

CALIFORNIA COASTAL COMMISSION

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

Filed: November 3, 1998
49th Day: December 22, 1998
180th Day: Waived
270th Day: July 31, 1999
Staff: SFR-LB
Staff Report: June 24, 1999
Hearing Date: July 13-16, 1999
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-98-321

APPLICANT: Jan and Jerry Barto **AGENT:** None

PROJECT LOCATION: 759 Via Lido Soud, City of Newport Beach, Orange County

PROJECT DESCRIPTION: Demolition of a failed existing 40-foot long cast-in-place bulkhead. The bulkhead will be replaced by a new 40 foot long cast in place bulkhead system. The new bulkhead will be on the same alignment as the failed bulkhead with a base elevation of +.54 feet MLLW and a top elevation of +8.79 feet. No seaward encroachment will occur as a result of this development.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval in Concept (7/20/98) and construction permit 172-59.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach, Local Coastal Program-Land Use Plan, effectively certified May 18, 1982; Coastal Development Permits: 5-96-102 (Rafferty), 5-97-117 (Donahue), 5-97-236 (Wagner); 5-98-305 (Newport Harbor Yacht Club), and 5-98-372 (WMC Development).

SUMMARY OF STAFF RECOMMENDATION:

This permit application is the follow-up permit application to an emergency permit issued by the Executive Director to replace a failed bulkhead. The bulkhead has been reconstructed. Staff recommends approval of the proposed development with one special condition requiring that the applicant minimize disturbance to the beach during construction and remove all construction debris following construction.

The major Coastal Act issue raised by this project would be the potential for adverse impacts to the marine environment resulting from the replacement of a failed bulkhead. The subject site is in an urban harbor (Newport Bay) which has been extensively developed with bulkheads. This project replaces a failed bulkhead with a new bulkhead in the same location; consequently, impacts to the marine environment are believed minimal.

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, located between the nearest public roadway and the shoreline, 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. Construction Responsibilities and Debris Removal

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

- (a) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be immediately removed from the beach following the completion of construction;
- (c) No machinery shall be allowed at any time on the beach, or intertidal zone;
- (d) All excavated beach sand shall be re-deposited on the beach;
- (e) Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material; and
- (f) Staging and storage of construction machinery and storage of debris shall not take place seaward of the bulkhead.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

The applicant proposes to demolish and reconstruct a bulkhead which failed on a residential lot at 759 Via Lido Soud, Newport Beach, Orange County (Exhibits 1,2, and 5). The subject site is located between the sea and the first parallel public roadway and is a bay front lot. Prior to its failure there was a 40 foot long, cast-in-place concrete bulkhead, on the bayfront side of the subject property. No seaward encroachment will occur as a result of this proposed development.

The subject site was subject to coastal development permit 5-98-072 for the demolition of a two story single family residence and the construction of a 5,261 square foot single family residence with a 627 square foot garage. Grading consisted of 480 cubic yards for the purposes of constructing a basement. Coastal Development permit 5-98-072 was approved by the Commission on May 14, 1998

with five special conditions: Assumption of Risk, Conformance with Geotechnical Recommendations, Evidence of Regional Water Quality Approval, Disposal of Cut Dirt, and Improvements to the Bulkhead.

The City of Newport Beach requires that when homes (which have bulkheads) are demolished that the bulkheads be inspected for structural integrity. However, work on the bulkhead was not a part of the project approved under 5-98-072.

Consequently the Commission imposed a special condition which required that the applicant obtain a new permit or an amendment to 5-98-072 if the City required inspection revealed the need for repairs to the bulkhead.

Shellmaker, Inc., the applicant's consultant, wrote on May 12, 1998 that during the course of demolition of the old residence, the bulkhead infrastructure was exposed and examined per the City of Newport Beach's requirements. Upon exposure, the bulkhead was found to be in such poor condition that it failed on July 22, 1998, posing the risk that it would undermine the neighbor's house. The Executive Director issued emergency permit 5-98-321-G on August 12, 1998 to reconstruct a new bulkhead in the same footprint and configuration as the failed bulkhead. The bulkhead was re-built under the Emergency Permit. This application is the follow-up application to the emergency permit.

The land use designation for the site is *Single Family Detached Residential*. The land use designation for the harbor area seaward of the U.S. Bulkhead line is *Water*.

B. Protective Structures and Hazards

Section 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act states in part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area...*

In May 1998 the Commission approved coastal development permit 5-98-072 for the demolition and reconstruction of a single family residence at the subject site. Site conditions included an existing, aging cast-in-place concrete bulkhead. No work was proposed on the existing bulkhead under the previous application. However, during the construction of the new residence the existing bulkhead failed on July 22, 1998. The failure also left the neighbor's house on the west side in a very vulnerable state. According to information submitted with the application for the emergency permit a sand berm and sand bags were placed to protect the neighbor's property, but due to tidal action these measures only worked for very short periods of time and required constant maintenance. On August 12, 1998 the Executive Director issued an emergency permit to rebuild the bulkhead. The bulkhead according to the applicant's consultant was immediately reconstructed. The new replacement bulkhead, through the emergency permit was conditioned to be installed in the same location and not to exceed the height of the failed bulkhead. Since the proposed bulkhead will be reconstructed to re-establish the conditions which existed prior to the failure, it will not have any additional impact upon shoreline processes.

