

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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Filed: July 2, 2003  
49th Day: NA  
180th Day: NA  
Staff: FSY-LB  
Staff Report: July 17, 2003  
Hearing Date: August 6-8, 2003  
Commission Action:

**TH 18****STAFF REPORT: REVOCATION REQUEST**

**APPLICATION NO.:** R-5-02-302

**APPLICANTS:** Neil & Kerry Barth

RECORD PACKET COPY

**AGENT:** D.B. Neish, Inc

**PROJECT LOCATION:** 1806 East Balboa Boulevard & 1813 East Bay Avenue, City of Newport Beach, County of Orange

**PROJECT DESCRIPTION:** Demolish an existing single-family residence, garage & storage structure at 1806 East Balboa Boulevard and adjust lot lines. No further development is proposed at 1806 East Balboa Blvd. Demolish an existing single-family residence, garage and storage structure and construct a 9,488 square foot 2-story single-family home with a basement, attached 921 square foot garage and rear yard pool, with 785 cubic yards of grading & export and adjust lot lines, at 1813 East Bay Avenue.

**PARTIES REQUESTING REVOCATION:** Timothy M. Lindenfelser

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**SUMMARY OF STAFF RECOMMENDATION:**

Commission Staff recommends that the Commission **DENY** the request to revoke permit 5-02-302 because the request does not establish the grounds required by Section 13105 (a) or (b) of the Commission's regulations.

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**LOCAL APPROVALS RECEIVED:** Approval In Concept #1879-2002 from the City of Newport Beach Planning Department dated August 19, 2002; Approval In Concept #0637-2002 from the City of Newport Beach Planning Department dated June 12, 2002; Lot Line Adjustment No. LA2001-002 (PA2001-156) from the City of Newport Beach Planning Department dated September 5, 2001; and Parcel Map No. NP20020-020 (PA2002-143) from the City of Newport Beach Planning Department dated August 14, 2002.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach Certified Land Use Plan; *Geotechnical Investigation, New Residence, 1813 East Bay Avenue, Newport Beach, CA (Job No. 2066)* prepared by Coleman Geotechnical dated December 28, 2001; Letter from Commission Staff dated September 27, 2002; Anonymous letter dated October 18, 2003; Letter from Charles Howell dated October 21, 2002; Letter from Coleman Geotechnical (Job No. 2066) dated October 18, 2002; Letter from Commission Staff dated November 22, 2002; Letter from Charles Howell dated December 2, 2002; *Waste Discharge Requirements, Order No. 98-67, NPDES No. CAG998001 (De Minimum Discharges), Dewatering at Various Locations* from

the California Regional Water Quality Control Board (RWQCB) dated November 8, 2002; *Coastal Hazard Study for New Development at 1813 East Bay Drive* prepared by Skelly Engineering dated December 5, 2002; Letter from Commission Staff dated January 31, 2003; Letter from Harold Larson to Tim (Charles) Howell dated February 3, 2003; Letter from Charles Howell dated February 3, 2003; Letter from Charles Howell dated March 12, 2003; Letter from Neil & Kerry Barth dated March 16, 2003; Letter from Charles Howell dated March 25, 2003; Letter from Howard P. House received May 1, 2003; Letter from Tim & Cristine Lindenfelser received May 5, 2003 and Letter from Tim Lindenfelser received June 2, 2003.

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## **EXHIBITS**

1. Revocation Request
2. Coastal Development Permit 5-99-282 condition compliance letter dated February 14, 2001
3. Letter from Mr. House received May 1, 2003
4. Front Page of May 2003 Commission Hearing Addendum
5. Letter from Mr. Lindenfelser received May 5, 2003

## **PROCEDURAL NOTE:**

This revocation request was received on July 2, 2003. The next regularly scheduled meeting is August 6-8, 2003.

The Commission's regulations identify the grounds for the revocation of a coastal development permit as follows:

- (a) *Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;*
- (b) *Failure to comply with the notice provisions of Section 13054, where the views of the person not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application.*

**I. MOTIONS AND RESOLUTIONS:**

**A. MOTION AND RESOLUTION FOR REVOCATION OF PERMIT NO. 5-02-302**

The Commission Staff recommends that the Commission make and reject the following motion and thereby adopt the following resolution:

**MOTION**

*I move that the Commission grant revocation of Coastal Development Permit No. 5-02-302.*

**STAFF RECOMMENDATION**

Commission Staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the revocation request and adoption of the following resolution and findings. The motion passes only by affirmative vote of majority of the Commissioners present.

**RESOLUTION TO DENY REVOCATION**

The Commission hereby denies the request for revocation of the Commission's decision on Coastal Development Permit No. 5-02-302 on the grounds that 1) there was no intentional inclusion of inaccurate, erroneous or incomplete information in connection with the coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on the permit or deny the application; and 2) there was no failure to comply with the notice provisions of Section 13054 of the Regulations, where the views of the person not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on the permit or denied the application.

**II. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares:

**A. Project Location, Description and Background**

**Project Location**

The subject site consists of the properties located at two separate locations at 1813 East Bay Avenue and 1806 East Balboa Boulevard within the City of Newport Beach, Orange County and are located within an existing urban residential area. The 1813 East Bay Avenue property is a beachfront (narrow sandy beach) lot located between the first public road and Newport Bay and is surrounded to the North by a narrow sandy beach and Newport Bay; to the East by "K" Street; to the West by an existing single-family residence and to the South by an alley. The 1806 East Balboa Boulevard property is an inland lot and is surrounded to the North by an alley; to the East by an alley; to the West by existing single-family residence and to the South by East Balboa Boulevard.

### Project Description

Development proposed on the 1806 East Balboa Boulevard property consists of: demolition of an existing single-family residence, garage & storage structure and merging of four (4) lots into one (1) lot. No further development is proposed at 1806 East Balboa Blvd.

At the 1813 East Bay Avenue property, the following development will take place: demolition of an existing single-family residence, garage and storage structure and construction of a 9,488 square foot 2-story single-family home with a basement, attached 921 square foot garage with two (2) additional outdoor parking spaces. Construction of a pool, spa, pool fencing and wall in the rear yard (bayfronting), outdoor rear yard bar, barbeque and fire ring, covered patio/veranda, a 254 square foot 2<sup>nd</sup> floor balcony, fountain, planters, and landscape and hardscape work will also take place. In addition, there will be 785 cubic yards of grading & export to a location outside of the coastal zone and merging of three (3) lots into one (1) lot. The foundation system for the proposed home and pool will consist of matt foundations with caissons. Lastly, the existing pier/dock will remain as is in place.

