

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: September 4, 1998
49th Day: October 23, 1998
180th Day: March 3, 1999
Staff: SFR-LB
Staff Report: September 24, 1998
Hearing Date: October 13-16, 1998
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-98-183

APPLICANT: Lido Investment Company, LLC

AGENT: Balalis Corporation

PROJECT LOCATION: 3336 Via Lido, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: The demolition of a ten unit apartment building covering four lots. The re-subdivision of the four existing, unequally sized lots into four 2812 sq. ft. sized lots.

LOCAL APPROVALS RECEIVED: Approval in Concept 835-98 from the City of Newport Beach. General Plan Amendment 97-3(A). Local Coastal Program Amendment 48, and Re-subdivision 1033.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan. Coastal development permit 5-98-007 (La Charite & Sons Construction, Inc.). Report to the Mayor and City Council (City of Newport Beach, April 13, 1998) and Report to the Mayor and City Council (City of Newport Beach, March 9, 1998)

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project as submitted. This project will be heard concurrently with Newport Beach Land Use Plan Amendment 1-98 which proposes the re-designation of the project site from "*Retail and Service Commercial*" to "*Multi-Family Residential*". The basic issue of whether or not the subject parcels should be reserved for future commercial use or whether the legal non-conforming residential use should be legitimized was dealt with in the Land Use Plan Amendment. Since staff recommends that the Commission approve the project as submitted, there are no outstanding concerns.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that the development, located between the nearest public roadway and the shoreline, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 including the public access and recreation policies of Chapter 3, 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 construction 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 construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application, or in the case of administrative permits, the date on which the permit is reported to the Commission. Construction 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 construction 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 of the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, 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.

None

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Project Description and Location

The demolition of a ten unit apartment building. The re-subdivision of four existing unequally sized lots into four equally sized lots of 2812 sq. ft. each. The project site is located at 3336 Via Lido, City of Newport Beach, County of Orange (Exhibits 1 & 2).

The project site is within the Lido Village area of Newport Beach. Lido Village is bounded by Newport Boulevard, Via Lido and Newport Bay. The Land Use classification for the project site was changed to "*Multi-Family Residential*" through the City's Land Use Plan Amendment which was heard at this Commission meeting. Prior to the Commission's action on the Land Use Plan amendment, the existing residential development on the project site (consisting of a pre-Coastal Act ten unit apartment) was a legal non-conforming use since the site was previously designated "*Retail and Service Commercial*". The certified Land Use Plan is used as guidance by the Commission as the standard of review is the Coastal Act.

Though not part of the current project before the Commission, approval of this project would allow the site to be developed with one single-family residence per lot, for a total of four single family residences. Coastal development permits will be required for this subsequent development.

B. New Development

The project consists of the demolition of a ten unit apartment building and the re-subdivision of four existing, but unequally sized lots into four equally sized lots. Residential use currently on the subject property was developed prior to the passage of the Coastal Act. The subject site (3336 Via Lido) fronts Newport Bay and is adjacent to visitor serving and coastal dependent commercial uses, specifically the Lido Village retail center just to the north of the subject site.

Section 30250.

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

The proposed demolition and re-subdivision constitutes new development. Section 30250 requires that new development be located within a developed area able to accommodate it. The project site has been used for residential purposes on an historic basis and all infrastructure necessary to serve future development which may occur on the site already exists. Furthermore, the project site is in a highly urban area which has been built out. The proposed demolition of the ten unit apartment will result in a de-intensification of use of the site.

The re-subdivision of the apartment building site, based on the newly adopted Land Use Plan Amendment, would allow the construction of four single family dwellings. No coastal development permit applications have been submitted for construction of the homes that would be allowed by this re-subdivision. The new lots created by this re-subdivision, however, do not meet the City's requirement of having a fifty (50) foot lot width as each lot would be thirty-one (31) feet wide.

