

CALIFORNIA COASTAL COMMISSION

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

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Staff Report: September 19, 2002
Hearing Date: October 8-11, 2002
Commission Action:

**TU 15b****STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-01-362

APPLICANTS: David Jenkins & Patricia Manzo

AGENT: Culbertson, Adams & Associates, Mr. David B. Neish and Mr. David J. Neish

PROJECT LOCATION: 2215 & 2223 Bayside Drive, Corona Del Mar, City of Newport Beach (County of Orange)

PROJECT DESCRIPTION: Construction of an approximately 120 foot long bulkhead fronting Newport Bay. The bulkhead and backfill will result in the fill of 562 square feet of high intertidal sandy habitat.

RECORD PACKET COPY**SUMMARY OF STAFF RECOMMENDATION:**

The applicants propose to construct a new bulkhead on two bayfront lots in Corona Del Mar (City of Newport Beach). The primary issue before the Commission is the determination of the proposed bulkhead's consistency with Coastal Act Section 30233, which only allows the fill of coastal waters for certain limited purposes, not including protection of residential development, and Section 30235, which does require approval of shoreline altering construction when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, provided that certain additional criteria are satisfied. Staff recommends that the Commission **DENY** the proposed project.

As submitted, the proposed project is primarily inconsistent with the Sections 30233 and 30235 of the Coastal Act. Section 30233 of the Coastal Act identifies an exhaustive list of eight uses for which fill of open coastal waters is allowed. The proposed bulkhead does not qualify as one of the eight permitted uses. The proposed bulkhead will result in the fill of 562 square feet on high intertidal habitat, to be converted to yard space for the residence, allegedly in order to increase protection of existing structures. Fill of wetland or coastal waters for private residential development is not one of the allowable uses identified under Section 30233.

Section 30235 of the Coastal Act requires the Commission to allow construction of a bulkhead when required to protect existing development that is in danger due to erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. However, the proposed bulkhead is not necessary to protect an existing structure that is in danger due to erosion.

Furthermore, feasible alternatives to the proposed project that comply with Coastal Act policies exist, thus adding an additional reason why of the current proposal cannot be approved. For example, if erosion is a problem, periodic beach nourishment could be undertaken to maintain the existing beach profile.

Staff recommends that the project be denied, since it is not an allowable use under Section 30233 of the Coastal Act nor is it necessary under Section 30235 of the Coastal Act to protect an existing structure threatened by erosion, and because it is not the least environmentally damaging feasible alternative.

STAFF NOTE

The original deadline for the Commission's review of this proposal was October 20, 2002. However, the agent requested additional time to review the project before it went to hearing. Therefore, the applicants requested a 90-day extension, which was approved when staff signed it on September 16, 2002. The new, extended deadline under the Permit Streamlining Act is December 15, 2002.

LOCAL APPROVALS RECEIVED: Approval In Concept from the City of Newport Beach Harbor Resources Division dated August 8, 2001 and letter from the Regional Water Quality Control Board (RWQCB) dated March 8, 2002.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Coastal Development Permits 5-98-021 (Smith, Combs and Ray); 5-00-495 (Schulze); 5-01-104 (Fluter); 5-01-117 (Childs); *Coastal Engineering Analysis for Proposed Shoreline Stabilization Structure at 2215 and 2223 Bayside Drive, Corona Del Mar, CA 92625* prepared by Noble Consultants, Inc. dated May 16, 2001; Letter to David Neish from staff dated October 10, 2001; letter from David Neish to staff dated November 8, 2001; letter from Noble Consultants, Inc. to staff dated November 8, 2001; letter from Coastal Resources Management to Noble Consultants, Inc. dated November 8, 2001; letter from Boulderscape, Inc. to Noble Consultants, Inc. dated October 25, 2001; letter from staff to David Neish dated December 7, 2001; letter from Nobel Consultants, Inc. to David Neish dated December 3, 2001; letter from David Neish to staff dated January 31, 2001; letter from staff to David Neish dated February 8, 2002; *Marine Biological Resources Impact Assessment, Proposed Shoreline Stabilization Structure, 2215 and 2223 Bayside Drive, Corona Del Mar, CA 92625*, prepared by Coastal Resources Management dated August 2, 2001; letter from Noble Consultants, Inc. to David Neish dated March 27, 2002; *Conceptual Mitigation Plan for the Restoration of Saltmarsh Habitat Upper Newport Bay, California*, by Coastal Resources Management dated April 19, 2002; letter from the California Department of Fish and Game to staff dated December 3, 2001; letter from the United States Army Corps of Engineers to Noble Consultants, Inc. dated January 2, 2002; and letter from the California Department of Fish and Game to Coastal Resources Management dated April 19, 2002.

EXHIBITS

1. Vicinity Map
2. Assessor's Parcel Map
3. Vicinity Picture
4. Site Plan
5. Sections

STAFF RECOMMENDATION:

I. STAFF RECOMMENDATION OF DENIAL

Staff recommends that the Commission adopt the following resolution to deny the coastal development permit application. The motion passes only by affirmative vote of a majority of the Commissioners present.

A. Motion

I move that the Commission approve Coastal Development Permit No. 5-01-362 for the development proposed by the applicant.

B. Staff Recommendation of Denial

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

C. Resolution to Deny the Permit

The Commission hereby **DENIES** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act 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. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. Project Location, Description and Background

1. Project Location

The proposed project is located on two bayfront lots fronting Newport Bay at 2215 and 2223 Bayside Drive in Corona Del Mar (City of Newport Beach), County of Orange (Exhibits #1-3). North of the project site is Bayside Drive; South of the project site is a sandy beach area and Newport Bay, to the East is a bulkheaded residential lot and to

the West is a vacant lot with no bulkhead. The project site is located in a residential area where the majority of the homes fronting Newport Bay are located on bulkheaded lots. The homes located to the east of the subject site at 2227, 2231 and 2233 Bayside Drive recently received Coastal Commission approval for coastal development permit 5-98-021 (Smith, Combs and Ray) to repair an existing pre-coastal retaining wall/seawall located on their properties.

The project site is located at the southernmost portion of Newport Bay. The bay entrance is protected by the east and west jetties. The subject residences are located at the northwestern end of the embayment situated along the right outside bend of the Newport Bay Channel. This section of the channel is known as the Corona Del Mar Bend. The properties are oriented in a southwest facing direction, and a sandbag barrier has been placed along the sandy beach area fronting Newport Bay at approximately the +7.0 feet Mean Lower Low Water (MLLW) elevation contour.

2. Project Description

The original project, as submitted to the Commission, consisted of: construction of a new approximately 120 foot bulkhead along two properties located at the +6 feet (MLLW) elevation contour consisting of sheet pile that extends to -13.0 feet MLLW. The northwestern return of the bulkhead will be designed to directly abut the existing northwestern property boundary wall at 2215 Bayside Drive. The seaward most limit of this section of the bulkhead will be approximately 34 feet landward of the +4.65 feet Mean High Waterline (MHW). The southeastern return section will directly abut the existing bulkhead located at 2227 Bayside Drive. The existing bulkhead located at 2227 Bayside Drive is approximately 11 feet seaward of the landward most limit of this southeastern return section. The seaward most limit of the southeastern return section will be about 6 feet landward of the +4.65 MHW. A concrete cap will be formed around the upper portion of the sheetpiles extending below the existing beach sand levels. The top of the bulkhead will be at an elevation of approximately at +10.5 feet, MLLW and approximately 3.5 feet of the bulkhead will be seen above the beach. The bulkhead will have an undulating continuous rock like cover to blend in with the beach environment. In addition, fill of 580 square feet of high intertidal sandy habitat landward of the bulkhead is proposed. The applicants state that the bulkhead is needed to protect existing structures on the two properties from high tides and heavy storms and protect the property from erosion.

The proposed project was revised in a letter dated March 27, 2002 from *Noble Consultants, Inc.* to Mr. David Neish, Jr. (Culbertson, Adams & Associates) and remains essentially the same except that the southeastern portion of the bulkhead and the southeastern return section located bayward of the 2223 Bayside Drive residence is now positioned approximately 3 feet landward of the original position (Exhibits #4-5). After discussing the project with the ACOE, it was determined that relocating the southeastern portion of the bulkhead approximately 3 feet landward would move it out of the ACOE jurisdiction. Consequently, positioning the southeastern portion of the bulkhead 3 feet landward results in an 18 square foot reduction of high intertidal habitat that would be impacted by fill. Therefore, the amount of high intertidal habitat impacted has been reduced from 580 square feet to 562 square feet.

