

CALIFORNIA COASTAL COMMISSION

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Staff:
Staff Report:
Hearing Date:
Commission Action:

FSY-LB FSY
July 17, 2003
August 6-8, 2003

**TH 17b****RECORD PACKET COPY****STAFF REPORT: REVISED FINDINGS**

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.

DATE OF COMMISSION ACTION: October 8, 2002

COMMISSIONERS ON PREVAILING SIDE: Commissioners Desser, Dettloff, Hart, Kruer, Orr, Ruddock, Rose and Wan.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action of October 8, 2002 approving the construction of the bulkhead. Staff had recommend denial of the proposed project as it would have been primarily inconsistent with Sections 30233 and 30235 of the Coastal Act. At the hearing it was determined that the location of the proposed development is in an area where other bulkheads exist, that the proposed bulkhead would be infill and, regarding staff's concern about consistency with 30233 and 30235, if the bulkhead were required to be moved landward out of the intertidal area, there would be no fill of open coastal waters. These findings have been incorporated beginning on page 6.

In approving this project, **Two (2) Special Conditions** were imposed. **Special Condition No.1** requires the applicant to submit revised bulkhead alignment plans. **Special Condition No. 2** relates to construction responsibilities and debris removal.

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; letter from the California Department of Fish and Game to Coastal Resources Management dated April 19, 2002, and letter from the California Department of Fish and Game to staff dated October 4, 2002.

EXHIBITS

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

I. STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following motion and resolution:

MOTION:

"I move that the Commission adopt the revised findings in support of the Commission's action of October 8, 2002 in approving coastal development permit application 5-01-362 with conditions."

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the October 8, 2002 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for its approval of coastal development permit application 5-01-362 with conditions on the grounds that the findings support the Commission's decision made on October 8, 2002 and accurately reflect the reasons for it.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission.
4. **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.
5. **Terms and Conditions Run with the Land** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Revised Bulkhead Alignment and Plans

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit two (2) full size sets of revised plans for the proposed bulkhead for the review and written approval of the Executive Director. The revised plans shall relocate the proposed bulkhead as far landward as feasible based on consultation with the U.S. Fish & Wildlife Service and State Dept. of Fish & Game to eliminate intertidal impacts and to the satisfaction of the Executive Director. The bulkhead shall also be designed to minimize impacts to shoreline processes.
- B. The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Construction Responsibilities and Debris Removal

- A. No construction materials, equipment, debris, or waste will be placed or stored where it may be subject to wave wind, or rain erosion and dispersion.
- B. Any and all construction material will be removed from the site within 10 days of completion of construction.
- C. Machinery or construction materials not essential for project improvements will not be allowed at any time in the intertidal zone.
- D. If turbid conditions are generated during construction a silt curtain will be utilized to control turbidity.
- E. Floating booms will be used to contain debris discharged into coastal waters and any debris discharged will be removed as soon as possible but no later than the end of each day.
- F. Non-buoyant debris discharged into coastal waters will be recovered by divers as soon as possible after loss.

IV. 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 United States Army Corps of Engineers (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. The high intertidal sandy habitat is located at elevations between +5.0 and +7 MLLW.

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 area 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 an approximately 120-foot long bulkhead along two properties located at the +6 feet (MLLW) elevation contour. The top of the bulkhead would be at an elevation of approximately at +10.5 feet, MLLW and approximately 3.5 feet of the bulkhead would be seen above the beach. The proposed bulkhead and backfill will result in the fill of 562 square feet of high intertidal sandy habitat. The high intertidal sandy habitat is located at elevations between +5.0 and +7 MLLW. However, the position of the bulkhead could be moved more landward in order to minimize the adverse impacts to coastal resources, including avoidance of the fill of coastal waters.

The intertidal 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 provide 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. 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. **Allowable Use Test**

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 proposed bulkhead alignment, which results in the fill of coastal waters, is the only alignment that would provide the required protection from hazards. Rather, there are more landward alternatives that, at once, provide the protection of existing structures and avoid the fill of coastal waters.

2. 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 an erosional trend resulting in a 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. Thus, the no project alternative is feasible.

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. However, the periodic dredging with deposition on the beach would have other adverse impacts upon coastal resources, such as eelgrass. Thus, this alternative is not the preferable alternative.

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.

Alternative #4

The fourth alternative provided by the applicant 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 runoff."*

Analysis

Even though the proposed bulkhead would be moved more landward it would still result in the fill of open coastal waters. Thus, this alternative is not the preferred alternative.