A bulkhead is required at the subject site to protect the structural integrity of the applicant's lot and the neighbor's lot from tidal activity. The new bulkhead has been reviewed and approved by a structural engineer confirming that it will achieve its intended purpose of minimizing risks to life and property; and that it will assure stability and structural integrity both on-site and off-site. The proposed development will protect lot stability and reduce risks to life and property with a new bulkhead system. This development will not have any adverse impacts upon shoreline processes because there will be no change from the prior structural footprint. Therefore, the Commission finds that the proposed development, as submitted, conforms with Section 30235 and 30253 of the Coastal Act.

C. Coastal Access and Recreation

Section 30212 of the Coastal Act states in 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...

(b) For purposes of this section, "new development" does not include:

(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.

Section 30604(c) of the Coastal Act states:

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3.

The proposed development, which occurs between the nearest public road and the sea, includes the reconstruction of a bulkhead that will not occur seaward of the existing wall. Therefore, the proposed development is not subject to the access requirements of section 30212 of the Coastal Act. Existing vertical public access is available immediately east of the site at the street-end of Via Waziers. There is no established lateral public access in the vicinity. Since the proposed project involves the reconstruction of existing facilities, neither the existing access situation nor the intensity of use of the site will be changed. The proposed development will not have an impact on existing coastal access or recreation in the area. Therefore, the Commission finds that the project is consistent with the public access and recreation policies of the Coastal Act.

D. Water Quality and the Marine Environment

The proposed project is the reconstruction of an existing bulkhead adjacent to coastal waters. Due to the proposed project's location near or in the water, the proposed work may have adverse impacts upon water quality and the marine environment.

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.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Due to the proximity of the project site to coastal waters and the fact that construction of the proposed project will require the use of heavy machinery and require the stockpiling of construction materials the Commission finds it necessary to identify, at minimum, the permittee's responsibilities regarding project construction. Mining of shoreline resources for bulkhead backfill could result in damage to marine resources. In addition, if stored improperly, hazardous substances (i.e. fuel and lubricants, etc.) present in heavy machinery or stockpiled materials, could be released into the marine environment. In order to protect the marine environment from degradation, the Commission is imposing a special condition which requires that no local sand, cobbles, or shoreline rocks be used for construction material, that all construction materials and equipment are to be stored landward of the bulkhead, on impervious surfaces only, that all construction materials or waste are to be stored in a manner which prevents their movement via runoff, or any other means, into coastal waters, that no machinery may be placed in the intertidal zone at any time, and that any and all construction equipment, materials and debris are to be removed from upland and intertidal areas at the conclusion of construction.

The proposed project will maintain the present use and is not expected to create additional adverse impacts on marine resources. However to protect coastal waters the Commission finds it necessary to specify the permittee's responsibilities regarding construction procedures and cleanup, and has conditioned the project

accordingly. Therefore, only as conditioned does the Commission find that the proposed project conforms with Sections 30230 and 30231 of the Coastal Act.