3. Prior Commission Action at the Subject Sites

2215 Bayside Drive

On March 1987, the Commission approved Waiver 5-87-218 (Moses). CDP 5-87-218 was a waiver that allowed the bayward extension of a deck for a single family residence within stringline.

On August 1987, the Commission approved Waiver 5-87-485 (Moses). CDP 5-87-485 was a waiver that allowed the seaward addition of a 691 square foot solarium to the first floor of a 2,674 square foot 2 story single family residence within established stringline.

On September 1990, the Commission approved Coastal Development Permit 5-90-589 (Furnish) for a 2,185 square foot addition to an existing 3,422 square foot two story single family residence. The permit was approved with one special condition requiring submittal of revised plans showing that the structural addition conforms to the stringline as drawn on an exhibit. Initially the project plans were inconsistent with the stringline. However, the applicant's agent agreed verbally to the stringline as determined by the Coastal Commission. To verify consistency with the stringline, a special condition was imposed requiring submittal of revised plans showing that the structural addition conforms to the stringline as drawn on an exhibit.

On May 1991, the Commission approved Waiver 5-91-336 (Furnish). CDP 5-91-336 was a waiver that allowed the revision of an existing dock consisting of an addition to the single finger dock to create a U shaped boat dock that would be no further channel ward than the existing single finger dock. The dock would be 54 feet beyond the existing platform and approximately 35 feet wide.

On June 1991, the Commission approved an Amendment to Coastal Development Permit 5-90-589 (Furnish) to include the demolition and reconstruction of all but a 10 foot segment of existing walls, rather than the originally proposed partial demolition for remodel. No change in square foot or height was proposed.

2223 Bayside Drive

On September 1994, the Commission approved Waiver 5-94-188 (O'Brien). CDP 5-94-188 was a waiver that allowed construction of a new boat dock consisting of a 4' x 135' pier with a 10' x 14' platform, a 3' x 24' ramp, and a 24' x 40' U shaped dock. The proposed dock would be within the U.S. bulkhead line.

B. Marine Resources

Section 30233 of the Coastal Act, in relevant part, states:

(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:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
- (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.*
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) Restoration purposes.*
- (8) Nature study, aquaculture, or similar resource dependent activities.*

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. Since the City has an LUP, which is one component of a complete Local Coastal Program (LCP), but does not have a full LCP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies that relate to development at the subject site:

Dredging, Diking and Filling in Open Coastal Waters, Wetlands, and Estuaries

1. *Only the following types of developments and activities may be permitted in the parts of Newport Bay which are not within the State Ecological Reserve where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects:*
 - a. *Construction or expansion of Port/marine facilities.*
 - b. *Construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, haul-out boat yards, commercial ferry facilities.*
 - c. *In open coastal waters, other than wetlands, including estuaries, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, haul-out boat yards, and pleasure ferries. (Fishing docks and swimming and surfing beaches are permitted where they already exist in Lower Newport Bay).*
 - d. *Maintenance of existing and restoration of previously dredged depths in navigational channels and turning basins associated with boat launching ramps, and for vessel berthing and mooring areas. The 1974 U.S. Army Corps of Engineers maps shall be used to establish existing Newport Bay depths.*
 - e. *Incidental public service purposes which temporarily impact the resources of the area, such as burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines.*
2. *New developments on the waterfront shall take into consideration existing usable water are for docking facilities. Residential and commercial structures (except piers and docks used exclusively for berthing of vessels) shall not be permitted to encroach beyond the bulkhead line. However, **this policy shall not be construed to allow development which requires the filling of open coastal waters, wetlands or estuaries which would require mitigation for the loss of valuable habitat in order to place structures closer to the bulkhead line or create usable land areas.** No bayward encroachment shall be permitted except where there is no feasible less environmentally damaging alternative and where mitigation is provided through payment of in-lieu fees to the Upper Newport Bay Mitigation Fund Administered by the City. (Emphasis Added)*
3. *The City shall examine proposals for construction of anti-erosion structures, offshore breakwaters, or marinas, and regulate the design of such structures to harmonize with the natural appearance of the beach.*

The proposed bulkhead is proposed to be approximately 120 foot long bulkhead along two properties located at the +6 feet (MLLW) elevation contour. The top of the bulkhead will be at an elevation of approximately at +10.5 feet, MLLW and approximately 3.5 feet of the bulkhead

will be seen above the beach. The bulkhead and backfill will result in the fill of 562 square feet of high intertidal sandy habitat. This habitat is located at elevations between +5.0 and +7 MLLW. Section 30108.2 of the Coastal Act defines "Fill" as the placement of earth or any other substance or material placed in a submerged area. Section 30233 of the Coastal Act limits the fill of wetlands and open coastal waters to the eight uses enumerated above. In addition, the City has an LUP policy regarding Dredging, Diking and Filling in Open Coastal Waters, Wetlands, and Estuaries that is similar to Section 30233 of the Coastal Act. The proposed fill of an intertidal area, which would provide yard space for the residence and allegedly provide greater protection to the existing landward development, is not designed or intended to serve any of the allowable uses identified by Section 30233 or the City's LUP. The proposed fill of an intertidal area that would provide yard space for the residence and to allegedly increase protection of existing structures is not designed to serve any of the allowable uses identified by Section 30233 or by the City's LUP. In addition to the requirement that a proposed fill of coastal waters be an allowable use under Section 30233 (and the City's LUP), both of these rules also require that projects (to be approved) involving the fill of wetlands and open coastal waters must also demonstrate that there is no feasible less environmentally damaging alternative and that feasible mitigation has been provided.

1. **Other Agency Comments**

California Department of Fish and Game (DF&G)

The California Department of Fish & Game (DF&G) reviewed the project. In a letter from the DF&G to Commission staff dated December 3, 2001, it states that DF&G would concur with issuance of a CDP for the proposed project with implementation of proposed mitigation measures discussed in their letter. The mitigation measures the applicants proposed were discussed in the *Marine Biological Resources Impact Assessment, Proposed Shoreline Stabilization Structure, 2215 and 2223 Bayside Drive, Corona Del Mar, CA 92625*, was prepared by Coastal Resources Management dated August 2, 2001. The 582 square feet [revised later to be 562 square feet] of unvegetated high intertidal habitat would be mitigated at a one-to-one ratio within the Upper Newport Ecological Reserve, by depositing money into the California Wildlands Foundation. The DF&G comments on this by stating: "*While deposition of fees into the California Wildlands Foundation is an option, a mitigation fund for this type of activity has not been established at this current time. Thus, it would be more prudent to deposit fees into the Upper Newport Bay North Shellmaker Island Mitigation Fund, administered by the City of Newport Beach.*" The proposed mitigation project underwent some changes and the current proposal is discussed later.

United States Army Corps of Engineers (ACOE)

In a letter dated January 2, 2002, the ACOE states that the entire bulkhead will be located landward of the Mean Higher High Water datum, denoted by the +5.40 feet, MLLW elevation contour [landward of the Mean High Tide Line] and does not discharge dredged or fill material into the water of the United States or an adjacent wetland. Therefore, the project is not subject to their jurisdiction under Section 404 of the Clean Water Act and a Section 404 permit is not required from them.

Regional Water Quality Control Board (RWQCB)

The project was also submitted to the California Regional Water Quality Control Board (RWQCB) for their review and approval. In a letter dated March 8, 2002, the RWQCB stated that the proposed project is not subject to jurisdiction under Section 404 of the Clean Water Act. The letter further discusses the BMP's that the applicants state will be implemented. The letter concludes by stating that the RWQCB has no objection to the proposed project provided that the discussed BMP's are implemented to minimize discharges to waters of the United States and that the water quality of Newport Bay is not adversely impacted.

2. Allowable Use Test

The applicants contend that the purpose of the project is to maintain the beach width seaward of the residence and enhance the protection of the subject lots. The applicants state that the subject site is experiencing erosion which is having adverse impacts on the property and that the proposed bulkhead is necessary to protect existing structures. Section 30233 of the Coastal Act allows the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes for: 1) new, expanded port, energy, and coastal-dependent industrial facilities; 2) maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps; 3) entrance channels for new or expanded boating facilities in wetland areas and in degraded wetlands, identified by the Department of Fish and Game; 4) 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; 5) incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines; 6) mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas; 7) restoration purposes; and 8) nature study, aquaculture, or similar resource dependent activities.

