

CALIFORNIA COASTAL COMMISSION

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Staff: Meg Vaughn-LB
Staff Report: 1/25/07
Hearing Date: 2/14-16/07
Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 5-06-338

APPLICANT: Rodney F. Emery

AGENTS: Joseph C. Orloff
Fleetwood Joiner & Associates

PROJECT LOCATION: 8 Beacon Bay, Newport Beach, County of Orange

PROJECT DESCRIPTION: Demolition of existing single family residence and construction of a new 4,944 square foot, 24 foot high, 3 story (including basement level) single family residence with an attached, 3 car garage. In addition, 225 cubic yards of cut are proposed to accommodate the basement level. The subject site fronts on Newport Harbor.

LOCAL APPROVALS RECEIVED: Approval In Concept (No. 0378-2006) from the City of Newport Beach Planning Department dated 3/22/06.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing the demolition and construction of a single-family residence, including construction of a new basement level. Construction of the proposed basement will require excavation of 225 cubic yards of cut as well as dewatering of the site during basement construction. The subject site fronts on Newport Harbor. No bulkhead/shoreline protection device currently exists at the site and none is proposed. The major issues before the Commission are the prohibition on a future shoreline protection device, and those related to site stability during basement construction and possible impacts to water quality due to the proposed de-watering.

Staff recommends the Commission **APPROVE** the proposed development with six (6) Special Conditions. Special Condition No. 1 requires conformance with geotechnical recommendations; Special Condition No. 2 requires conformance with the submitted Water Quality Management Plan; Special Condition No. 3 requires submittal of a Dewatering Plan; Special Condition No. 4 prohibits future shoreline protection devices; Special Condition No. 5 requires the applicant to assume the risks of the proposed development; and Special Condition No. 6 requires the applicant to record a Deed Restriction against the property, referencing all of the Special Conditions contained in this Staff Report.

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; Water Quality Management Plan prepared by ACE Civil Engineering, dated 7/14/06; and, the Preliminary Geotechnical Evaluation, prepared by Geotek, Inc., dated 5/12/06.

I. STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application as conditioned.

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-06-338 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

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. **Conformance with Geotechnical Recommendations**

- A. All final design and construction plans, including foundations, grading and drainage plans shall be consistent with all recommendations contained in the Preliminary Geotechnical Evaluation prepared by Geotek, Inc. dated May 12, 2006. No changes to the approved plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.
- C. The permittee 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 unless the Executive Director determines that no amendment is legally required.

2. **Water Quality Management Plan**

The applicant shall carry out development consistent with the Water Quality Management Plan prepared by ACE Civil Engineering dated July 14, 2006 which includes infiltration trenches in the sideyards, directing drainage to the infiltration trenches and landscaped areas. Any proposed changes to the approved plan shall be reported to the Executive

Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. Dewatering Plan

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, a dewatering plan prepared by an appropriately licensed professional. The plan shall be based on the project geotechnical report and shall include an assessment of the quality of the water to be removed, a description of the dewatering equipment to be used and the method of discharge, and shall provide details for water sampling, and water quality standards to be met prior to discharge, and the methods and location of discharge.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that the Dewatering Plan has been reviewed and approved by the geotechnical consultant and the Regional Water Quality Control Board.
- C.** The permittee 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 unless the Executive Director determines that no amendment is legally required.

4. No Future Shoreline Protective Devices

- A(1).** By acceptance of this Permit, the applicant agrees, on behalf of himself and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-06-338 including, but not limited to, the residence in the event that the development is threatened with damage or destruction from waves, erosion, flooding, storm conditions, or other natural hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- A(2).** By acceptance of this Permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowners shall remove the development authorized by this Permit, including the residence, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowners shall remove all recoverable debris associated with the development from the

beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

5. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNIFY

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from erosion, flooding and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

6. Deed Restriction

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description

The applicant proposes to demolish the existing single family residence and construct a new 4,944 square foot, 24 foot high, 3 story (including basement level) single family residence with an attached, 3 car garage. In addition, 225 cubic yards of cut are proposed to accommodate the basement level. Dewatering will be required during construction of the basement level.

