

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



Tu 17g

Filed: 2/1/99
49th Day: 3/22/99
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Staff: MV-LB
Staff Report: 2/18/99
Hearing Date: 3/9-12/99
Commission Action:

RECORD PACKET COPY**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-98-523

APPLICANT: Jim Bridges

AGENT: Pete Swift, Swift Slip

PROJECT LOCATION: 331 E. Bayfront, Balboa Island (Newport Beach), Orange County

PROJECT DESCRIPTION: Remove and replace existing dock, gangway, and pier. The float is proposed to be modified from a 10 foot by 20 foot rectangle to a 6 foot by 48-foot rectangle with an 18 square foot lobe at the landward end. The pier is proposed to be shortened by 23 feet: from 44 feet to 21 feet. An existing 8 by 12-foot platform is proposed to be removed and replaced with an 11 by 12-foot platform at the base of the shortened pier. The gangway is proposed to be 3 feet by 22 feet. The existing dock extends to the U.S. Pierhead line. The proposed dock would extend 10 feet beyond the pierhead line, and would be 10 feet short of the U.S. Project line. The subject site was inspected for eelgrass and none was found.

LOCAL APPROVALS RECEIVED: City of Newport Beach Fire and Marine Department, Marine Environmental Division, Approval in Concept, City Harbor Permit No. 152-331.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the project subject to five special conditions.

The proposed boat dock project includes a 10 by 11-foot deck area (platform). The Commission has recently expressed concern where these structures involve fill of open coastal waters (in the form of pilings) for a non-boating use. In this case, staff is recommending that only pilings necessary to support the boating facility be allowed by recommending a special condition which requires that either: 1) the existing platform be retained in place, or 2) that the proposed platform portion of the project be deleted, or that 3) the proposed project be redesigned so that the relocated platform would not require pilings and no additional piles are required beyond those required to support the 4 foot wide pier. Staff is also recommending two additional special conditions which require 1) removal of construction debris, and 2) identification of the location of the disposal site for construction debris.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan, City of Newport Beach Harbor Permit Policies, Coastal Development Permit 5-98-229 (Close).

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. Submittal of Revised Plans

Prior to issuance of a coastal development permit, the applicant shall provide for the review and written approval of the Executive Director, revised plans. The revised plans shall reflect one of the three following alternatives:

a. Retain Existing Development

The revised plans shall show the pier and platform as it currently exists. The applicant can conduct repair and maintenance on the pier platform but shall not relocate and rebuild the platform as proposed.

b. Revised Platform Configuration

The revised plans shall show that the 10-foot by 11-foot platform has been removed and the width revised to be consistent with the width of the 4-foot wide pier walkway.

c. Revised Piling Supports

The revised plans shall show a relocated platform only if the relocated platform would not require pilings and the total number of project pilings does not exceed the number of pilings necessary to support the approved 4 foot wide pier walkway, ramp, and float.

The proposed development shall be constructed in compliance with the final plans approved by the Executive Director. 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. 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 removal 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 bulkhead 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.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description

The applicant proposes to remove and replace an existing boat dock including: float, gangway, pier, and platform. The float is proposed to be modified from a 10 foot by 20 foot rectangle to a 6 foot by 48 foot rectangle with an 18 square foot lobe at the landward end. The pier is proposed to be shortened by 23 feet: from 44 feet to 21 feet, in order to accommodate a larger boat. An existing 8 by 12 foot platform is proposed to be removed and replaced with an 11 by 12-foot platform at the channelward base of the shortened pier. The gangway is proposed to be 3 feet by 22 feet. The existing dock extends to the U.S. Pierhead line. The proposed dock would extend 10 feet beyond the pierhead line, and would be 10 feet short of the U.S. Project line. The subject site was inspected for eelgrass and none was found. Exhibit C shows the proposed dock configuration and exhibit E shows the existing dock configuration.

B. Marine Environment

Section 30233 of the Coastal Act states, in pertinent part:

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.