The City has an LUP policy regarding Dredging, Diking and Filling in Open Coastal Waters, Wetlands, and Estuaries that is similar to Section 30233 of the Coastal Act. The City's LUP limits the fill of estuaries, wetlands and coastal waters to five enumerated uses: 1) construction or expansion of Port/marine facilities; 2) construction or expansion of coastal-dependent industrial facilities, including commercial fishing facilities, haul-out boat yards, commercial ferry facilities; 3) in open coastal waters, other than wetlands, including estuaries, new or expanded boating facilities, including slips, access ramps, piers, marinas, recreational boating, launching ramps, haul-out boat yards, and pleasure ferries; 4) maintenance of existing and restoration of previously dredged depths in navigational channels and turning basins associated with boat launching ramps, and for vessel berthing and mooring areas and; 5) incidental public service purposes which temporarily impact the resources of the area, such as burying cables and pipes, inspection of piers, and maintenance of existing intake and outfall lines. In addition, the City's LUP regarding the fill of estuaries, wetlands and coastal waters states: "...this policy shall not be construed to allow development which requires the filling of open coastal waters, wetlands or estuaries which would require mitigation for the loss of valuable habitat in order to place structures closer to the bulkhead line or create usable land areas."

The proposed development would result in 562 square feet of fill in intertidal coastal waters and would expand the yard space of the residence. Neither the protection of existing structures nor the provision of additional yard space for a residence is one of the uses identified by Section 30233 or the City's LUP as an allowable purpose for the fill of open coastal waters. Therefore, the proposed bulkhead does not qualify as one of the allowable uses identified in Section 30233 of the Coastal Act or in the City's LUP.

Although Section 30235 of the Coastal Act does require the Commission to approve bulkheads when necessary to protect an existing structure or beaches in danger from erosion (and when designed to eliminate adverse impacts on shoreline sand supply), and the subject site is apparently experiencing some erosion, the applicant has not demonstrated that the erosion is occurring at a rate which demands attention or that any existing structure is in danger and can only be protected via the construction of the proposed bulkhead. Therefore, the Commission cannot find that the proposed development is approvable pursuant to Section 30235 of the Coastal Act. This will be discussed further in Section II.C., below.

3. Alternatives Analysis Test

To demonstrate that the proposed bulkhead is the least environmentally damaging alternative, the applicants have provided an alternatives analysis, which explores options other than the proposed bulkhead.

Alternative #1

The first alternative provided by the applicant is a no project alternative. The coastal assessment states that the shoreline bayward of the residences is exhibiting a slight erosional trend resulting in a slow but continued decrease in dry beach width. As a result the subject properties and hardscape improvements are now vulnerable to storm waves propagating down the entrance channel to Newport Bay.

Analysis

This alternative would maintain the existing "natural" condition and not result in the loss of 562 square feet of high intertidal habitat and no new permanent man made structure on the beach similar to the proposed bulkhead, which makes this alternative a less environmentally damaging alternative than the proposed bulkhead. Furthermore, the applicant has been using sandbags to provide protection from storm events. Even though the analysis [to be discussed later] does state that the existing sandbag berm was ineffective at one section, while the other sections were effective, it is still an alternative that is allowed under 30233 of the Coastal Act and would not result in the placement of a permanent man made structure on the beach. Also, new and additional sand bags could be placed at the section where the sand bags were ineffective and this would not result in a permanent loss of habitat by the construction of a bulkhead. In addition, there was no compelling case presented by the applicants for the constant need of sandbags to prevent erosion. If the constant need of sandbags were not needed to protect the site from erosion, the permanent construction of a bulkhead would not seem necessary as well. Although erosion is occurring on

site, this alternative is feasible as the applicant has not documented how the proposed fill meets the criteria of Section 30233.

Alternative #2

The second alternative provided by the applicant is the continual addition of sand (beach nourishment) to prevent the overall net loss of sand at the site. The coastal assessment acknowledges that the nourished beach would provide a significant buffer zone to southerly storm wave attacks; however, it further states: *"...the entire compartment extending from the bulkhead located at 2137 Bayside Drive to the bulkhead located at 2227 Bayside Drive would need to be filled with sand. This becomes logistically complicated since the compartment includes the above referenced properties, as well as the property located at 2209 Bayside Drive. Currently, 2209 Bayside Drive is an undeveloped property and the owner has expressed little or no interest in pursuing shoreline stabilization measures."* Furthermore, the assessment states that the continual addition of beach on site is problematic due to trucking difficulties due to the location of the site, difficulties with periodic renourishments, no potential lateral beach access to allow the transportation of materials to the beach and the cautiousness needed to ensure that eelgrass will not be buried during the profile equilibrium of the fill.

Analysis

This alternative would maintain the existing "natural" condition and not result in the loss of 562 square feet of high intertidal habitat and no new permanent man made structure on the beach similar to the proposed bulkhead, which makes this alternative a less environmentally damaging alternative than the proposed bulkhead. Periodic dredging with deposition on the beach would be a preferable method of maintaining the existing beach profile. This approach has been taken by the City of Newport Beach on Coastal Development Permit #5-99-282 (City of Newport Beach) approved by the Coastal Commission. Under this permit, navigable channels and berthing slips are periodically dredged and the sand is placed back on the beach to maintain the beach profiles. The dredging of beach material that has eroded into Newport Bay back onto the beach would achieve the applicant's project purpose of mitigating the erosion of beach material by maintaining the existing beach profile. The beach nourishment can be conducted on all properties affected.

The applicant asserts that there would be access difficulties to the site in order to conduct beach replenishment and that cautiousness is needed to ensure that eelgrass will not be buried during the beach replenishment. Even though there may be difficulties accessing the site, access to the site is still available. Also, dredging and deposition would occur on the bayward side of the development, thus there would be no trucking difficulties due to the location of the site or no potential lateral beach access to allow the transportation of materials to the beach. In regards to the cautiousness needed to ensure that eelgrass will not be buried during the replenishment, the applicant would have to provide a plan that would delineate areas of where eelgrass may be impacted and make sure that these areas are not impacted. Furthermore, unlike the applicant's proposal, beach nourishment, would be consistent with Section 30233 of the Coastal Act

and would be a less environmentally damaging alternative to the proposed bulkhead.

Alternative #3

The third alternative provided by the applicant consists of a revetted bulkhead instead of the proposed vertical bulkhead. The coastal assessment states that the bulkhead would be in the same location as the proposed vertical bulkhead, but the revetted bulkhead would require additional lateral space to construct resulting in an increase in the amount of habitat affected.

Analysis

This is a feasible alternative; however, it would be even more environmentally damaging than the current proposal since it would require the installation of a new permanent man made structure on the beach similar to the proposed bulkhead and would also require additional fill of high intertidal habitat. Thus, this is not the least environmentally damaging alternative. Fill of wetland or coastal waters for private residential development is not identified as a use under Section 30233 of the coastal Act. Therefore, the Commission cannot find that the proposed development is consistent with Section 30233 of the Coastal Act.

Alternative #4

The fourth alternative consists of moving the proposed vertical bulkhead landward in line with the existing sandbags located at approximately an elevation of +7.0 MLLW. The coastal assessment states: *"This alternative is a potentially viable solution; however, the net storm wave related benefit would be somewhat less than that of the preferred plan [the currently proposed bulkhead]...Since the location of the bulkhead... is closer to the bayfront improvements of the residences, the bulkhead will not provide the same degree of protection as the preferred plan when inundated with storm related wave activity and runup."*

Analysis

Even though the proposed bulkhead would be moved more landward and result in less fill of open coastal waters, this is a feasible alternative that would result in the installation of a new permanent man made structure on the beach similar to the proposed bulkhead. Thus, this is not the least environmentally damaging alternative. Fill of wetland or coastal waters for private development is not a coastal-dependent use. The applicant asserts that bulkhead placement in this alternative will not provide the same degree of protection as the preferred plan when inundated with storm related wave activity and runup. The applicant has not demonstrated that the erosion is occurring at a rate, which demands attention or that any existing structure is in danger or can only be protected via the construction of the proposed bulkhead. If the applicant had demonstrated that the bulkhead was necessary to protect the existing developments, the position of the bulkhead could have been moved more landward in order to minimize the adverse impacts to coastal resources just as this proposed alternative, which moves the bulkhead more landward. However, the

construction of a bulkhead does not entitle the applicant to maximize the yard space, which is not a coastal-dependent use. The bulkhead should be as far landward as possible to be consistent with the goal of protecting existing development, which minimizes adverse impacts to intertidal habitat area. Therefore, the Commission cannot find that the proposed development is consistent with Section 30233 of the Coastal Act.