E. Land Use Plan

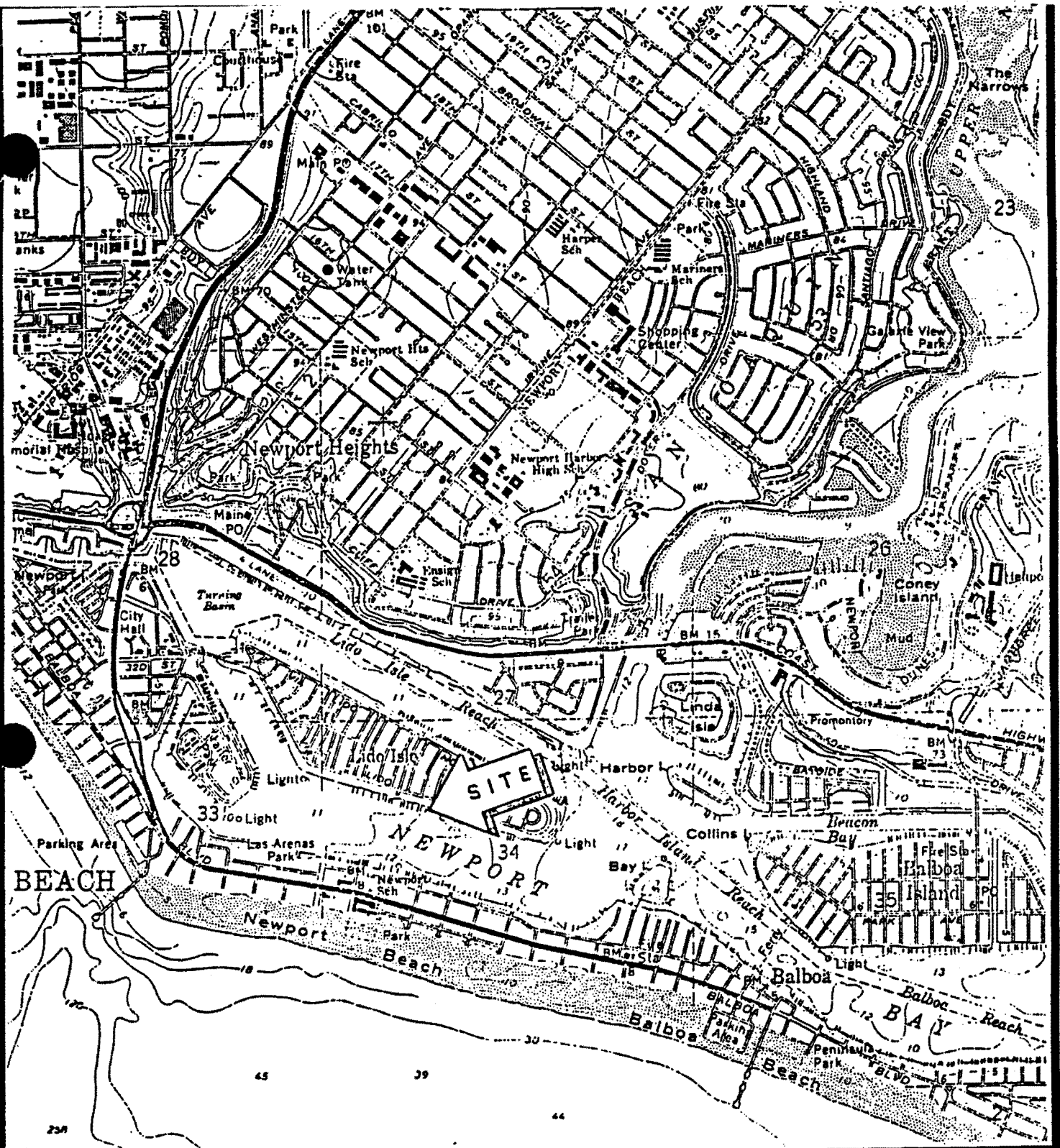
Section 30604 of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified local coastal program. The permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The proposed development is consistent with the policies of the certified Land Use Plan. Therefore, the Commission finds that approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program (Implementation Plan) for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

F. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The project is located in an existing harbor in an urbanized area. Development already exists on the subject site. The project site does not contain any known sensitive marine resources, therefore the impacts arising from the proposed project will be minimal. In addition, the proposed development has been conditioned, to restrict the placement of construction materials and use of on-site resources as construction material; and to remove all construction debris. As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and is consistent with CEQA and the policies of the Coastal Act.



Reference:

USGS NEWPORT BEACH, CALIFORNIA, 7.5 MIN. QUAD. MAP,
PHOTOREVISED 1981

Scale:

1 = 24,000



TITLE:	SITE VICINITY MAP	
PROJECT:	759 VIA LIDO SOUND, LIDO	
PROJECT NO.:	97122-101	DATE: 9-1'

EXHIBIT No. 1

Application Number:

5-98-321

Vicinity Map

California Coastal
Commission

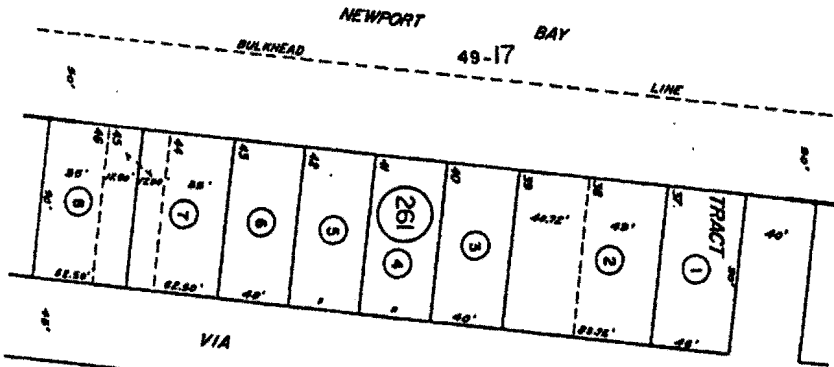


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MARCH 1981



TRACT NO. 907 A. M. 28-25 TO 36 AC.

