

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: 1/25/99
49th Day: 3/15/99
180th Day: 7/24/99
Date of Extension Request: 6/21/99
Length of Extension: 90 days
Final date for Comm. Action: 9/19/99
Staff: MV-LB
Staff Report: 7/21/99
Hearing Date: 8/10-13/99
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-98-496

APPLICANT: Gingerlee Field

AGENT: Pete Swift, Swift Slip

PROJECT LOCATION: 1701 E. Bay Ave. Balboa (Newport Beach), Orange County

PROJECT DESCRIPTION: Remove and replace existing pier with platform and pilings, and redeck existing float. The pier will be 32 feet long by 4 feet wide with a 12 by 12 foot platform. The eight replacement pilings will be 12 inches in diameter.

LOCAL APPROVALS RECEIVED: City of Newport Beach Fire and Marine Department Approval in Concept, City Harbor Permit No. 109-1701.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan, City of Newport Beach Harbor Permit Policies, Coastal Development Permits 5-98-523 (Bridges), 5-99-120 (Sutherland), 5-99-121 (Vance), 5-99-113 (Bradburne), 5-99-114 (Offield).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends denial of the proposed project because it is inconsistent with Section 30233 of the Coastal Act which limits fill of open coastal waters. The excess fill will result in incremental loss of near shore sandy bottom habitat. The cumulative impact of this loss is significant. Alternatives to the project as proposed exist which would still allow the applicant use of the boat dock while minimizing fill of open coastal waters.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. DENIAL

The Commission hereby Denies a permit, for the proposed development on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, and will 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.

II. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description and Location

The applicant proposes to remove and replace an existing pier with platform and pilings and redeck the existing float. The pier will be 32 feet long by 4 feet wide with a 12 by 12 foot platform at approximately the midpoint of the pier. The platform area is proposed to be supported with one piling at each of the four corners. The eight new pilings supporting the pier with platform will be 12 inches in diameter.

The subject site is located in the City of Newport Beach on the harbor side of the Balboa Peninsula. The subject site was inspected for eel grass 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 project proposes to use one single pile at each corner to support the platform area. The question has arisen of whether or not the proposed 12 by 12 foot platform constitutes a bona fide boating use or would serve as private residential patio area. If not a legitimate boating facility, the platform would be inconsistent with the uses allowed under Section 30233. 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.

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 dimensions of the proposed platform are 12 by 12 feet. One dimension of the proposed platform exceeds the length limitation for the shortest dimension allowed by the City's HPP of 10 by 14 feet. However, a representative of the City's Fire and Marine Safety Department has explained to Commission staff the City's practice regarding this. If an existing platform was previously permitted by the City with an extended dimension, the property owner is permitted by the City to rebuild the platform in the same location if no changes to the configuration of the pier, platform, gangway, or float are proposed.

The applicant has indicated that the platform will be used solely for boating purposes. More specifically the proposed uses of the 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 a location for placement of fiberglass storage boxes to be used for storage of boating items such as anchors, fenders, and dock lines, and maintenance activities related to boating. 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.

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. Pilings used to support boat docks in Newport Harbor displace near shore sandy bottom habitat. Although this habitat type generally doesn't support rare or unique species, it's area is limited and not easily replaced. Marine organisms generally found in this type of habitat

include worms, clams, snails, and crustaceans. Marine plants sometimes found in this area include eel grass, however, none exists at the subject site. It should be noted that the pilings themselves provide habitat for marine organisms such as mussels, barnacles, limpets, and littorine snails.