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 by 14 feet. Piers are fixed, pile-supported structures which extend from dry land areas to water areas connecting to a gangway which 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, they are allowed to extend to the adjudicated U.S. Project line.

The piers and gangways 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 pier-related 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 platforms contained lockers, small boats, kayaks, and boating equipment or were empty, others had plastic chairs and tables or benches, flowers, 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 pilings.

In the case of this permit application, existing development includes a pier, an 8 by 12 foot platform, gangway, and float. Public access to the water in this area is provided at the streetends, and along the walkway around Balboa Island. Lateral access along the beach is restricted by the presence of the existing boat docks. In addition, only minimal sandy beach area exists in this area, usually only at low tide.

The Coastal Act limits the fill of open coastal waters. Section 30233 of the Coastal Act allows fill of open coastal waters, such as Newport Harbor, for recreational boating purposes. The proposed project requires piles, which constitute fill. The piles necessary to support the proposed boat dock (including the pier, gangway and float) are allowable because they are necessary to support a recreational boating use. However, the proposed 11 by 12 foot platform does not provide a necessary boating function. The applicant has indicated that the platform has been and will continue to be used for ingress and egress to the float and as a seating area with allowances for boating related storage. Ingress and egress to the float can be accomplished without the platform. As a seating area the platform would serve as an extension of private residential patio area. Fill for private residential patio area is not a use allowed under Section 30233 of the Coastal Act.

The applicant is proposing to extend the dock by 10 feet and rebuild the platform area. In order to rebuild the platform and move it landward, the applicant is proposing to remove the platform, extract the pilings, re-insert the pilings and reconstruct the platform. Because the existing platform is being removed and reconstructed landward, the proposed platform is analyzed as new development.

As proposed, the platform would be constructed with piles at each corner. However, if the dock were constructed without the platform, only two piles would be required for the same length of pier. Therefore, the platform as proposed would result in two pilings being emplaced for a use other than recreational boating (private deck area), inconsistent with Section 30233's specifically enumerated allowable uses. If the project were redesigned, however, such that the relocated platform would not require pilings, then the project could be found consistent with 30233 because fill would not be proposed for a non-allowable use. Two T-piles could be used to support the walkway with or without the platform. The use of T-piles would mean no additional fill (piles) would be necessary to support the proposed platform. Another method of avoiding the placement of unallowable fill would be to eliminate the platform and limit the pier to only the 4 foot width necessary for the walkway. Or, unallowable fill could be avoided if the applicant does not rebuild the existing platform and instead retains the existing 8 by 12 foot platform in its current location. It should be noted that the last option would not achieve the applicant's goal of docking a larger boat at the site.

Under the Coastal Act, fill is allowable under Section 30233(a)(4) for new or expanded boating facilities. As such, the pier walkway providing access from dry land to the float is an expanded boating facility and the pilings necessary to support the float and the pier are allowable under the Coastal Act. However, the additional pilings proposed for the relocated

platform are not an allowable use under Section 30233 of the Coastal Act. Therefore, staff is recommending a special condition which requires that either: 1) the existing platform be retained in place, or 2) that the proposed platform portion of the project be deleted, or 3) that the proposed project be redesigned so that the relocated platform would not require pilings and no additional piles would be required beyond those required to support the 4 foot wide pier.

If any one of these three options is pursued, the proposed project would not result in unallowable fill of coastal waters under Section 30233 of the Coastal Act. Therefore, as a condition of approval, the applicant shall submit, for the review and approval of the Executive Director, revised plans indicating that one of the above described options has been incorporated into the design of the project.

Section 30233 also requires that any project which results in fill of open coastal waters also be the least environmentally damaging alternative and provide adequate mitigation. The proposed project meets these two requirements in that the pilings themselves are self-mitigating in that they provide habitat for marine organisms; and, the use of pilings to support a recreational pier, in this instance, is the least damaging alternative. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30233(a)(4) of the Coastal Act.

