

CALIFORNIA COASTAL COMMISSION

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

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Filed: 3/3/99
49th Day: 4/21/99
180th Day: 8/30/99
Staff: MV-LB
Staff Report: 3/25/99
Hearing Date: 4/13-16/99
Commission Action:

STAFF REPORT: REGULAR CALENDAR**APPLICATION NUMBER:** 5-99-043**APPLICANT:** Alberta Brown**AGENT:** Pete Swift, Swift Slip**PROJECT LOCATION:** 740 Via Lido Nord, Newport Beach, Orange County

PROJECT DESCRIPTION: Revise existing boat dock by: replacing existing U-shaped float with a larger 60 foot by 28 foot U-shaped float, shortening existing pier to 9 feet and replacing the existing 10 foot by 12 foot platform with a 10 foot by 14 foot platform in a new location and, replacing the 3 foot by 20 foot gangway with a 3 foot by 22 foot gangway.

LOCAL APPROVALS RECEIVED: City of Newport Beach Fire and Marine Department, Marine Environmental Division, Approval in Concept, City Harbor Permit No. 175-740.

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); 5-98-523 (Bridges).

SUMMARY OF STAFF RECOMMENDATION:

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

The proposed boat dock project includes a 10 by 14 foot deck area (platform). The proposed platform is not a widened area of the pier, but a virtually separate structure proposed to be located to the side of the pier (the platform and the pier would share approximately 3 feet of common edge). The Commission has recently expressed concern that these platform structures may involve fill of open coastal waters (in the form of pilings) for a non-boating use. In this case, staff is recommending a special condition that would require the elimination of the proposed platform area in order to avoid non-allowable fill. 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.

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 revised plans for the review and written approval of the Executive Director. **The revised plans shall indicate that the 10 by 14 foot platform has been deleted from the project.**

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 and Location

The applicant proposes to revise an existing boat dock by: 1) replacing an existing U-shaped float with a larger 60 foot by 28 foot U-shaped float; 2) replacing the 3 foot by 20 foot gangway with a 3 foot by 22 foot gangway; and 3) shortening the existing pier to 9 feet and replacing the existing 10 foot by 12 foot platform with a 10 foot by 14 foot platform in a new location. The existing dock extends to the U.S. Pierhead Line. The proposed dock would also extend to the U.S. Pierhead Line.

The existing 10 foot by 12 foot platform is a widened area of the channelward end of the existing pier (see Exhibit C). The proposed 10 foot by 14 foot platform would not be a widened area of the proposed pier. As proposed it is virtually a separate structure. The proposed pier and platform would share only about three feet of a common edge (see exhibit

B). As proposed, the platform would require a total of 4 pilings, three of which do not contribute to the structural support of the pier.

The subject site is located on Lido Island within Newport Harbor in the City of Newport Beach. Lido Island is not a locked gate community. However, public access to the harbor on Lido Island exists only at the walkway between the 300 and 400 block of Via Lido Nord. Lido Island, like the majority of islands in Newport Harbor, is surrounded by private, residential boat docks.

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.

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

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

The 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 pier, gangway and float are allowable because they are necessary to support a recreational boating facility. However, the proposed 10 by 14 foot platform is not necessary for the boat dock to function. Since the platform requires fill (in the form of pilings), it can only be allowed if it is one of the specifically enumerated uses allowed under Section 30233 of the Coastal Act.

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 and/or the width of the channel, 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 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. The Commission approved a project similar to the proposed project at 744 Via Lido Nord (next door to the subject site) under waiver No. 5-95-166 (Kluger). The project approved under 5-95-166 was similar in that it involved boat dock reconstruction and a platform was also relocated landward, but in that case the pier was eliminated. Commission staff observed that while some of the platforms contained lockers, small boats, kayaks, and boating equipment or were empty, others had plastic tables and chairs 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.

The applicant is proposing to relocate, enlarge 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 pilings and reconstruct the platform. Because the existing platform is being removed and reconstructed, the proposed platform is analyzed as new development.