Single piles are generally 12 inches in diameter (as is the case with the subject project) and the T-piles are generally 14 inches in diameter. The cross-sectional area of the single pile is 0.79 square feet, while the area of the T-pile is 1.07 square feet. Four single piles would occupy 3.16 square feet ($0.79 \times 4 = 3.16$). Two T-piles would occupy 1.07 square feet ($1.07 \times 2 = 2.14$). Although the amount of fill resulting from a single project that uses four single piles rather than two T-piles is relatively minor, a difference of 1.02 square feet, the incremental effects of allowing such projects would be significant. There are thousands of boat docks in Newport Harbor. If these boat docks were allowed redesigns which used single piles rather than T-piles, the net fill resulting would be upwards of 1,000 square feet. Based on this significant cumulative adverse impact, it is important to assure that each individual boat dock minimize the amount of fill needed to support the allowable boat dock use. Several platforms in Newport Harbor have already been approved by the Commission and constructed using two T-piles centered under the platform area rather than a single pile at each of the four corners. The existing T-pile supported platforms demonstrate that use of T-piles instead of single piles is feasible. The proposed platform, however, is to be supported by one single pile at each of the four corners of the platform, resulting in additional fill beyond that necessary to support the platform. Therefore, the proposed project will not minimize the amount of fill.

The Coastal Act requires that any fill of coastal waters use the least environmentally damaging alternative. As proposed, the project does not constitute the least environmentally damaging alternative for the project. A feasible, less environmentally damaging alternative to the proposed project would be to use T-piles instead of single piles, thereby reducing the area of near shore sandy bottom habitat that is displaced by the proposed project. The Commission has found the use of T-piles to be a less environmentally damaging alternative to single piles in numerous similar boat dock projects in the area (5-98-523, Bridges; 5-99-120, Sutherland, 5-99-121, Vance; 5-99-113, Bradburne; and 5-99-114, Offield). Therefore the Commission finds that the proposed project is inconsistent with Section 30233's requirement that any project involving fill of open coastal waters be the least environmentally damaging alternative and so must be denied.

C. Unpermitted Development

This is an after-the-fact permit request. On or before September 9, 1998, the applicant replaced, in the same location and configuration, an existing pier with platform and redecked an existing float. The pier is approximately 52 feet long. A 12 by 12 foot platform exists at approximately the midpoint of the pier. Eight new pilings replaced the existing 8 damaged pilings in the same location. The 36 by 10 foot rectangular float was redecked to replace deteriorated wood. No work was done to the existing gangway. All work is completed at this time. The applicant, in this permit, requests after-the-fact approval of this completed work. However, the Commission reviews this project as if no work had been done.

Consideration of this application has been based solely upon the Chapter 3 policies of the Coastal Act. Commission action on this permit application does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred.

D. 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 proposed the project is inconsistent with Section 30233 of the Coastal Act which limits fill of coastal waters. The Commission, therefore, finds that the proposed project will not be consistent with the Chapter 3 policies of the Coastal Act and will prejudice the ability of the City to prepare a Local Coastal Program implementation program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

E. California Environmental Quality Act

Section 13096 of the Commission's 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.

Previous sections of these findings contain documentation of the significant adverse impacts of the proposed development. Specifically, the significant adverse impact resulting from the proposed project is the cumulative impact of loss of near shore sandy bottom habitat which results from excess fill of coastal waters. As discussed above, there is a feasible alternative available which would substantially lessen any significant adverse impact which the activity would have on the environment. The feasible alternative would be to use T-piles rather than single piles. This alternative would lessen the project's adverse impact by reducing the amount of fill resulting from the project. Because the proposed project does not propose to use T-piles, the Commission cannot find that the project as proposed is the least environmentally damaging alternative. Therefore, the Commission finds that the proposed project is not consistent with CEQA and the policies of the Coastal Act.



subject site

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|-------------------------------|
| EXHIBIT NO. A |
| APPLICATION NO. |
| 5-98-496 |
| California Coastal Commission |

VICINITY MAP

Dec 8 '98 9:04 P. 02

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DEC 10 1998

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1949 MAP WAS PREPARED FOR ORANGE COUNTY ASSESSOR DEPT. PURPOSES ONLY. THE ASSESSOR MAKES NO GUARANTEE AS TO ITS ACCURACY NOR ASSUMES ANY LIABILITY FOR OTHER USES. NOT TO BE REPRODUCED. ALL RIGHTS RESERVED. ©COPYRIGHT ORANGE COUNTY ASSESSOR 1987