NOTE - ASSESSOR'S BLOCK 4 PARCEL NUMBERS SHOWN IN CIRCLES

ASSESSOR'S MAP BOOK 423 PAGE 26 COUNTY OF ORANGE

25

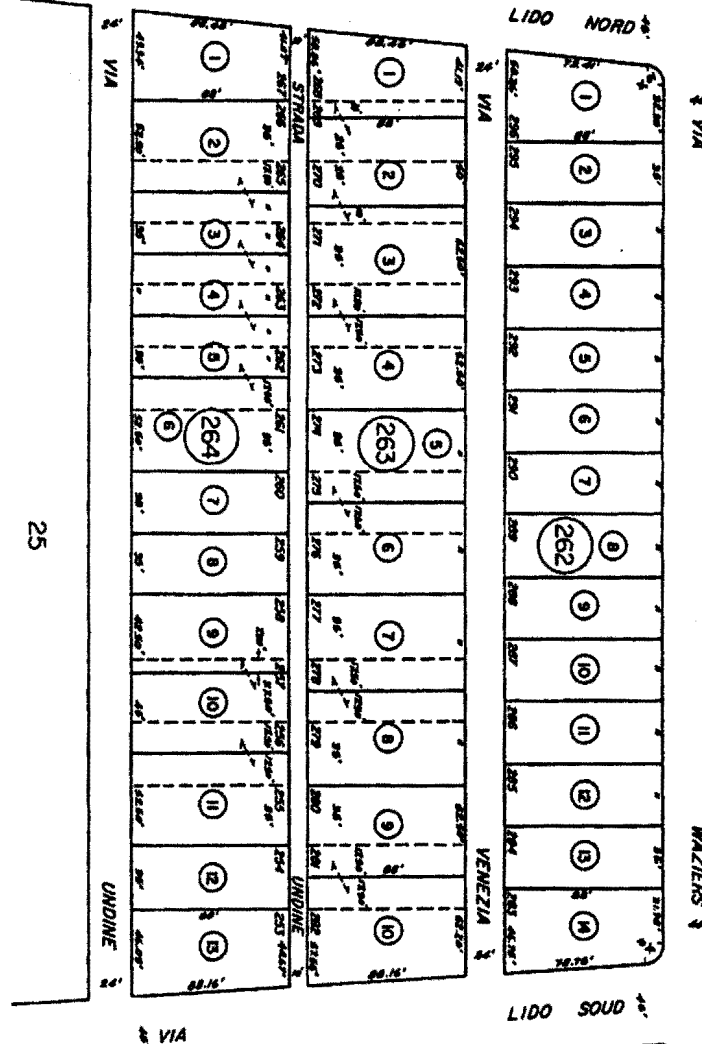


EXHIBIT No. 2

Application Number:

5-98-321

Assessor's Map

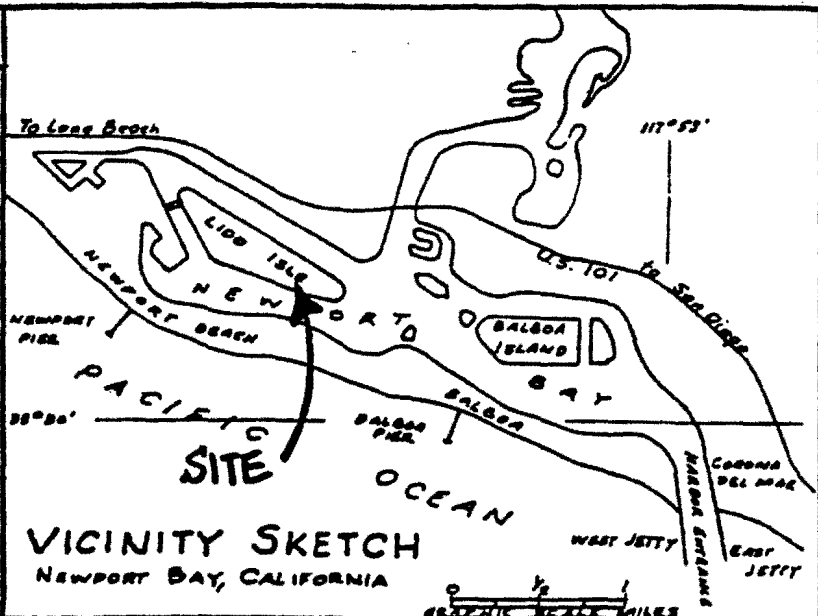
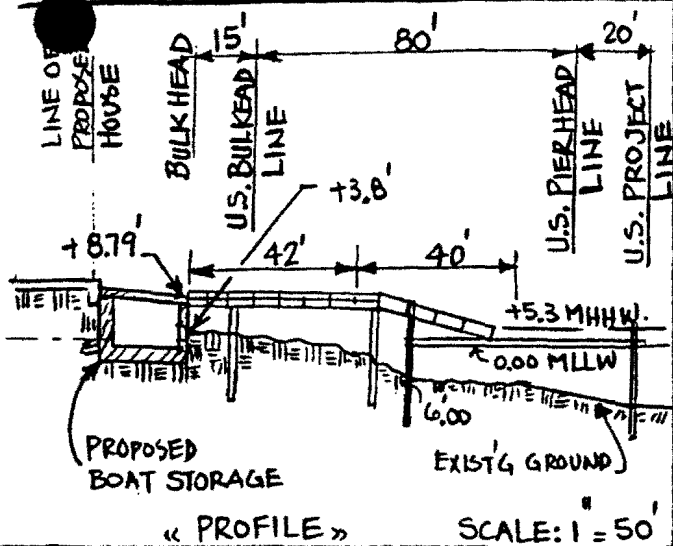


California Coastal Commission

1" = 60'

