CALIFORNIA COASTAL COMMISSION
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Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: **5-98-295**

APPLICANT: George Briggeman

AGENT: Construction Resources

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

PROJECT DESCRIPTION: Remove an existing dock and gangway (ramp). Construct a new 3 foot wide by 22 foot long gangway, 79 foot long by 32 foot wide "L" shaped dock with a 14 foot long (seaward) by 10 foot wide piling-supported concrete deck seaward of the bulkhead.

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 submittal of revised plans eliminating the proposed 10 foot by 14 foot piling-supported, reinforced concrete deck seaward of the bulkhead.

Staff scheduled this application on the Regular Calendar because it is located in an area of original jurisdiction, because of the special condition requiring the applicant to submit revised plans showing that the piling-supported 10 foot by 14 foot reinforced concrete deck seaward of the bulkhead is removed, and because the applicant does not agree with the special condition to remove the deck.

ISSUES OF CONTROVERSY:

In recent months the Commission and staff have been examining the issue of whether decks and platforms attached to piers and/or bulkheads in Newport Harbor are necessary parts of private boating recreational facilities and approvable fill projects under Section 30233 of the Coastal Act. Section 30233 of the Coastal Act allows fill for "new and expanded boating facilities and the placement of structural pilings for public recreational piers."

Staff is recommending approval of the proposed development with special conditions. One special condition requires the applicant to submit revised plans showing that the 10 foot by 14 foot piling-supported, reinforced concrete deck seaward of the bulkhead is removed. The applicant does not agree with staff's recommendation removing the pile-supported deck on the basis that the Commission has approved similar structures in the past, that the development is consistent with City of Newport Beach Harbor Policies, and the development is consistent with the existing pattern of development.

The construction of five (5) foot cantilevered decks and 10 foot by 14 foot pile-supported decks beyond the bulkhead is currently allowed by the City of Newport Beach in areas of Newport Harbor where the waterway is held in private ownership, such as Linda Isle. In areas of City, County or State Land jurisdictional waters, i.e., non-private waterways, this policy is not in effect. However, the City policies do allow pier owners to expand a portion of their pier to a 10 foot by 14 foot platform or similar configuration, i.e, side extensions for 14 feet (see Exhibit 5 top).

The City of Newport Beach has a certified LUP. In the absence of a fully certified LCP, however, the standard of review is the Chapter 3 policies of the Coastal Act. Historically, the Commission has used LUP policies as guidance.

Neither the City of Newport Beach, the Army Corps of Engineers nor the California Department of Fish and Game have expressed concern about pilings for existing or renovated boating facilities or docks or platforms, unless the proposed development substantially increases the number of pilings or the development is located in an area containing eelgrass.

STAFF NOTE:

This application was initially scheduled for the January 14, 1999 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. Staff agendized the item for the February hearing and the applicant's agent again requested that the item be continued to March. The applicant's agent once again requested that the item be continued until April, the Long Beach hearing. Staff requested and received the 90 day extension of time until July 6, 1999.

There are two other staff reports on the April agenda involving 10 foot by 14 foot or similar size platforms on piers in Newport Harbor [(5-99-043, Brown) and (5-98-523, Bridges)]. A detailed analysis of the City of Newport Beach harbor policies and Commission permit history is contained in Section "C" of this staff report.

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 5-98-229 (Close), 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).

LIST OF EXHIBITS

1. Vicinity Map
2. Site Plan
3. LUP Map
4. Assessor's Parcel Map
5. Newport Standard Drawing
6. Map of Newport Harbor

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. Submittal of Revised Plans

Prior to the issuance of the coastal development permit the applicant shall submit, for the review and approval of the Executive Director, revised site plans demonstrating that the piling-supported 10 foot by 14 foot reinforced concrete deck seaward of the bulkhead is removed.

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

2. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

Disturbance to the harbor waters 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 waters, bulkhead and dock area any and all debris resulting from the demolition of the existing dock facility and the construction of the new dock facility. 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.

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 an existing ramp (gangway) 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 (seaward) by 10 foot wide piling-supported concrete deck. The existing dock consists of two parallel 4 foot wide and 48 foot long finger docks separated by 20 feet. The existing gangway is 4 feet wide by 20 feet long. The concrete deck is proposed to be supported by four pilings, while the dock will be supported by five pilings. The proposed deck will extend a maximum of 14 feet seaward of the existing bulkhead line. The applicant is lengthening the dock and turning it so it opens towards the channel. The previous orientation of the dock was parallel with the bulkhead. For the purposes of this staff report, the words "ramp" and "gangway" are interchangeable.

The project site is located on Linda Isle in the Newport Harbor (see Exhibit 1and Exhibit 6). 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 (see Exhibit 2). There are ramps and docks 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 is privately owned waterways.

Neither the Department of Fish and Game nor the Army Corps of Engineers object to the proposed development.

B. Filling of Open Coastal Waters

1. Coastal Act Policies

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.

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 304ll, 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.

2. Commission Policy & Consistency with the Coastal Act

Section 30108.2 of the Coastal Act states that pilings constitute fill. The Coastal Act policy governing fill of open coastal waters is Section 30233 which requires that fill be permitted when: 1) there is no feasible less environmentally damaging alternative, where feasible mitigation measures have been provided to minimize adverse environmental impacts, and 3) fill is one of 8 allowable uses.