The proposed project is located on an approximately 4,000 square foot bayfront lot on Lower Newport Bay at 8 Beacon Bay in the City of Newport Beach, County of Orange. The site is designated Medium Density Residential in the City of Newport Beach Land Use Plan (LUP) and the proposed use conforms to this designation. Although the site fronts on Newport Bay, no bulkhead currently exists at the site and none is expected to be necessary over the life of the proposed project.

Public access to the bay is available across the channel from the subject site along the public walkway that rings Balboa Island and approximately one mile south of the project site at the sandy public beach along the Balboa Peninsula.

The applicants are proposing to incorporate water quality measures into the proposed project, including directing drainage to landscaped areas and to infiltration trenches located in both side yards.

B. Hazards

Section 30253 of the Coastal Act states, in part:

New development shall:

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

1. Geologic Recommendations

The proposed development includes excavation of 225 cubic yards of cut in order to accommodate the basement level. Excavation such as this, particularly on a bayfront lot, raises questions regarding site stability. A Preliminary Geotechnical Evaluation was prepared by GeoTek, Inc. (5/12/06) in conjunction with the proposed project. The Preliminary Geotechnical Evaluation included review of the proposed basement level. In describing the proposed project the Evaluation states:

“Based on our review of the site development plans by Fleetwood B. Joiner and Associates dated March 24, 2006, we understand that the proposed single-family residence will consist of a 3-story residential structure with a subterranean floor. It is expected that the basement floor will be founded at approximately 12 feet below existing grade. A mat slab foundation system will be used to support the proposed structure. A temporary soldier beam type shoring system will be used to support the sides of the excavation needed for the construction of the subterranean floor. If site development significantly differs from the assumptions made herein, the

recommendations included in this report should be subject to further review and evaluation.”

The scope of the Preliminary Geotechnical Evaluation included the following: research and review of available geologic data and general information pertinent to the site, site exploration consisting of the excavation, logging, and sampling of 2 exploratory borings, laboratory testing on representative samples collected during the field investigation, review and evaluation of site seismicity, and compilation of the geotechnical report which includes findings, conclusions, and recommendations for site development.

The Preliminary Geotechnical Evaluation concluded, with regard to the proposed site development:

“The proposed development of the site appears feasible from a geotechnical viewpoint provided that the following recommendations are incorporated into the design and construction phases of development. However, the owner should recognize that the site, together with most parts of the Newport Balboa Peninsula and Harbor, have risks associated with possible liquefaction, seiche and tsunami.

The geotechnical analyses performed concerning site preparation and recommendations presented herein have been completed using the information provided. Any significant changes to proposed site development should be reviewed by this office in order that recommendations provided in this report remain valid and applicable.”

The Preliminary Geotechnical Evaluation includes recommendations regarding earthwork, design, concrete construction, shoring design, retaining wall design and construction, post-construction considerations, and plan review and construction observation. The Investigation concludes that the project is feasible from a geotechnical perspective provided the applicant complies with the recommendations contained in the Investigation.

Dewatering of the site is proposed. If not properly conducted, dewatering may lead to instability of the site or surrounding area, inconsistent with Section 30253. Regarding dewatering, the geotechnical consultant states: “A dewatering system would be required to lower the ground water level at the site during basement removal/excavation. It is GeoTek’s opinion that surrounding areas should not experience any adverse affects due to temporary dewatering. However, if dewatering should lower the existing ground water elevation by more than three feet below the basement level during construction, the effects to the surrounding areas should be re-evaluated by the project geotechnical engineer.” The applicant has contracted with a dewatering engineer to prepare a dewatering plan for the proposed development. In order to assure that risks are minimized, Special Condition No. 3 requires that the Dewatering plan be reviewed and approved by the geotechnical consultant.

In order to assure that risks are minimized, the geotechnical consultant’s final recommendations must be incorporated into the design of the project. Therefore, the

Commission imposes Special Condition No. 1, which requires the applicant to submit, for the review and approval of the Executive Director, final design and construction plans reviewed and signed by the geotechnical consultant indicating that the recommendations contained in the geotechnical report have been incorporated into the design of the proposed project.

2. Shoreline Protection

The subject site is a waterfront lot. No bulkhead or other type of shoreline protection device currently exists at the site. Neighboring properties do not have bulkheads/shoreline protection either. The subject site is not located near the harbor entrance, rather it is located well within the more protected (from wave action), "upstream" parts of the harbor. A relatively narrow, but stable sandy beach lies seaward of the subject lot. "Slow" erosion would be expected to occur on site; however, the slow erosion trend is expected to be offset by the periodic dredging and nourishment activities that occur within the harbor to provide adequate depths for vessels moored to the Beacon Bay community docks located in this area. Based on these factors, no shoreline protection is proposed at the site. No protection is expected to be needed in the future.