The applicant has indicated that the platform has been and will continue to be used for ingress and egress to the float, as a staging area to gather equipment prior to departing on the boat, and as a location for placement of fiberglass storage boxes to be used for storage of boating items such as anchors, fenders, and dock lines. In addition, the applicant has indicated that because the platform is above the tide, it is a safe place to locate weather tight electrical services. Also the applicant has indicated that backflow devices would be mounted on the platform. In addition, although not proposed at this time, the platform area could convert in the future, perhaps under different ownership, to a patio seating area.

Ingress and egress to the float can be accomplished without the platform. Further, the State of California Department of Boating and Waterways' (DBW) "Layout and Design Guidelines for Small Craft Berthing Facilities" do not include any description of a pier platform. While this does not indicate that DBW would object to the proposed platform, it does indicate that the platform is not a required component of a boat dock. Additionally, although the City's Harbor Permit Policies allow these platforms, they are optional. Further while many of the docks in Newport Harbor do have platforms, there are boat docks in Newport Harbor without them. And in other harbors that have similar single boat docks associated with residential development, such as Huntington Harbor and the Naples area of Long Beach, such platforms are not prevalent.

If converted to 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. In addition the City's certified Land Use Plan (LUP) policy cited above precludes residential and commercial structures (except piers and docks used exclusively for berthing of vessels) from encroaching beyond the bulkhead line. As patio area, the proposed platform area would also be inconsistent with this LUP policy.

The fact that ingress and egress can be accomplished without the platform, that the DBW design guidelines and the City's Harbor Permit Policies do not require them, and that many existing private boat docks function well without them, indicates that the proposed platform is not a necessary part of the proposed boating facility.

Many of the platforms in the harbor are widened areas of the otherwise 3 or 4 foot wide pier. In those cases it is usually possible to construct the platforms without using more pilings than would be necessary for the pier alone. This is accomplished by using T-piles in the center of the pier/platform area, rather than a single piling at each of the four corners of the platform. However, in this case, because the platform is off to the side of the pier, it cannot be constructed without more pilings than would be necessary for the pier alone.

Because the platform is proposed to be located to the side of the pier, rather than being a widened part of the pier, the project cannot be re-designed to eliminate pilings which support the platform without eliminating the platform itself. Consequently, retaining the platform if T piles are used is not an option in this case. In order to eliminate non-allowable fill staff is recommending a special condition that the proposed platform be eliminated from the design of the proposed project and that the applicant submit revised plans which will reflect this. If the proposed project were constructed without the platform, then the project could be found consistent with 30233 because fill would not result from a non-allowable use. Therefore, as a condition of approval, the applicant shall submit, for the review and approval of the Executive Director, revised plans indicating that the platform has been eliminated from the design of the project.

Section 30233 also requires that any project which results in fill of open coastal waters also provide adequate mitigation and be the least environmentally damaging alternative. The proposed project meets the first of these requirements because the pilings themselves are self-mitigating in that they provide habitat for marine organisms. The proposed project is the least environmentally damaging alternative in that it has been designed in conformance with the Department of Boating and Waterways Guidelines, and as conditioned, uses only the piles necessary to support recreational boating facilities. 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 do not exist in the immediate project vicinity. The nearest lateral access is along the public walkway adjacent to the harbor at the 300 and 400 block of Via Lido Nord (the subject site is a 740 Via Lido Nord, see exhibit D).

The proposed development consists of reconfiguration of an existing boat dock. The proposed development will not adversely impact navigation. The development will not create additional adverse impacts on coastal access and recreation. The proposed development does not constitute an intensification of use. Therefore, the Commission finds that the proposed development does not pose significant adverse impacts on existing public access and recreation and is consistent with Section 30212 of the Coastal Act.

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

D. Water Quality

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

The project site is on the water in Newport Harbor. The applicant is proposing to revise 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 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.



