No. 2


Application Number: **5-98-295**

Site Plan

California Coastal Commission



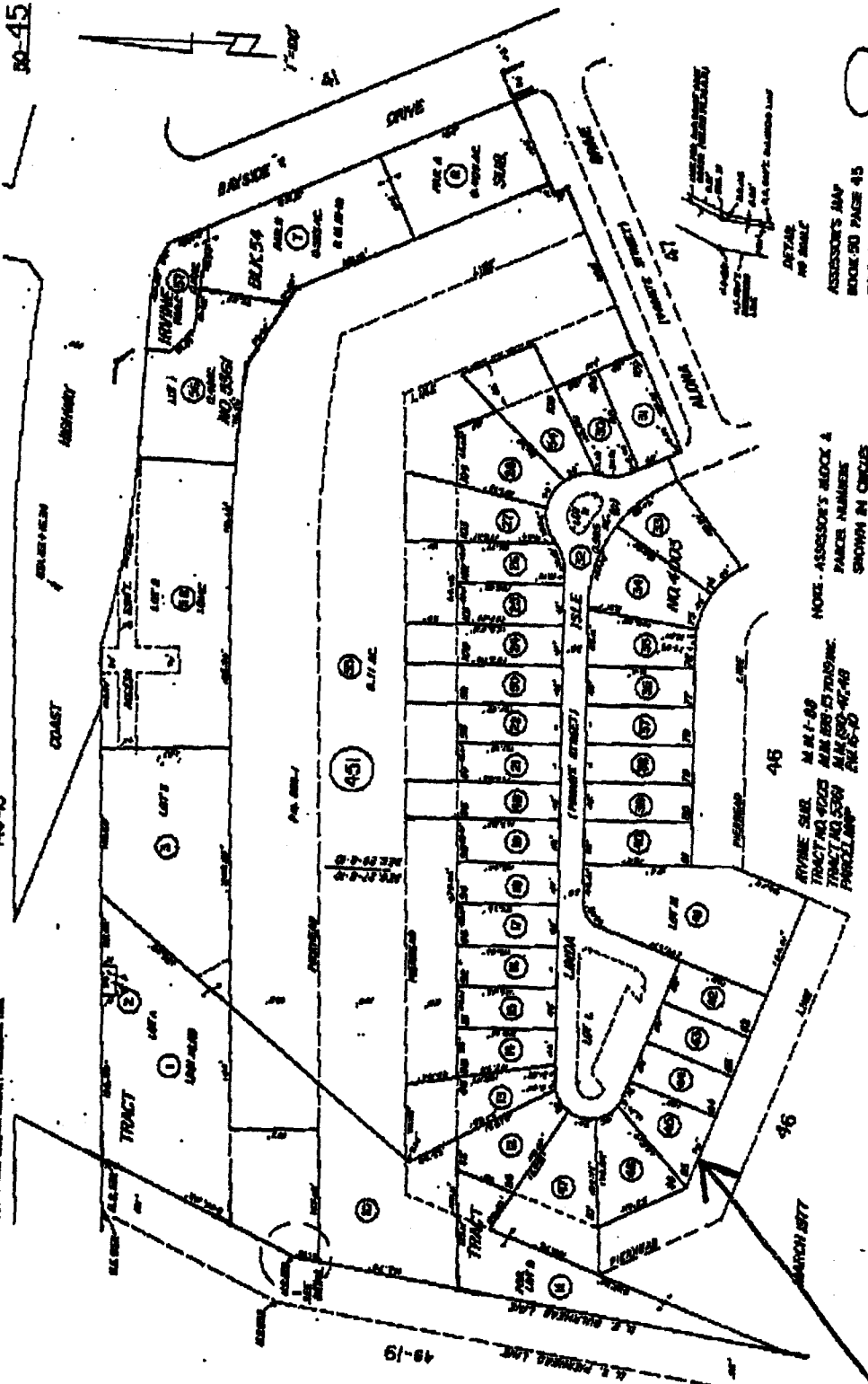
SITE

EXHIBIT No. 3
Application Number: 5-98-295
LUP Map
 California Coastal Commission

90-45

FOR E. 1/2, S.E. 1/4, SEC. 14, T. 6S., R. 10W.
440-15

THIS MAP IS A PRELIMINARY MAP AND DOES NOT REPRESENT THE FINAL MAP. THE FINAL MAP WILL BE THE ONE WHICH IS RECORDED IN THE PUBLIC RECORDS. THIS MAP IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT IS PREPARED.