4. Mitigation Test

Projects that involve fill of open coastal waters must qualify as an allowable use under Section 30233 of the Coastal Act, and then if the proposed project cannot avoid impacts to coastal resources, mitigation is also required. In this case, the proposed project has not qualified as an allowable use under the Coastal Act or avoided (or even minimized) its impacts.

To evaluate the biological impact of the proposed bulkhead, the applicants submitted a *Marine Biological Resources Impact Assessment, Proposed Shoreline Stabilization Structure, 2215 and 2223 Bayside Drive, Corona Del Mar, CA 92625*, was prepared by Coastal Resources Management dated August 2, 2001. The assessment found that the construction of the new bulkhead would result in the filling of 580 square feet [the project was revised after this assessment was completed. Currently, only 562 square feet of high intertidal habitat will be impacted] of high intertidal wetland habitat as defined by the U.S. Fish and Wildlife Service at elevations between +5.0 and +7 ft MLLW. This includes 170 square feet of direct loss from the construction of the bulkhead and 392 square feet of high intertidal habitat that will be filled. The coastal assessment states: "*The affected habitat is unvegetated, high intertidal sandy beach and its biological value is low because few organisms live in the high intertidal sediments on which predators feed on. Secondly, the area is located near residential structures and high levels of human disturbance. The affected habitat consists of coarse and medium sands which hypothetically could be used by shorebirds and seabirds as a resting habitat, although human activity limits much of the beach's value as wildlife habitat. Despite its overall low habitat value, the filling of wetland habitat is a long term, unavoidable impact. Consequently, reasonable and prudent steps should be taken to avoid, minimize, or compensated for the wetland loss and impacts to marine resources.*"

The applicants have indicated that they are willing to provide mitigation to offset impacts arising from the project as proposed. The applicants have submitted a Conceptual Mitigation Plan, which would mitigate the loss of 562 square feet of high intertidal sandy beach at a mitigation ratio of 4:1, as typically required by the Commission for this type of impact, resulting in the restoration of 2,248 square feet of high intertidal salt marsh habitat at elevations between +5.0 and +7.0 ft, MLLW within Upper Newport Bay. In a letter dated April 19, 2002, the DF&G states that they have accepted the conceptual mitigation agreement. Nevertheless, before the Commission can approve the project, the project must meet all the requirements of Section 30233 which are that the project must be an allowable use, be the least environmentally damaging alternative and provide adequate mitigation. In this case, the proposed project does not meet two of the three requirements in that it is neither an allowable use nor the least environmentally damaging alternative. Since the proposed project is neither an allowable use nor the least environmentally damaging alternative, the adequacy of the proposed mitigation is not being assessed.

5. City's LUP

The proposed project is in conflict with the City's LUP regarding Dredging, Diking and Filling in Open Coastal Waters, Wetlands, and Estuaries. The City's LUP limits the fill of estuaries, wetlands and coastal waters to the five enumerated uses listed previously. The proposed fill of the intertidal area would not be for any of the five uses listed in the LUP in that its main functions would be to increase yard space for the residence and to allegedly provide greater protection to the existing landward development, increase protection of existing structures, neither of which is one of the allowable uses identified by the City's LUP regarding the fill of estuaries, wetlands and coastal waters. In addition, there are other less environmentally damaging alternatives that exist which would not result in the construction of a bulkhead in the high intertidal area. Since other less environmentally damaging alternatives exist, such as beach replenishment, the proposed project is again inconsistent with City's LUP.

6. Conclusion

The proposed development would result in 562 square feet of fill in coastal waters. The area of proposed fill would provide additional yard space for the residence and is to allegedly increase protection of existing structures. Fill of wetland or coastal waters for private residential development is not one of the allowable uses identified under Section 30233. In addition, the submitted coastal assessment does not demonstrate that the bulkhead would be the least environmentally damaging alternative. Alternatives to the installation of the bulkhead which are less damaging are available. One alternative could be beach nourishment, which would prevent the overall loss of sands at the site. Beach nourishment is an alternative to the bulkhead which is environmentally less damaging since a new permanent man made structure would not be installed on the beach. As stated previously, before the Commission can approve the project, the project must meet all the requirements of Section 30233 which are that the project must be an allowable use, be the least environmentally damaging alternative and provide adequate mitigation. In this case, the proposed project does not meet two of the three requirements in that it is neither an allowable use nor the least environmentally damaging alternative. The City's LUP has similar, though even more restrictive, conditions, and thus the proposed project is inconsistent with it as well.

Therefore, the Commission finds that the proposed project is inconsistent with Section 30233 of the Coastal Act and the City's LUP.

C. Protective Structures and Hazards

Section 30235 of the Coastal Act states:

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

stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

The proposed project consists of the construction of a new bulkhead fronting Newport Bay. Although not specifically listed as a type of construction that alters natural shoreline processes covered in Section 30235 of the Coastal Act, it is similar to a seawall, which is discussed in Section 30235 of the Coastal Act. Moreover, the presence of a bulkhead at this location would alter natural shoreline processes. Consequently, the proposed development is covered by Section 30235 via its reference to "other such construction that alters natural shoreline

Section 30235 of the Coastal Act requires the Commission to approve bulkheads when they are both necessary to protect an existing structure or beaches in danger from erosion and designed to eliminate adverse impacts on shoreline sand supply. Although the subject site is apparently experiencing nominal erosion, which appears to be the result of natural processes as discussed in the evaluation conducted by *Noble Consultants, Inc.* dated May 16, 2001 discussing the need for the new bulkhead, the applicant has not demonstrated that the erosion is occurring at a rate which demands attention or that any existing structure is in danger and can only be protected via the construction of the proposed bulkhead. Therefore, the Commission cannot find that the proposed development is approvable pursuant to Section 30235 of the Coastal Act.

An evaluation conducted by Noble Consultants, Inc. entitled *Coastal Engineering Analysis for Proposed Shoreline Stabilization Structure at 2215 and 2223 Bayside Drive, Corona Del Mar, CA 92625* dated May 16, 2001 discusses the need for the new bulkhead. The applicants contend that the purpose of the project is to maintain the beach width seaward of the residence and enhance the protection of the subject lots. The letter discusses three primary reasons why the bulkhead is necessary: 1) the subject sites are exposed to periods of increased elevations of wave runup during episodic storm events producing southerly wind setup, local sea, and swell; 2) the sandbag berm is not effectively mitigating the coastal impacts of the subject sites; and 3) the gradual migration on the shoreline would result in the loss of property and property improvements for both subject residences.

Reason #1

The first reason the report states that the new bulkhead is needed is because the subject sites are exposed to periods of increased elevations of wave runup during episodic storm events producing southerly wind setup, local sea, and swell: *"The subject site is vulnerable to storm conditions resulting from a pre-frontal local sea producing strong southeast winds along the coast that turn towards the south a short distance offshore...The project site is prone to southerly dominant wind setup, local sea, and swell propagating directly into the entrance channel of Newport Harbor. These waves enter through the mouth of the harbor between the inlet jetties and travel northward towards the residences. As the waves approach the subject shoreline obliquely from the south, they continue to refract until they eventually break on the beach. The energy of the waves reaching the shoreline are dampened somewhat from the intensity reaching the open coast due to the location of the site. Nonetheless, during episodic storm events producing southerly swell, local sea and setup, the intensity of the waves and the associated wave runup can impact the shoreline of the subject sites...The subject sites are exposed to periods of increased elevations of wave runup during episodic storm events producing southerly wind setup, local sea, and swell."*

Analysis

The natural state of the beach sand is that sand moves on and off shore and the construction of a bulkhead will prevent the natural sand movement process. Though erosion can adversely impact the existing beach profile and berthing facilities, dredging to maintain the existing beach profile and berthing facility is a feasible alternative that is allowed pursuant to Section 30233 of the Coastal Act and would not result in the placement of a new permanent man made structure on the beach. This alternative would not result in the fill of open coastal waters resulting in the permanent elimination of the existing high intertidal habitat. In addition, this alternative would be environmentally superior to the loss of habitat. Another alternative would be the use of sandbags to aid in the erosion problems stated on site. Even though the analysis [to be discussed later] does state that the existing sandbag berm was ineffective at one section, while the other sections were effective, it is still an alternative that is allowed under 30233 of the Coastal Act and would not result in the placement of a permanent man made structure on the beach. Also, new and additional sand bags could be placed at the section where the sand bags were ineffective and this would not result in a permanent loss of habitat by the construction of a bulkhead. In addition, there was no compelling case presented by the applicants for the constant need of sandbags to prevent erosion. If the constant need of sandbags were not needed to protect the site from erosion, the permanent construction of a bulkhead would not seem necessary as well. Thus, the proposed bulkhead is not needed to prevent erosion or protect an existing structure and so the first reason offered by *Noble Consultants, Inc.* does not satisfy the criteria of Section 30235 or require approval of the proposed project.