C. 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.

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 exist in the immediate project vicinity. The subject site is located on Little Balboa Island, which is connected to Balboa Island by a bridge across the Grand Canal. No public access is provided to Newport Harbor across the project site. However, public access is provided in this area at the streetends and by the public walkway around Balboa Island.

The proposed development consists of reconfiguration of an existing boat dock, including the ramp, pier, float, and platform. The proposed development will not adversely impact existing navigation. The development will not create adverse impacts on coastal access and recreation. 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.

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 project site is waterfront property in Newport Harbor. The applicant is proposing to make improvements to an existing recreational boating facility. The approval from the City of Newport Beach indicates that no eelgrass is present at the site.

The development is located on the water and there is 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. Special condition 3 requires the applicant to notify the Executive Director of the location of the disposal site for demolition and construction by-products.

Only as conditioned for appropriate storage of construction materials and equipment, and 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.

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 marine resource protection policies of Sections 30230 and 30233 of the Coastal Act. Mitigation measures, in the form of special conditions requiring: 1) removal of construction debris, 2) mitigation of construction impacts, and 3) the elimination of the proposed fill for non-allowable uses, 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.

31

31

SEE MAP



Subject
Site

EXHIBIT NO. A
APPLICATION NO.
5-98-523
California Coastal Commission

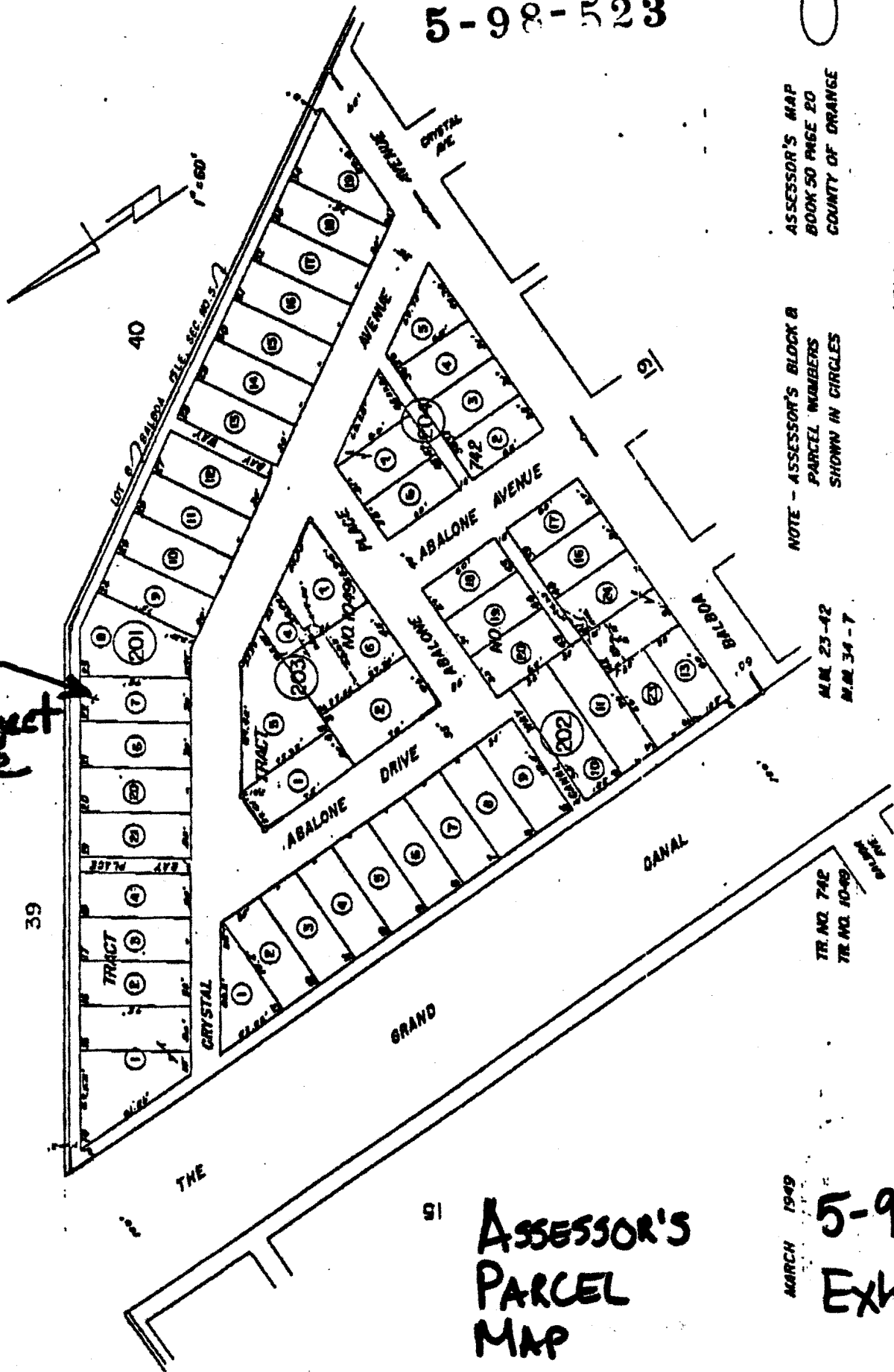
VICINITY MAP

50-20

5-98-523



14.5' WIDE AREAS



Subject Site

ASSESSOR'S MAP
BOOK 50 PAGE 20
COUNTY OF ORANGE

NOTE - ASSESSOR'S BLOCK 8
PARCEL NUMBERS
SHOWN IN CIRCLES

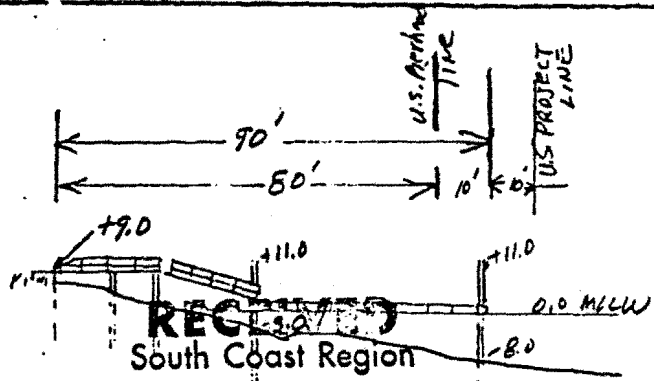
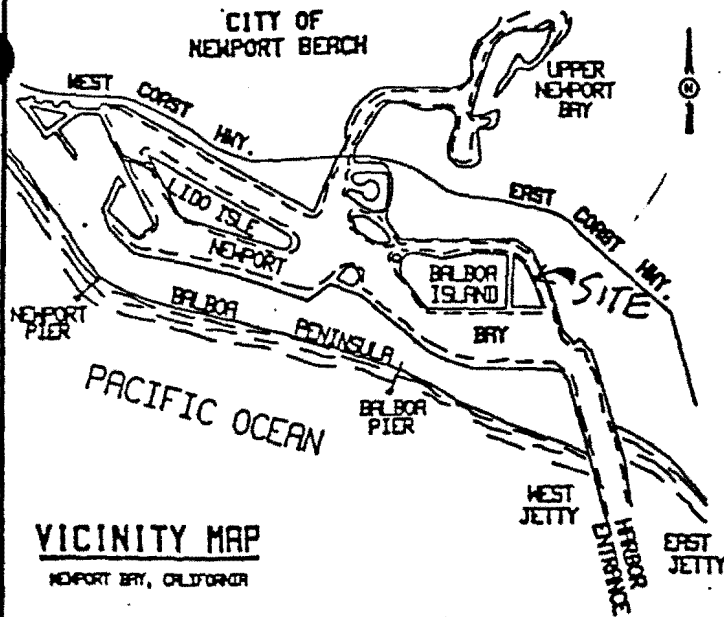
M.M. 23-42
M.M. 34-7