423-26

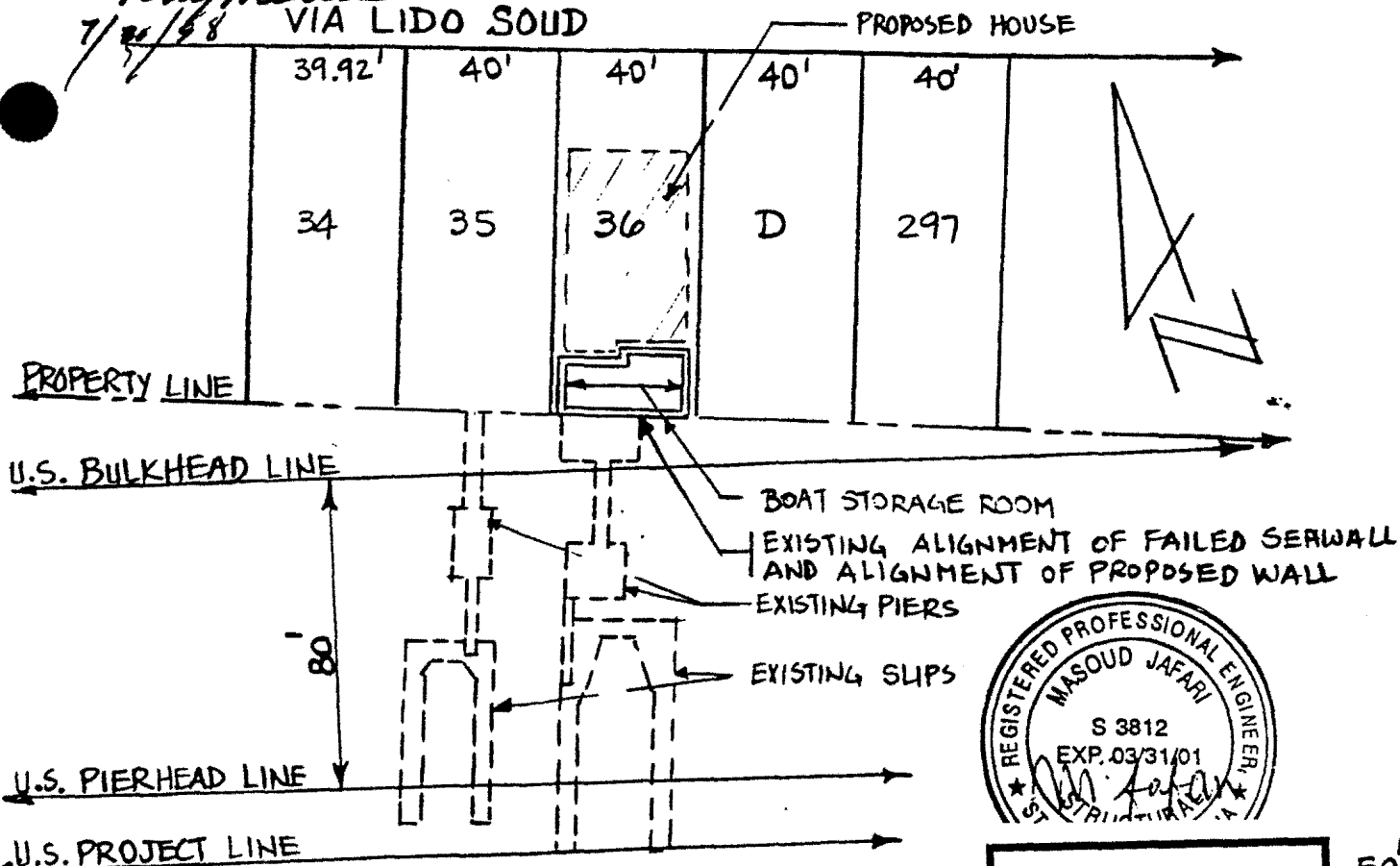
CITY OF NEWPORT BEACH



FIRE & MARINE DEPT.
CITY OF NEWPORT BEACH

Soundings are expressed in feet and denote depths below Mean Lower Low Water. Maximum range of tide approximately 10 feet. Harbor lines are established in this section of Newport Bay.

Tom Melin
7/22/98 VIA LIDO SOUND



APPLICANTS NAME JAN & JERRY BARTO
JOB ADDRESS 759 VIA LIDO SOUND
LOT 36
WILLIAM
PREPARED

EXHIBIT No. 3	50'
Application Number:	107
5-98-321	7/98
Plan View	
California Coastal Commission	