The proposed development could not be found consistent with Section 30253 of the Coastal Act if the site were expected to become threatened by marine forces and necessitate construction of a shoreline protection device to protect the proposed development.

The proposed development includes demolition and reconstruction of a single family residence. The demolition stage would be the appropriate stage to consider alternatives to shoreline protection, such as placing the structure in a more landward position. However, once a structure is approved and built, some form of protection must be allowed pursuant to Section 30235.

The Coastal Act limits construction of protective devices because they have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Under Coastal Act Section 30235, a shoreline protective structure must be approved if: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

Because the proposed project is new development, it can only be found consistent with Section 30253 of the Coastal Act if a shoreline protective device is not expected to be needed in the future, as is the case here. Therefore, the Commission imposes Special Condition No. 4, which prohibits the applicant and his successors in interest from constructing shoreline protective devices to protect the proposed development and requiring that the applicant waive, on behalf of itself and all successors and assigns, any right to construct protective devices for the proposed project that may exist under 30235.

3. Assumption of Risk

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, the risk is not eliminated entirely. The site is a waterfront which is inherently hazardous. Given that the applicant has chosen to implement the project despite potential risks from erosion, flooding and wave uprush, the applicant must assume the risks. Therefore, the Commission imposes Special Condition No. 5 requiring the applicant to assume the risk of the development. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability.

4. Deed Restriction

In order to assure that the applicant and any successors in interest are aware of the prohibition on future shoreline protection, the Commission imposes Special Condition No. 6 which requires the applicant to record a deed restriction reflecting this and other conditions of approval.

5. Conclusion

Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30253 of the Coastal Act, which requires that geologic risks be minimized and that geologic stability be assured.

C. Water Quality

Section 30230 of the Coastal Act states that:

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.

Section 30230 of the Coastal Act requires that marine resources be maintained, enhanced, and where feasible, restored. In addition, Section 30230 requires that uses of the marine environment 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, among other purposes, long-term scientific and educational purposes.

Section 30231 of the Coastal Act requires that the quality of coastal waters and streams be protected and, where feasible, restored. The quality of the coastal waters, including Newport Harbor, is required by Section 30231 to be, at a minimum, maintained.

The proposed development of a subterranean level will require dewatering during construction. This aspect of the proposed development was reviewed by the geotechnical consultant. Regarding dewatering the Preliminary Geotechnical Investigation states:

“A dewatering system would be required to lower the ground water level at the site during basement removal/excavation. It is GeoTek’s opinion that surrounding areas should not experience any adverse affects due to temporary dewatering. However, if dewatering should lower the existing ground water elevation by more than three feet below the basement level during construction, the effects to the surrounding areas should be re-evaluated.”

The applicant has contracted with a dewatering engineer to prepare a Dewatering Plan for the proposed development (Ivan Bradford of Foothill Engineering and Dewatering). However, the dewatering plan has not yet been finalized. The dewatering engineer has indicated that the dewatering plan will be based on the project geotechnical report and would include an assessment of the quality of the water removed, a description of the dewatering equipment to be used, and the method of discharge. It is expected that discharge will be directed into the bay. Prior to being discharged into the bay, the water removed from the site must meet certain standards of water quality as necessary to protect the quality of the bay waters. These standards will be included in the dewatering plan prepared by the dewatering engineer. The dewatering plan is subject to the review and approval of the Regional Water Quality Control Board.

In order to assure that water quality is protected, a Dewatering Plan, prepared by an appropriately licensed professional must be submitted. Therefore, the Commission imposes Special Condition No. 3, which requires the applicant to submit, for the review and approval of the Executive Director, a Dewatering Plan and that the plan be reviewed and approved by the geotechnical consultant and the Regional Water Quality Control Board. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act, which requires that water quality and marine resources be protected.