### Project Background

On May 6, 2003, the California Coastal Commission approved Coastal Development Permit 5-02-302. However, **Special Condition No. 5** (proposed by Commission Staff), which would have required revised project plans showing that the proposed project adheres to the "accessory structure stringline" and that no development occurs bayward of the accessory structure stringline, was altered. The Commission approved the proposed project as submitted; therefore, the applicants did not have to submit revised plans adhering to the "accessory structure stringline." The following **Five (5) Special Conditions** were imposed on the proposed project: **1)** storage of construction materials, mechanized equipment and removal of construction debris; **2)** adherence to best management practices; **3)** submittal of a traffic control plan; **4)** adherence to specific timing of construction; **5)** the permittees shall undertake development in accordance with the approved final plans and, **6)** submittal of proof of legal interest. On June 6, 2003, the Notice of Intent to Issue Permit was issued.

### **B. Summary of Revocation Request's Contentions**

The revocation request has been filed by Timothy M. Lindenfelser. Although his contentions are summarized below, the full text of the revocation request is included as Exhibit #1.

As detailed in the Procedural Note on page 2 of this Staff Report, the grounds for revocation, as identified in Section 13105 (a) and (b) of the California Code of Regulations, are 1) intentional inclusion of inaccurate, erroneous or incomplete information where the accurate and complete information would have caused different conditions or denial of the permit and 2) failure to comply with the notice provisions, where the views of the person not notified were not otherwise made known to the Commission and could have caused different conditions or denial of the project. Either ground, if proven, will suffice to allow revocation. 14 Cal. Code Regs. § 13108 (d).

The revocation request (Exhibit #1) asserts both grounds (a) and (b) for the revocation of this permit. The contention alleges that the applicant intentionally withheld information: 1) that the 1813 East Bay Avenue property was dredged and the beach nourished, thus creating an artificially enlarged bayfront yard; and 2) that the swimming pool will have to be constructed

with a protective bulkhead or that the swimming pool itself will have to be constructed as a protective bulkhead. The contention also alleges that there was a failure to comply with notice provisions: 1) the public notice stated that a "rear yard" pool is to be constructed, which should have stated "front yard" instead; and 2) letters of opposition were not heard by the Commission. In addition, the contention alleges that the applicant moved the hearing to Monterey to prevent opposing views from being heard.

**C. Analysis of the Revocation Request's Contentions with Respect to Section 13105 of the California Code Of Regulations**

Because of the impacts on a permittee, the grounds for revocation are necessarily narrow. The rules of revocation do not allow the Commission to revisit a previously issued permit based on information that came into existence after the Commission acted, no matter how compelling that information might be. Similarly a violation of the Coastal Act or the terms and conditions of a permit or an allegation that a violation has occurred are not grounds for revocation under the California Code of Regulations. The grounds for revocation are, of necessity, confined to information in existence at the time of the Commission's action. In this case, the Commission approved the subject permit on May 6, 2003. The three elements that must be proved before a permit can be revoked under Section 13105 (a) are:

- 1) That the applicant provided inaccurate, erroneous or incomplete information,
- 2) That the inaccurate, erroneous or incomplete information was supplied knowingly and intentionally, **AND**
- 3) That if the Commission had accurate and complete information at the time it approved the application, it would have required additional or different conditions or denied the application.

Similarly, the three elements that must be proved before a permit can be revoked under Section 13105 (b) are:

- 1) That there was a failure to comply with the notice provisions of Section 13054 of the Regulations,
- 2) That the views of the person not notified were not otherwise made known to the Commission, **AND**
- 3) That, if the Commission had been aware of those views, they could have caused the Commission to require additional or different conditions on a permit or denied the application.

**1. Intentional Inclusion of Incomplete or False Information Provided by Applicant**

The contention raised in the revocation request alleges grounds for revocation identified in Section 13105 (a) of the California Code of Regulations. The contention alleges that the applicant intentionally withheld information: 1) that the 1813 East Bay Avenue property was dredged and the beach nourished thus creating an artificially enlarged bayfront yard; 2) that the swimming pool will have to be constructed with a protective bulkhead or that the swimming pool itself will have to be constructed as a protective bulkhead. To meet this requirement, the revocation request must pass three tests: First, that complete or correct information was not provided. Second that the applicants had intent to supply the incomplete or false information. (Common mistakes and/or omissions do not constitute intent to provide inaccurate, erroneous or

incomplete information or evidence of having knowingly done so). Third, if the first two tests have been met, that the Commission would have imposed different conditions or denied the application if it had had accurate and complete information. These tests are discussed below.

a. **Dredging**

The revocation request states: *"The coastal commission needs to know that 1813 East Bay Avenue was excessively dredged the week of February 24, 2002 at the request of the applicant by Shellmaker Inc., a local dredging company. The applicants then conducted a grade survey shortly thereafter to be submitted with their coastal permit. The applicants of 1813 purposely dredged their beach including sand from our beach to create a manufactured grade on their property, making it look like there is more sand there than naturally exists in an attempt to increase the size of their yard."*

Mr. Lindenfelser claims that the Commission was not aware of the dredging and placement of sand on the project site. However, the applicants had obtained approval from the Commission for dredging and beach nourishment for the project site (see Coastal Development Permit 5-99-282 and condition compliance letter dated February 14, 2001 (Exhibit #2). Thus, the Commission was aware that dredging and beach nourishment was authorized, and apparently did occur, at the project site. In addition, the hearing tape verifies that the issue of dredging and beach nourishment on the project site was discussed during the course of the hearing. Moreover, Mr. Lindenfelser does not provide evidence that the applicant had intent to supply incomplete or false information relative to the grade of the beach or the manner in which that grade was created. Therefore, there is no evidence of intentional inclusion of inaccurate or incomplete information, much less that such inaccurate or incomplete information, had it been corrected or completed and presented to the Commission, would have caused the Commission to impose different conditions or deny the project.

b. **Bulkhead**

Mr. Lindenfelser states in the revocation request that: *"The proposed swimming pool and patio area are being built where a natural tidal area exists immediately adjacent to the public beach access on K Street. The addition of any depth swimming pool will require a bulkhead to be built in the ground around the pool. The swimming pool wall will have to be constructed as a bulkhead because seawater will be in contact with it during certain tides if not all the time. ... Included in this letter is an aerial photograph provided to me by the City of Newport Beach (exhibit A) that indicates this area would normally would partially underwater at high tide. This photograph was taken in March, however the tides are actually much higher in December and have risen all the way to the applicant's existing patio. Also indicated is where the sand was excessively dredged as of February/March of 2002 to create the perception that the structure would not touch the tidal waters. Also, enclosed is a recent photograph (exhibit B) taken on June 14, 2003 at 7:00 pm indicating that the proposed structure would be in contact with the tidal waters even as the*