WILLIAM SIMPSON & ASSOCIATES, INC.
CONSULTING STRUCTURAL ENGINEERS

2222 NEWPORT BLVD.
NEWPORT BEACH, CALIF. 92660

PH (714) 876-0710
FAX (714) 876-0248

WILLIAM SIMPSON ASSOC

BARTO SEAWALL
769 VIA LIDO SOUND

LIDO ISLAND

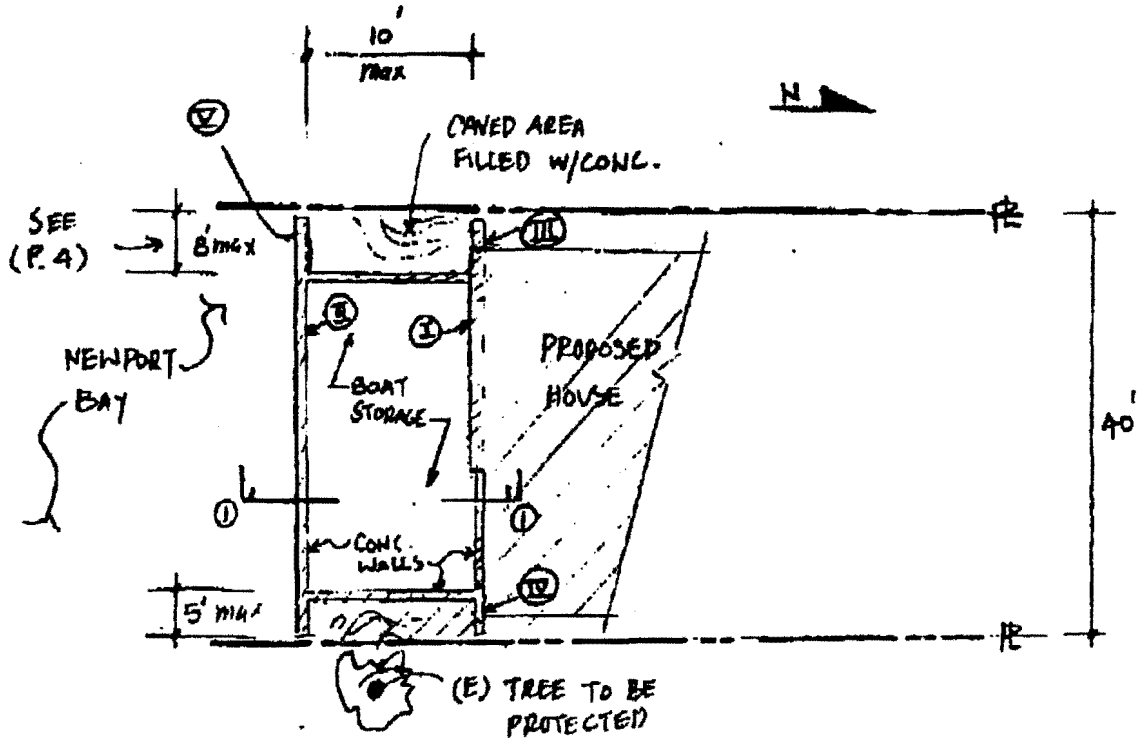
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JOB 5521

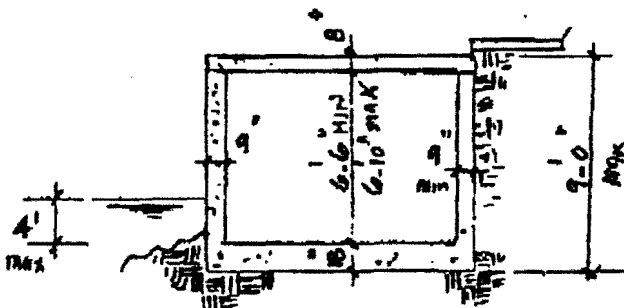
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DES M.J.

DATE 7/26/92



PARTIAL PLAN



SECTION 1-1

EXHIBIT No. 4

Application Number:

5-98-321

Sectional Views



California Coastal
Commission

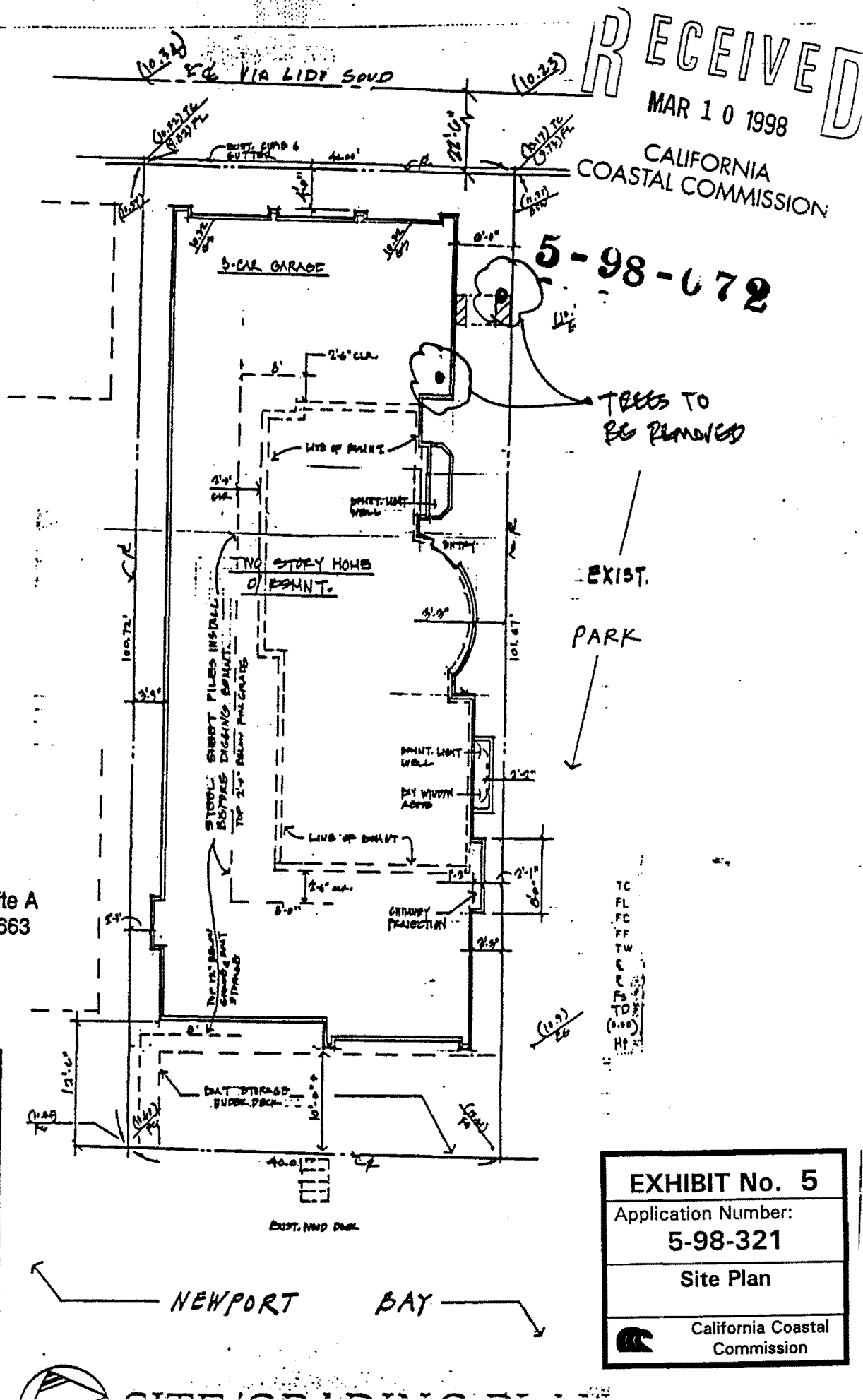


CUSTOM RESIDENCE FOR

IAN & JERRY BARTO

Located at:
759 Via Lido Soud, Lido Island
Newport Beach, California


Eric F. Mossman
Architect AIA
2800 Lafayette Ave., Suite A
Newport Beach, CA 92663



RECEIVED
MAR 10 1998
CALIFORNIA
COASTAL COMMISSION

5-98-072

TC
FL
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EXHIBIT No. 5
Application Number: 5-98-321
Site Plan
 California Coastal Commission