Reason #2

The second reason the report states that the new bulkhead is needed is because the sandbag berm is not effectively mitigating the coastal impacts of the subject sites: *"It is evident that the existing protective sandbag berm can aid in the mitigation of the coastal impacts of the subject sites; however, the soft barrier extending to the southeast (to the right) of the dock depicted in the photograph has sustained significant damage rendering it basically ineffective in its function to protect the beach fronting the rear of the lots from continued wave attack. For this reason, it is advisable that a more permanent shoreline stabilization structure be implemented to enhance the coastal protection of the subject residences."*

Analysis

As discussed previously, the natural state of the beach sand is that sand moves on and off shore and the construction of a bulkhead will prevent the natural sand movement process. Erosion can be dealt with the use of sandbags to aid in the erosion problems stated on site, just as the applicants have been doing. Even though the analysis does state that the existing sandbag berm was ineffective at one section, while the other sections were effective, it is still an alternative that is allowed under 30233 of the Coastal Act and would not result in the placement of a permanent man made structure on the beach. Also, new and additional sand bags could be placed at the section where the sand bags were ineffective and would not result in a permanent loss of habitat by the construction of a bulkhead. In addition, there was no compelling case presented by the applicants for the constant need of sandbags to prevent erosion. If the constant

need of sandbags were not needed to protect the site from erosion, the permanent construction of a bulkhead would not seem necessary as well. Intermittent use of sandbags would help in protecting the site from erosion and not result in the construction of a permanent man made structure on the beach. Thus, the proposed bulkhead is not needed to prevent erosion or protect an existing structure and so the second reason offered by *Noble Consultants, Inc.* does not satisfy the criteria of Section 30235 or require approval of the proposed project.

Reason #3

The third reason the report states that the new bulkhead is needed is because the gradual erosion on the shoreline would result in the loss of property and property improvements for both subject residences.

Analysis

The natural state of the beach is that sand moves on and off shore and the construction of a bulkhead will prevent the natural sand movement process. Periodic dredging of the berthing facilities with deposition on the beach (beach replenishment) would be a preferable method of maintaining the existing beach profile and the functionality of the berthing facilities as opposed to the construction of the bulkhead, a permanent structure. This approach has been taken by the City of Newport Beach on Coastal Development Permit #5-99-282 (City of Newport Beach) approved by the Coastal Commission. Under this permit, navigable channels and berthing slips are periodically dredged and the sand is placed back on the beach to maintain the beach profiles. The proposed project is adjacent to a navigable channel and has a berthing facility. The dredging of beach material that has eroded into Newport Bay back onto the beach would achieve the applicant's project purpose of mitigating the erosion of beach material by maintaining the existing beach profile. Section 30233 of the Coastal Act allows fill of open coastal waters for: "*Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*" Section 30233 also states: "*Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.*" Another alternative would be the use of sandbags to aid in the erosion problems stated on site. Even though the analysis does state that the existing sandbag berm was ineffective at one section, while the other sections were effective, it is still an alternative that is allowed under 30233 of the Coastal Act and would not result in the placement of a permanent man made structure on the beach. Also, new and additional sand bags could be placed at the section where the sand bags were ineffective and this would not result in a permanent loss of habitat by the construction of a bulkhead. In addition, there was no compelling case presented by the applicants for the constant need of sandbags to prevent erosion. If the constant need of sandbags were not needed to protect the site from erosion, the permanent construction of a bulkhead would not seem necessary as well. Once again, then, this reason offered by *Noble Consultants, Inc.* does not satisfy the criteria of Section 30235 or require approval of the proposed project.

Conclusion

Section 30235 of the Coastal Act requires the Commission to approve bulkheads when it is both necessary to protect an existing structure or beaches in danger from erosion and designed to eliminate adverse impacts on shoreline sand supply. Although the subject site is apparently experiencing nominal erosion, which appears to be the result of natural processes, the applicant has not demonstrated that the erosion is occurring at a rate which demands attention or that any existing structure is in danger. Moreover, even if existing structures were shown to be in danger, there is no evidence that they could only be protected via the construction of the proposed bulkhead. Additionally, even if the applicant had demonstrated that the bulkhead was necessary to protect the existing developments, the position of the bulkhead could have been moved more landward in order to minimize the adverse impacts to coastal resources. The construction of a bulkhead does not entitle the applicant to maximize the yard space, which is not a coastal-dependent use. The bulkhead should be as far landward as possible to be consistent with the goal of protecting existing development, which minimizes adverse impacts to intertidal habitat area. Therefore, the Commission cannot find that the proposed development is approvable pursuant to Section 30235 of the Coastal Act.

D. Project Alternatives

Denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicants' property, nor unreasonably limit the owners' reasonable investment backed expectations of the subject property. The applicants already possess a substantial residential development of significant economic value of the property. In addition, several alternatives to the proposed development exist. Among those possible alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):

1. No Project

No changes to the existing site conditions would result from the "no project" alternative. However, the applicants did not submit information on the current rate of erosion which would substantiate if and when this alternative may result in damage to the existing structures, so there is no evidence to reject this as a viable alternative. This alternative would not alter the existing site conditions, result in the loss of 562 square feet of high intertidal habitat, or result in the establishment of a new permanent man made structure on the beach. In addition, this alternative would maintain the beach and sand movement in its "natural" state and result in the least amount of effects to the environment. Furthermore, the applicant has been using sandbags to provide protection from storm events. Even though the analysis does state that the existing sandbag berm was ineffective at one section, while the other sections were effective, it is still an alternative that is allowed under 30233 of the Coastal Act and would not result in the placement of a permanent man made structure on the beach. In addition, there was no compelling case presented by the applicants for the constant need of sandbags to prevent erosion. If the constant need of sandbags were not needed to protect the site from erosion, the permanent construction of a bulkhead would not seem necessary as well. Based on the information provided, the "No Project" alternative appears to be a viable alternative here, and it is certainly a less environmentally damaging one.

2. Beach Replenishment

Another alternative to the proposed project would be beach replenishment. This alternative would not result in the loss of 562 square feet of high intertidal habitat and is an alternative to the bulkhead that is environmentally less damaging since a new man made structure would not be installed on the beach. The Commission approved Coastal Development Permit #5-99-282 (City of Newport Beach) for beach nourishment to occur in the City of Newport Beach. Under this permit, navigable channels and berthing slips are periodically dredged and the sand is placed back on the beach to maintain the beach profiles. The proposed project is adjacent to a navigable channel and has a berthing facility. The dredging of beach material that has eroded into Newport Bay back onto the beach would achieve the applicant's project purpose of mitigating the erosion of beach material by maintaining the existing beach profile. Section 30233 of the Coastal Act allows fill of open coastal waters for: *"Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps."* Section 30233 also states: *"Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems."* Furthermore, unlike the applicant's proposal, beach nourishment would be consistent with Section 30233 of the Coastal Act and would be less environmentally damaging alternative to the proposed bulkhead.