In reaching its decision approving the subdivision, the City Council evaluated several alternatives for how the subject property (3336 Via Lido) plus the two adjoining properties to the south could be developed in the future. One alternative considered future development, without subdividing the subject property. Under this scenario four condominiums could be built on the project site (3336 Via Lido). This alternative would result in the same density of residential development as contemplated by the proposed subdivision. A second alternative considered slightly larger lots. This alternative would have required the participation of the other property owners and would not have resolved the fact that the lots would not

comply with the fifty foot minimum width. A third alternative based on meeting the lot width criteria would have allowed a total of four single family residences on all three properties. This alternative, however, would limit the subject parcel to two single family residences and would have reduced the development potential of the other two properties from eight residential units to two residential units. In approving the subdivision with four thirty-one foot wide lots, the City Council rejected the alternatives to the proposed subdivision and granted the applicant a variance based on the following summarized reasons: the property owner is proposing a substantial reduction in the number of dwelling units, the proposed lot width is consistent with other residential parcels in the area, and strict adherence to minimum standards would deprive the landowner of the preservation and enjoyment of a substantial property right.

Based on the project sites historical use as residential development, that the project site can accommodate future residential development, and the fact that the demolition of the apartment building and the re-subdivision will not adversely impact visitor serving commercial opportunities, the proposed development would be consistent with the Coastal Act. Therefore, the Commission finds that the demolition of the existing apartment building and the re-subdivision of the four lots is consistent with Section 30250 of the Coastal Act.

C. Coastal 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 include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3. The proposed development is located between the sea and the nearest public road. In this case the sea is Newport Harbor.

Section 30212 of the Coastal Act requires that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development except in certain limited situations. A public access dedication can only be required where a proposed project adversely impacts public access. The certified land use plan identifies the subject site as being suitable for the construction of a walkway along the bulkhead. One of the stated reasons for the Planning Commission denying the project was the lack of a proposed coastal walkway as part of the development project under consideration. The proposed demolition of the apartment building and re-subdivision of the project site, however, will not affect the public access situation.

The subject site is currently developed as a private residential apartment and the public does not currently have access to the waterfront at the project site. The demolition of the ten unit apartment would result in a de-intensification of use of

the site. Access to the water exists nearby the subject site. Coastal access opportunities exist at Lido Village, the Lido Sailing Club, and the Via Lido Bridge. Each of these coastal access sites are in easy walking distance of each other.

For the foregoing reasons, the proposed development will not adversely impact the public's ability to access the water as public access through the subject site or along the waterfront does not currently exist and access opportunities exist nearby. Therefore, the Commission finds that the development is consistent with the public access and recreation policies of the Coastal Act.

D. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development 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 the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was certified on May 19, 1982. At the October 1998 Commission meeting, the Commission approved an amendment to the City's certified Land Use Plan to re-designate the subject site from "*Retail and Service Commercial*" to "*Multi-Family Residential*" which would bring the land use designation into conformance with the existing residential development on the project site. Furthermore, this land use re-designation allows future residential development to occur on the project site. However, the certified Land Use Plan is used as guidance since the standard of review is consistency with the Chapter 3 policies of the Coastal Act. The project, as submitted, has been found to be consistent with the Chapter 3 policies of the Coastal Act regarding public access and new development. Therefore, the Commission finds that 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).