WATER LINE AS PER AERIAL PHOTO, 1947

subject site

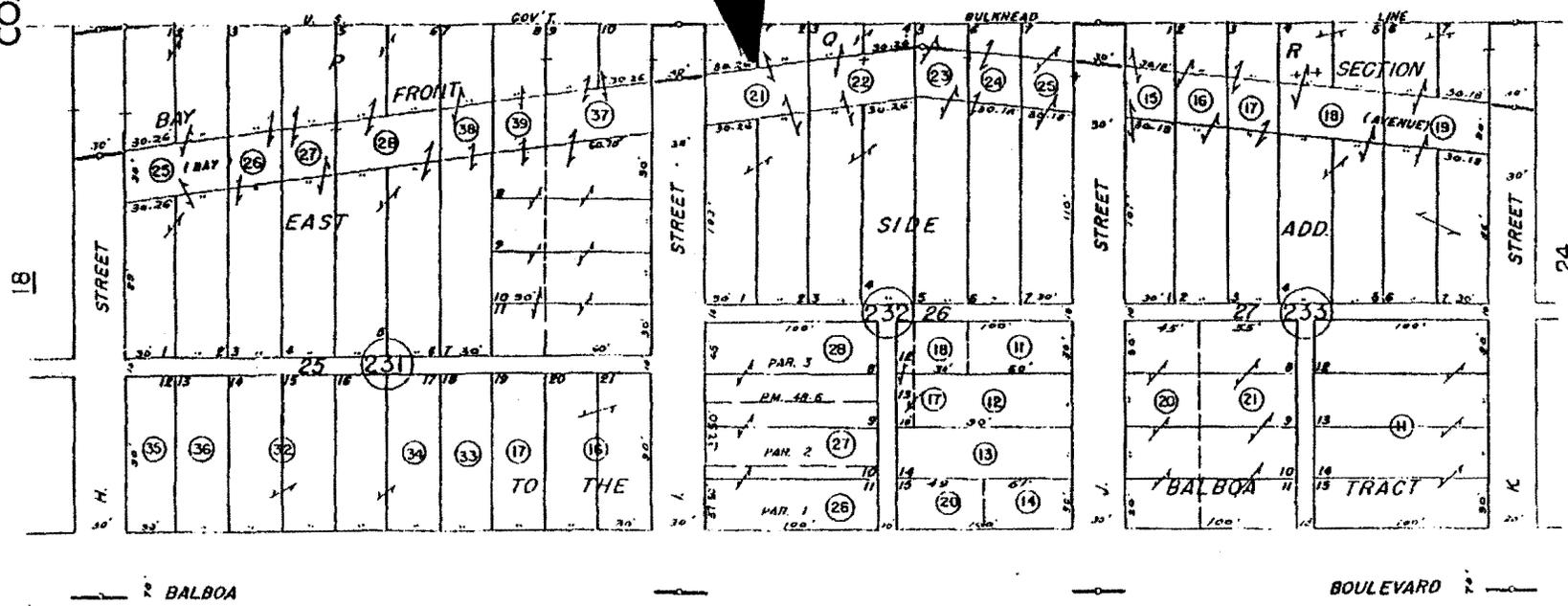
50-18

Assessor's Parcel Map

5-98-496

Exhibit B

48-23



MARCH 1949