*dredged beach exists today. ... Furthermore this project allows a structure to be built 42 feet beyond the recommended string line setback originally proposed by the Long Beach coastal commission in their staff report dated April 17, 2003. The report clearly identifies concerns over the pool structure acting as a bulkhead/seawall. In fact, the applicant is planning on putting the pool structure as far out into the bay as the surroundings bulkheads reside. On the audio tape some of the commissioners raised concerns over the possibility of the pool structure becoming a bulkhead, but the applicant's consultant stated that the pool structure would not touch the tidal waters. Unfortunately, the commissioners did not hear our opposing views at the hearing and were therefore not given complete information on which to base their decision."*

Mr. Lindenfelser claims that that the proposed swimming pool will have to be constructed as a bulkhead due to its location. In order to determine the presence of erosion and flooding hazards on the project site, the applicants submitted a *Coastal Hazard Study* and this was discussed in Section IV. B (2) pages 10-12 of the Staff Report and it concludes: *"In conclusion, flooding, erosion and wave runup will not significantly impact this property over the life of the proposed improvement. The proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area. There are no recommendations necessary for erosion, ocean flooding or wave runup protection."* In Section IV., B (4) page 14 of the Staff Report, it stated: *"As stated previously, there will be construction of a pool, pool safety fence, walkway and block wall located in the rear of the property adjacent to the bay, over which Commission Staff had concerns since these structures could potentially act as a bulkhead/seawall."* Even though Commission Staff had concerns over these accessory structures serving as a potential bulkhead/seawall, it was determined that these accessory structures would not act as a bulkhead/seawall: *"Also, the Commission Staff Engineer has reviewed the project plans and has determined that the wall, walkway and pool safety wall would not act like a bulkhead/seawall."* In addition, the applicants never intended to construct a bulkhead/seawall. Thus, the location of the proposed pool will not be subject to significant erosion, flooding or wave runup hazard. Therefore, the assertion regarding the need for a bulkhead/seawall was known to the Commission and was addressed by the Commission in their action on the permit.

Mr. Lindenfelser also submitted pictures of the project site (Exhibit 1, pages 4 & 5) that he claims shows that the proposed pool area would normally be partially underwater at high tide. While these pictures do show that the project area may be partially underwater at high tide, he has not submitted any additional information, such as reports or studies that validate his claim. Exhibit 1, page 4 is an overlay of the proposed pool, walkway, etc over an aerial of the project site. This exhibit shows that the pool, walkway, etc would be partially underwater. However, the site as previously discussed is a site where placement of sand takes place. The beach nourishment accounts for the different contours evident on the project plans and the aerial as the aerial was taken before beach nourishment occurred. In addition, this issue was discussed during the Commission hearing. The location of the proposed pool was discussed and it was stated that the pool would be located inland of the

Mean High Tide Line (MHTL), thus the pool would be located outside of any intertidal habitat. Mr. Lindenfelser claims that the Commission was lead to believe that the proposed structure was not going to be located in tidal waters. Coastal Development Permit 5-02-378 (Johnson) was also heard at the May 2003 hearing, but was denied. The Johnson project was the construction of a new 70-foot long bulkhead fronting Newport Bay. Mr. Lindenfelser alleges that since the Commission knew that the proposed bulkhead for the Johnson project was to be located in tidal waters, the Commission denied the application and would have done the same on the Barth project had it known that the pool, walkway, etc would also be in tidal waters. However, the Commission was aware of the issue that the pool location depending on the status of beach nourishment may be in coastal waters at some period. As stated previously, it was determined at the hearing that these structures would be out of the intertidal zone and that the beach nourishment accounts for the different contours evident on the project plans and the aerial as the aerial was taken before beach nourishment occurred. Therefore, the issue regarding the location of the bulkhead/seawall was known to the Commission and was addressed by the Commission in their action on the permit.

Mr. Lindenfelser's has provided no evidence that the hazard analysis submitted by the applicant and reviewed by the Commission was somehow inaccurate, erroneous and misleading. Furthermore, there is no evidence that the applicant attempted to knowingly and intentionally provide inaccurate, erroneous or incomplete information relative to the hazards present at the site or any need for a bulkhead/seawall to protect the proposed development. Finally, even if inaccurate, erroneous, or incomplete information was supplied knowingly and intentionally to the Commission (and there is no evidence of this), there is no evidence that the Commission would have required additional or different conditions or would have denied the application.

## **2. Failure to Comply with the Notice Provisions**

One of the contentions raised in the revocation request alleges grounds for revocation identified in Section 13105 (b) of the California Code of Regulations. The contention alleges that there was a failure to comply with notice provisions: 1) the public notice stated that a "rear yard" pool is to be constructed, which should have stated "front yard" instead and 2) letters of opposition were not heard by the Commission. To meet this requirement, the revocation request must pass three tests: First, that there was a failure to comply with the notice provisions of Section 13054 of the Commission's regulations; Second, the views of the person not notified were not otherwise made known to the Commission. Third, if the first and second tests had been met, that the Commission would have imposed different conditions or denied the application. These tests are discussed below.

### **a. Rear Yard**

*The revocation request states: "It also seems the public notice was misleading. The public notice states that a "rear yard" pool is to be constructed. However, the pool is actually located on the bay front, which is considered the front side of the home by anyone living on the bay front, not the rear yard. It may have been*



*much less misleading if the notice would have read, "pool located on the bay front side of the home." Therefore this notice may not have reached all affected parties with opposing views of the project." The description of the proposed project on the public notices stated: "Demolish an existing single-family residence, garage & storage structure at 1806 East Balboa Boulevard and adjust lot lines. No further development is proposed at 1806 East Balboa Blvd. Demolish an existing single-family residence, garage and storage structure and construct a 9,488 square foot 2-story single-family home with a basement, attached 921 square foot garage and rear yard pool [emphasis added], with 785 cubic yards of grading & export and adjust lot lines [at 1813 East Bay Avenue]."*