In this instance the applicant's plan shows that the existing dock facility consists of a ramp from the bulkhead connecting to the dock. No pilings are required for the existing ramp and the current recreational boating facility does not include a 10 foot by 14 foot deck or a 5 foot cantilevered deck. The existing boat dock is accessible from the bulkhead via a gangway, which does not require pilings.

The project description in the application requests the removal of an existing dock and gangway and the installation of a new 79 foot by 32 foot dock, three (3) foot wide by 22 foot long gangway, and construction of a piling-supported reinforced concrete 10 foot by 14 foot "deck". Drawings submitted by the applicant show that the deck would be constructed flush with the top of the bulkhead and constitute, in effect, an extension of the rear yard. In addition, the deck will be constructed of reinforced concrete supported by four (4) reinforced concrete pilings. The proposed dock has five pilings. The proposed 10 foot wide by 14 foot long deck would require four (4) new pilings. The dimensions of the four pilings are approximately two (2) feet by two (2) feet for a total of 16 sq. ft. The individual impacts are not substantial, however, the cumulative impacts potentially are substantial.

The proposed development of a reinforced concrete deck with four (4) pilings beyond the bulkhead also does not conform with the certified LUP, which states that residential and commercial structures (except piers and docks used exclusively for berthing of vessels) shall not be permitted to encroach beyond the bulkhead line. A deck which would, in effect, become an extension of the rear yard is a residential structure, is not exclusively used for berthing of vessels, and is therefore, not allowable under the certified LUP. A detailed discussion of the City's harbor policies and development in Newport Harbor is contained in the following section (Section "C") of this staff report.

In a recent decision on a permit (5-98-229, Close) the Commission found that 10 foot by 14 foot platforms on piers are permissable if additional pilings (other than those necessary to support the pier itself) are not required to support the platform.

In this case the Commission finds that the proposed piling-supported 10 foot by 14 foot reinforced concrete deck is a private deck, is not a necessary part of a recreational boating facility, and is, therefore, not an allowable use under Section 30233 of the Coastal Act. In

addition, the Commission finds that there is a less environmentally damaging alternative to the use of fill for four pilings because the applicant can access the dock by a gangway from the bulkhead. A gangway from the bulkhead does not require the use of pilings or fill. This is the existing dock and ramp configuration. Finally, the Commission finds that the applicant is not providing any mitigation to offset the adverse impacts of filling open coastal waters.

Therefore, the Commission finds that the applicant shall submit revised plans showing that the piling-supported 10 foot by 14 foot reinforced concrete deck is removed. Only as conditioned does the Commission find that the proposed development is consistent with Section 30233 of the Coastal Act. The Commission also finds that the use of fill for pilings for the proposed 79 foot long by 32 foot wide dock is necessary for a boating facility and is an allowable use under Section 30233(a)(4) of the Coastal Act.

C. City of Newport Beach Harbor Policies

The findings included in this section are provided as information on: the City of Newport Beach's harbor policies, a description of the harbor and types of recreational boating facilities, Army Corps policies, and an overview of the permitting history of recreational boating projects in Newport Harbor.

a. Project Location

A map of Newport Harbor is included as Exhibit 6. The southern and western part of the Balboa Peninsula consists of residential properties fronting an up to 300 foot wide beach. The northern and eastern side of the Balboa Peninsula consists primarily of residential properties with narrow beaches and private boat piers and docks. Within Newport Harbor waters are the Lido Peninsula, Lido Isle, Harbor Island, Linda Isle, and Balboa Island (see Exhibit 6). Finally, there are properties on the mainland south of Pacific Coast Highway which front the harbor.

The proposed development is located on Linda Isle (see Exhibit 6), an area where private property jurisdiction extends out beyond the bulkhead line into harbor waters. Linda Isle is a private, gated community with access from the mainland via 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. The waters on the southern horseshoe are county tidelands and are not private. Exhibit 3 is the certified LUP 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 considered privately owned waterways by the City of Newport Beach.

Typically there are two private boating facility scenarios in Newport Harbor: 1) continuous bulkheads with little or no sandy beach and, 2) sandy beach with or without bulkheads.

Islands such Lido Isle, Balboa Island, Linda Isle and Harbor Island which have continuous bulkheads and little or no beach. The typical boating structure on Linda Isle includes a ramp or gangway extending from the bulkhead, 5 foot cantilevered deck or 10 foot by 14 foot deck to a boat dock. Lots on the inland side of the Balboa Peninsula and on Bayside Drive (mainland) are beach-fronting lots. Beach fronting lots require piling-supported piers in order for boat owners to gain access to their boats which are docked in the harbor waters. The location of the U.S. Pierhead Line, the depth of the water and the size and draw of the boat dictate the length of the pier, the size of the dock and the number of pilings necessary to support the dock. The seaward extension of piers is limited by the U.S. Pierhead Line, although the harbor policies do allow some docks to extend beyond the pierhead line.

The State Legislature gave the City of Newport Beach jurisdiction over the waters of Newport Harbor. In Newport Harbor there is an adjudicated bulkhead line and a U.S. Pierhead Line. The original trust grant giving the City of Newport Beach jurisdiction over the harbor water was in 1919 and was most recently revised in 1978. It is important to distinguish between an existing "bulkhead" and the "bulkhead line" because the two are not necessarily the same. In many areas of the harbor the existing bulkheads do not extend out to the "bulkhead line" and there is a patchwork pattern of bulkheads which undulate in and out. In other areas of Newport Harbor, such as Linda Isle and Harbor Island, there are continuous, uniform bulkheads around the islands.