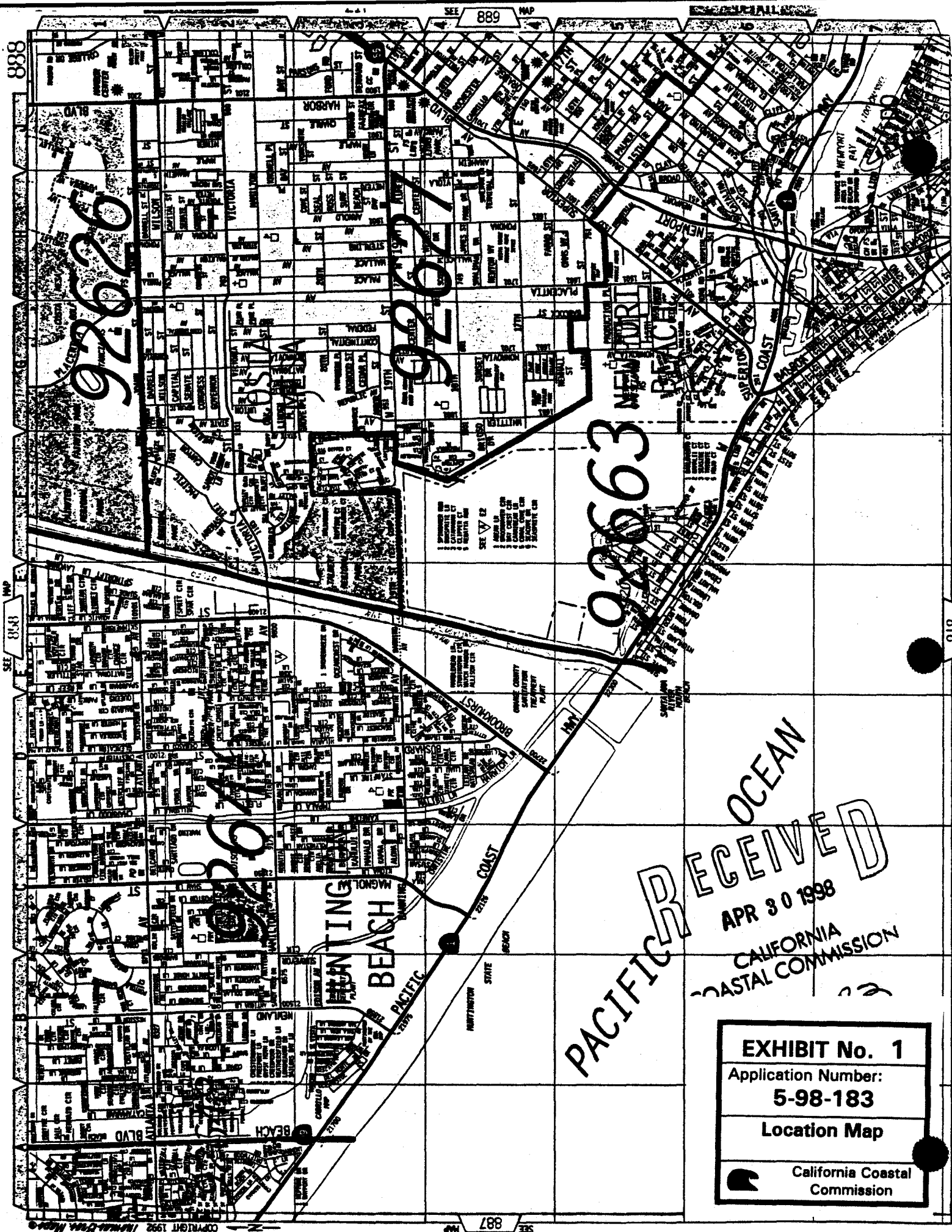
E. California Environmental Quality Act

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.

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(Lido Investment Company, LLC)

The project is located in an existing urbanized area. Development already exists in the project vicinity and all necessary utilities needed to serve the subject parcel are available when the site is re-developed. The proposed development will have minimal adverse impacts on coastal resources since it will be limited to the demolition of an existing ten unit apartment building and the re-subdivision of the project site. This will lower the intensity of use of the site. There are no mitigation measures or alternatives necessary as there are no adverse impacts. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

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PACIFIC OCEAN
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CALIFORNIA
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EXHIBIT No. 1

Application Number:

5-98-183

Location Map

California Coastal
Commission

1/2, SEC. 28, T. 6S., R. 12W.

