

CALIFORNIA COASTAL COMMISSION

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Staff Report: 6/24/99
Hearing Date: 7/13-16/99
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-99-113

APPLICANT: David Bradburne

AGENT: Pete Swift, Swift Slip

PROJECT LOCATION: 636 Harbor Island Dr., Newport Beach, Orange County

PROJECT DESCRIPTION: Construction of a new boat dock consisting of a 44 by 31 foot U-shaped float with an attached 9 foot wide lobe at the base of the gangway, 3 by 22 foot gangway, and a 10 by 14 foot platform. The platform is proposed to be used as a staging area for boating activities folding of sails and other maintenance related to the boats. In addition, because the platform is above the tide, it is a safe place to locate the weather tight electrical services necessary for the boat. Also, backflow devices are proposed to be mounted on the platform. Also proposed is an 8 foot long deck cantilevered 5 feet beyond the bulkhead.

LOCAL APPROVALS RECEIVED: City of Newport Beach Fire and Marine Department Approval in Concept, Harbor Permit Number 200-636.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; City of Newport Beach Harbor Permit Policies, Coastal Development Permits 5-99-120 (Sutherland), 5-99-121 (Vance), 5-99-043 (Brown), 5-98-523 (Bridges).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed development subject to two special conditions. Special condition No. 1 requires minimization of construction impacts on harbor bottom and intertidal areas, appropriate storage of construction materials, removal of construction debris, and no mechanized equipment, except a barge or land-mounted crane, seaward of the bulkhead. Special condition No. 2 limits the use of the 10 by 14 foot platform solely to boating related uses.

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

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 removed from the project site within 24 hours of completion of construction;
- (c) No machinery, with the exception of a barge or land-mounted crane, shall be allowed at any time seaward of the bulkhead;
- (d) Disturbance of the harbor bottom and intertidal areas shall be minimized.

2. Use of Platform Limited to Boating Related Uses

By acceptance of this permit the applicant agrees and acknowledges that the sole use of the 10 by 14 foot platform area is limited to boating related uses and shall not be used for any other uses including but not limited to private residential patio amenities.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

The applicant proposes to construct a new boat dock consisting of a 44 by 31 foot U-shaped float with an attached 9 foot wide lobe at the base of the gangway, 3 by 22 foot gangway, and a 10 by 14 foot platform. The float will be supported by three 12 inch diameter piles. The platform is proposed to be used as a staging area for boating activities, folding of sails, and other maintenance related to the boats. In addition, because the platform is above the tide, it is a safe place to locate the weather tight electrical services necessary for the boat. Also, backflow devices are proposed to be mounted on the platform. The 10 by 14 foot platform will be supported by one 14 inch diameter "T" pile. Also proposed is an 8 foot long deck cantilevered 5 feet beyond the bulkhead.

The subject site is located in Newport Harbor, on Promontory Bay. The subject site was inspected for eelgrass and none was found.

B. Marine Environment

Section 30233 of the Coastal Act states, in pertinent 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:

(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 float are allowable because they are necessary to support a recreational boating facility. The project proposes to use a single T-pile to support the platform area. In this case, there is no pier area separate from the platform. Rather the pier area is comprised of the 10 by 14 foot platform. Because the platform is coincident with the pier, the same number of T-piles would be required to support the pier area whether it was widened to the 10 foot platform width or not. Therefore, no fill is required for the support of the platform. Nevertheless, the question has arisen of whether or not the proposed 10 by 14 foot platform constitutes a bona fide boating use or would serve as private residential patio area. 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.

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. Commission staff observed that while some of

the existing platforms in Newport Harbor contained lockers, small boats, kayaks, and boating equipment or were empty, others had tables and chairs or benches, flower pots, 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 piles.