Alternative #5

A fifth alternative provided by Commission Staff consists of moving the proposed bulkhead as far landward as feasible to eliminate intertidal impacts.

Analysis

The proposed bulkhead would result in the fill of 562 square feet of high intertidal habitat. The high intertidal sandy habitat is located at elevations between +5.0 and +7 MLLW. This alternative does not result in the fill of open coastal waters (intertidal habitat area). Since this is the least environmentally damaging feasible alternative and, moreover, eliminates any fill of open waters, thus taking the whole project out of the purview of Section 30233, the Commission imposes **Special Condition #1**, which requires the applicants to submit revised plans for the proposed bulkhead. The revised plans shall relocate the proposed bulkhead as far landward as feasible based on consultation with the U.S. Fish & Wildlife Service and State Dept. of Fish & Game to eliminate intertidal impacts. The bulkhead shall also be designed to minimize impacts to shoreline processes. Imposing this Special Condition will result in no fill of open coastal waters.

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. The applicants have indicated that they are willing to provide mitigation to offset impacts arising from the project as proposed. However, in this case, the proposed project, as conditioned, does not involve fill of open coastal waters hence no mitigation is required.

The project site is also located in an area where other bulkheads are located. Residents located south of the project site and across Newport Bay on Harbor Island have lots that are bulkheaded. The construction of the proposed bulkhead will be infill development similar to the existing development located in this area.

Conclusion

In order to eliminate impacts to the intertidal zone, the Commission imposes **Special Condition #1**, which requires the applicants to submit revised plans for the proposed bulkhead. The revised plans shall relocate the proposed bulkhead as far landward as feasible based on consultation with the U.S. Fish & Wildlife Service and State Dept. of Fish & Game to eliminate intertidal impacts. The bulkhead shall also be designed to minimize impacts to shoreline processes. Locating the proposed bulkhead inland so that there would be no impacts to the intertidal zone would not result in the fill of open coastal waters. 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, once the project is modified to be consistent with **Special Condition #1**, it will no longer involve fill of open coastal waters hence, no mitigation is required. Therefore, the proposed project would not be inconsistent with Section 30233 of the Coastal Act.

3. City's LUP

As conditioned, the proposed project would not 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. As conditioned, the proposed project will not fill any estuary, wetland, or coastal waters.

4. Conclusion

As proposed, the development would result in 562 square feet of fill in high intertidal sandy habitat (coastal waters). The high intertidal sandy habitat is located at elevations between +5.0 and +7 MLLW. However, the position of the bulkhead could be moved more landward in order to minimize the adverse impacts to coastal resources, including completely avoiding any fill of coastal waters. In order to eliminate impacts to the intertidal zone, the Commission imposes **Special Condition #1**. Therefore, as conditioned, the project would not be inconsistent with Section 30233 of the Coastal Act.

C. Water Quality and the Marine Environment

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed project is located near the coastal waters of Lower Newport Bay. Lower Newport Bay is a critical coastal water body on the federal Clean Water Act 303(d) list of "impaired" water bodies. The designation as "impaired" means that water quality within the water body does not meet State and Federal water quality standards designed to meet the 1972 Federal Clean Water Act goal of "fishable, swimmable" waters. In Newport Harbor, the listing cites elevated concentrations of metals, pathogens, nutrients, pesticides, and toxic organic compounds from a variety of sources including urban runoff, boatyards, contaminated sediments, and other unknown non-point sources as the reason for listing the harbor as an "impaired" water body. The listing is made by the California Regional Water Quality Control Board, Santa Ana Region (RWQCB), and the State Water Resources Control Board (SWRCB), and confirmed by the U.S. Environmental Protection Agency (EPA). The RWQCB has targeted the Newport Bay watershed, which would include Newport Harbor, for increased scrutiny as a higher priority watershed under its Watershed Initiative. The standard of review for development proposed in coastal waters is the Chapter 3 policies of the Coastal Act, including

the following water quality policies. Sections 30230 and 30231 of the Coastal Act require the protection of biological productivity and water quality.