PARCEL MAP 48-6
BAY FRONT SECTION
THE EAST SIDE ADD. TO THE
BALBOA TRACT

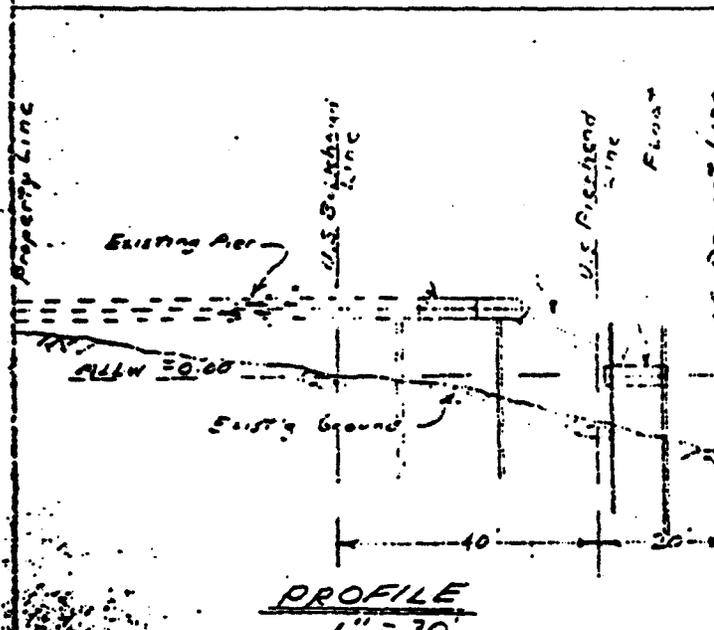
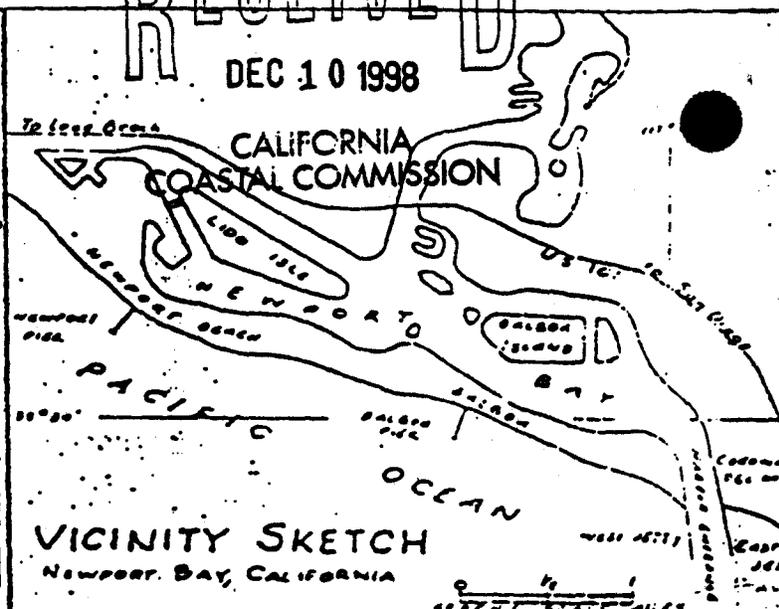
M.M. 6-15
M.M. 4-20