Section 13054 of the Regulations state that the applicant shall submit 1) (a) addresses of all residences located within 100 feet of the perimeter of the subject parcel, 1) (b) addresses of all owners of parcels of real property located within 100 feet of the perimeter of the subject parcel, 1) (c) known interested parties; 2) stamped envelopes for these addresses; and 3) the applicant must post the site with a notice, in a conspicuous place, that states that an application for a permit for the proposed development has been submitted to the California Coastal Commission. Mr. Lindenfelser claims that since the description in the notice incorrectly located the proposed pool (discussed more thoroughly below), that this notice may not have reached all affected parties with opposing views of the project. Mr. Lindenfelser makes no claim that the applicant failed to provide notice materials or failed to post the site (i.e., that he failed to comply with the notice provisions of section 13054 of Title 14 of the California Code of Regulations). While the description on the posting notice stated that a "rear yard" pool is to be constructed should have stated "front yard" instead, no allegations have been made that notices were not sent or that the site was not posted. The applicants did not intentionally mislead the public since Commission Staff is responsible for putting together the project description for the public notice. It was Commission Staff and not the applicant that stated that the pool was located in the "rear yard." Typically, the front yard of the house is the portion of the site between the frontage road and the front of the house, and the backyard is the area fronting the bay. However, upon reviewing the City's practice, it appears that in this area the City does consider the front yard to be the portion of the site between the bay and the residence, while the rear yard is adjacent to the street. The applicants adhered to Section 13054 of the Commission's regulations and the erroneous project description on the public notice was not based on the applicants' information. Thus, Mr. Lindenfelser's allegations that the applicants did not comply with the notice provisions of Section 13054 of the Commission's regulations is false.

Nevertheless, a public notice was properly provided to Mr. Lindenfelser. In addition, Mr. Lindenfelder was provided a copy of the Staff Report, which clearly indicated the location of the pool on the project site and at the hearing the location of the pool was clearly disclosed. Thus, Mr. Lindenfelder was provided notice that complies with Section 13054 of the Regulations. Therefore, regardless that the public notice located the proposed pool in the incorrect location, it did not prevent Mr. Lindenfelser from presenting his views of the pool since he knew of the actual location of the proposed pool as also evidenced in

his written correspondence and conversation with Commission Staff. Thus, there is no evidence that the Commission's action would have been different had the correct location of the proposed pool been stated in the public notice.

**b. Letters of Opposition**

Mr. Lindenfelser states in the revocation request that: *"And finally, letters of opposition to the pool in the tidewaters from neighboring properties 1807 and 1805 East Bay Avenue were not heard by the commission. Our letter (1807) was sent to the Long Beach office on April 30<sup>th</sup> at approximately 3:30 pm, 6 days prior to the hearing on May 6<sup>th</sup>. The public notice states that written materials are required to be sent no later than 3 days before the meeting and that staff will then distribute materials to the Commission. For some reason, our letter was not presented to the commission. Attached (exhibit C) are our original letters to the coastal commission. I own 1807 East Bay Avenue, which is immediately adjacent to the applicant's proposed coastal development project (1813 East Bay Avenue, Newport Beach)."*

In regards to the letter submitted by Mr. House (1805 East Bay Avenue) (Exhibit #3), it was received on May 1<sup>st</sup> and was included in the addendum for the Tuesday, May 6 2003 Hearing. The front page of the addendum stated that this letter had been included in the addendum is included with this Staff Report as Exhibit #4. Therefore, the views of Mr. House were made known to the Commission.

Mr. Lindenfelser claims that his letter did not get presented to the Commission and if it did it may have caused the Commission to require additional or different conditions on the proposed project or denied the application. Mr. Lindenfelser claims that he sent his letter (Exhibit #5) 6 days prior to the Hearing and that it should have been presented to the Commission since it was sent 3 days before the Hearing. Mr. Lindenfelser's letter was received on May 5, 2003, which was one day before the Commission Hearing. Mr. Lindenfelser may have mailed it 6 days before the Hearing, as he claims, however, Commission Staff did not receive the letter until May 5<sup>th</sup>, 2003. As stated previously, it is requested that written materials be submitted to Commission Staff no later than three working days before the Hearing. Commission Staff reviewed the letter and determined that the majority of the issues it raised were already discussed in the Staff Report or the opposition letter submitted by Mr. House, which was included in the Hearing addendum. The one issue raised in his letter but not discussed in Mr. House's letter or within the Staff Report dealt with the disruption to the view corridor by the placement of a pool structure, walls, fences, etc. The view corridor described in the letter is not a public view corridor, but rather would be a private view corridor. Private views are not protected under the Coastal Act. Therefore, due to the fact that the relevant issues in his letter were already raised and that the letter was not received three days before the Commission Hearing, the letter was not sent to the Commission Hearing. In addition, upon review of the audio tape from the hearing, it is clear the Commission was advised that a letter of opposition from a neighbor two lots to the east (Mr. House) was in the addendum and it raised concerns about encroachment of the swimming pool and suggests amenities be re-sited along the street given size of

the parcel. A review of the hearing tape also indicates that Commission Staff reported a telephone call to the Commission received on May 5<sup>th</sup>. The caller was reportedly from "an immediate adjoining neighbor." To the west of the project site is a street end, but to the east is an immediate adjoining neighbor (Mr. Lindenfelser). Therefore, it has been determined that the telephone call reported to the Commission was from Mr. Lindenfelser. Since the letter discussed issues that were already discussed in the Staff Report or were already raised in the opposition letter sent by Mr. House, and the concerns raised by Mr. Lindenfelder were reported verbally to the Commission, the Commission was aware of the issues Mr. Lindenfelder was raising.

### 3. Location of Hearing

Mr. Lindenfelser alleges: *"The applicants moved their hearing to Monterey preventing opposing views from neighbors and local representatives from being heard."* Furthermore, the revocation request states: *"The original hearing on this project was scheduled for April 2003 which was in Long Beach. On March 20, 2003 the applicant requested that the project be postponed to the May 2003 hearing Monterey. This change of venue made it difficult for any of the affected neighbors to attend. In fact the owner of 1805 called the Long Beach commission requesting that the hearing be postponed until all affected parties could attend. This request was not successful."*

The contention alleges that the applicant moved the Hearing to Monterey to prevent opposing views from being heard. A contention that an applicant purposefully orchestrated a non-local hearing to minimize participation by opponents is not valid grounds for revocation of a permit. The subject application was initially scheduled for the April 2003 Hearing, which was to take place in Santa Barbara and not Long Beach as Mr. Lindenfelser states. On March 20, 2003, Commission Staff received a letter dated March 20, 2003 from the applicants requesting that the project be postponed until the May 2003 Hearing. Commission Staff determined that the applicants' request was consistent with their right to request a postponement provided in Section 13073 of Title 14 of the California Code of Regulations, and the project was postponed. The matter was rescheduled for May 2003 (which hearing had long ago been scheduled to take place in Monterey) because this was the last hearing at which the Commission could act on the application and still comply with Permit Streamlining Act deadlines. Furthermore, Mr. Lindenfelser was provided notice, consistent with Section 13054 of the regulations, that the proposed project was rescheduled for the May 2003 in Monterey.