The construction of the bulkhead will occur near the water. Construction of any kind adjacent to or in coastal waters has the potential to impact marine environment. The Bay provides an opportunity for water oriented recreational activities and also serves as a home for marine habitat. Because of the coastal recreational activities and the sensitivity of the Bay habitat, water quality issues are essential in review of this project

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain, surf, or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. In addition, the use of machinery in coastal waters not designed for such use may result in the release of lubricants or oils that are toxic to marine life. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, **Special Condition #2** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicants to incorporate silt curtains and/or floating booms when necessary to control turbidity and debris discharge. Divers shall remove any non-floatable debris not contained in such structures that sink to the ocean bottom as soon as possible.

To minimize the adverse impacts upon the marine environment and avoid fill of coastal waters, **One (1) Special Condition** has been imposed. **Special Condition #2** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris to protect coastal water quality and the biological productivity thereof. Therefore, the Commission finds that, as conditioned, the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act.

D. Public Access and Recreation

Section 30212 of the Coastal Act, in relevant part, states:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
- (2) adequate access exists nearby...*

Section 30604 (c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea includes a specific finding that the development is in conformance with the public access and recreation policies of Chapter 3 of the Coastal Act. The proposed development is located between the sea and the first public road.

The proposed development is located across two single-family lots in the southernmost portion of Newport Bay. There is no public access across the sites. There are several opportunities for public access to the coast located near the proposed development. Bayside Drive County

Beach is accessible via the Harbor Master Coast Guard location located about a half mile to the northwest of the proposed development. This area also allows the launching of small boats by the public.

The proposed development does not constitute an intensification of use and would not result in significant adverse impacts to coastal access and recreation. Therefore, the commission finds that the proposed development conforms with Section 30212 of the Coastal Act.

E. Local Coastal Program

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on January 9 1990. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

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.

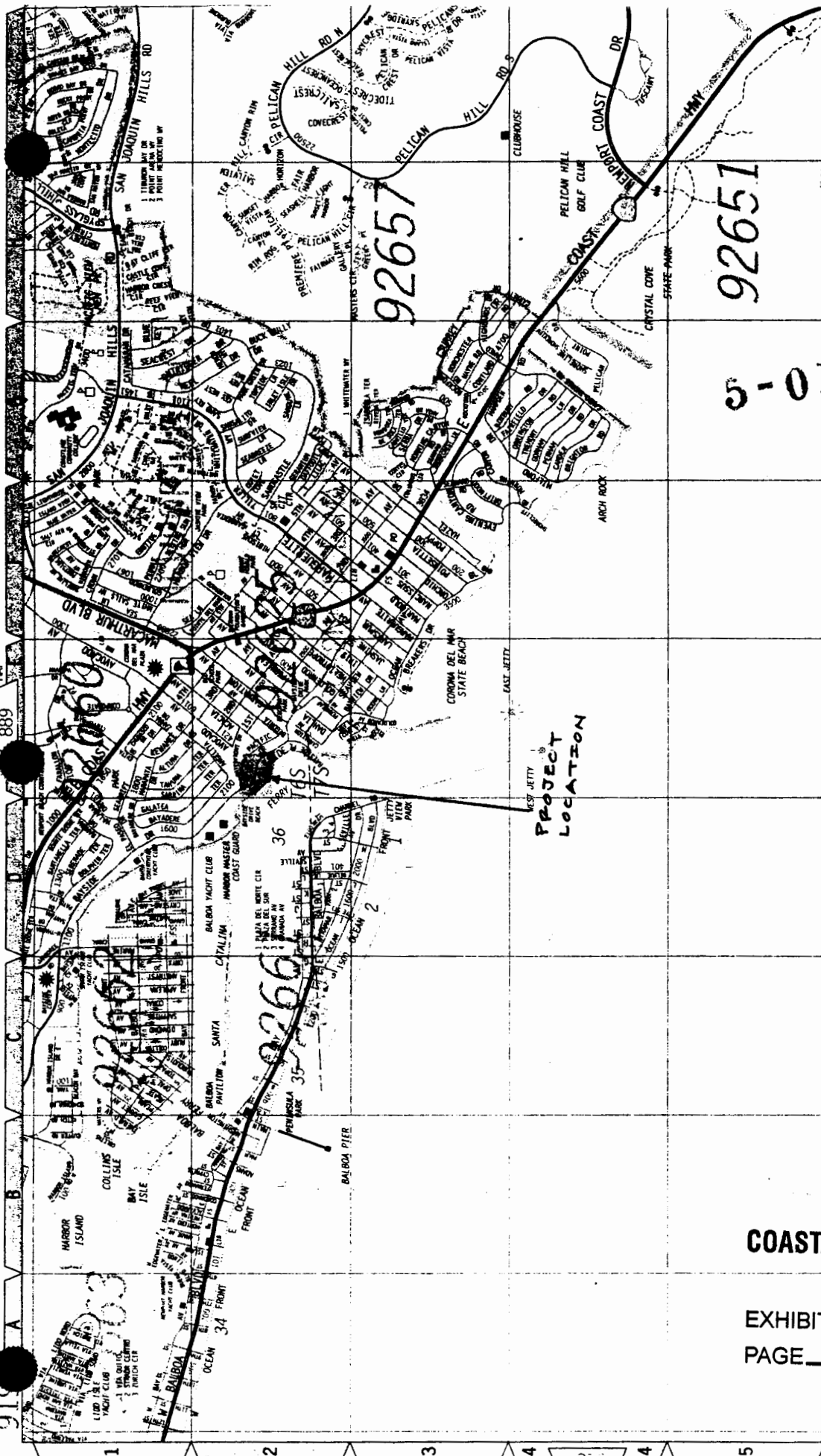
As described above, the proposed project would not have significant adverse environmental impacts, as conditioned. As conditioned, the proposed project has been found consistent with the policies of Chapter 3 of the Coastal Act. Mitigation measures include Special Conditions requiring the applicant to submit revised bulkhead alignment plans and to adhere to construction responsibilities and debris removal.