TR. NO. 742
TR. NO. 10-49

ASSESSOR'S
PARCEL
MAP

MARCH 1949
5-98-523
Exhibit B

CITY OF NEWPORT BEACH



RECEIVED
South Coast Region

DEC 28 1998

CALIFORNIA
COASTAL COMMISSION

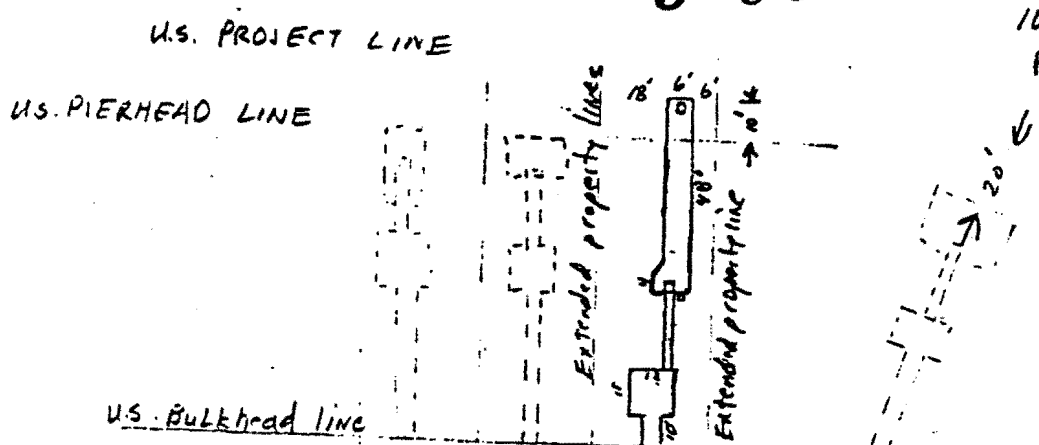
PROFILE 1" = 40'