### D. Conclusion

The revocation request does not demonstrate that the applicant knowingly and intentionally provided inaccurate, erroneous, or incomplete information. Thus, the grounds necessary for revocation under Section 13105(a) of the Regulations has not been met. Furthermore, the revocation request does not establish that there was a failure to comply with the notice provisions of Section 13054 of the Regulations. Thus, the ground for revocation of a permit pursuant to Section 13105(b) have not been met.

The Commission finds that the revocation request shall be denied because the contentions raised in the revocation request do not establish all of the grounds identified in either Section 13105 (a) or (b) of the California Code of Regulations.

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Peter M. Douglas  
Executive Director  
California Coastal Commission  
45 Freemont Street, Suite 2000  
San Francisco, CA 94105

June 28, 2003

RECEIVED  
South Coast Region  
JUL 01 2003 JUL 2 2003  
CALIFORNIA  
COASTAL COMMISSION  
CALIFORNIA  
COASTAL COMMISSION

RE: Request for Revocation of Permit 5-02-302, Item #Tu 13b, 1813 East Bay Avenue,  
Newport Beach, County of Orange

Dear Mr. Douglas:

I am writing this letter to request the revocation of Coastal Development Permit 5-02-302 which was recently approved in the May 6<sup>th</sup> public hearing in Monterey, California.

I have reviewed the audiotape from the meeting, which I have enclosed for your review. On this tape project 5-02-302 was approved and project 5-02-378 was not. Project 5-02-302 was approved because the coastal commission was led to believe that the proposed structure was not in the tidal waters. Project 5-02-378 (also in Newport Beach on Bay Avenue) was not approved because the coastal commission had all the facts and understood that the proposed structure was in the tidal waters.

Based on a review of this tape I believe this project should not have been approved for the following reasons:

- a) There was the intentional inclusion of inaccurate, erroneous or incomplete information presented to the commission (section 13105);
- b) The public notice provisions were misleading (section 13054);
- c) The applicant moved their hearing to Monterey preventing opposing views from neighbors and local representatives from being heard (section 13106);
- d) Both my letter and adjacent neighbor's letter of opposition to this project were not heard by the commission (section 13105).

The coastal commission needs to know that 1813 East Bay Avenue was excessively dredged the week of February 24, 2002 at the request of the applicant by Shellmaker Inc., a local dredging company. The applicants then conducted a grade survey shortly thereafter to be submitted with their coastal permit. The applicants of 1813 purposely dredged their beach including sand from our beach to create a manufactured grade on their property, making it look like there is more sand there than naturally exists in an attempt to increase the size of their yard.

The proposed swimming pool and patio area are being built where a natural area exists immediately adjacent to a public beach access on K Street. The addition of any

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EXHIBIT # 1  
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This

depth swimming pool will require a bulkhead to be built in the ground around the pool. The swimming pool wall will have to be constructed as a bulkhead because seawater will be in contact with it during certain tides if not all the time.

Included in this letter is an aerial photograph provided to me by the City of Newport Beach (exhibit A) that indicates this area would normally be partially underwater at high tide. This photo was taken in March, however the tides are actually much higher in December and have risen all the way to the applicant's existing patio. Also indicated is where the sand was excessively dredged as of February/March of 2002 to create the perception that the structure would not touch the tidal waters. Also, enclosed is a recent photograph (exhibit B) taken on June 14, 2003 at 7:00 pm indicating that the proposed structure would be in contact with the tidal waters even as the dredged beach exists today.

Furthermore this project allows a structure to be built 42 feet beyond the recommended string line setback originally proposed by the Long Beach coastal commission in their staff report dated April 17, 2003. The report clearly identifies concerns over the pool structure acting as a bulkhead/seawall. In fact, the applicant is planning on putting the pool structure as far out into the bay as the surrounding bulkheads reside. On the audio tape some of the commissioners raised concerns over the possibility of the pool structure becoming a bulkhead, but the applicant's consultant stated that the pool structure would not touch the tidal waters. Unfortunately, the commissioners did not hear our opposing views at the hearing and were therefore not given complete information on which to base their decision.

It also seems the public notice was misleading. The public notice states that a "rear yard" pool is to be constructed. However, the pool is actually located on the bay front, which is considered the front side of the home by anyone living on the bay front, not the rear yard. It may have been much less misleading if the notice would have read, "pool located on the bay front side of the home." Therefore this notice may not have reached all affected parties with opposing views to the project.

The original hearing on this project was scheduled for April 2003 which was in Long Beach. On March 20, 2003 the applicant requested that the project be postponed to the May 2003 hearing in Monterey. This change of venue made it difficult for any of the affected neighbors to attend. In fact the owner of 1805 called the Long Beach commission requesting that the hearing be postponed until all affected parties could attend. This request was not successful.

And finally, letters of opposition to the pool in the tidewaters from neighboring properties 1807 and 1805 East Bay Avenue were not heard by the commission. Our letter (1807) was sent to the Long Beach office on April 30<sup>th</sup> at approximately 3:30 pm, 6 days prior to the hearing on May 6<sup>th</sup>. The public notice states that written materials are required to be sent no later than 3 days before the meeting and that staff will then distribute materials to the Commission. For some reason, our letter was not presented to the commission. Attached (exhibit C) are our original letters to the coastal commission.

COASTAL COMMISSION

EXHIBIT # 1  
PAGE 2 OF 9

Bay Avenue, Newport Beach, which is immediately adjacent to the applicant's proposed coastal development project (1813 East Bay Avenue, Newport Beach).

We respectfully request that you find grounds for revocation and allow this permit application to be heard again with all known facts presented to the commission. Thank you very much for your time and consideration.