E. 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.

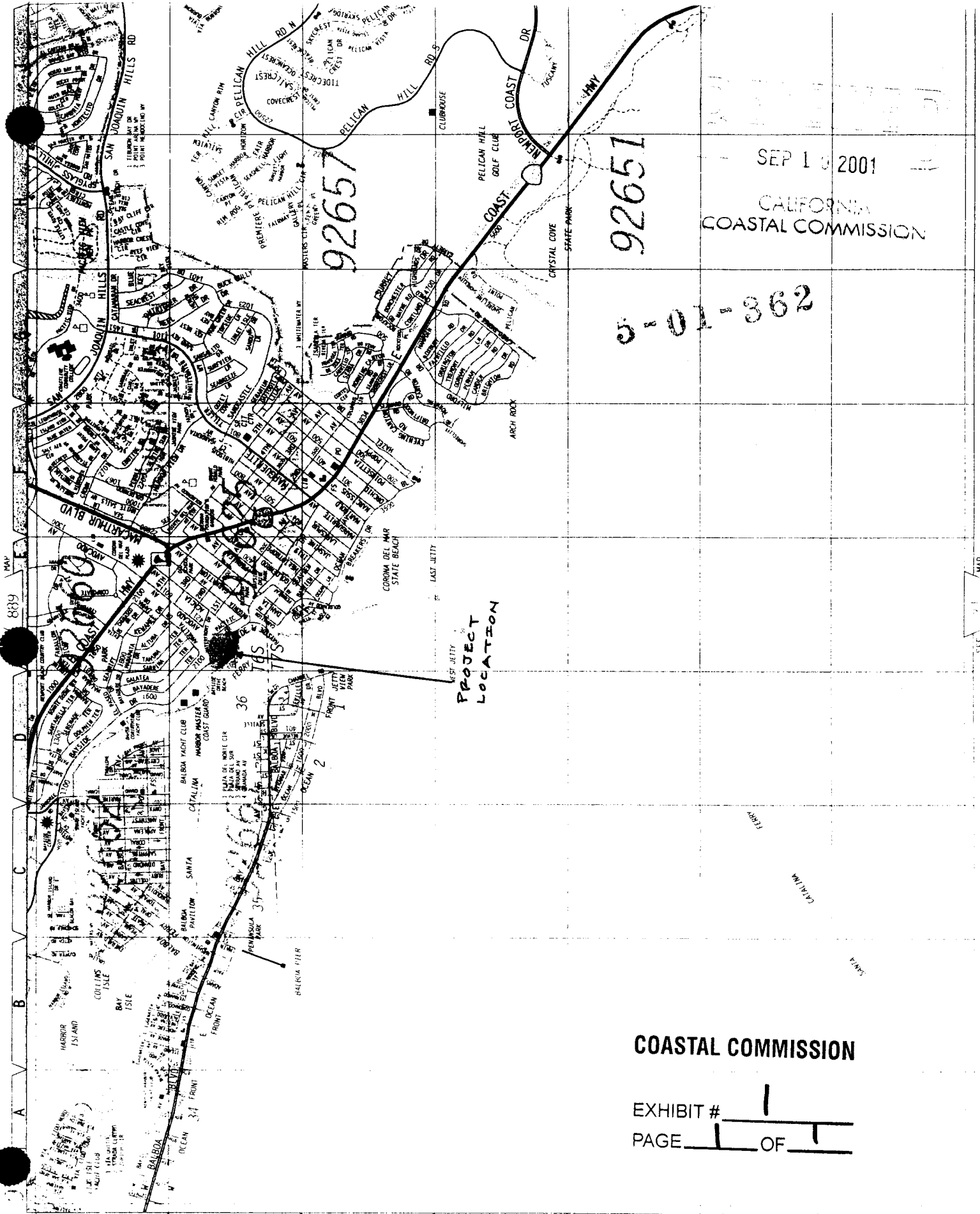
The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on January 9, 1990. Since the City has an LUP but no LCP, the policies of the LUP are used only as guidance. The proposed project is in conflict with City's LUP regarding Dredging, Diking and Filling in Open Coastal Waters, Wetlands, and Estuaries, for the reasons explained above, in Section II.B.5, for the reasons explained above, in Section II.B.5.

The construction of the proposed project is inconsistent with the Chapter 3 policies of the Coastal Act discussed previously, specifically Sections 30233 and 30235 of the Coastal Act, as well as with the City's LUP. Section 30233 of the Coastal Act states the uses for which fill of open coastal waters is allowed. Section 30235 of the Coastal Act states when construction of a bulkhead must be permitted. The proposed development would 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). Therefore, the project is found inconsistent with the policies in the City's certified LUP and the Chapter 3 policies of the Coastal Act and must be denied.

F. California Environmental Quality Act

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, 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.

As described above, the proposed project would have significant adverse environmental impacts. There are feasible alternatives available, such as the no project alternative and/or beach replenishment, as well as mitigation measures. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives that would lessen significant adverse impacts that the activity would have on the environment. Therefore, the project must be denied.



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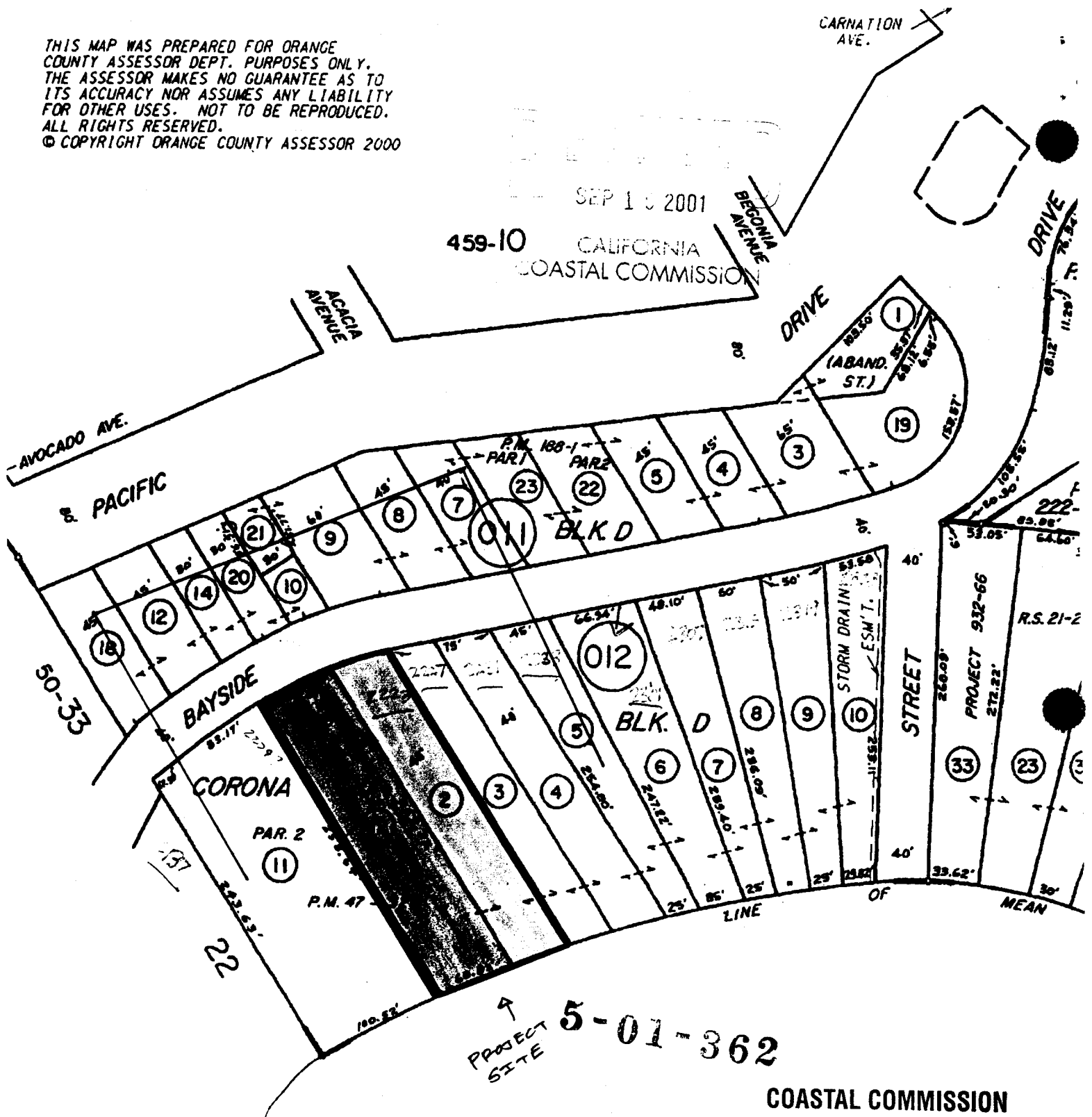
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COASTAL COMMISSION