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

NEWPORT BAY

5-98-523

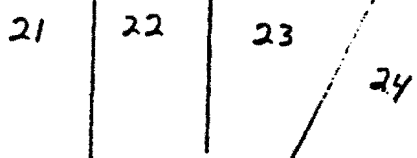
DOCK EXTENDS PAST
U.S. PIERHEAD LINE
10' PER HARBOR PERMIT
POLICY #23, "V" #5



EEL GRASS INSPECTION
 NO EEL GRASS
 EEL GRASS IN THE PROJECT AREA
 SIGNATURE
 PERMIT# 12-4-98 DATE

FIRE & MARINE DEPT.
CITY OF NEWPORT BEACH

12-4-98



Old structure = 484 sq ft
New structure = 482 sq ft

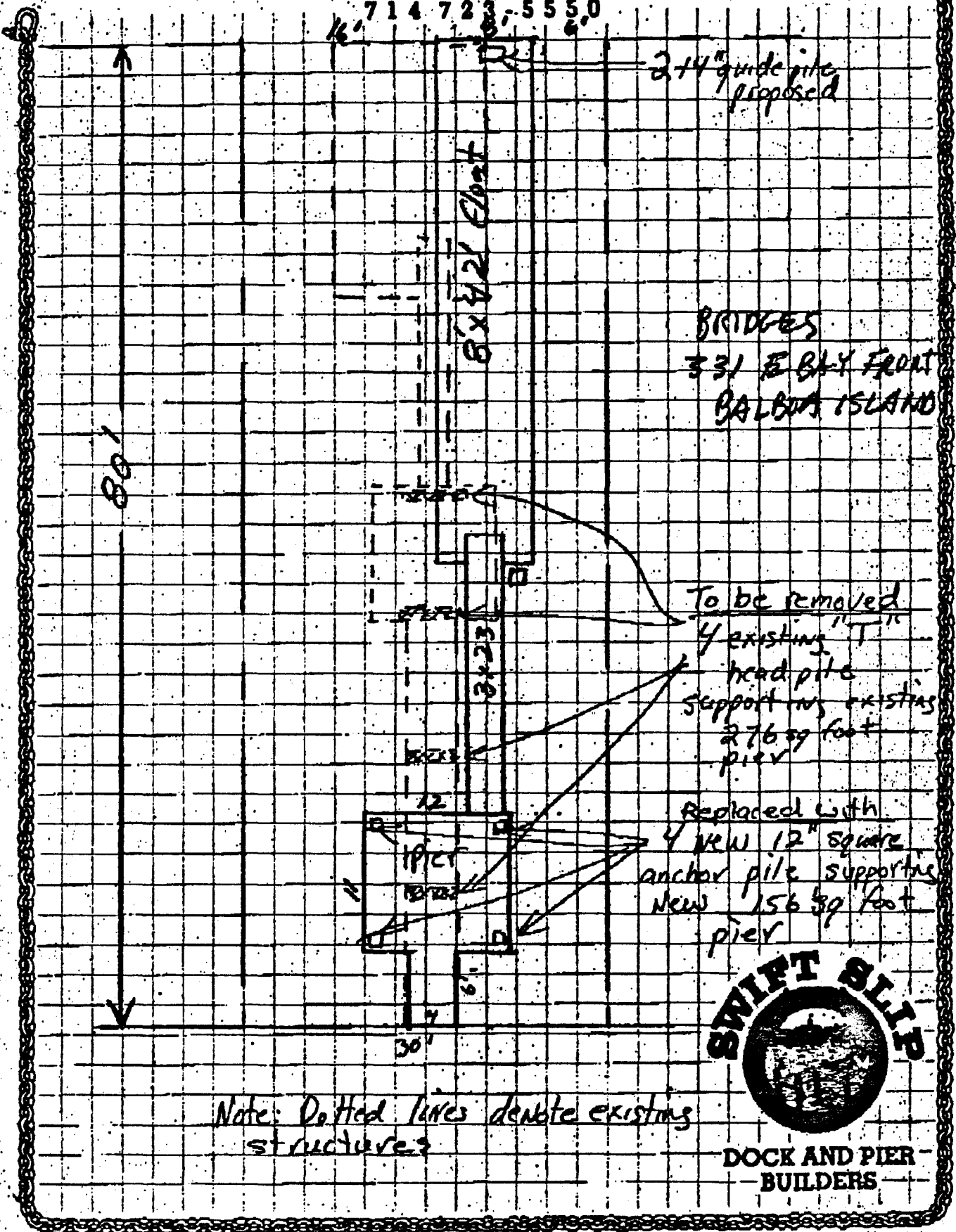
Note: Remove and replace entire dock, gangway and pier.
 * Float will change from 10x20' to 6x48' with small lobe (18 sq ft), with 2-14" concrete pile
 * Pier will be shortened 23' reusing existing pile
 * Gangway will be 3x22'
 PLAN VIEW 1" = 50'