Sincerely,



Timothy M. Lindenfesler  
1807 East Bay Avenue  
Newport Beach, CA 92661  
(949) 584-4101

Attached Exhibits

- A. Aerial photo
- B. Recent bay front photo
- C. Letters of opposition

**COASTAL COMMISSION**

EXHIBIT # 1  
PAGE 3 OF 9







COASTAL COMMISSION

EXHIBIT # 1  
PAGE 5 OF 9

EXHIBIT C

Item No: Tu 13b  
Permit number: 5-02-302  
Approve 1806 - Oppose 1813

Dear Coastal Commission,

Thank you for protecting our coastal environment. This letter is in regard to the project proposed for 1813 East Bay Avenue, Newport Beach (Orange County). We own 1807 East Bay Avenue, adjacent to the project sites. We recently constructed a new home on 1807 East Bay after conforming to the current city setbacks that required us to locate the living areas of the home away from the bay front on an unusual 14' setback line established back in the 1960s. We also asked for our master bedroom area to have a second floor deck extend out towards the bay above the patio cover approximately 8'-6". At the public hearing, the neighbors rejected our design expressing concerns about loss of privacy and noise coming from this second floor. Therefore, we did not build out our second floor deck.

As we understand it, there is a request to demolish the structure at 1806 East Balboa Blvd and adjust lot lines. We are not sure what is meant by adjust lot lines, but as long as that does not impact ingress and egress to the alleys around the neighborhood, we are in favor of that proposal.

Regarding the project proposed for 1813, we have reviewed the coastal commission staff proposed accessory stringline between our patio edge and 1813's patio edge on the opposite side of "K" Street as illustrated in Exhibit 12 of the staff report. We are very concerned about having a pool structure, walls, fences, etc. located beyond our patio line and the stringline towards the bay. We believe this could be a disruption to the view corridor, presumably would be in the tidelines and could cause adverse impacts due to wave attack and shoreline erosion to our property as indicated by the coastal commission. The tide water currently reaches our patio at high tide, which would put the pool well into the tideline, requiring a seawall for protection.

We would like to help accommodate the Barth's requests for their home and accessory structure. However, we want to do this as safely and correctly as possible. To protect 1805 and 1807 from ending up in a cove vulnerable to shore erosion and wave attack on their foundations, perhaps all 3 homes should build seawalls so that 1813 can have a pool in that location? This would probably require that the plans be resubmitted including seawalls for all three residences before the proposal for 1813 is approved. As another alternative, perhaps there is a place for the pool to be located adjacent to the street on "K" Street, or in redesigning the home further away from the bay, as we did with our residence.

Thank you for your time and consideration.

Sincerely,

Tim and Cristine Lindenfeser  
1807 East Bay Avenue  
Newport Beach, CA 92661  
949 584 4101  
victory.tl@cox.net

COASTAL COMMISSION

EXHIBIT # 1  
PAGE 6 OF 9

HOWARD P. HOUSE  
1805 E. Bay Avenue  
Newport Beach, Ca. 92661  
Ph & Fax (714) 557-4152

Item #Tu 13b  
Permit #5-02-302  
Howard P. House in  
partial opposition to  
swimming pool

April 28, 2003

California Coastal Commission  
P.O. Box 1450 200 Oceangate, 10<sup>th</sup> floor  
Long Beach, Ca. 90802-4416

Re: Bay front development at 1813 E. Bay Ave., Newport Beach

Dear Commissioners,

My neighbors and I are very concerned about the proposed development and would like to attend your meeting. We object to having this item scheduled to be heard in Monterey instead of "locally" in Long Beach. Traveling to Monterey for this meeting would be most difficult and should be un-necessary for a Newport Beach issue. Please re-consider the location.

I have owned my residence at 1805 E. Bay Avenue, Newport Beach since 1965. The applicant (Barth) is proposing a very large single family home on their lot with 90 feet of bay frontage. I do not object to the size of the proposed house; but I do object to the proposed beach front location of their swimming pool.

Your hearing notice refers to a "rear yard" pool, when in fact the pool would be located on what is now the sandy beach of Newport bay. Apparently the pool may conform to the local zoning requirements. However, two walls forming a 5 foot deep safety "moat" on three sides of the pool are planned. This together with separate outside fire place and BBQ structures near the pool all make for a rather intense beach front development.

With their huge lot of 14,472 sq.ft., the Barths do have many options for planning the development. At a prior Newport Beach Planning Commission meeting, we neighbors objected to the pool location and suggested an alternative: Place the pool along the "K Street" side of the property and within the allowable building "footprint" / set backs. The Barths have no interest in compromise which would help mitigate the inevitable loud noise which will come with the pool. The Barths have 5 young children who will undoubtedly invite their friends to join in the noisy fun.

COASTAL COMMISSION

EXHIBIT # 1  
PAGE 7 OF 9

HOWARD P. HOUSE  
1805 E. Bay Avenue  
Newport Beach, Ca. 92661  
Ph & Fax (714) 557-4152

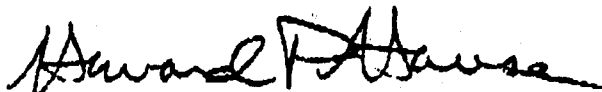
Item #Tu 130  
Permit #5-02-302  
Howard P. House in  
partial opposition to  
swimming pool

My 30 foot wide lot is only 30 feet from the Barth property. It will be impossible to carry on normal conversation on my patio with a noisy pool so close. Our neighbor at 1807 E. Bay Ave., will even have it worse. By moving the proposed pool to a side yard location along "K Street", the noise impact on us neighbors would be lessened and the Barths would still have a view of Newport bay from the pool & spa. Please refer to the attached alternative that we previously suggested to the Barths.

The plans submitted for "approval in concept" do not clearly show the relationship between the proposed "moat" walls and the high / low tide lines. The pool is to be 8 ft. deep which will require some very deep beach front retaining walls. In sum, the magnitude of this beach front patio / pool should be viewed as part of the structure of the house and located within the allowed building "footprint" and / or a side yard. We would prefer the natural beach with low intensity patios, similar to adjoining neighbors. There is plenty of room on the Barth property for a pool which does not impact the neighbors.

Thank you in advance for any consideration you can give us.