EXHIBIT # 1
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COASTAL COMMISSION

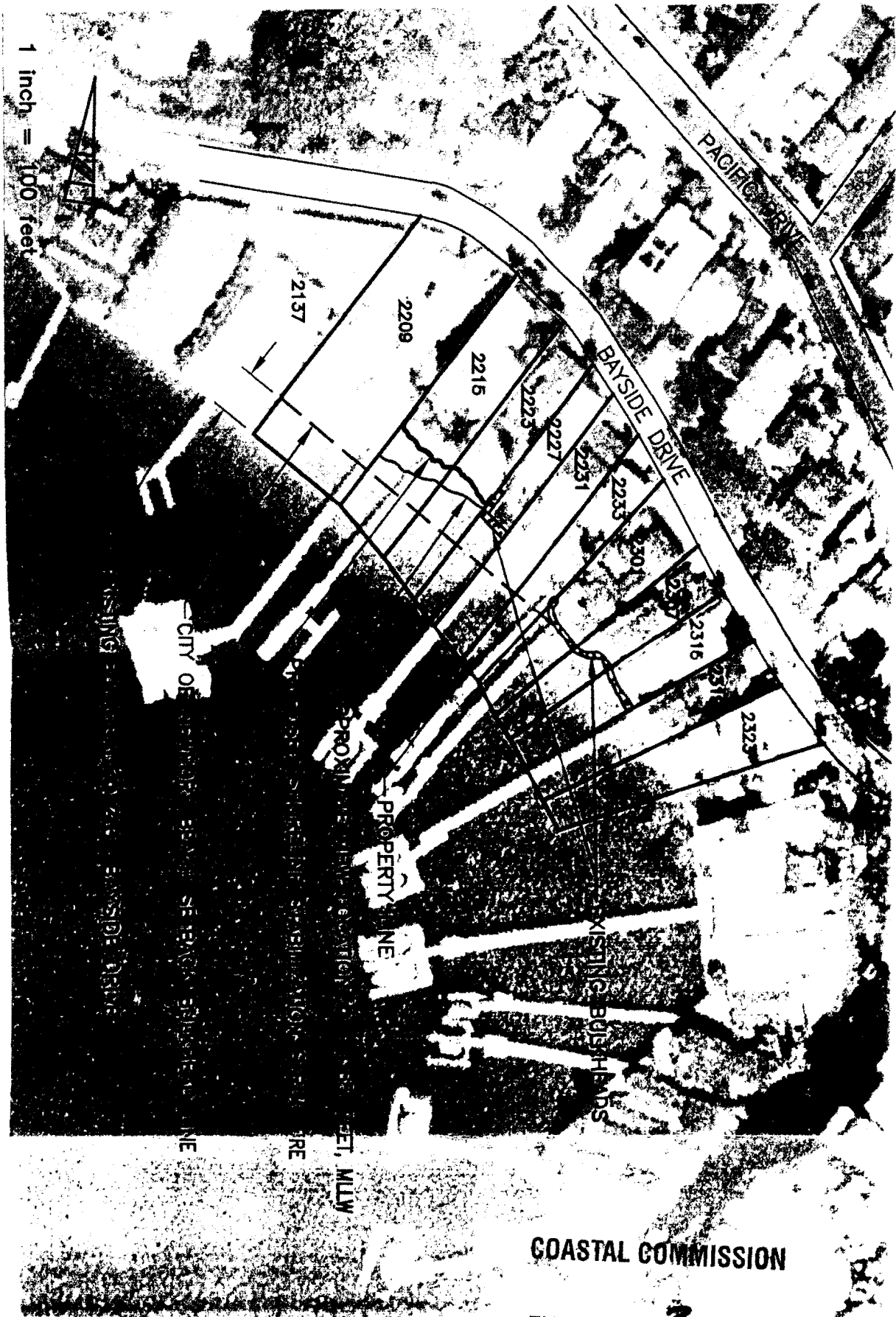
EXHIBIT # 2
 PAGE 1 OF 1

48-03

MARCH 1949

CORONA DEL MAR
 PARCEL MAP
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M.M. 3-41,4.
 P.M. 36-3
 P.M. 47-3'



COASTAL COMMISSION

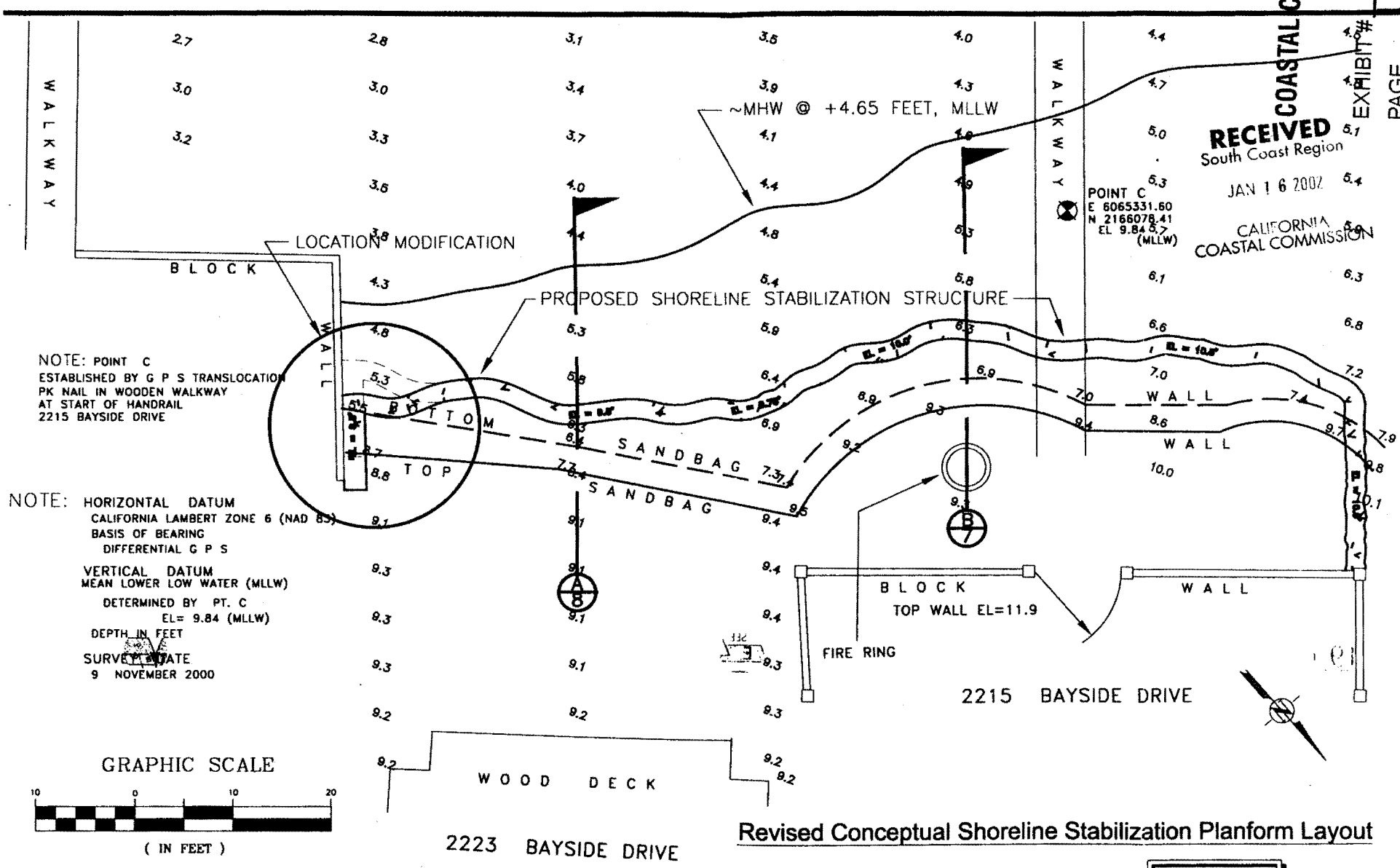
EXHIBIT # 3
PAGE 1 OF 1

2215 and 2223 Bayside Drive Property Boundaries and Proposed Shoreline Stabilization Structure for