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

ASSESSOR'S MAP
BOOK 48 PAGE 23
COUNTY OF ORANGE

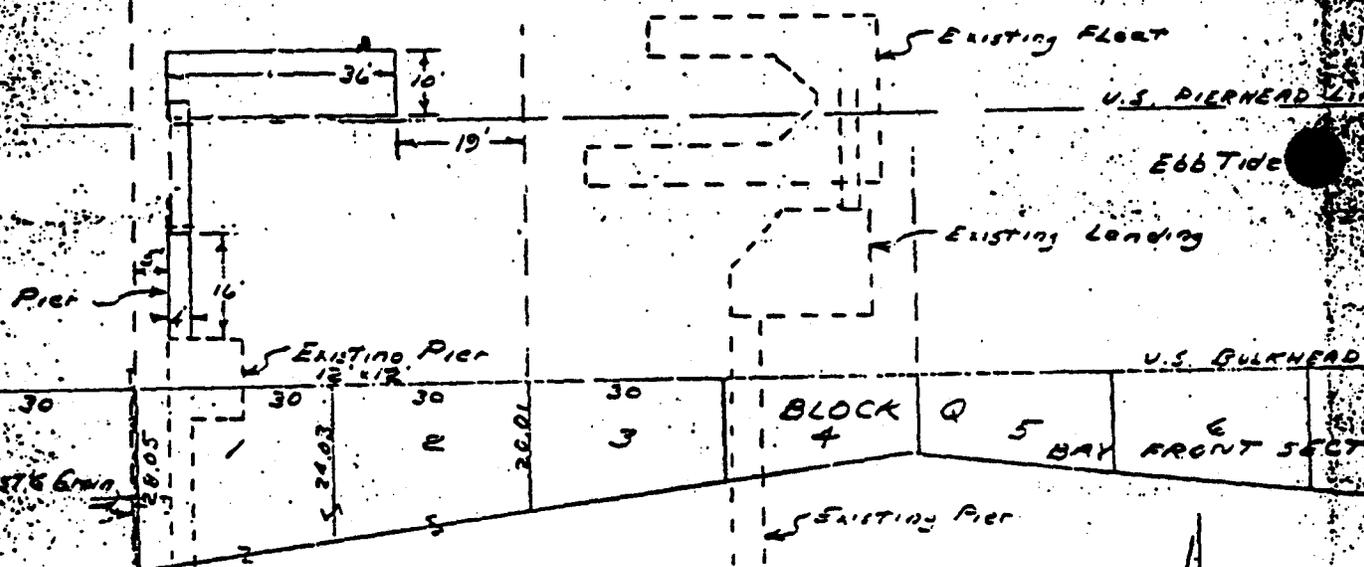
TOF: BB OR Bk-Pg 48-23 Sht 1 of 1 CHRISTY-1701 E. BAY Order:

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DEC 10 1998



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

Newport Bay

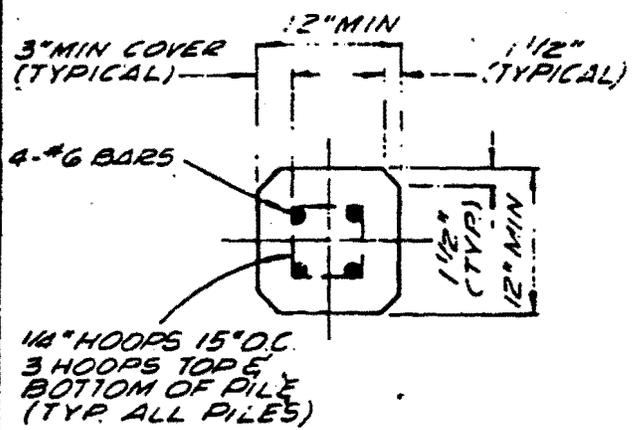


NOTE:
REPLACE PIER WITH 8 NEW 12" PILINGS.
REDECK FLOAT

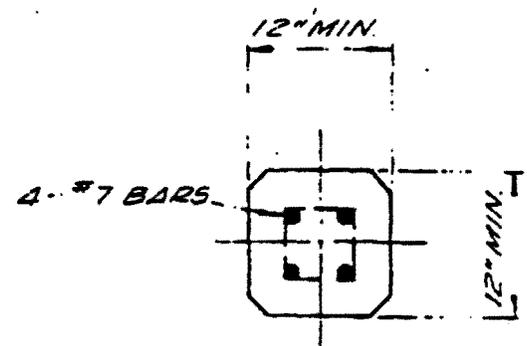
5-98-496
Project Plans
Exhibit C

Hale Field
 SOUTH COAST DISTRICT OFFICE
 1701 E Bay Ave
 5-98-49600
 PROJECT NO. _____
 TRACT _____ BLOCK _____ LOT _____
 REPRESENTATIVE _____
 DATE _____