Yours truly,

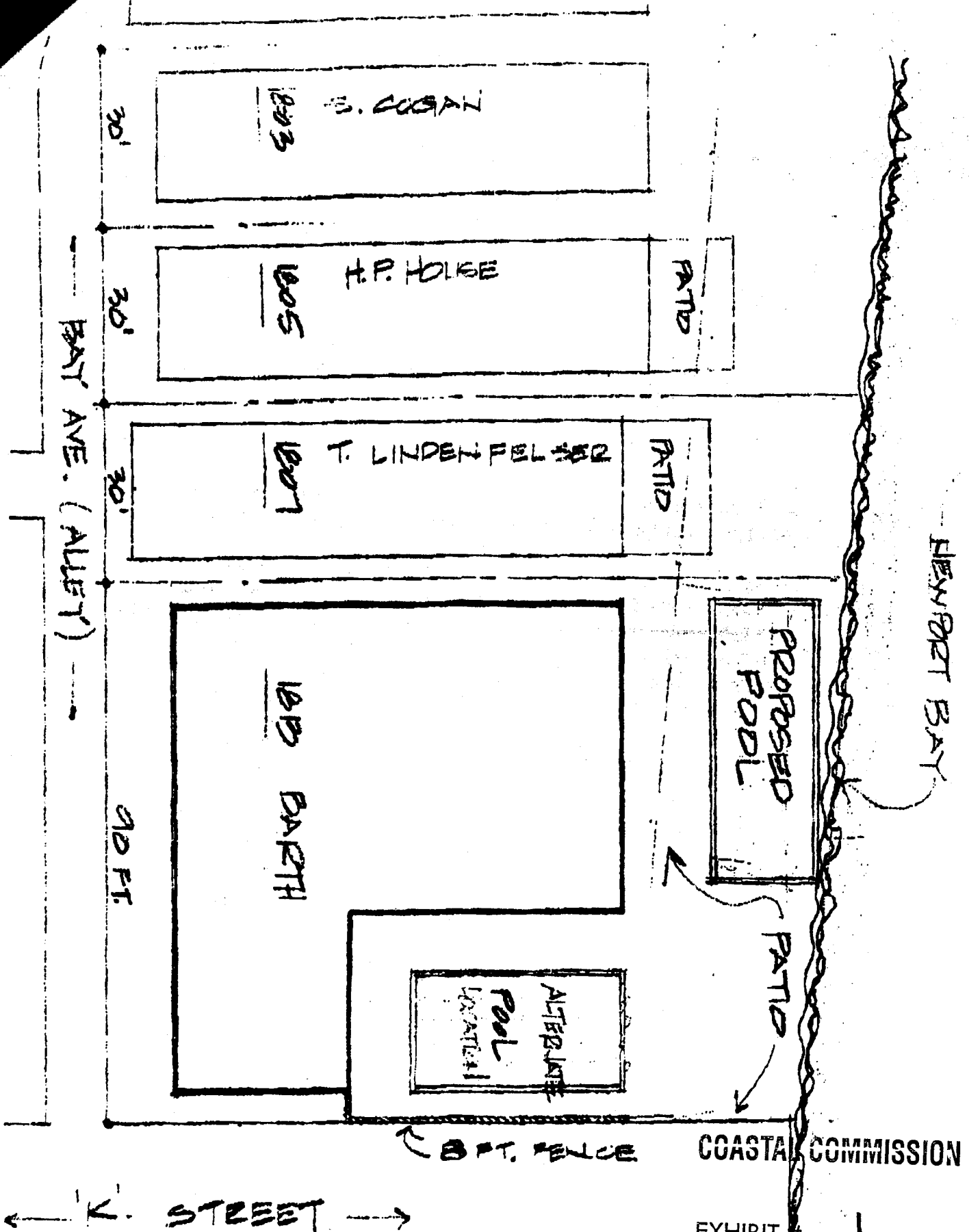


Howard P. House

With enclosure

COASTAL COMMISSION

EXHIBIT # 1  
PAGE 8 OF 9



**CALIFORNIA COASTAL COMMISSION**

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



February 14, 2001

Mr. Tony Melum  
Division of Harbor Resources  
City of Newport Beach  
P.O. Box 1768  
Newport Beach, CA 92658-8915

**Subject: Condition Compliance – Coastal Development Permit 5-99-282  
& Conformance with Consistency Certification CC-078-99**

Dear Mr. Melum:

Commission staff have received information submitted as evidence of compliance with Coastal Development Permit 5-99-282 and/or as evidence of conformance with Consistency Certification CC-078-99 for the following sites in the City of Newport Beach:


City Harbor Permit #	Site Address	Date Received	Beach Disposal? (Yes/No)	Ocean Disposal? (Yes/No)
109-1813	1813 E. Bay	2/13/2001	Yes	No

Commission staff have reviewed the information submitted and determined that the above referenced dredging event conforms with Consistency Certification CC-078-99 and that no further federal consistency review is necessary from the Commission for the dredging component of the project. In addition, the proposed beach disposal has been reviewed and found by the Executive Director to be consistent with Special Conditions 1, 2, and 3 of Coastal Development Permit 5-99-282. No further review is necessary from the Commission for the beach disposal components of the project.

Please be advised that only the project described in the materials submitted for the sites listed above have been found to conform with Consistency Certification CC-078-99 and/or conform with the terms and conditions of Coastal Development Permit 5-99-282. Any change in the project may cause it to lose its status as consistent with CC-078-99 and/or CDP 5-99-282. This certification is based on information provided by the recipient of this letter. If, at a later date, this information is found to be incorrect or incomplete, this letter will become invalid, and any development occurring at that time must cease until a new determination regarding conformance with CC-078-99 and/or CDP 5-99-282 is obtained.

If you have any questions, please contact me at (562) 590-5071 or Mr. James Raives at (415) 904-5200.

Sincerely,

  
Karl Schwing  
Coastal Program Analyst

Cc: Mr. James Raives, California Coastal Commission  
Ms. Susan Sturges, U.S. Army Corps of Engineers

**COASTAL COMMISSION**

EXHIBIT # 2  
PAGE 1 OF 1

HOWARD P. HOUSE  
1805 E. Bay Avenue  
Newport Beach, Ca. 92661  
Ph & Fax (714) 557-4152

Item #Tu 13b  
Permit #5-02-302  
Howard P. House in  
partial opposition to  
swimming pool

April 28, 2003

California Coastal Commission  
P.O. Box 1450 200 Oceangate, 10<sup>th</sup> floor  
Long Beach, Ca. 90802-4416

**RECEIVED**  
South Coast Region

MAY 1 2003

CALIFORNIA  
COASTAL COMMISSION

Re: Bay front development at 1813 E. Bay Ave., Newport Beach

Dear Commissioners,

My neighbors and I are very concerned about the proposed development and would like to attend your meeting. We object to having this item scheduled to be heard in Monterey instead of "locally" in Long Beach. Traveling to Monterey for this meeting would be most difficult and should be un-necessary for a Newport Beach issue. Please re-consider the location.

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EXHIBIT # 3  
PAGE 1 OF 3

HOWARD P. HOUSE  
1805 E. Bay Avenue  
Newport Beach, Ca. 92661  
Ph & Fax (714) 557-4152

Item #Tu 13b  
Permit #5-02-302  
Howard P. House in  
partial opposition to  
swimming pool

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Thank you in advance for any consideration you can give us.