The certified LUP notes that Newport Harbor is the largest natural small craft harbor in the United States, containing over 9,000 boats and that thousands of additional small boats are launched at the boat ramps or kept in dry storage areas.

b. <u>LUP Policies</u>

The LUP contains policies concerning protection of environmentally sensitive areas, including: riparian areas, freshwater marshes, saltwater marshes, intertidal areas, other wetlands, areas containing rare and endangered species, and unique and diverse vegetative communities.

Page 21 (2) of the certified LUP contains the policy regarding piers, docks and bulkheads. It states:

> New developments on the waterfront shall take into consideration existing usable water area for docking facilities. Residential and commercial structures (except piers and docks used exclusively for berthing of vessels) shall not be permitted to encroach beyond the bulkhead line.

c. Harbor Policies

There have been a number of recent requests for dock and pier renovations. These requests are driven in part by the increasing size of boats, turnover of residential properties, and aging boating facilities. Whenever the City receives a request for a boating facility renovation, it requires the applicant to bring the development up to code. Many of the older docks, piers and bulkheads date back to the 1930's.

The City guidelines governing development on the water in Newport Harbor are found in the 1998 City of Newport Beach's "Harbor Permit Policies" and the "Standard Drawings". These policies are implemented by the Newport Beach Fire and Marine Department. The Harbor Permit policies and Standard Drawings have not been reviewed or approved by the Commission. In fact, the Harbor Permit policies are often in conflict with Commission and other resource agency policies. For instance, the Harbor Permit policies allow extending existing bulkheads to the bulkhead line and backfilling. Therefore, the City could approve projects involving the filling of open coastal waters for bulkhead extension projects. This type of project is inconsistent with the Marine Resource protection policies of the Coastal Act. The policies of the certified LUP are in opposition to filling of open coastal waters for this purpose.

The Harbor Permit policy guidelines were 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. 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.
>
> **HARBOR LINES:** The "Harbor Lines" are established Bulkhead, Pierhead, and Project Lines.
>
> **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.
>
> **STANDARD DRAWINGS:** The term "Standard Drawings" refers to Standard Drawings adopted by the City of Newport Beach as minimum standards of construction whenever harbor permits are required.

The general Harbor Permit policies contain 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 of Newport Beach distinguishes between privately-owned waterways and publicly-owned waterways. The City's Harbor Permit policies document contains policies allowing certain exceptions, including the placement of storage lockers on piers and decks. The exceptions include patio decks in private waterways in Newport Harbor:

> **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.

The City allows homeowners in privately owned waters to construct either a 5 foot cantilevered deck beyond the bulkhead or a piling-supported 10 foot by 14 foot deck attached to the bulkhead. Section 5a of the Harbor Permit Policies provides that the Marine Department can approve and issue permits which conform to the harbor Standard Drawings. The harbor Standard Drawings include provision for a maximum 10 foot by 14 foot deck or a 5 foot cantilevered deck on private waterways in the City of Newport Beach as part of the overall dock system. Applicants in private waterways are allowed to have one or the other but not both a 5 foot cantilevered deck and a 10 foot by 14 foot deck.

The City of Newport Beach has a certified LUP only, therefore, the standard of review is the Chapter 3 policies of the Coastal Act, in particular Section 30233 concerning fill of open coastal waters. The Commission has traditionally used the LUP policies as guidance in its deliberations. However, the Commission has not adopted the City's harbor policies and the Coastal Act does not provide for distinctions between public and private waterways.

d. Analysis of Private Waterway Permit Records

The City of Newport Beach and the Commission have approved permits and waivers for cantilevered decks and 10 foot by 14 foot decks extending beyond the bulkhead line on Linda Isle and other private waterway 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, however, both the Commission and the City of Newport Beach have routinely approved 10 foot by 14 foot platforms attached to private boating recreational piers. The actual size of the platform is 10 feet by 14 feet, but this also includes the dimensions the gangway (see Exhibit 5 top). The 10 foot by 14 foot platforms are not referred to as decks and therefore not covered by the harbor policy exceptions. The standard harbor drawings of the City of Newport Beach do include drawings of piers with an optional 10 foot by 14 foot platform as part of the pier. The City does not normally allow platforms larger than 10 feet by 14 feet.

There is a difference between 10 foot by 14 foot "platforms" on piers and 10 foot by 14 foot "decks" attached to bulkheads. The 10 foot by 14 foot platforms on piers are actually two 14 foot long and 3 foot wide side extensions to four foot wide piers and not a separate10 foot by 14 foot addition to an existing 4 foot wide pier. The 10 foot by 14 foot wide decks are attached to bulkheads, are 10 feet wide and extend 14 feet seaward, supported by pilings.

Commission staff conducted an in-house survey of the address file cards in the South Coast office and reviewed the project descriptions contained on those cards to identify pier and dock improvements for development in private waterways in Newport Harbor. Staff then reviewed the permit logs dating back to 1973 and/or the permit files in the office dating from 1991. The results of these efforts are indicated below.

In researching previous permits Commission staff found 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 piling-supported 10 foot by 14 foot 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), l615 Bayside Dr. (P-3107), and 536 Harbor Island Dr. (A-9351).