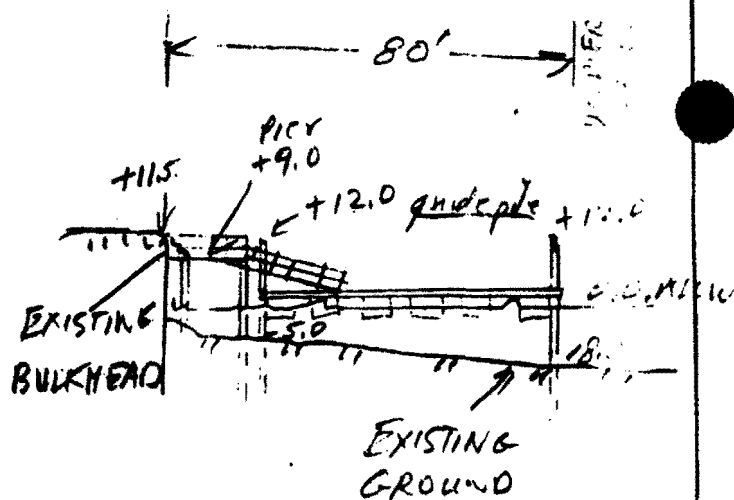
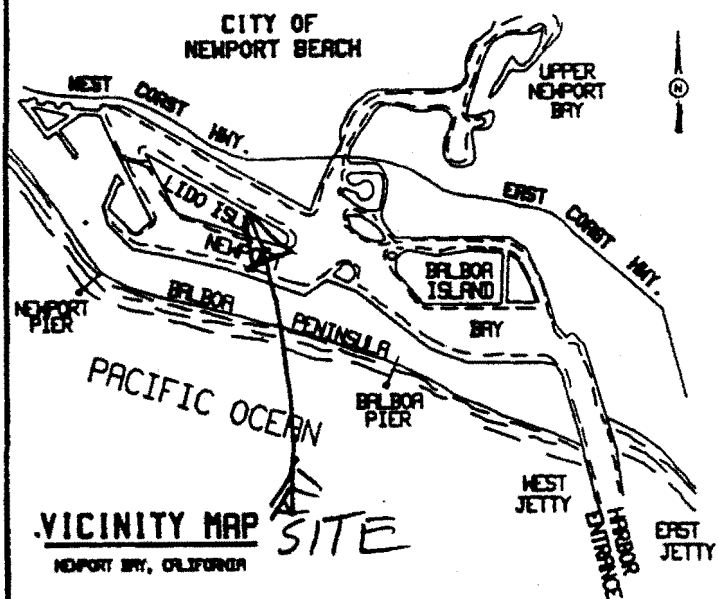
Subject
Site

EXHIBIT NO. A
APPLICATION NO.
5-99-043
California Coastal Commission

VICINITY MAP

#175-740

CITY OF NEWPORT BEACH

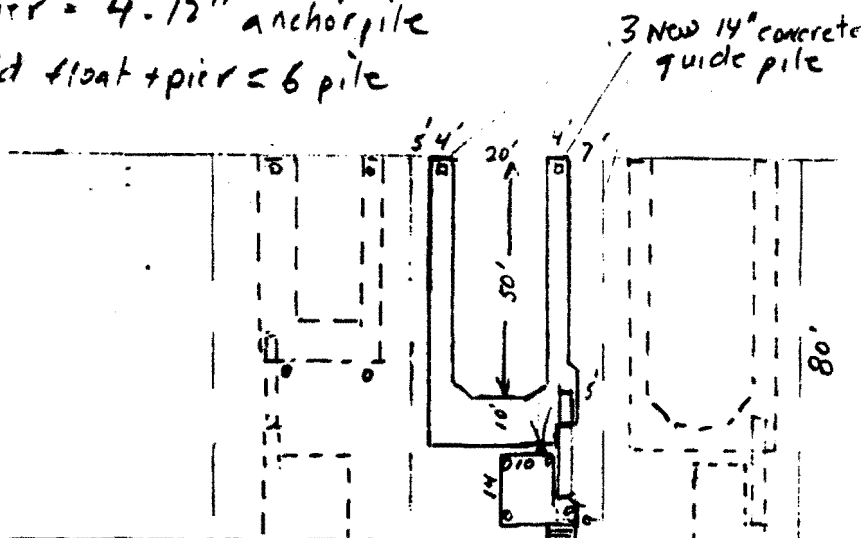


PROFILE 1" = 40'