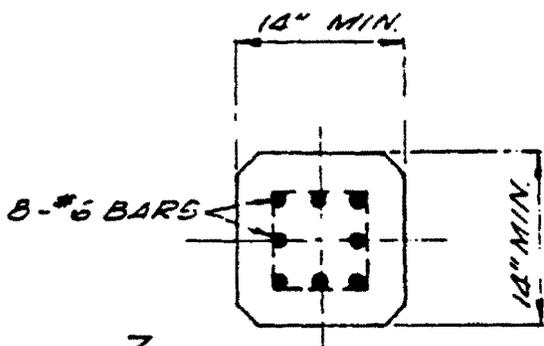
13 A



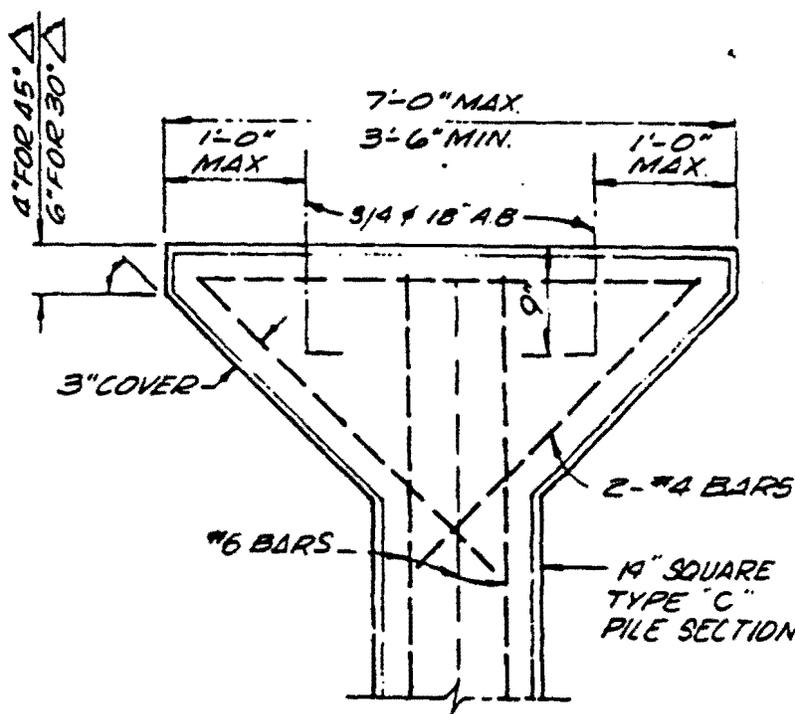
TYPE "A" PILE
SCALE: 3/4" = 1'-0"



TYPE "B" PILE
SCALE: 3/4" = 1'-0"



TYPE "C" PILE
SCALE: 3/4" = 1'-0"



TYPE "D" PILE
SCALE: 3/4" = 1'-0"

NOTE: ALL PILING SHALL BE 560-C-3250 CONCRETE

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REV 4-8-85
REV 9-2-75

CITY OF NEWPORT BEACH
PUBLIC WORKS DEPARTMENT

DRAWN A.L. DATE 3-1-73

APPROVED J.T. Deulin
PUBLIC WORKS DIRECTOR
R.E. NO. 7537

PILE DETAILS

DRAWING NO. STD-610-L

Typical T-pile 5-98-496 Exhibit D

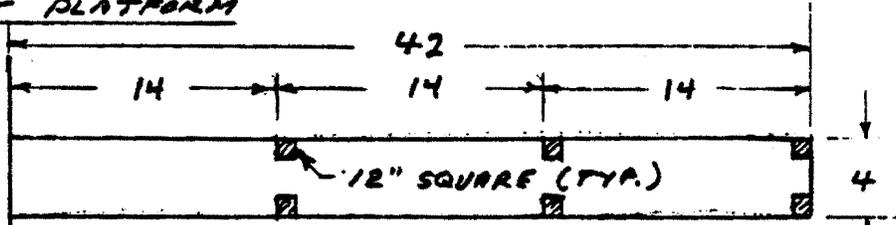
4/27/99

ATTACHMENT 4 PIER PILE FOOTPRINTS

SCALE: 1" = 10'