However, there are probably more examples of 10 foot by 14 foot decks and cantilevered decks in the areas of Linda Isle, Harbor Island and Bayside Dr., because project descriptions in agendas and permit logs which generally refer to docks and piers may also include 10 foot by 14 foot decks. To determine an exact count each individual file would have to be ordered (many from archives) and the plans reviewed.

e. Aerial Photo Analysis – Newport Harbor

Staff also analyzed aerial photographs of Newport Harbor supplied by the City of Newport Beach and counted the number of recreational boating facilities on a particular aerial and also the number of 10 by 14 foot platforms in private and non-private waters. Staff found

that at least 80 percent of the lots in Newport Harbor with boating facilities had 10 foot by 14 foot platforms or similar structures.

The aerials did not include Linda Isle, however, the Commission has 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.

In areas of City, County or State Land jurisdictional waters, i.e., non-private waterways, this policy allowing 5 foot cantilevered decks and 10 foot by 14 foot piling-supported decks is not in effect and these deck structures attached to the bulkhead are not allowed. The Commission also has approved the construction of 5 foot cantilevered decks in Huntington Harbor and this policy is incorporated into the certified Huntington Beach LCP. Cantilevered decks do not require fill and are therefore not subject to the provisions of Section 30233 of the Coastal Act.

The Commission's recent decision on the construction of a 10 foot by 14 foot platform along E. Balboa Boulevard (5-98-229, Close) indicates that 10 foot by 14 foot platforms on piers are allowable as long as additional pilings are not required to support the platform. In the case of Close, the Commission gave the applicant the option of: 1) keeping the pier and dock as is, 2) submitting plans showing that additional pilings necessary to support the proposed platform have been removed, and 3) submitting plans with the platform with the proviso that no extra pilings are required for the platform.

Projects involving eelgrass require more detailed analysis.

f. Army Corps Policies on Fill

The Corp's policy is that no mitigation is required for pilings (except basically for new marinas or where eelgrass is impacted) because although the pilings do displace some harbor bottom and water column, the pilings themselves provide habitat for marine organisms. In this instance, the pilings for the proposed reinforced concrete deck are not closely spaced and do not serve the functional equivalent of fill, according to the Army Corps definition.

The Corps recently released a public notice for proposed regional general permit no. 54. This permit would allow residents in Newport Harbor to conduct repair, minor maintenance dredging and dispose of dredged material for existing residential and commercial development in the harbor. This general permit would reauthorize and expand upon the maintenance dredging activities authorized for the past 10 years under Regional General Permit 18 which is due to expire in August 1999. The stated purpose of the revised regulation is to reduce the administrative burden on the regulated public and the regulating agencies in Newport Harbor. Dock structure modifications would be covered by this permit if the modifications do not extend seaward of the U.S. Pierhead Line and do not result in an

overall increase in area which shades or directly impacts existing eelgrass. The proposed regulations would also allow the removal and replacement of existing pilings as well as the addition of up to two (2) additional pilings.

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 residential lots 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 shoreline 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 preliminary comments indicate 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 30233 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 removal of the pile-supported deck 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.