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

Note: Replace float with
60'x28' "U" shape
Replace pier with
10x14' shape
Replace gangway
with 3x22'
Float = 3-14" guidepile
Pier = 4-12" anchorpile
Old float + pier = 6 pile

NEWPORT BAY



U.S. PIERHEAD: 115B

FIRE & MARINE DEPT.
CITY OF NEWPORT BEACH

1-26-99

U.S. BULKHEAD LINE

43

42

41

5-99-048

APPROVED
No.

PLAN VIEW 1" = 40'

APPLICANT'S NAME DON BROWN

JOB ADDRESS 740 VILLAGE ROAD

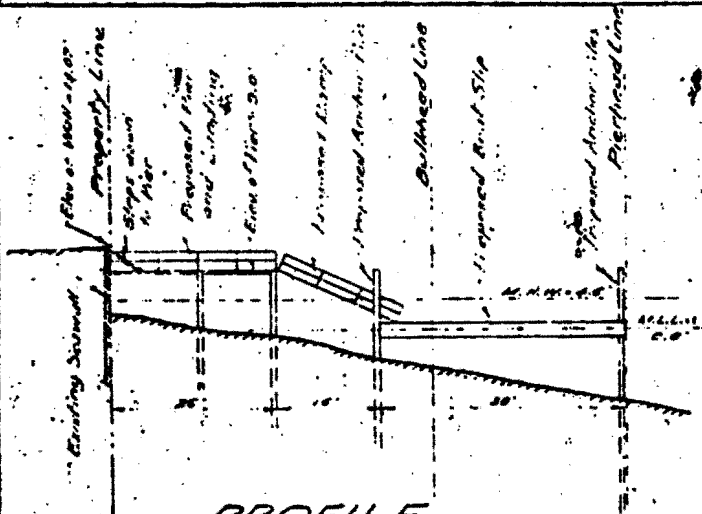
DATE 1-2-99