NOBIL

RECEIVED
South Coast Region
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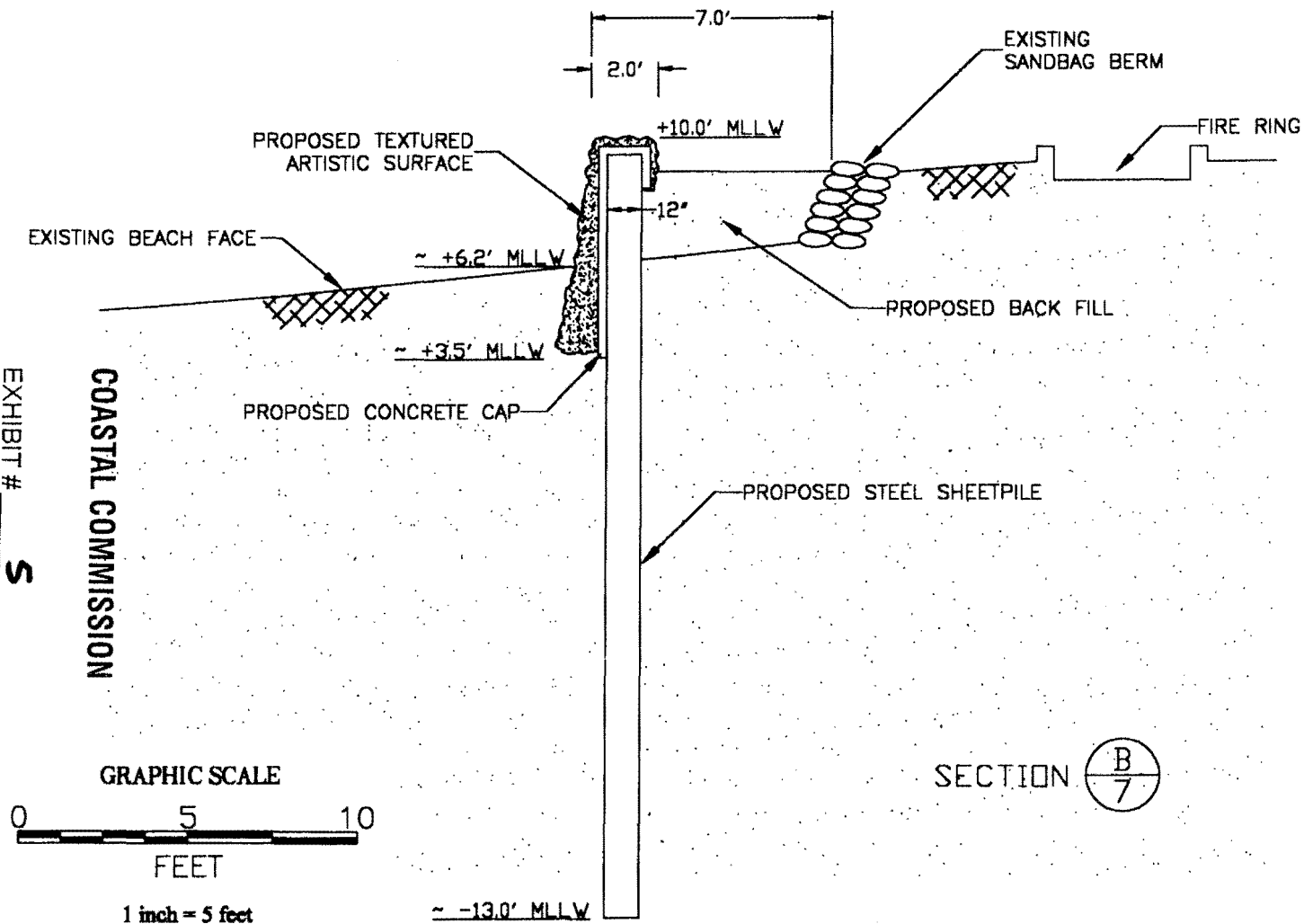
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Revised Conceptual Shoreline Stabilization Planform Layout

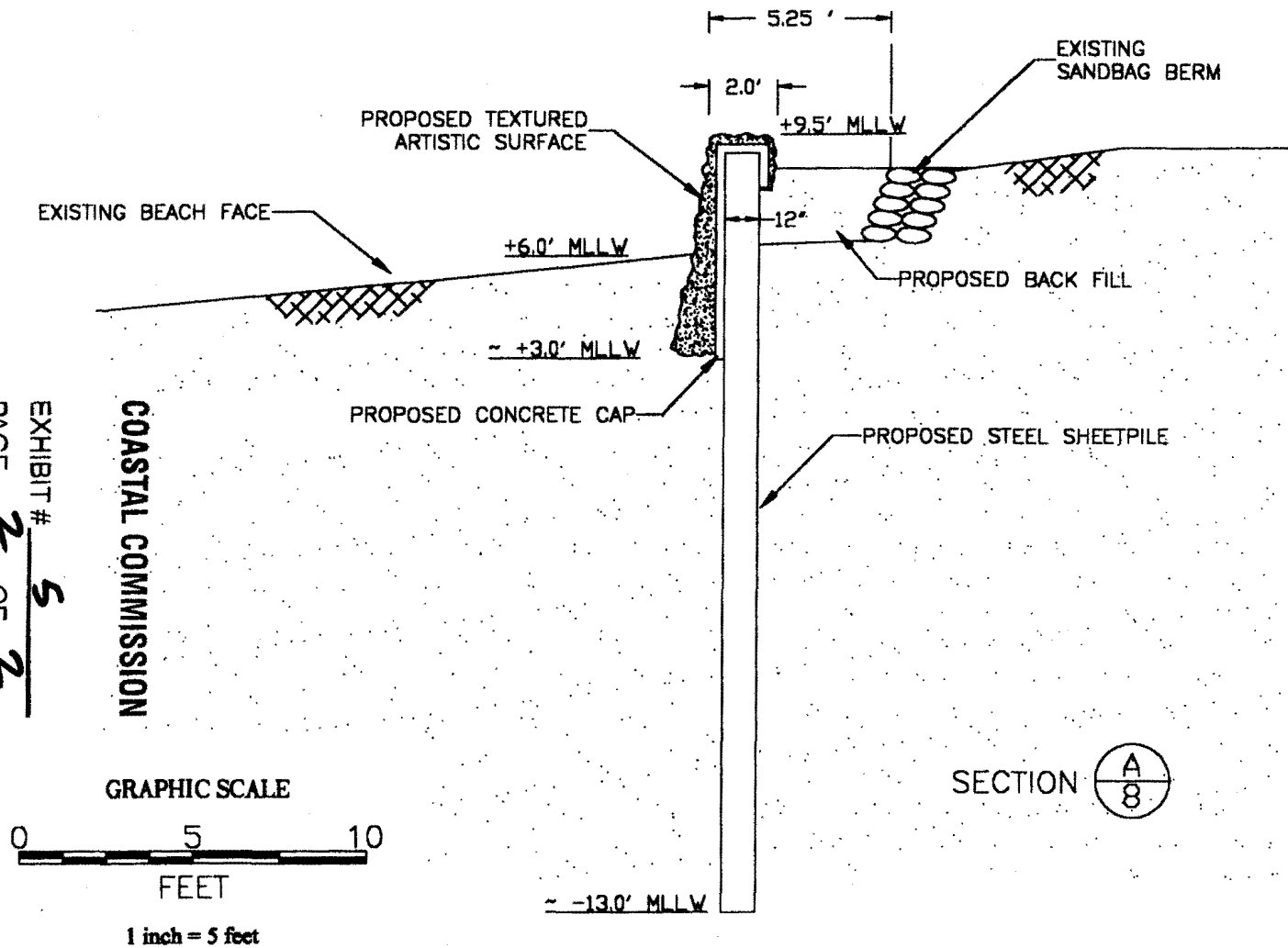
EXHIBIT # 5
PAGE 1 OF 2

COASTAL COMMISSION



Representative Cross Section - 2215 Bayside Drive

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EXHIBIT # 5
PAGE 2 OF 2



GRAPHIC SCALE



1 inch = 5 feet

SECTION $\frac{A}{8}$

Representative Cross Section - 2223 Bayside Drive