

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: July 15, 2005
49th Day: September 2, 2005
180th Day: April 11, 2006
Staff: ALB-LB *ALB*
Staff Report: October 27, 2005
Hearing Date: November 16-18, 2005
Commission Action:

**F 4c****STAFF REPORT: CONSENT CALENDAR**

APPLICATION NO.: 5-05-268 **RECORD PACKET COPY**

APPLICANT: Jack Woodhull

AGENT: Shellmaker, Inc.; Attn.: Lisa Miller

PROJECT LOCATION: 3 Harbor Island, City of Newport Beach (County of Orange)

PROJECT DESCRIPTION: Removal and replacement of an existing bulkhead in the same alignment.

LOCAL APPROVALS RECEIVED: Approval-In-Concept No. 1349-2005 from the City of Newport Beach Harbor Resources Division dated June 14, 2005; Letter from the California Regional Water Quality Control Board (RWQCB) dated September 29, 2005; Letter from the Department of Fish and Game dated September 21, 2005; and e-mail from National Marine Fisheries Service dated August 2, 2005.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing the demolition and construction of a bulkhead in the same location. The site is subject to tidal action, but not to direct wave attack because the site is located within a protected channel of Newport Harbor. The proposed bulkhead replacement is necessary to protect existing structures from tidal induced erosion and will have no new impacts upon shoreline sand supply because the device will be located in the same location as the existing. The major issues before the Commission relate to the effect of the proposed development on marine resources and water quality. No eelgrass or *Caulerpa taxifolia* are located within the project area at this time.

Staff recommends the Commission **APPROVE** the proposed development with **three (3) Special Conditions**. **Special Condition No. 1** deals with construction responsibilities and debris removal. **Special Condition No. 2** assures that impacts to eelgrass are avoided and, if necessary, mitigated. **Special Condition No. 3** requires that a pre-construction survey for *Caulerpa taxifolia* be done and if its presence is discovered, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *Caulerpa taxifolia* within the project and/or buffer area has been eliminated or 2) the applicant has revised the project to avoid any contact with *Caulerpa taxifolia*.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Eelgrass reporting survey completed on June 7, 2005; *Caulerpa* reporting survey completed on June 7, 2005; *Limited Geotechnical Engineering Investigation of Bulkhead Replacement at #3 Harbor Island Road, Newport Beach* prepared by Coast Geotechnical dated April 15, 2005; and Letter Report from William Simpson & Associates, Inc., Consulting Structural Engineers, dated July 5, 2005.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Project Plans
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STAFF RECOMMENDATION:

MOTION: I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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 or 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. 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.
2. Eelgrass Survey
 - A. **Pre Construction Eelgrass Survey.** A valid pre-construction eelgrass (*Zostera marina*) survey shall be completed during the period of active growth of eelgrass (typically March through October). The pre-construction survey shall be completed prior to the beginning of construction and shall be valid until the next period of active growth. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special

condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the eelgrass survey for the review and approval of the Executive Director within five (5) business days of completion of each eelgrass survey and in any event no later than fifteen (15) business days prior to commencement of any development. If the eelgrass survey identifies any eelgrass within the project area, which would be impacted by the proposed project, the development shall require an amendment to this permit from the Coastal Commission or a new coastal development permit.

- B. Post Construction Eelgrass Survey.** If any eelgrass is identified in the project area by the survey required in subsection A of this condition above, within one month after the conclusion of construction, the applicant shall survey the project site to determine if any eelgrass was adversely impacted. The survey shall be prepared in full compliance with the "Southern California Eelgrass Mitigation Policy" Revision 8 (except as modified by this special condition) adopted by the National Marine Fisheries Service and shall be prepared in consultation with the California Department of Fish and Game. The applicant shall submit the post-construction eelgrass survey for the review and approval of the Executive Director within thirty (30) days after completion of the survey. If any eelgrass has been impacted, the applicant shall replace the impacted eelgrass at a minimum 1.2:1 ratio on-site, or at another location, in accordance with the Southern California Eelgrass Mitigation Policy. All impacts to eelgrass habitat shall be mitigated at a minimum ratio of 1.2:1 (mitigation:impact). The exceptions to the required 1.2:1 mitigation ratio found within SCEMP shall not apply. Implementation of mitigation shall require an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.