D. Public Access

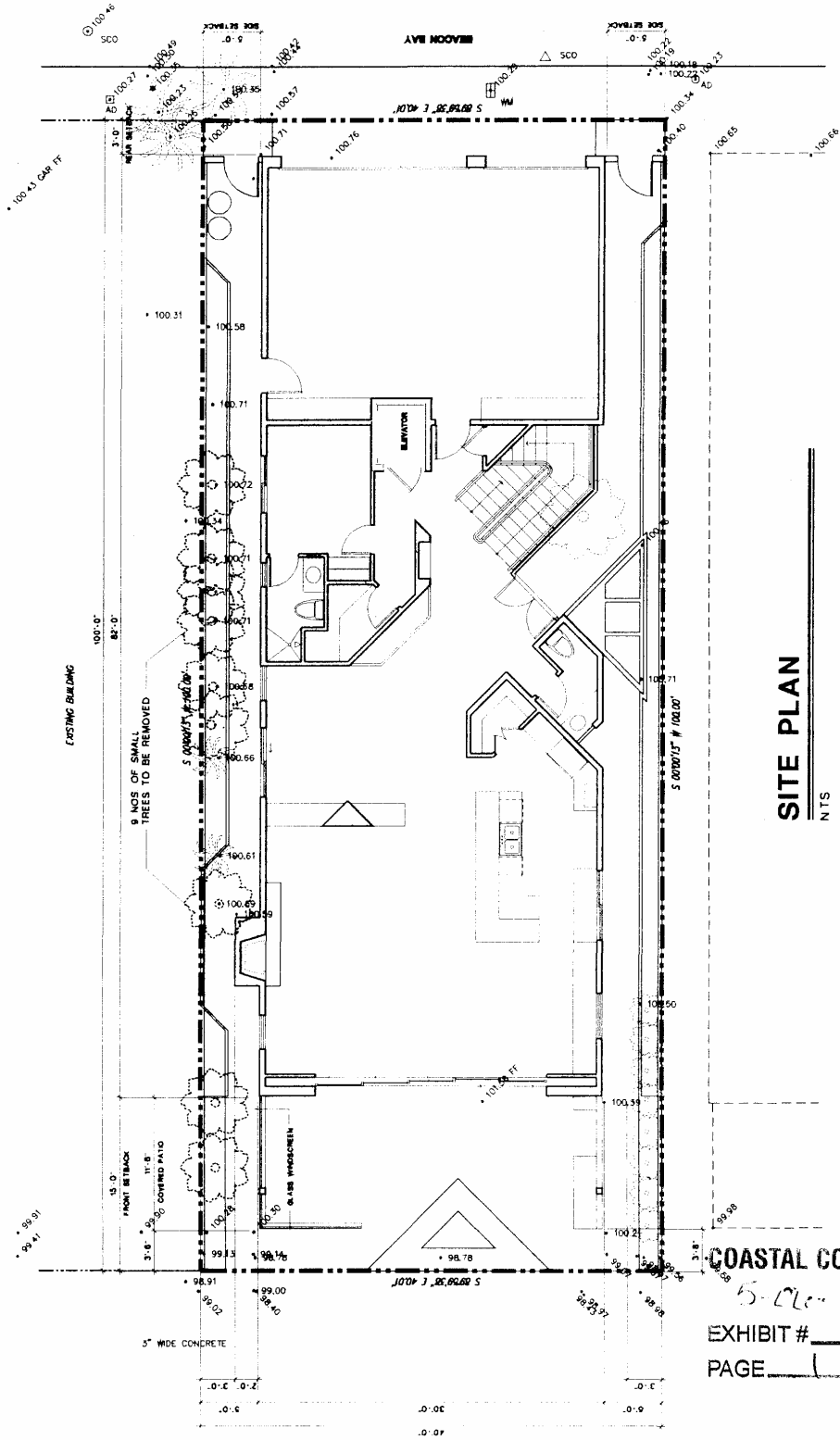
As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act

E. Local Coastal Program

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 comprehensively updated in October 2005. 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.