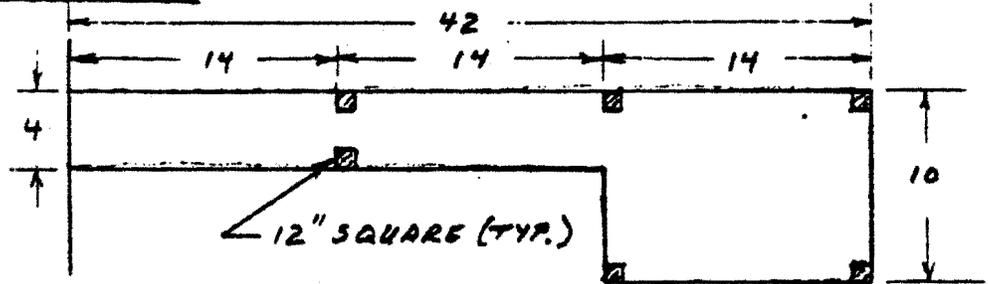
A. USING STRAIGHT PILES

1. WITHOUT PLATFORM



PIER PILE OCCUPIED AREA = 6×0.97
= 5.82 SQ. FT.

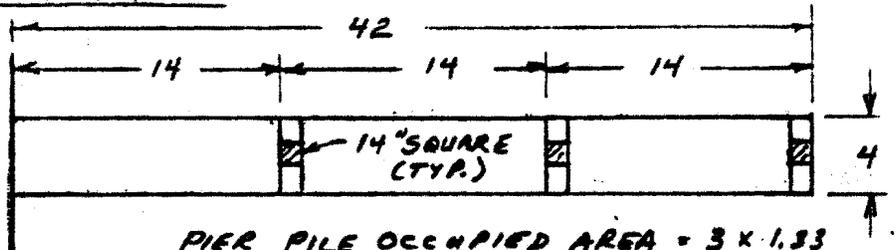
2. WITH PLATFORM



PIER/PLATFORM PILE OCC. AREA = 5.82 SQ. FT.
(NO CHANGE)

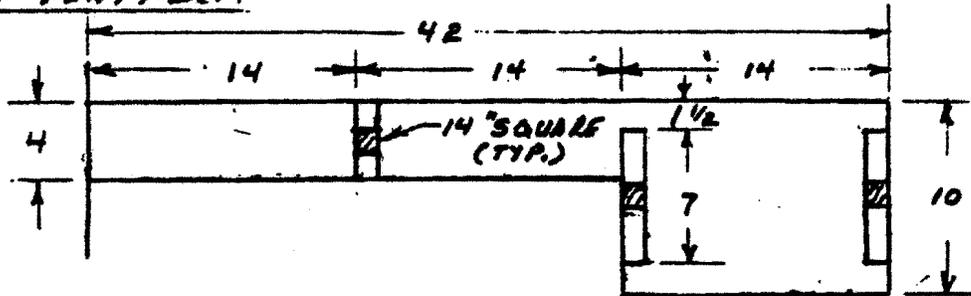
B. USING T-PILES

1. WITHOUT PLATFORM



PIER PILE OCCUPIED AREA = 3×1.33
= 3.99 SQ. FT.

2. WITH PLATFORM



PIER/PLATFORM PILE OCC. AREA = 3.99 SQ. FT.
(NO CHANGE)

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MAY - 3 1999

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EXAMPLE
single piles
vs
T-piles

NOTE:

DOCK (FLOAT) PILES ARE 0.97 SQ. FT. EACH, FOR AN ADDITIONAL 1.94 SQ. FT. FOR EACH CASE. THE TOTAL AREA IS THEREFORE 7.76 SQ. FT. FOR THE STRAIGHT PILES AND 5.93 SQ. FT. FOR THE T-PILES. THE DIFFERENCE IS 1.83 SQ. FT.

500-101

EXHIBIT E