13

NEWPORT

BAY

1"=100'

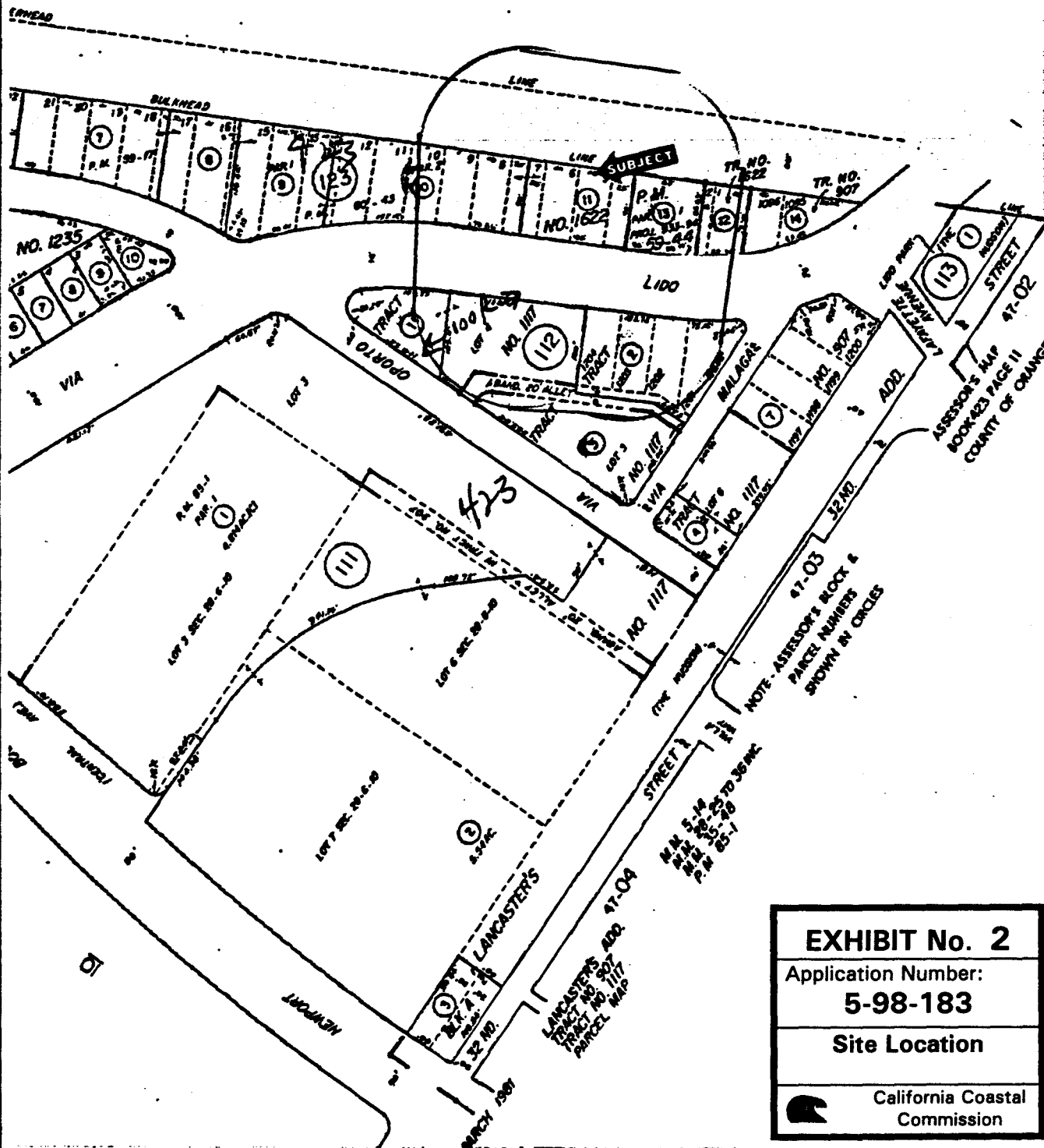


EXHIBIT No. 2

Application Number:

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Site Location



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Ownership Map