PROPOSED

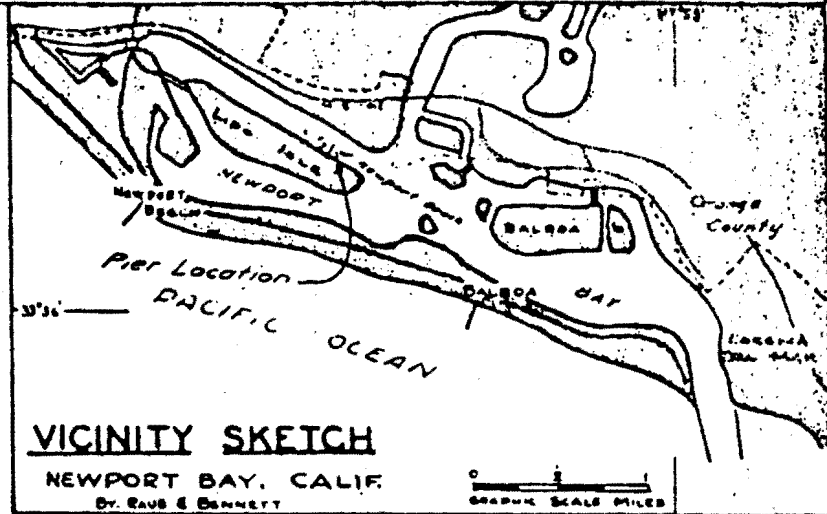
EXHIBIT B

EXISTING DOCK

175-740



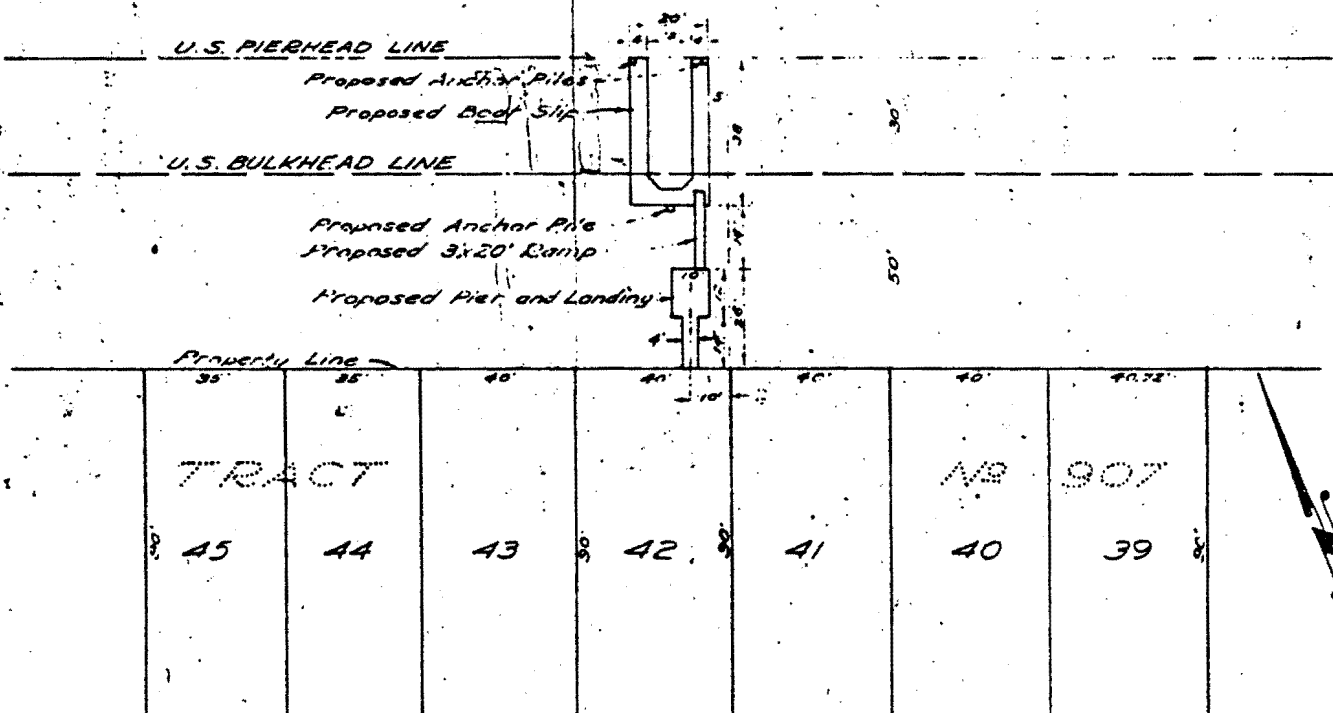
PROFILE
Scale in Feet



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

NEWPORT

BAY



TRACT

NO 907

45

44

43

42

41

40

39

VIA

LIDO

NORD

EXHIBIT C

5-99-043

EXISTING

PLAN

Scale in Feet

PAUL & BENNETT - ENGINEERING & SURVEYING
P.O. Box 635, Costa Mesa, California

PROPOSED
PIER AND BOAT SLIP

NEWPORT BAY
NEWPORT BEACH, CALIFORNIA

Appointed By: **FRANK T. SKINNER**