The applicant has indicated that the platform will be used solely for boating purposes. More specifically the proposed uses of the 10 by 14 foot platform include a staging area where boat passengers, especially small children, may safely prepare for boating excursions (i.e. put on life jackets, etc.), and as an area for folding sails. In addition, because the platform is above the tide, it is a safe place to locate the weather tight electrical services necessary to serve the boat. Also backflow devices would be mounted on the platform. Based on the uses proposed by the applicant, the Commission finds that the proposed platform does constitute a boating facility. As a boating facility, the proposed platform is a use specifically allowed under Section 30233(a)(4) of the Coastal Act.

Although as proposed the platform constitutes a bona fide boating facility, there is the possibility that additional uses may be contemplated in the future. If a future use did not constitute a legitimate boating use, the issue of fill (in the form of piles supporting the platform) for a non-allowable use is raised. For example, the platform area could be converted to private residential patio use by the placement of chairs or tables. In order to assure that this does not happen, special condition No. 2 is required. Special condition No. 2 limits the use of the platform solely for boating related purposes.

Section 30233 also requires that any project involving fill of open coastal waters, in addition to being an allowable use, must also be the least environmentally damaging feasible alternative. One way to reduce environmental damage is to minimize the amount of fill. Some platforms in Newport Harbor have been constructed using two T-piles centered under the platform area rather than a single pile at each of the four corners. Although the T-piles have a slightly larger diameter than the single piles, the use of two T piles rather than four single piles results in less fill. In the case of the proposed project, because one end of the platform is connected to the bulkhead, only one T-pile is necessary to support the platform. In addition, the project has been designed in conformance with the Department of Boating and Waterways Guidelines, and uses only the piles necessary to support recreational boating facilities. Therefore, the Commission finds that as proposed the design of the project, including the platform, is the least environmentally damaging feasible alternative.

Section 30233 also requires that any project which results in fill of open coastal waters also provide adequate mitigation. The proposed project meets this requirement because the pilings provide habitat for marine organisms. Therefore, the Commission finds that the proposed project is consistent with Section 30233 of the Coastal Act.

C. Public Access

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. The subject site is adjacent to Newport Harbor. Although the subject site is not located within a locked gate community, due to the pattern of residential development in the area, there is no public access in the immediate project vicinity. However, public access does exist nearby. Across Promontory Bay from the subject site is a walkway along Bayside Drive. In addition, the public walkway around Balboa Island is located across Balboa Island Channel from the subject site.

The proposed development consists of construction of a new boat dock within the U.S. Pierhead Line. The proposed development will not adversely impact navigation. The development will not create adverse impacts on coastal access and recreation. 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 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 construct a new recreational boating facility. The approval from the City of Newport Beach indicates that no eelgrass is present at the site. The proposed project has received approval from the California Regional Water Quality Control Board.

Because the development is located on the water there is the possibility that materials from construction may end up in the harbor waters. In order to prevent adverse impacts to marine waters from construction, special condition 1 provides for the safe storage of construction materials and the disposal of construction debris.

Only as conditioned for appropriate storage of construction materials and equipment 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. 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 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 a special conditions require 1) removal of construction debris and minimization of construction impacts, and 2) limiting the use of the 10 by 14 foot platform solely for boating related purposes, 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.