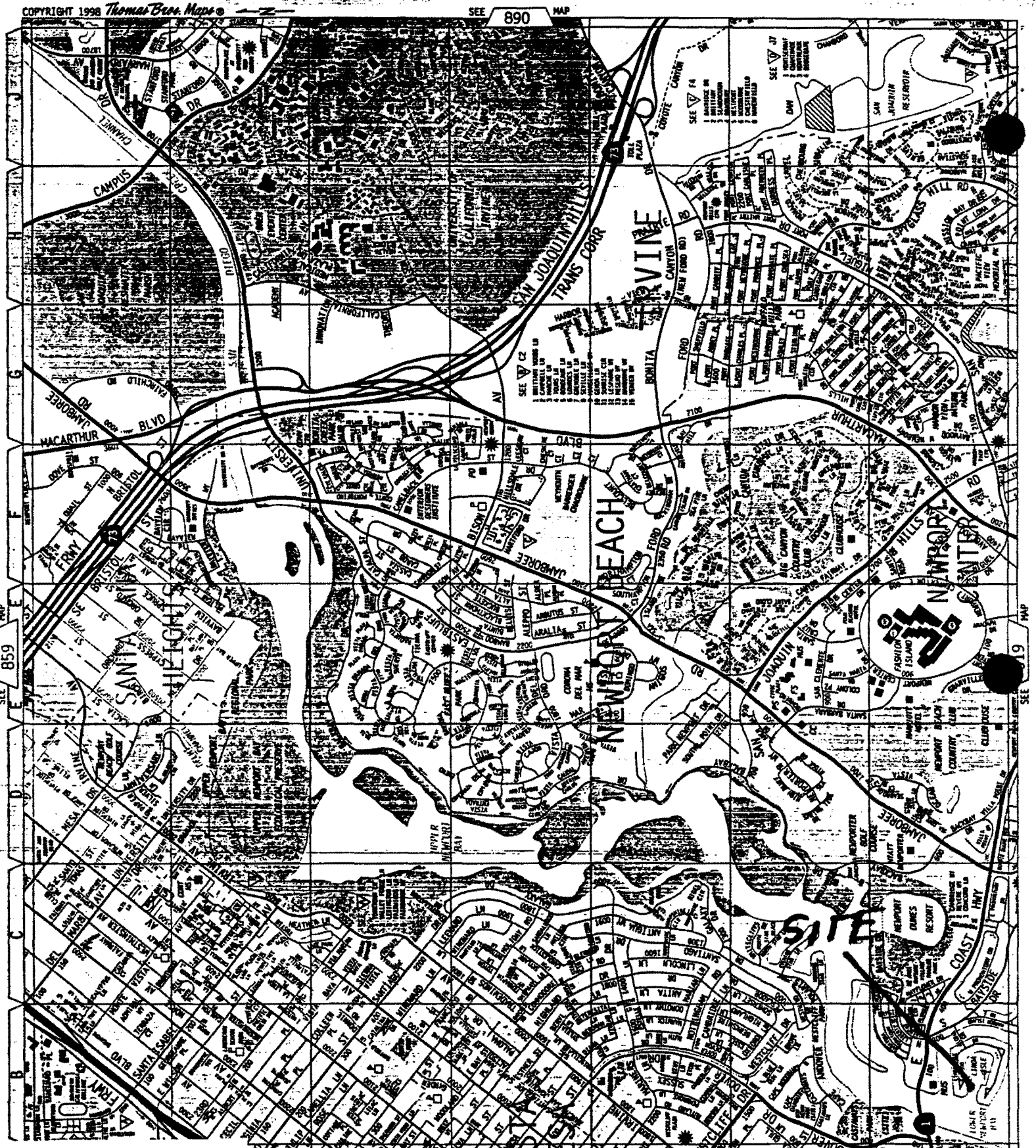


EXHIBIT No. 1

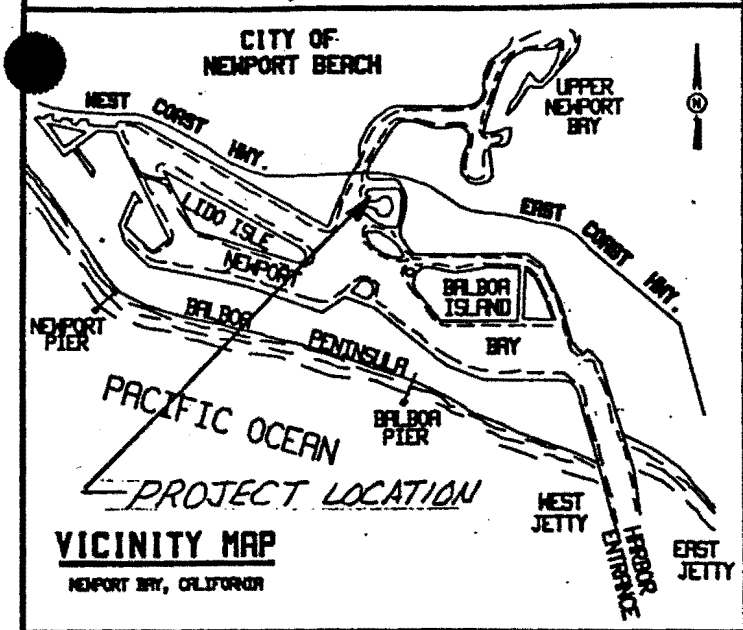
Application Number:

5-98-295

Vicinity Map

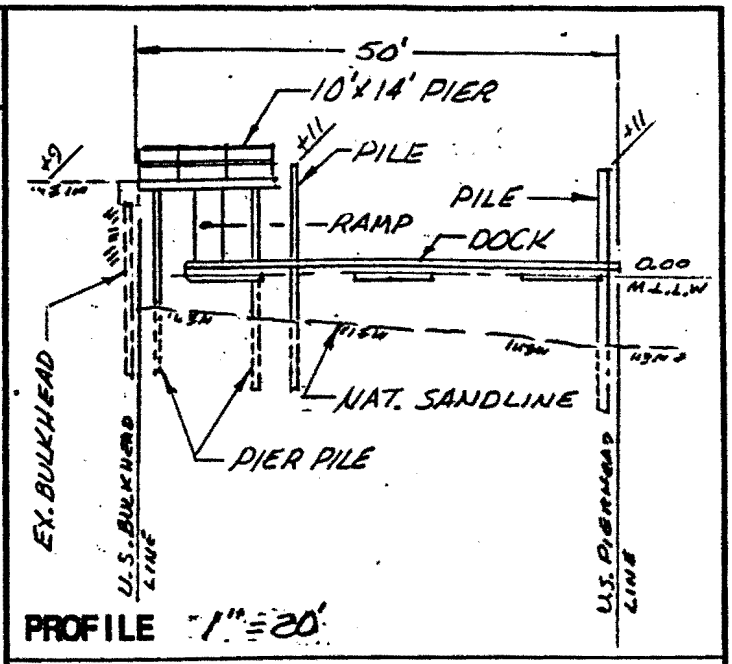
California Coastal Commission

CITY OF NEWPORT BEACH



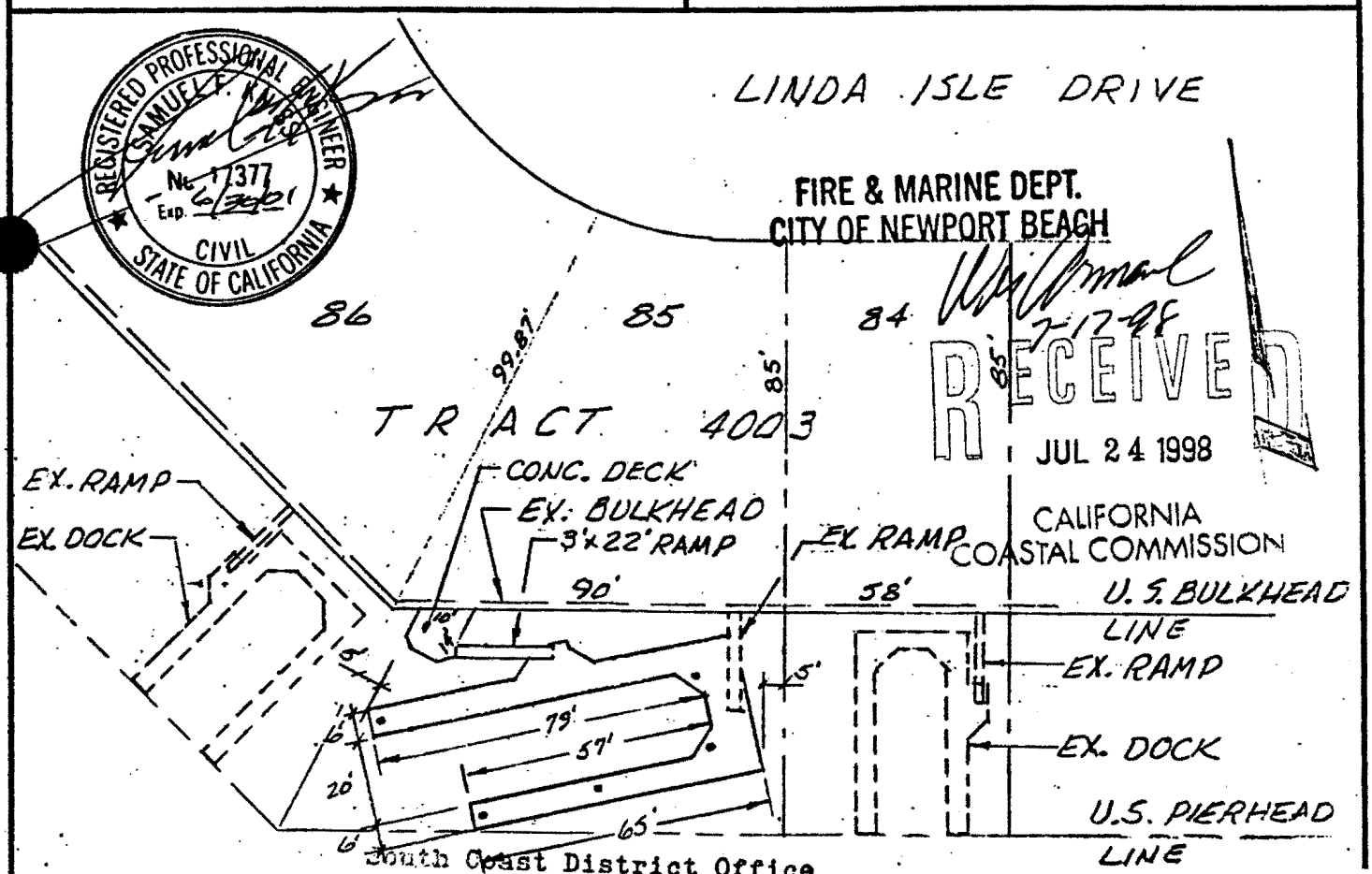
VICINITY MAP

NEWPORT BAY, CALIFORNIA



PROFILE 1" = 20'

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 AGATE
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