3. Pre-construction *Caulerpa Taxifolia* Survey

- A.** Not earlier than 90 days nor later than 30 days prior to commencement or re-commencement of any development authorized under this coastal development permit (the "project"), the applicant shall undertake a survey of the project area and a buffer area at least 10 meters beyond the project area to determine the presence of the invasive alga *Caulerpa taxifolia*. The survey shall include a visual examination of the substrate.
- B.** The survey protocol shall be prepared in consultation with the Regional Water Quality Control Board, the California Department of Fish and Game, and the National Marine Fisheries Service.
- C.** Within five (5) business days of completion of the survey, the applicant shall submit the survey:
- (1) for the review and approval of the Executive Director; and
 - (2) to the Surveillance Subcommittee of the Southern California Caulerpa Action Team (SCCAT). The SCCAT Surveillance Subcommittee may be contacted through William Paznokas, California Department of Fish & Game

(858/467-4218) or Robert Hoffman, National Marine Fisheries Service
(562/980-4043).

- D. If *Caulerpa taxifolia* is found within the project or buffer areas, the applicant shall not proceed with the project until 1) the applicant provides evidence to the Executive Director that all *C. taxifolia* discovered within the project and buffer area has been eliminated in a manner that complies with all applicable governmental approval requirements, including but not limited to those of the California Coastal Act, or 2) the applicant has revised the project to avoid any contact with *C. taxifolia*. No revisions to the project shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

1. Project Location

The proposed project is located on a bayfront lot at 3 Harbor Island in the City of Newport Beach, County of Orange (Exhibits #1-2). The site is designated Low Density Residential. The site is bounded to the north by Newport Harbor; to the south by Harbor Island Road; and to the west and east by existing residential structures. The project site is located in a residential area where many of the homes fronting Newport Harbor are located on bulkheaded lots. The subject site is a bulkheaded lot and although there are no bulkheads on the adjacent lots, there are bulkheads on the lots immediately beyond each neighboring lot. Site conditions on the bayward side of the sites in the subject area include existing bulkheads, piers and docks.

The subject site is located in the locked gate community of Harbor Island. No public access currently exists through the site. However, the project will have no impacts on existing coastal access. Public access to the harbor exists in the area across the channel from the site along the public walkways on Lido Island and Balboa Island.

2. Project Description

The applicant proposes to replace an existing concrete bulkhead in the same configuration, as shown in Exhibit 3. The bulkhead is currently 50 feet long with an 8 foot return on the west side and a 12 foot return on the east side. Because no bulkheads exist on the adjacent lots, the bulkhead will not tie into neighboring walls. The replaced bulkhead will be supported by a tieback system consisting of helical anchors drilled into the subject lot behind the wall. A 3-foot high wrought iron guardrail will also be replaced along the bulkhead. No work is proposed to the existing dock and pier.

The existing and re-constructed bulkhead is necessary to protect existing development, including off-site development on adjacent lots. According to the applicant's structural engineer, the existing wall has deteriorated to the point that it needs to be replaced to avoid destabilization of the subject and neighboring properties.

The City of Newport Beach Harbor Resources Division has surveyed the site for eelgrass and no eelgrass was discovered within 15 feet of the project area. The site has also been surveyed for *Caulerpa taxifolia* and none was found. These eelgrass and *Caulerpa taxifolia* surveys are valid for a limited period of time (until the next growing season for eelgrass, typically March through October, and 90 days for *Caulerpa taxifolia*). Based on these criteria, the eelgrass survey and *Caulerpa taxifolia* survey, which were performed in September 2003, are no longer valid. Thus prior to commencement of construction, an up to date eelgrass and *Caulerpa taxifolia* survey must be undertaken. If any eelgrass or *Caulerpa taxifolia* are found on the project site, Special Conditions No. 2 and No. 3 identify the procedures necessary to be completed prior to beginning any construction. The proposed project has received an approval in concept from the City of Newport Beach Harbor Resources Division. The Regional Water Quality Control Board (RWQCB) has determined that the proposed project will not adversely impact water quality if standard construction methods and materials are used. The applicant has applied for a permit from the U.S. Army Corps of Engineers.