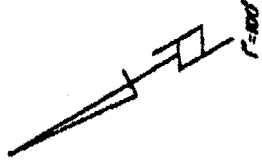


subject
site

EXHIBIT NO. A
APPLICATION NO. 5-99-13
California Coastal Commission

VICINITY MAP

50-42

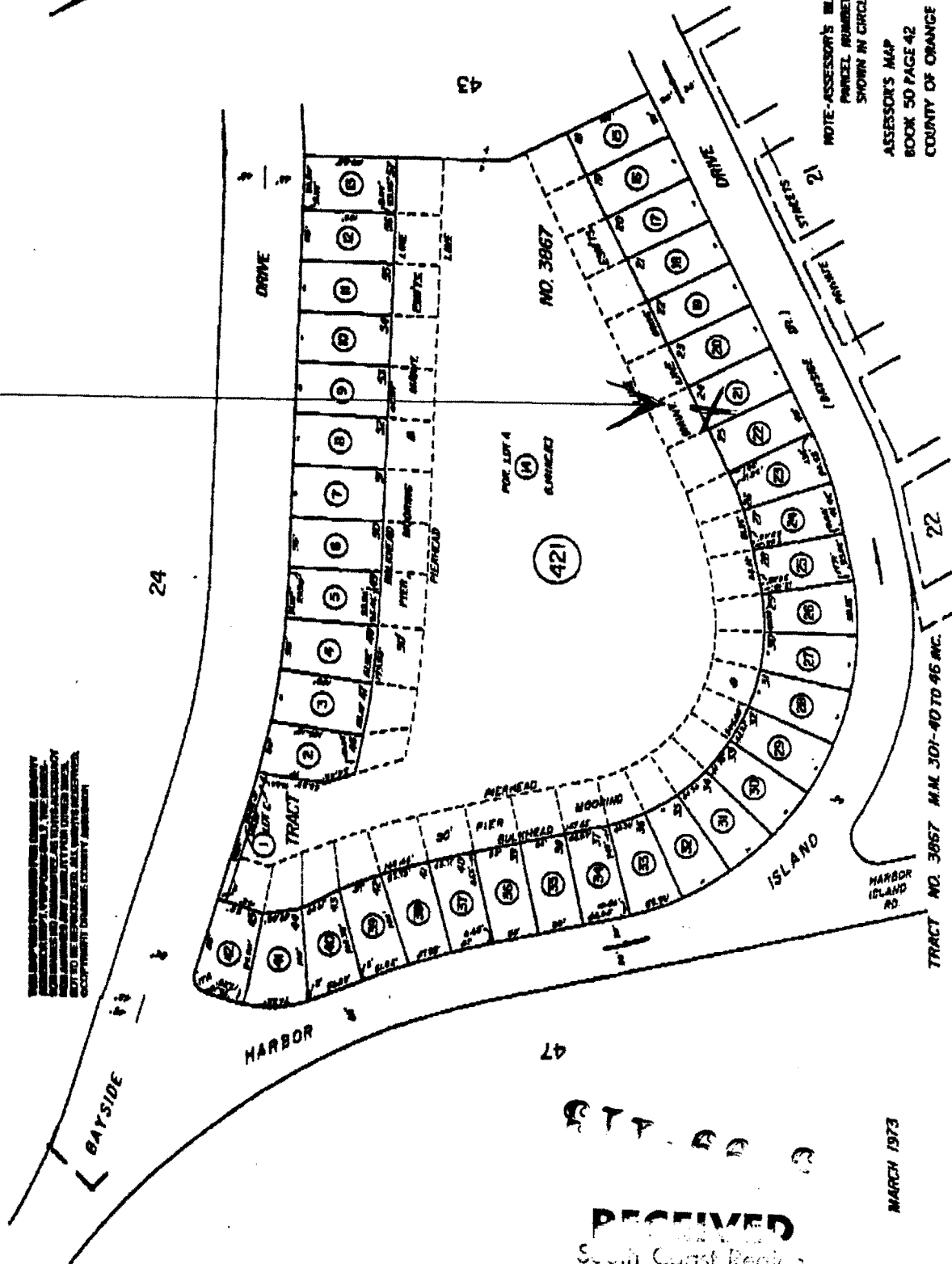


NOTE: ASSESSOR'S BLOCK B
PARCEL NUMBERS
SHOWN IN CIRCLES

ASSESSOR'S MAP
BOOK 50 PAGE 42
COUNTY OF ORANGE

subject
site

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Exhibit B

5-99-113

Assessor's Parcel Map

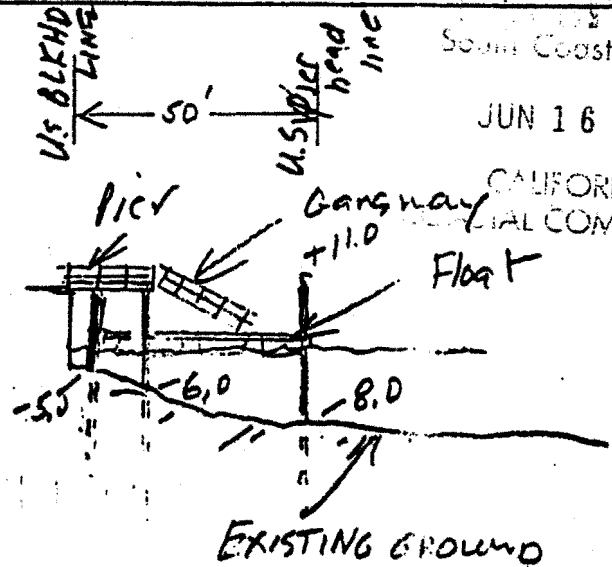
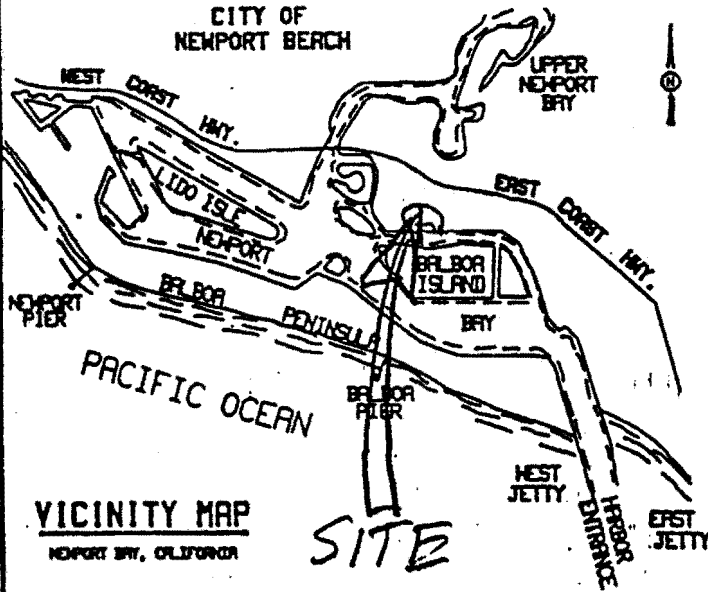
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CITY OF NEWPORT BEACH