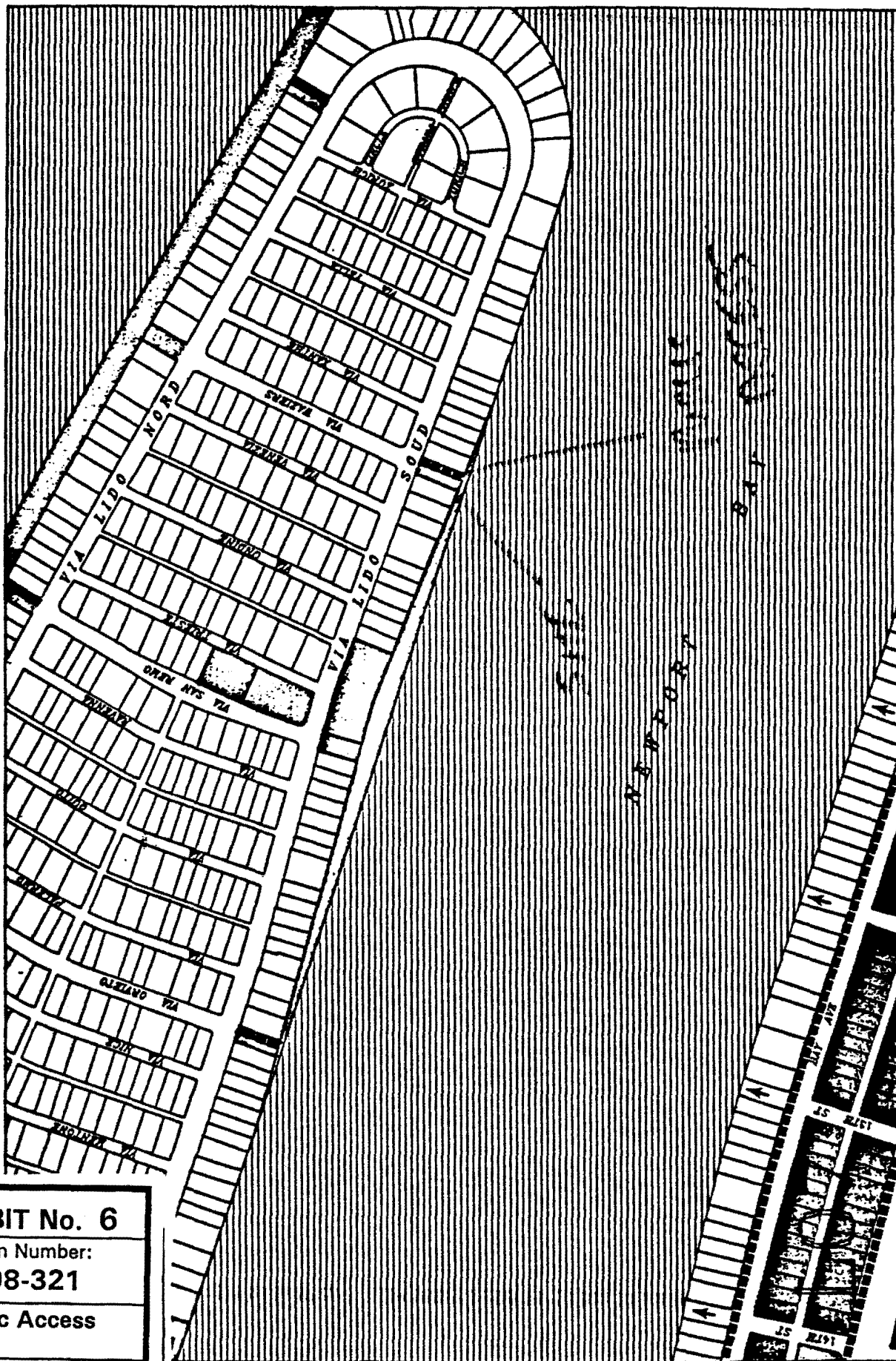


EXHIBIT No. 6

Application Number:

5-98-321

Public Access

California Coastal
Commission

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
3000 Ocean Gate, 10th Floor
Long Beach, CA 90802-4302
(562) 590-5071

EMERGENCY PERMIT

TO: Jan and Jerry Barto
211 Via Eboli
Newport Beach, CA 92663

August 12, 1998
Date
5-98-321-G
(Emergency Permit No.)

759 Via Lido Soud, Newport Beach, County of Orange
Location of Emergency Work


Demolition of an existing failed cast-in-place seawall and construction of a new cast-in place seawall in the same location. The new seawall will not exceed the height, length or width of the existing seawall and is an in-kind replacement. The new seawall will not extend seaward of the existing seawall.

Work Proposed.

This letter constitutes approval of the emergency work you or your representative has requested to be done at the location listed above. I understand from your information and our site inspection that an unexpected occurrence in the form of seawall failure due to excavation requires immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. 14 Cal. Admin. Code Section 13009. The Executive Director hereby finds that:

- (a) An emergency exists which requires action more quickly than permitted by the procedures for administrative or ordinary permits and the development can and will be completed within 30 days unless otherwise specified by the terms of the permit;
- (b) Public comment on the proposed emergency action has been reviewed if time allows; and
- (c) As conditioned the work proposed would be consistent with the requirements of the California Coastal Act of 1976.

The work is hereby approved, subject to the conditions listed on the reverse.

EXHIBIT No. 7
Application Number: 5-98-321
Emergency Permit
 California Coastal Commission

Very Truly Yours,

Peter M. Douglas
Executive Director

By: *Leresa Henry*
Title: District Manager

CONDITIONS OF APPROVAL:

1. The enclosed form must be signed by the property owner and returned to our office within 15 days.
2. Only that work specifically described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director.
3. The work authorized by this permit must be completed within 30 days of the date of this permit.
4. Within 60 days of the date of this permit, the permittee shall apply for a regular Coastal Permit to have the emergency work be considered permanent. If no such application is received, the emergency work shall be removed in its entirety within 150 days of the date of this permit unless waived by the Director.
5. In exercising this permit the applicant agrees to hold the California Coastal Commission harmless from any liabilities for damage to public or private properties or personal injury that may result from the project.
6. This permit does not obviate the need to obtain necessary authorizations and/or permits from other agencies.

For Emergency Shoreline Protection Projects:

7. If rock is used to construct the shoreline protective project, only clean, large rock shall be used. No fill materials or construction spoils shall be used. Applicant shall promptly remove without the aid of heavy machinery any rock that becomes dislodged and deposited on the beach.
8. OTHER: The proposed seawall will be constructed in the same location as the existing seawall and will not extend seaward of the footprint of the existing seawall.

Condition #4 indicates that the emergency work is considered to be temporary work done in an emergency situation. If the property owner wishes to have the emergency work become a permanent development, a Coastal permit must be obtained. A regular permit would be subject to all of the provisions of the California Coastal Act and may be conditioned accordingly. These conditions may include provisions for public access (such as an offer to dedicate an easement) and/or a requirement that a deed restriction be placed on the property assuming liability for damages incurred from storm waves.

If you have any questions about the provisions of this emergency permit, please call the Commission Area office.

Enclosures: 1) Acceptance Form; 2) Regular Permit Application Form

cc: Local Planning Department

0948G