DETAILS
AS SHOWN
ASSASSOR'S MAP
BOOK 50 PAGE 45
COUNTY OF ORANGE

NOTE: ASSASSOR'S BLOCK 4
PARCEL NUMBERS
SHOWN IN CIRCLES

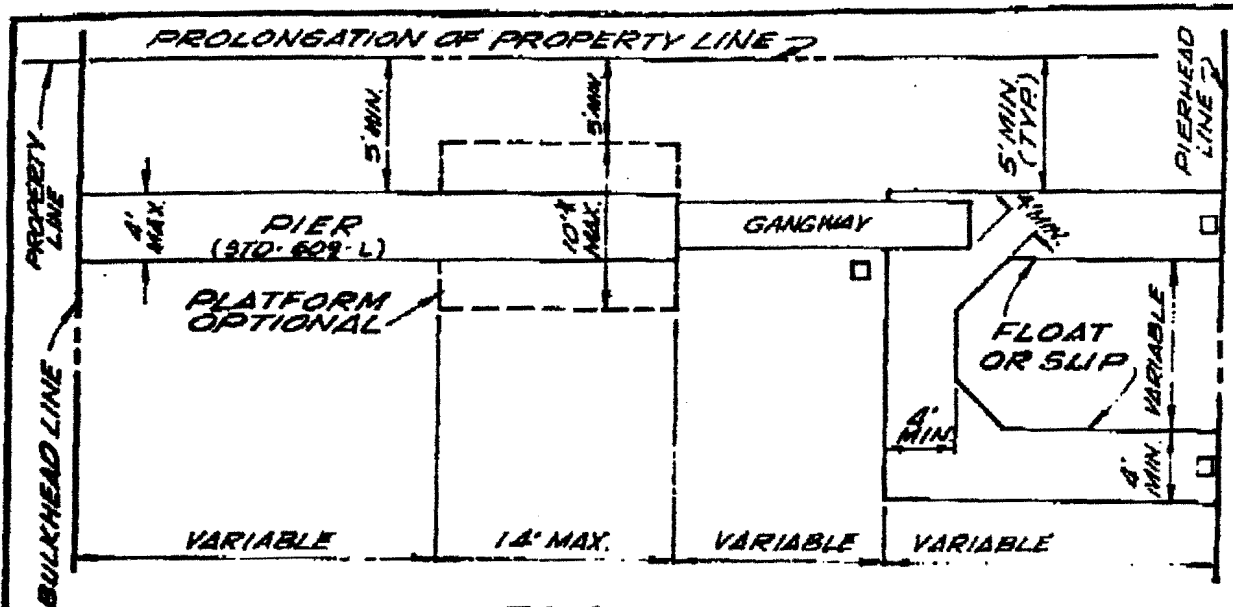
RYME SUB. M. 11-89
TRACT NO. 4123 M. 11-89-13 TRADING
TRACT NO. 5599 M. 11-89-14-15
PARCEL MAP