South Coast Region

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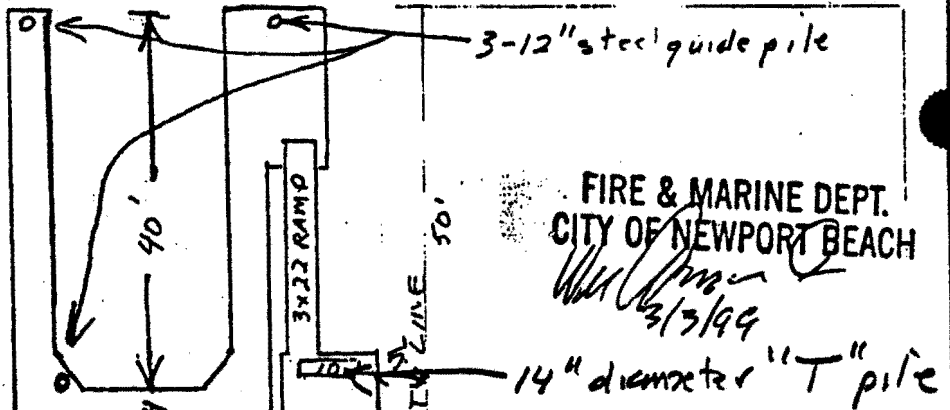
CALIFORNIA
FISH & WILDLIFE COMMISSION



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

NEWPORT BAY

U.S. PIERHEAD LINE



EEL GRASS INSPECTION
NO EEL GRASS
EEL GRASS IN THE
PROJECT AREA

SIGNATURE

200-636
PERMIT #

3-3-99
DATE

Note: There is no
pier or dock at
this address

APPLICANT'S NAME David Bradburne

JOB ADDRESS 636 Harbor Island Dr. DATE 2-25-99.

5-99-113

Exhibit C