5-98-523

APPLICANT'S NAME JIM BRIDGES JOB ADDRESS 331 EAST BAY FRONT DATE 11-17-98

500 30th Street Newport Beach CA 92663

714 723-5550

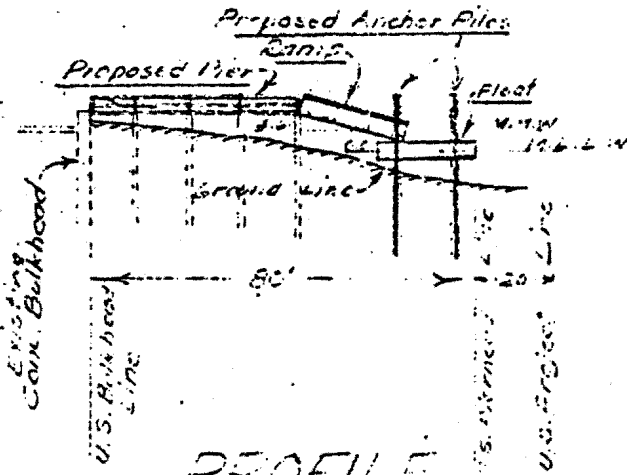


Proposed Dock Configuration

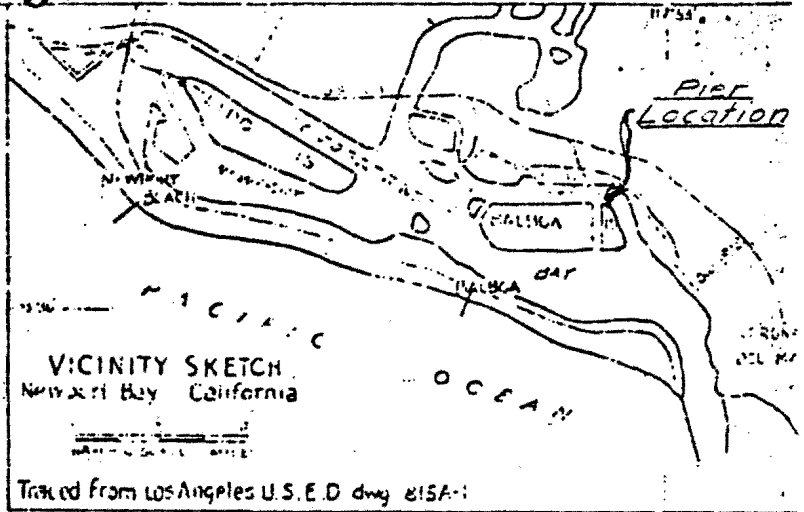
TOTAL P.02
5-98-523
EX. D

5-9-523

152-331



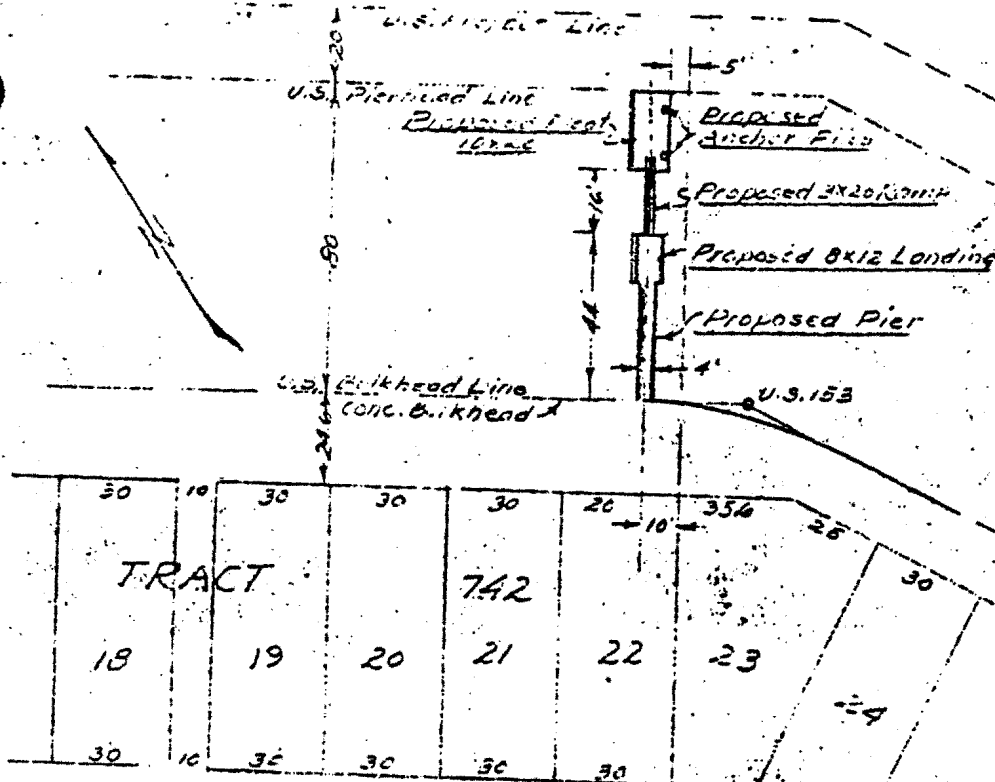
PROFILE
Scale in Feet



Soundings are expressed in feet and denote depths below Mean Lower Low Water
Max. range of tide approx. 10ft.

NEWPORT

76
128



EXISTING PIER,
DOCK AND GANGWAY
224 + 200 + 60
484 ft

CRYSTAL AVE

Existing Dock Configuration
PLAN

Scale in Feet

5.98-523

Proposed
Pier and Landing Float
Newport Bay
Newport Beach, California

Application by SARA S. PEYTON
331 E. BAY AVE. #412

Exhibit F



NEWPORT BEACH FIRE AND MARINE DEPARTMENT

February 1, 1999

California Coastal Commission
South Coast Area Office
200 Oceangate, Ste. 1000
Long Beach, CA 90802-4302

Re: Coast Application 5-98-229 (Close)

Dear Coastal Commissioners and Interested Parties:

It is our understanding that an issue has arisen relative to the above permit dealing with the construction of a 10 X 14 foot platform deck structures in conjunction with a residential boating facility. We thought it would be helpful to give the Commission some background on the City of Newport Beach's procedures as regards these types of structures.

Our approval in concept for these structures is based on the City Council Harbor Permit Policies and Standard Drawings. These policies and Standard Drawings were developed in the early 70s to give the City staff direction relative to construction on the waters of Newport Harbor. The majority of the water area within the City of Newport Beach is State property granted to the City of Newport Beach in trust. The original grant was in 1919 and has been revised over the years with the most recent revision in 1978.

City staff has provided the Coastal Commission staff with copies of these standard drawings which allow for the option of constructing a maximum of 10 x 14 foot platform in conjunction with a residential pier and float as indicated on the drawings. This optional 10 x 14 foot platform can have a number of uses relative to boating, such as space for dock boxes, the marshaling of equipment prior to taking it down to the float, termination point for utilities that would be of use on the floats such as water, and electrical outlets.