Yours truly,



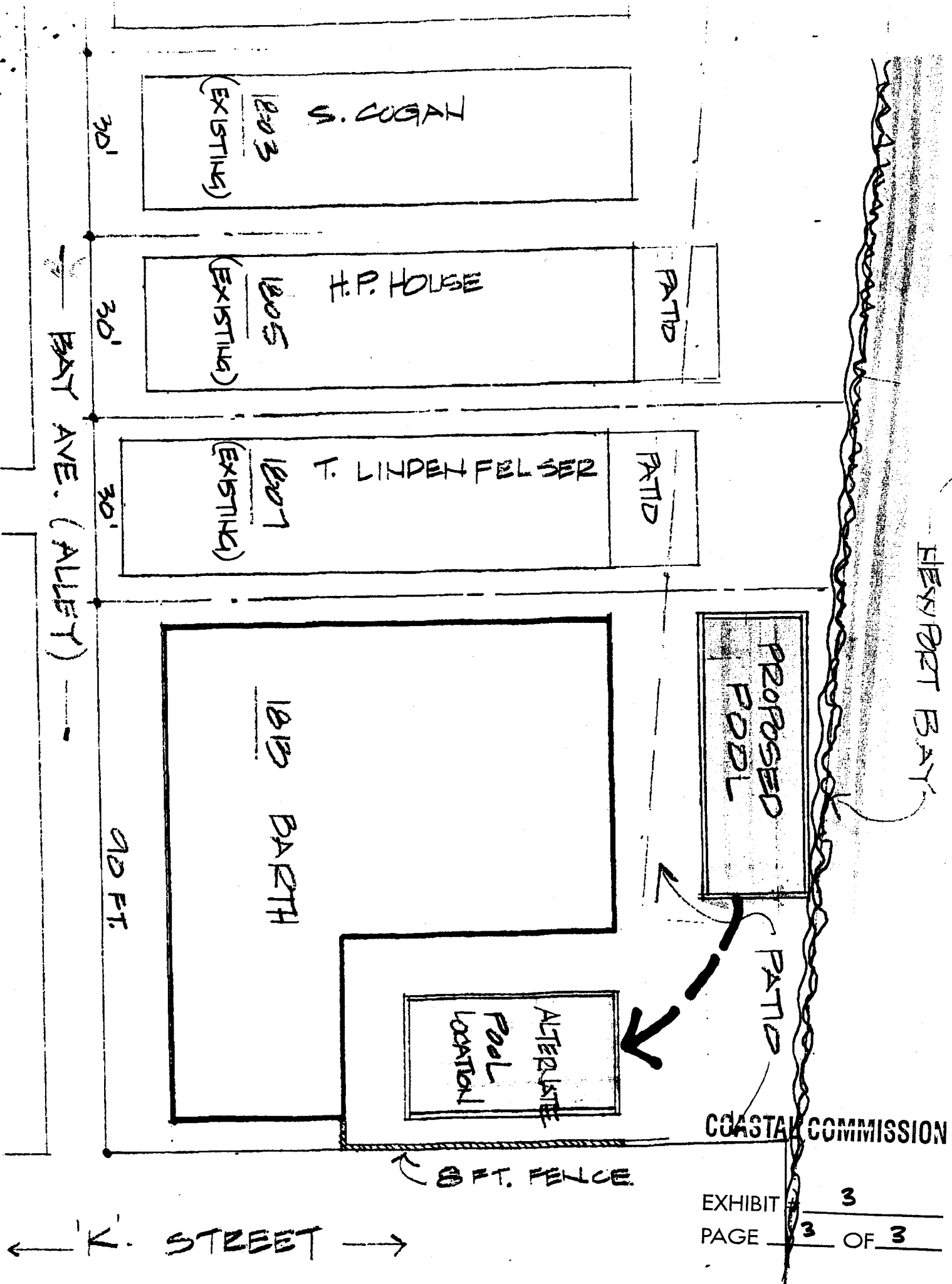
Howard P. House

With enclosure

COASTAL COMMISSION

EXHIBIT # 3  
PAGE 2 OF 3





COASTAL COMMISSION

**CALIFORNIA COASTAL COMMISSION**

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

**May 01, 2003****MEMORANDUM****TO:** Commissioners and Interested Parties**FROM:** Deborah N. Lee/South Coast Deputy Director**SUBJ:** Addendum to Commission Meeting for Tuesday, May 6, 2003 at 10:00 a.m.

<u>AGENDA</u>	<u>APPLICANT</u>	<u>DESCRIPTION</u>	<u>PAGE#</u>
<u>CONSENT:</u>			
TU 4a(5-03-008)	Cusick	Letter of concern	1-2
<u>NEW APPEAL:</u>			
TU 12a(A5-03-087)	Walker & Dupler	Letter supporting SI Letter opposing SI	3-8 9-10
<u>COASTAL PERMIT:</u>			
TU 13b(5-02-302)	Barth	Opposition letter	11-14
TU 13f(5-03-001)	Welcher & Taggart	Modify project description	15-16
TU 13h(5-03-089)	Goldrich & Kest	Modification to Staff Report Letter of Opposition	17-20 21

lm/ad may'03

**COASTAL COMMISSION**

EXHIBIT # 4  
PAGE 1 OF 1

**RECEIVED**  
South Coast Region

MAY 5 2003

CALIFORNIA  
COASTAL COMMISSION

Item No: Tu 13b  
Permit number: 5-02-302  
Approve 1806 - Oppose 1813

Dear Coastal Commission,

Thank you for protecting our coastal environment. This letter is in regard to the project proposed for 1813 East Bay Avenue, Newport Beach (Orange County). We own 1807 East Bay Avenue, adjacent to the project sites. We recently constructed a new home on 1807 East Bay after conforming to the current city setbacks that required us to locate the living areas of the home away from the bay front on an unusual 14' setback line established back in the 1960s. We also asked for our master bedroom area to have a second floor deck extend out towards the bay above the patio cover approximately 8'-6". At the public hearing, the neighbors rejected our design expressing concerns about loss of privacy and noise coming from this second floor. Therefore, we did not build out our second floor deck.

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Thank you for your time and consideration.

Sincerely,

Tim and Cristine Lindenfelser  
1807 East Bay Avenue  
Newport Beach, CA 92661  
949 584 4101  
victory.tl@cox.net

**COASTAL COMMISSION**

EXHIBIT # 5  
PAGE 1 OF 1