45

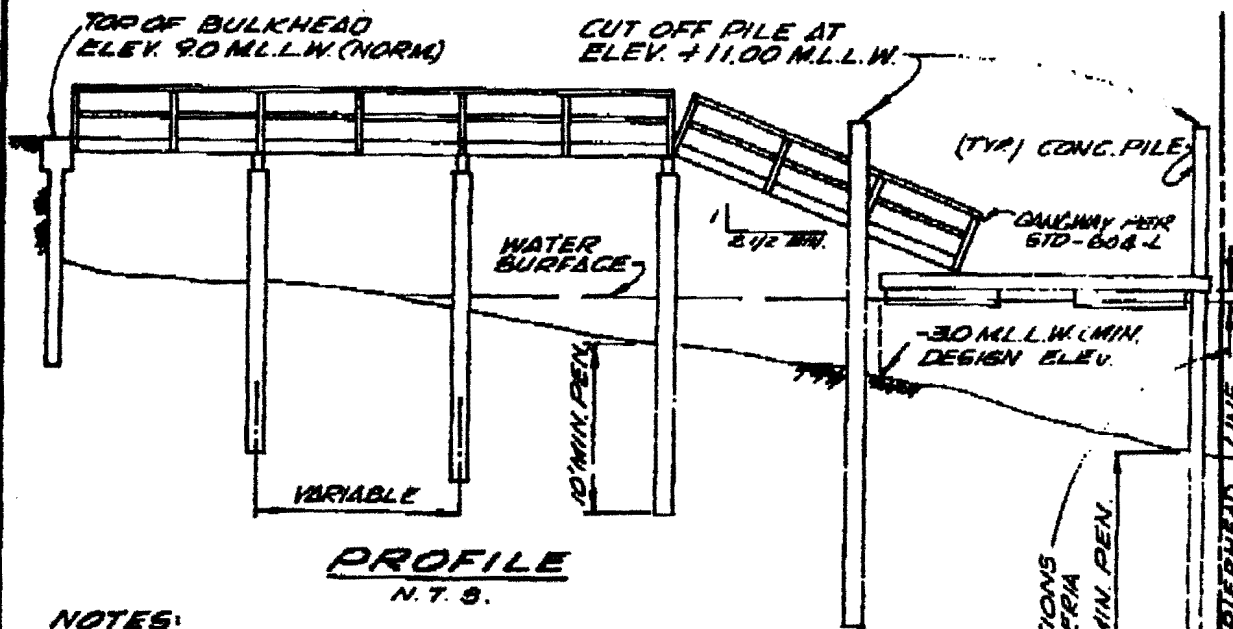
46

SITE

EXHIBIT No. 4
 Application Number:
5-98-295
 Assessors' Map
 California Coastal
 Commission



PLAN
N.T.S.



PROFILE
N.T.S.

NOTES:

1. TIMBER SHALL BE SEL. STRUCT. D.F. TREATED WITH ACA OR ACZA.
2. FIELD CUTS AND BORED HOLES SHALL RECEIVE A BRUSH COAT OF CONCENTRATED ACA OR ACZA.
3. BRACKETS AND FASTENERS SHALL BE HOT DIP GALVANIZED, EPOXY COATED OR STAINLESS.
4. WALKING SURFACES SHALL HAVE A SKID RESISTANT FINISH, SUCH AS UNPAINTED TIMBER OR GRIT ON TIMBER.
5. LOCATION OF PIER, PLATFORM, GANGWAY, SLIP & FLOATS IS OPTIONAL PROVIDING PROPER SETBACKS ARE MAINTAINED.
6. SEE STD.-604-L, 609-L & 612-L FOR GANGWAY, PIER, AND HANGER BRACKET DETAILS.
- * WHERE PIER IS JOINTLY OWNED BY ADJACENT PROPERTIES, PLATFORM WIDTH = 12' MAX.

FLOAT INSTALLATIONS PER DESIGN CRITERIA

REV. 3/22/01
REV. 5-15-08
REV. 4-4-05

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

SINGLE RESIDENTIAL USE
FLOAT WITH PIER

DRAWN *A.L.*

APPROVED *[Signature]*

PUBL

DRAWING No. 5

EXHIBIT No. 5

Application Number:

5-98-295

Deck Policy



California Coastal
Commission

RECEIVED



LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS

AUG 18 1998
RECEIVED
CALIFORNIA COASTAL COMMISSION
AUG 19 1998

LOP-FACSIMILE TRANSMITTAL CALIFORNIA COASTAL COMMISSION

US ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT--SPLCO-R
P.O. BOX 532711
LOS ANGELES, CA 90053-2325

DISTRICT CONTACT:
Name: Jae Chung
Phone: (213) 452-3408
FAX: (213) 452-3292

DATE INITIATED: August 18, 1998 Please review the LOP materials and provide substantive, site-specific comments to the District on or before September 2, 1998. If no comments are received by this date, the District assumes compliance with 33 CFR Part 325.2(e)(1).

AGENCY:

- California Department of Fish and Game
- U.S. Environmental Protection Agency
- U.S. Fish and Wildlife Service
- National Marine Fisheries Service
- U.S. Coast Guard
- California Coastal Commission

FAX number
 619-467-4299
 415-744-1078
 760-431-9624
 562-980-4092
 562-980-4427
 415-904-5400

Attn:
 M. Fluharty
 R. Tuden
 J. Bartel
 B. Hoffman
 Lt. R. Collier
 J. Raives

LOP NUMBER 98-00603-YJC

APPLICANT NAME: George Briggeman

AGENT NAME: Construction Resources

WATERWAY NAME: Newport Bay

LOCATION: The proposed work would be done just seaward of 85 Linda Island, within Newport Bay, in the City of Newport Beach, Orange County, California (see attached).

BRIEF DESCRIPTION OF PROPOSED WORK: The applicant proposes to replace a dock with a 79 ft. by 32 ft. dock (comprised of 6 pilings) and to build a 14 ft. by 10 ft. cantilevered deck (comprised of 4 pilings). The project would not require any dredging or filling in waters of the U.S. The resulting structure would be within the U.S. Pierhead Line. No eelgrass would be impacted by the work.

AREA OF WATERS SUBJECT TO LOSS AS A RESULT OF PROPOSED WORK: The proposed work would result in temporary impacts to 0.17 acres of waters of the U.S. The proposed work would not increase the coverage area of navigable waters of the U.S.

EXHIBIT No. 6
Application Number: 5-98-295
Army Corps
California Coastal Commission