In the past, the State Lands Commission has indicated that residential use of State Tidclands is an inappropriate use. With that in mind the 10 x 14 foot platform was designed so that its dimensions minimize its

Letter from City
re: boat dock platforms

5-98-523

Exhibit F,

potential for residential use but give the recreational boater some useable area in accessing their vessels over and above a simple walkway.

In cases where a coastal permit is required, we have issued hundreds of approval in concepts approving the 10 x 14 foot structure as allowed by our Harbor Permit Policies and Standard Drawings. A review of the aerial photographs provided the Coastal Commission staff will demonstrate that possibly 95% or more of the structures within Newport Harbor include this 10 x 14 foot pier platform.

These 10 x 14 foot piers can be constructed with either 4 pilings or 2 T head pilings depending on the engineering of the individual pier. In the past the City has left the choice of the positioning of pilings and the number of pilings to the applicant based on either aesthetics or their engineering considerations. Our standard drawings allow for either one as long as they meet the established engineering criteria.

As a side note, we are currently in the application process with the Army Corps of Engineers to renew our 10 year maintenance dredging permit. As part of that renewal we have been requested by the Corps to add dock construction to the general permit. This application has been reviewed by the National Marine Fisheries, the State Department of Fish and Game and the Federal Fish and Wildlife Service. As indicated in the proposed general permit it would authorize the removal and replacement of existing pilings as well as the addition of up to 2 additional pilings without the necessity for an individual or nationwide permit.

I hope this information will be helpful.

Sincerely,



Tony Melum
Deputy Chief Marine Environmental Division