B. WATER QUALITY

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms with Sections 30230 and 30231 of the Coastal Act.

C. MARINE RESOURCES

The proposed development is the replacement of an existing bulkhead in the same location or landward of the existing bulkhead that is necessary to protect an existing structure. The proposed development will not result in the additional fill of coastal waters as the new bulkhead will be located either in the same location or landward of the existing bulkhead. In the event that the bulkhead is being reconstructed in the same location, it is infeasible to relocate the new bulkhead further landward. The proposed development has been conditioned to minimize adverse effects on the marine environment by avoiding or mitigating impacts upon sensitive marine resources, such as eelgrass, and to avoid contributing to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. As conditioned, the project will not significantly adversely impact eelgrass beds and will not contribute to the dispersal of the invasive aquatic algae, *Caulerpa taxifolia*. Further, as proposed and conditioned, the project conforms with Sections 30233 and 30235 of the Coastal Act.

D. PUBLIC ACCESS

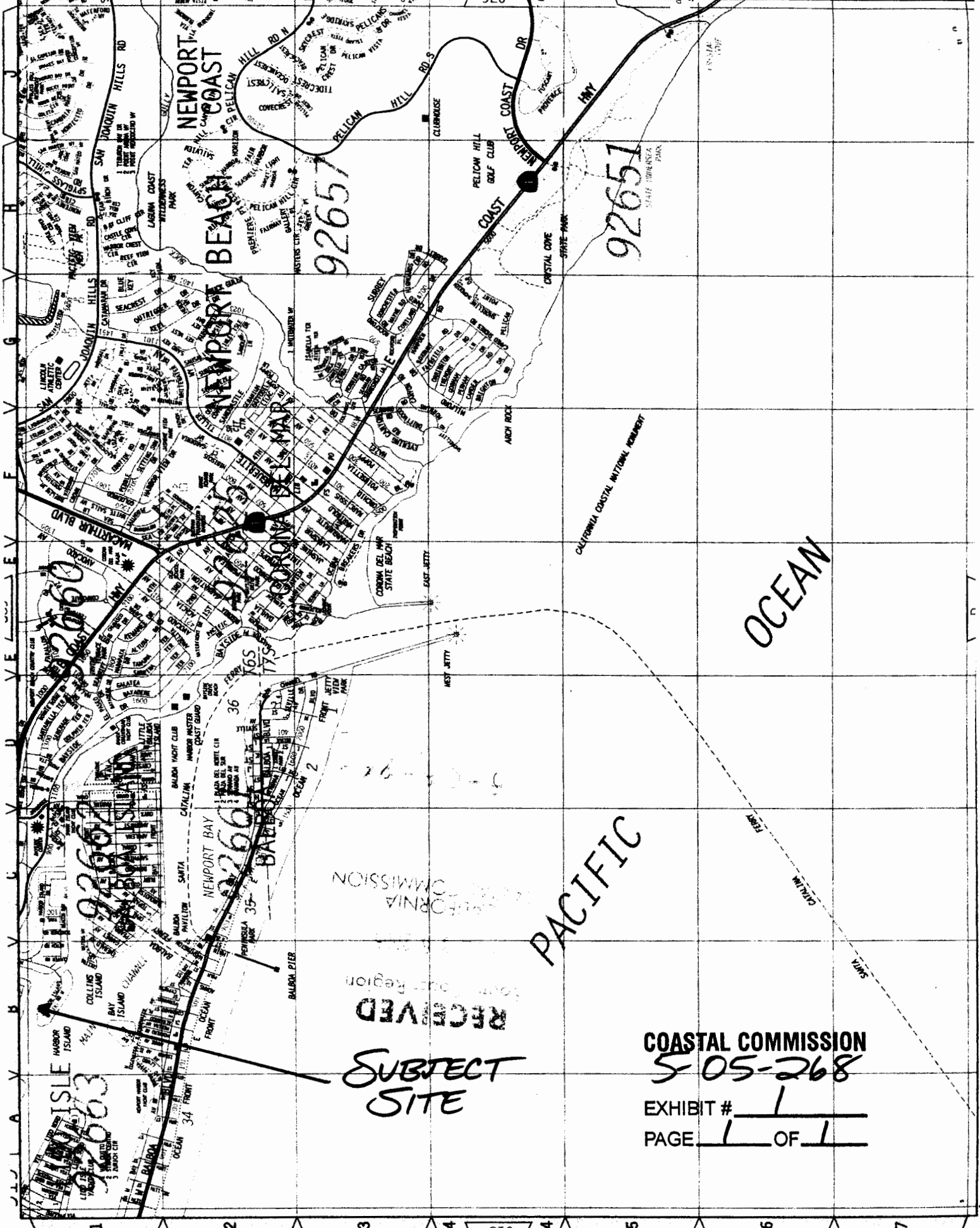
As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act