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, can be found consistent with the requirements of CEQA.

EXHIBIT # _____
PAGE _____ OF _____

1 PLAZA DEL MONTE CIR
2 PLAZA DEL SOL
3 STROANO AV
4 PRANDA AV

PROJECT LOCATION



889

676

vi

10

ORANGE CO.

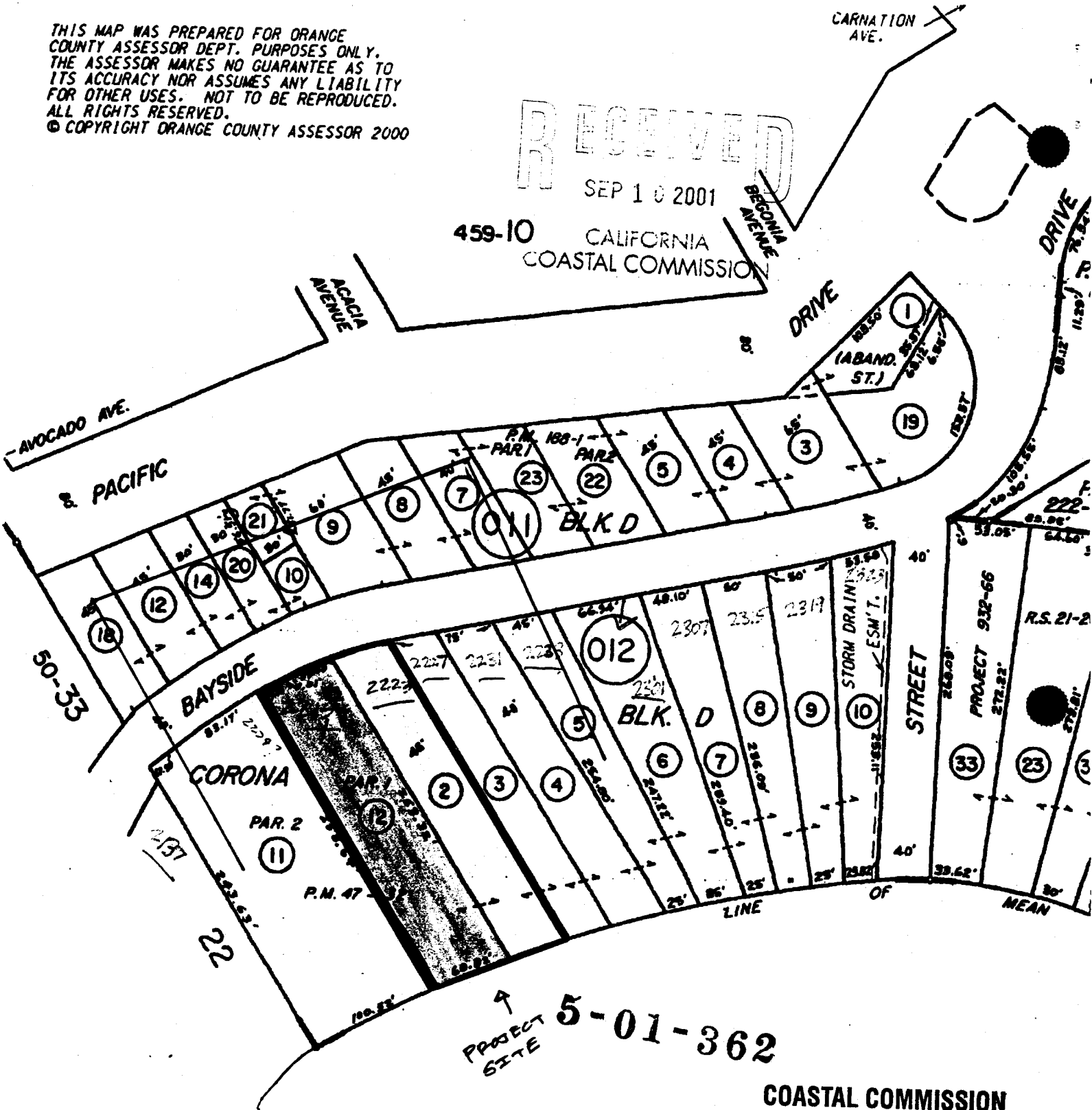
SEE MAP

MAP

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PROJECT SITE 5-01-362

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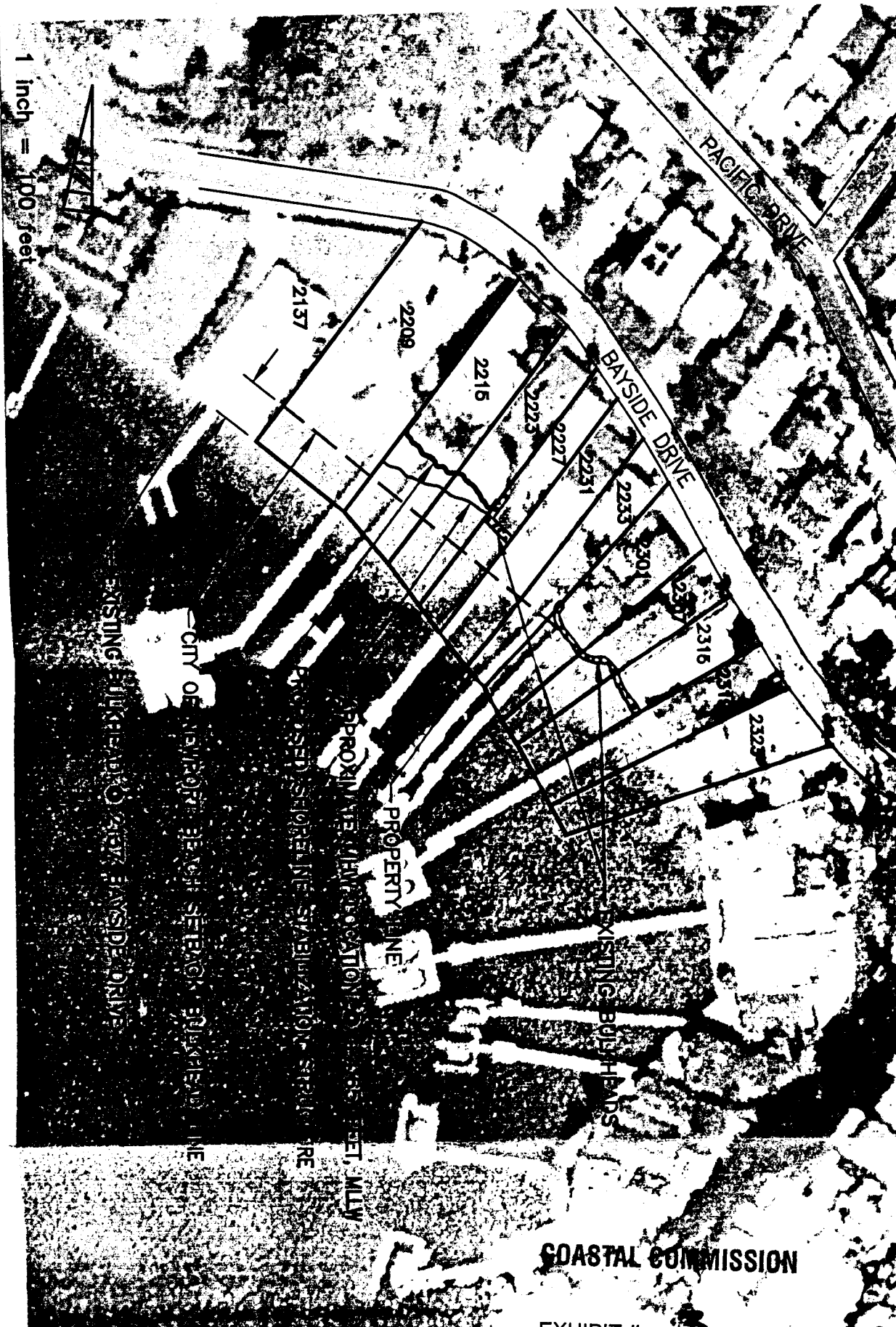
EXHIBIT # 2
PAGE 1 OF 1