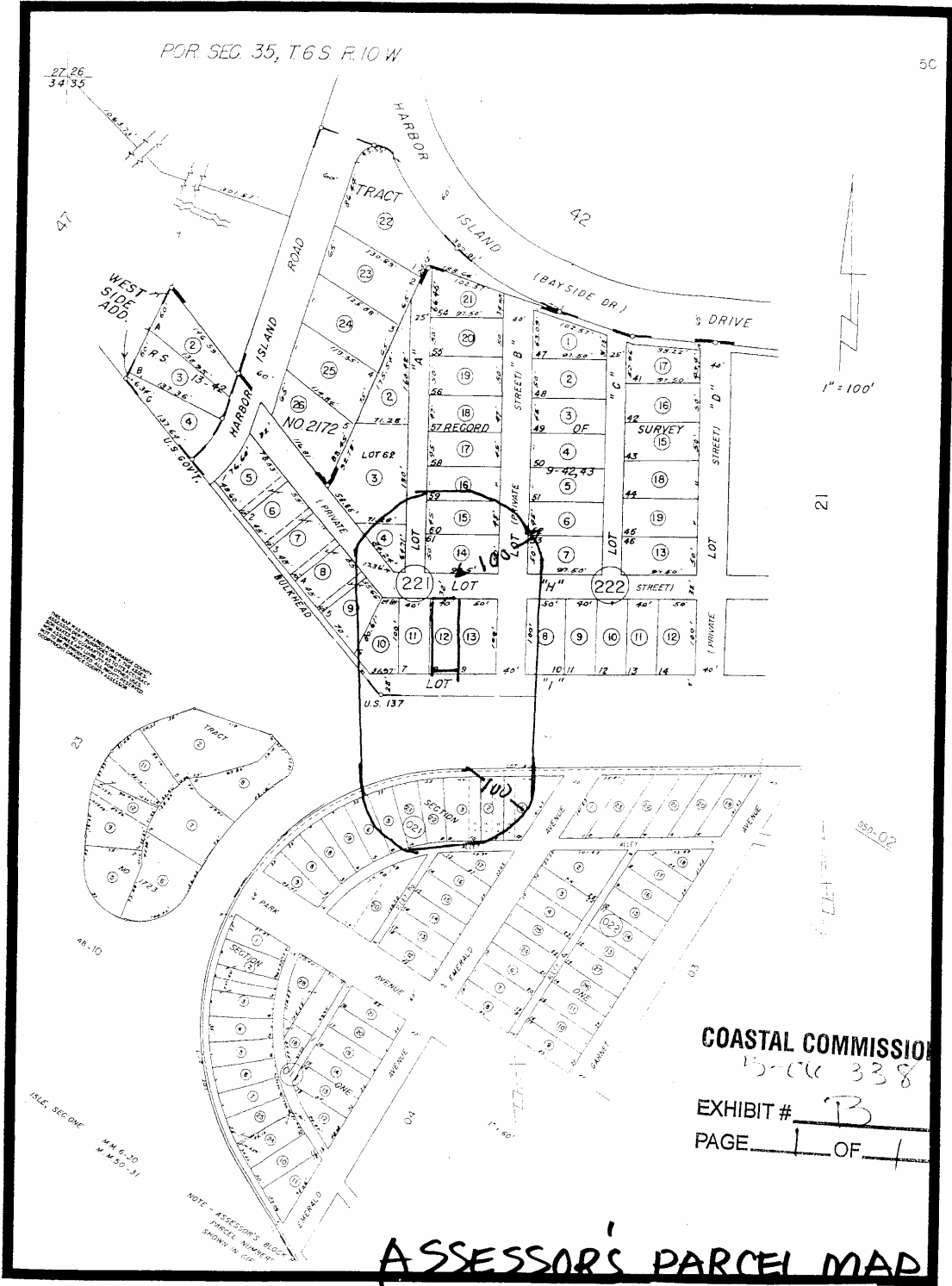
F. California Environmental Quality Act (CEQA)

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.



SITE PLAN
N.T.S.

COASTAL COMMISSION
5-06-338
EXHIBIT # A
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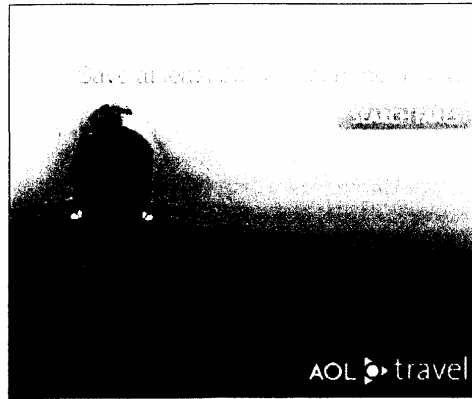


Ownership Map

MAPQUEST

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Notes:



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