E. LOCAL COASTAL PROGRAM

The LUP 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 a Local Coastal Program that is in conformity with the provisions of Chapter 3.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

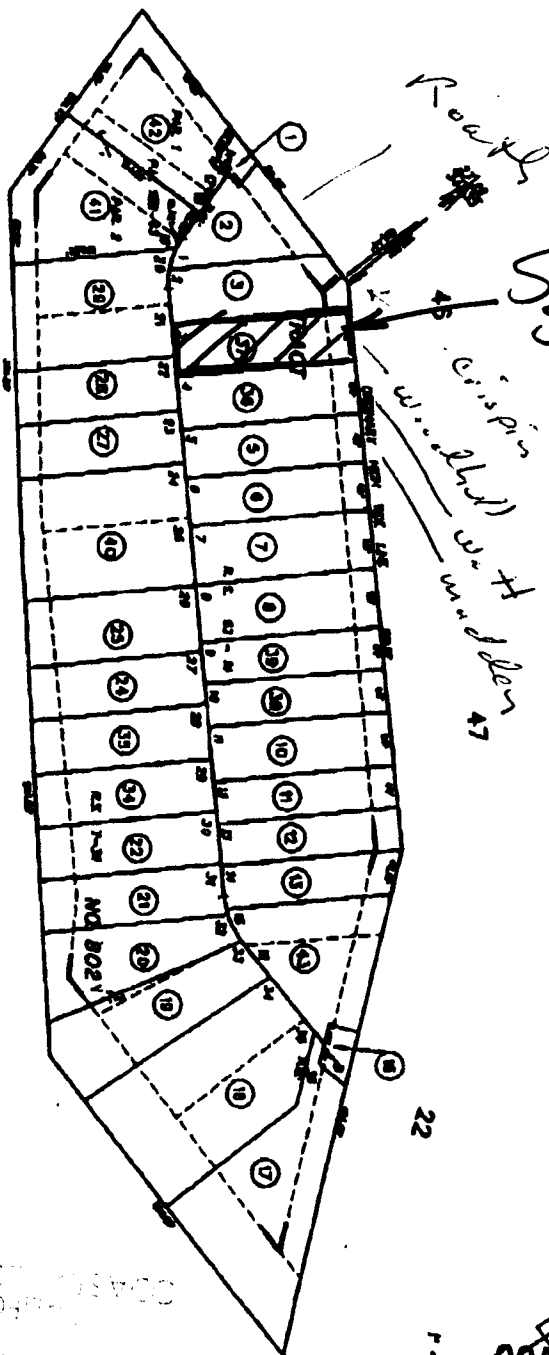
As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



RECEIVED
 SUBJECT SITE

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 EXHIBIT # 1
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FOR W. 1/2 NW 1/4, SEC. 35, T4S, R10W.
 FOR NE 1/4, NE 1/4, SEC. 34, T4S, R10W.



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TRACT NO. 808
 PARCEL MAP
 MIA 34-7
 P.L. 82-43
 NOTE - ASSESSOR'S BOOK 4
 PARCEL NUMBERS
 SHOWN IN CIRCLES
 ASSESSOR'S MAP
 BOOK 80 PAGE 23
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Scale: 1" = 100'

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 EXHIBIT # 2
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