48-03

MARCH 1949

CORONA DEL MAR
PARCEL MAP
" "

M.M. 3-41, 4.
P.M. 36-3
P.M. 47-



2215 and 2223 Bayside Drive Property Boundaries and Proposed Shoreline Stabilization Structure Loc.

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EXHIBIT # 3
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POINT C
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N 2166078.41
EL 9.84 (MLLW)

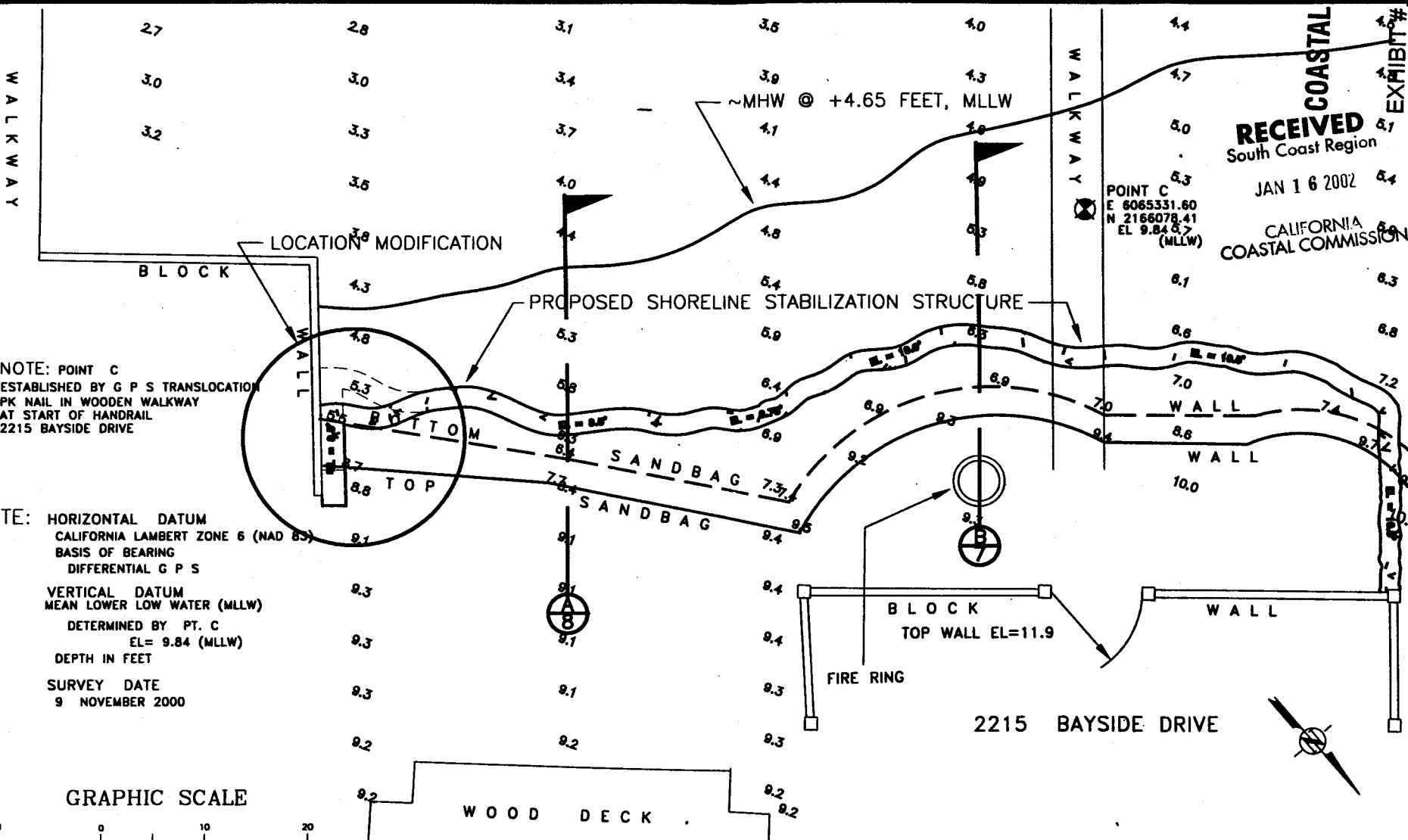
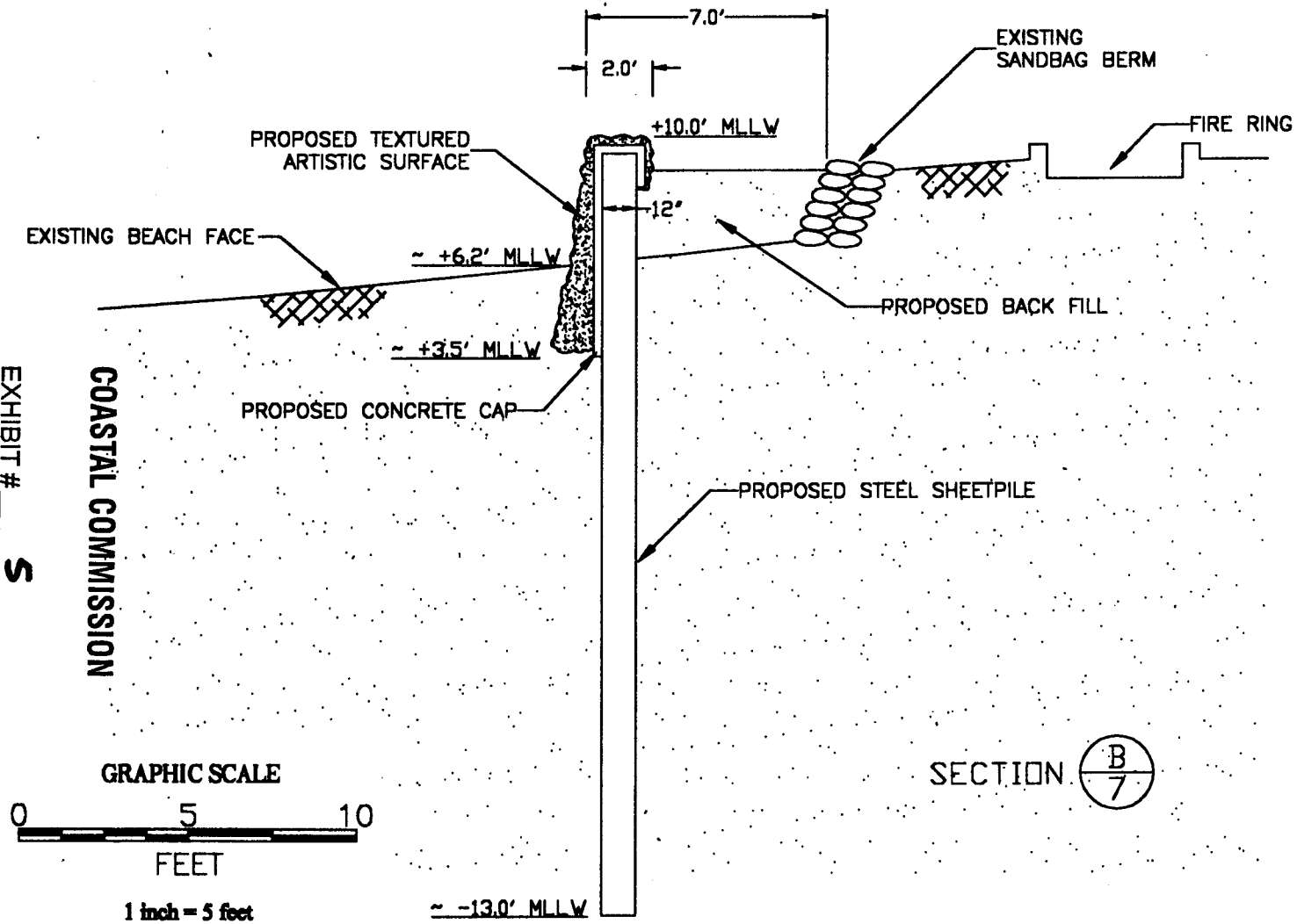