740 VIA LIDO NORD

JUL 22 1991
CALIFORNIA
COASTAL COMMISSION
SOUTH COAST DISTRICT

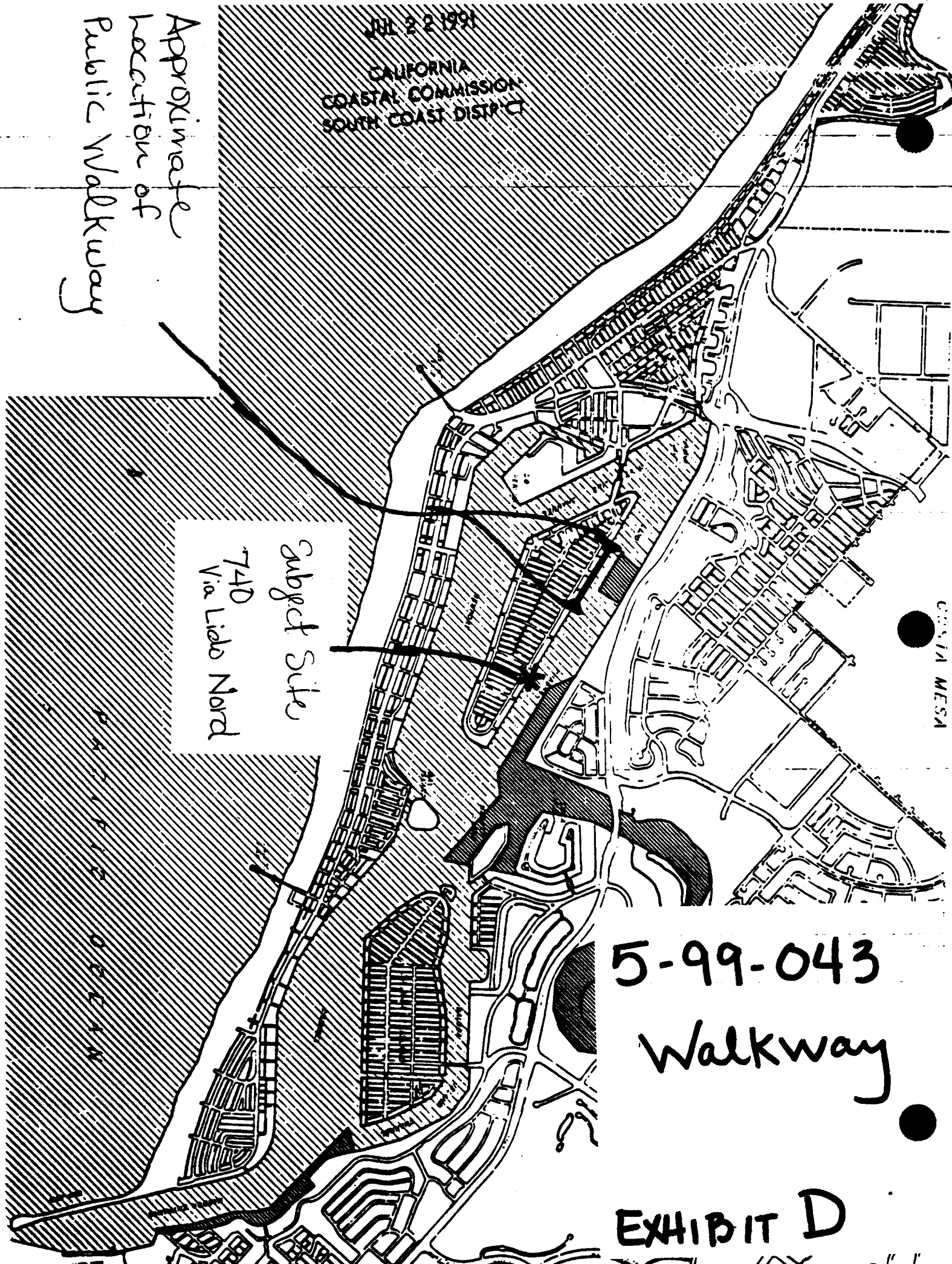
Approximate
Location of
Public Walkway

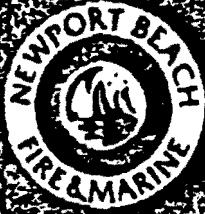
Subject Site
740
Via Lido Nord

COSIA MESA

5-99-043
Walkway

EXHIBIT D





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 Tidelands 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

5-99-043
EXHIBIT E,

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

5-99-043
EX. E₂