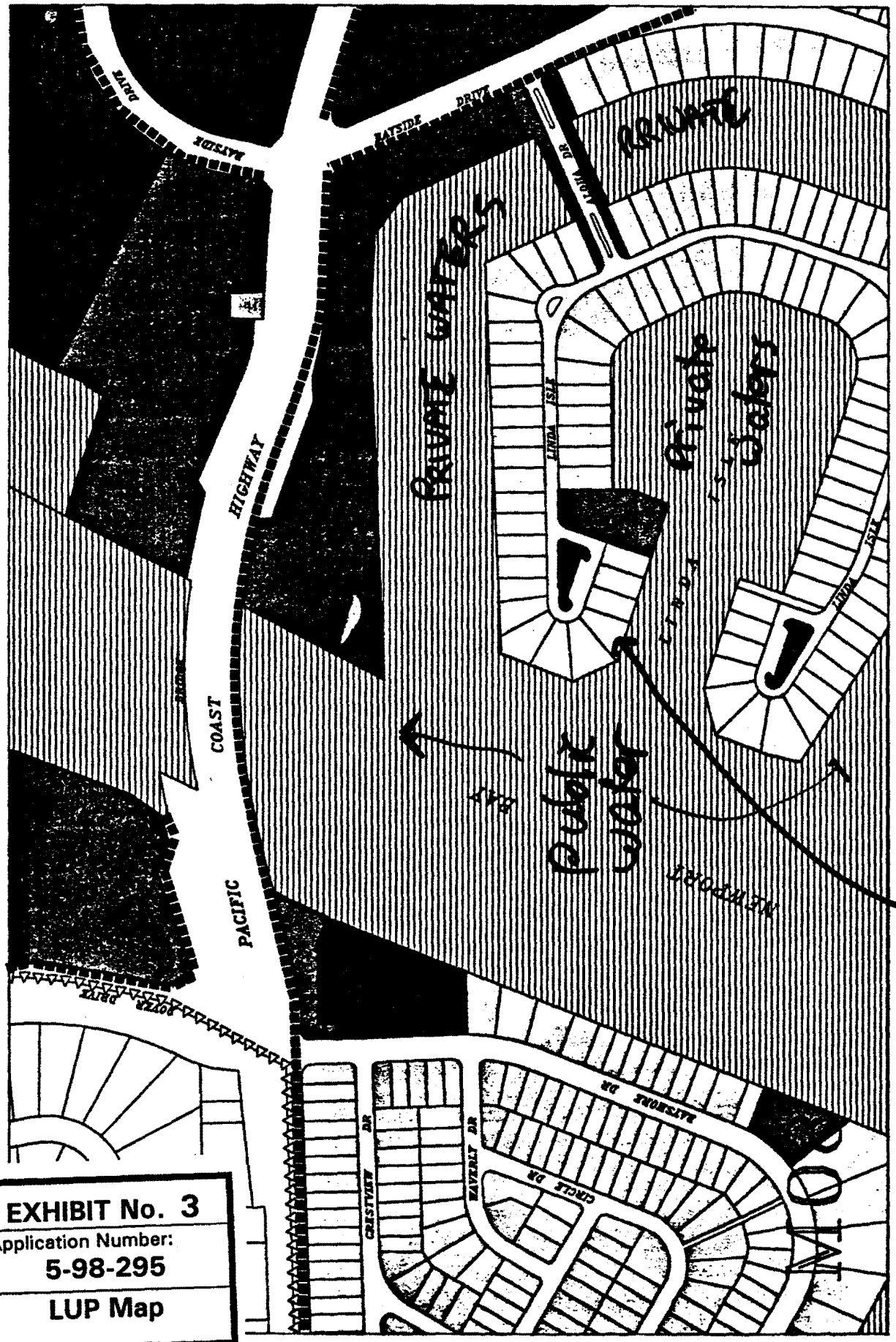


EXHIBIT No. 3

Application Number:
5-98-295

LUP Map

California Coastal Commission

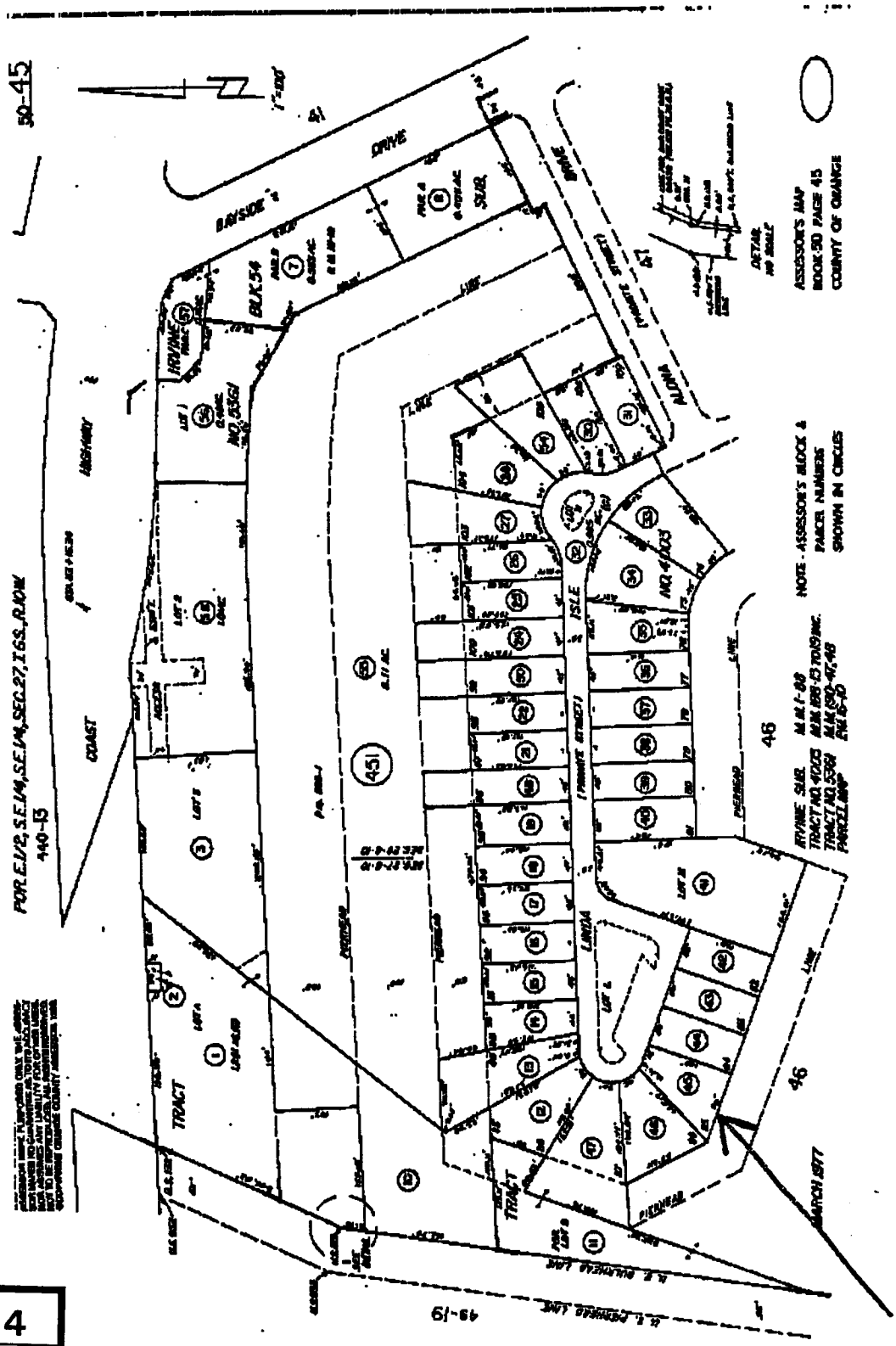


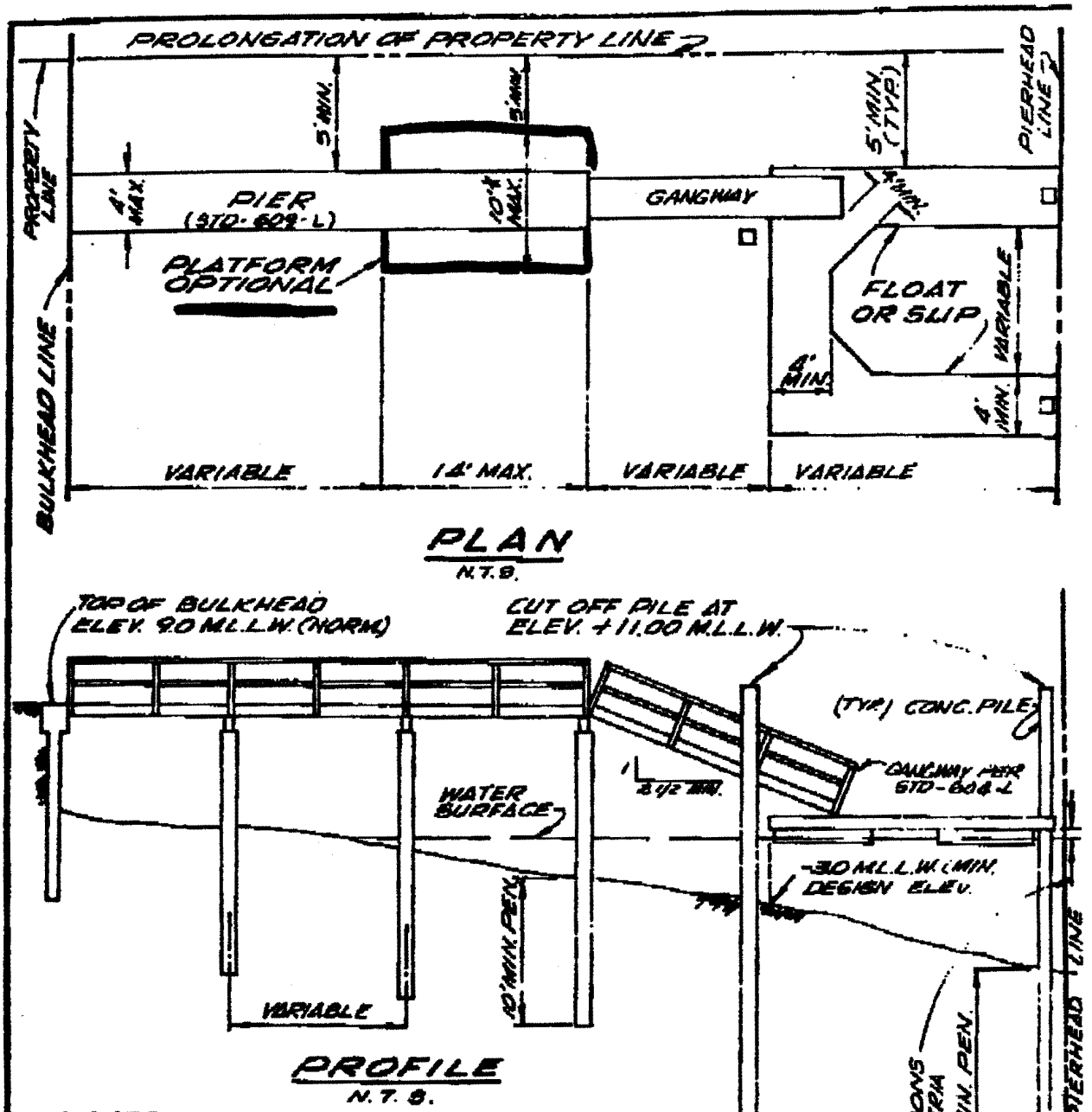
EXHIBIT No. 4

Application Number:

5-98-295

Assessors' Map

California Coastal Commission



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.

REV. 3/22/89
REV. 9-15-88
REV. 4-4-85

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

SINGLE RESIDENTIAL USE
FLOAT WITH PIER

DRAWN A.L.
APPROVED
DRAWING NO.

EXHIBIT No. 5

Application Number:
5-98-295

Deck Policy

California Coastal Commission

LINDA ISLE

NEWPORT BEACH FIRE & MARINE

City of Newport Beach

Fire and Marine Department

Scale: 1" = 2000'

EXHIBIT No. 6
Application Number: 5-98-295
Newport Harbor
California Coastal Commission

1-800-94-COAST
714-722-1611
Fax: 714-722-1612