EXHIBIT # **5**
PAGE **1** OF **2**

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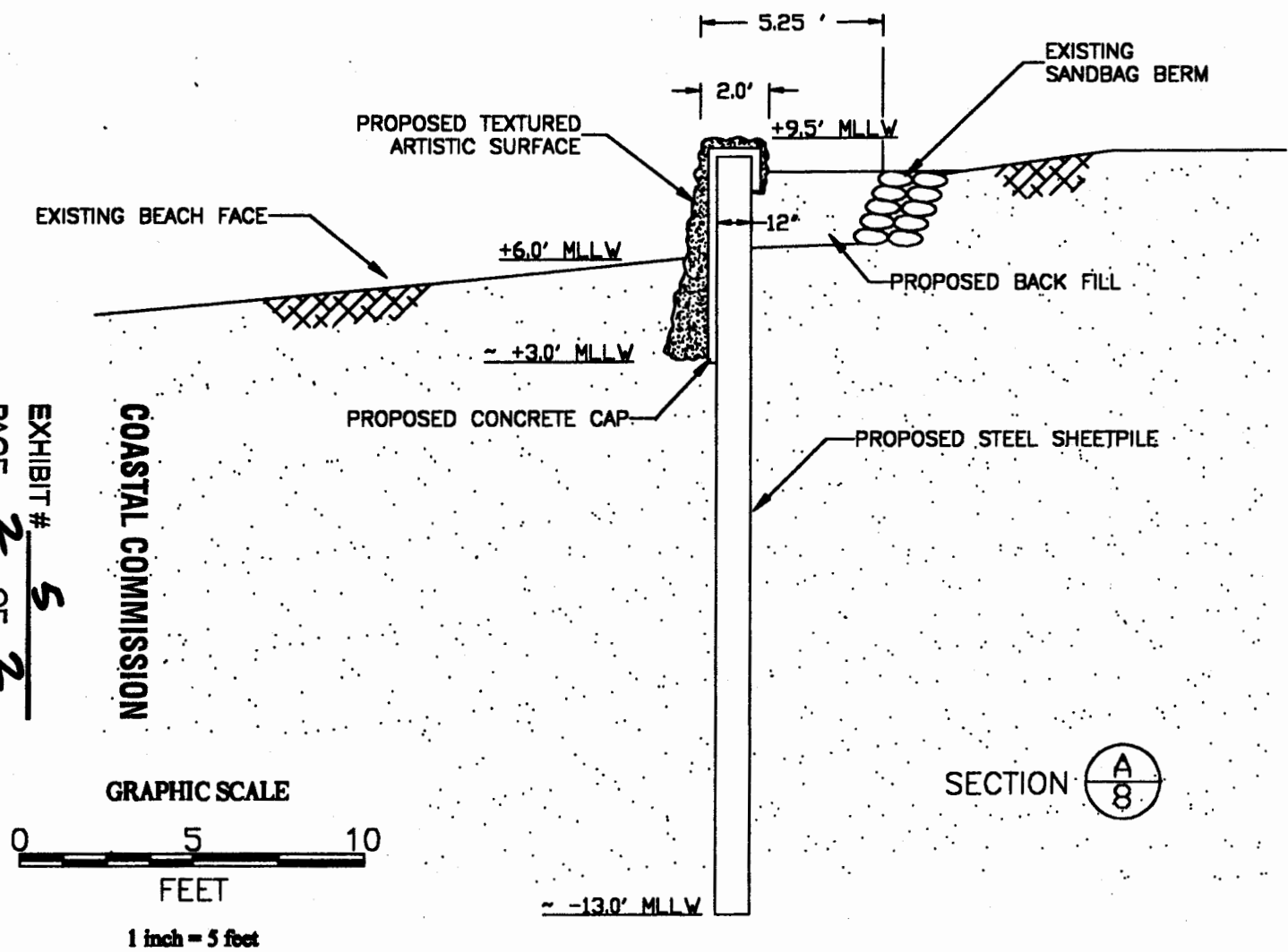
COASTAL COMMISSION



Representative Cross Section - 2215 Bayside Drive

EXHIBIT # 5
PAGE 2 OF 2

COASTAL COMMISSION



Representative Cross Section - 2223 Bayside Drive

Figure 8

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