CALIFORNIA COASTAL COMMISSION

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



W8a

Filed: August 6, 2013
180th Day: February 2, 2014
Staff: J. Rabin - LB
Staff Report: September 19, 2013
Hearing Date: October 9, 2013

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-13-070

Applicant: Levon Gugasian

Agent: Marcelo E. Lische, Architect

Location: 3915 Seashore Drive, Newport Beach (Orange County)

Project Description: Demolish existing two-story duplex and two-car garage and

remove concrete foundations. Construct a new three-story, 29-foot high single family residence with 2,416 square feet of total living area, an attached two-car, 426-square foot garage, and 680 square feet of decks. Grading consists of 236 cubic

yards of cut and fill.

Staff Recommendation: Approve with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to demolish an existing two-story duplex and a two-car garage and remove the concrete foundations. In its place, the applicant wants to construct a new three-story, 29-foot high single-family residence with 2,416 square feet of total living area, an attached two-car, 426-square foot garage, 680 square feet of decks, and no landscaping on an oceanfront lot. The project includes construction of a 36" high patio wall, concrete steps, and installation of stone pavers within the City of Newport Beach Oceanfront Encroachment Area. Grading consists of 236 cubic yards of cut and fill. Total area of the proposed structure is 2,842 square feet.

The proposed project is consistent with the character of the beachfront Balboa Peninsula neighborhood, which consists primarily of two and three-story homes. The project includes development in the city's oceanfront public right-of-way. Private improvements are allowed in the right-of-way under an Oceanfront Encroachment Policy and mitigation program approved by the Commission in June 1991 and incorporated into the City's Certified Coastal Land Use Plan. The proposed encroachments include a three-foot high retaining wall, three concrete steps from the beach down to the front yard, and installation of stone pavers separated by a 2" joint to allow percolation of stormwater into the ground. As conditioned, the proposed development conforms to the requirements of the program outlined in the City's Coastal Land Use Plan.

Staff is recommending **approval** of the proposed project with **ten** (10) **Special Conditions** regarding: 1) assumption of risk; 2) no future shoreline protective device; 3) future development; 4) recommendations of the geotechnical report; 5) conformance with the submitted drainage and run-off control plan; 6) drought tolerant landscaping; 7) storage of construction materials, mechanized equipment, and removal of construction debris; 8) deviation from approved encroachments; 9) City's right to revoke encroachment permit; and 10) recording 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 and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. 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.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	4
II. STANDARD CONDITIONS	4
III. SPECIAL CONDITIONS	5
IV. FINDINGS AND DECLARATIONS:	
A. PROJECT LOCATION AND DESCRIPTION	
B. Hazards	9
C. Development	9
D. Public Access	10
E. WATER QUALITY	11
F. DEED RESTRICTION	12
G. LOCAL COASTAL PROGRAM	11
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	11

APPENDICES

Appendix A - Substantive File Documents

EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Aerial View

Exhibit 3 – Photo of Existing Duplex at 3915 Seashore Drive, Newport Beach

Exhibit 4 – Site Plan

Exhibit 5 – Floor Plans

Exhibit 6 – Elevations

I. MOTION AND RESOLUTION

Motion:

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

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

Resolution:

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 of the Coastal Act. 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

This permit is granted subject to the following 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 on which the Commission voted on the application. 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

This permit is granted subject to the following Special Conditions:

1. **Assumption of Risk, Waiver of Liability and Indemnity**. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicants 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.

2. No Future Shoreline Protective Device

- A. By acceptance of this permit, the applicant and landowner agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-13-070 including, but not limited to, the residence, garage, foundations, and patio, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicant and landowner 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.
- B. By acceptance of this permit, the applicant and landowner further agree, on behalf of himself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the residence, garage, foundations, and patio, if any government agency has ordered that the structure is 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 landowner(s) 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.

- 3. Future Development. This permit is only for the development described in Coastal Development Permit No. 5-13-070. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-13-070. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-13-070 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- 4. Recommendations of the Geotechnical Report. All final design and construction plans shall be consistent with all recommendations contained in the Geotechnical Investigation for Proposed Residential Development Located at 3915 Seashore Drive, Newport Beach, California presented to Mr. Levon Gugasian and prepared by EGA Consultants, LLC of Costa Mesa, California, dated February 27, 2013. 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 legally required.
- shall conform with the Erosion Control Plan, the Grading and Drainage Plan, and the Roof Plan received June 13, 2013, including Sheets A-1.1a and A-3 showing roof drainage and runoff from all impervious areas directed to gutters, downspouts, deck drains, an underground conveyance system, a bottomless trench drain extending across the entire beachfront yard and two bottomless trench drains near the back of the side yards next to the garage. Stone pavers are to be installed in the beachfront yard and part of the west side yard to provide an opportunity for stormwater to percolate into the ground. 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 legally required.
- 6. Drought Tolerant Non-Invasive Landscaping. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (http://www.CNPS.org/), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (http://www.cal-ipc.org/), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See:http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf).

7. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris

The permittee shall comply with the following construction-related requirements:

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- 8. **Deviation from Approved Encroachments.** The only encroachment into the 10-foot deep encroachment area within the City of Newport Beach Oceanfront public right-of-way that extends oceanward from the southern property line at 3915 Seashore Drive that is allowed by this Coastal Development Permit 5-13-070 are construction of a three-foot high concrete retaining wall, three concrete steps from the beach down to the front yard, and installation of

stone pavers separated by a 2" joint to allow percolation of stormwater from the patio into the ground, as depicted on the final plan approved by the Executive Director. Any development in the public right-of-way, including improvements, repairs, and maintenance, cannot occur without an amendment to this coastal development permit or a new coastal development permit from the Coastal Commission, unless the Executive Director determines through written confirmation that no amendment or new permit is legally required.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit evidence, for the review and approval of the Executive Director, that the applicant has enrolled in the City's public access impact mitigation program (i.e. annual payment to City for encroachment). Evidence that the initial payment has occurred shall also be submitted. The applicants and all other successors and assigns must remain enrolled in the City's public access impact mitigation program (i.e. annual payment to City for encroachment) and make the recurring annual payment so long as the encroachment remains in place.

- 9. City's Right to Revoke Encroachment Permit. Approval of this coastal development permit shall not restrict the City's right and ability to revoke, without cause, the approved City encroachment permit in order to construct public access and recreation improvements within the public right-of-way.
- **10.** 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 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:

A. Project Location And Description

The subject site is a residential lot located at 3915 Seashore Drive (APN 423-326-02) in the City of Newport Beach, up coast from the Newport Pier (Exhibit 1). The rectangular parcel is approximately 25 feet wide by 79 feet long. The lot size is 1,999 square feet. The city's certified Land Use Plan (LUP) designates the property as Two-Unit Residential and the

proposed single-family residence is consistent with this designation. The project is located within an existing urban residential area on the Balboa Peninsula (Exhibit 2).

As noted above, the site consists of a single lot located between the first public road and the sea. There is a sandy beach (approximately 300 feet wide) between the subject property and the Pacific Ocean. Due to its oceanfront location, the project site may be potentially exposed to the hazard of wave run-up during a severe storm event.

The applicants are proposing to demolish a two-story duplex (Exhibit 3) and a two-car garage and remove the concrete foundations. In its place, the applicants propose to construct a new three-story, 29-foot high single family residence with 2,416 square feet of total living area, an attached two-car, 426-square foot garage, and 680 square feet of decks. The total structure will be 2,842 square feet.

In addition, the project includes a series of hardscape improvements in the City's Oceanfront Encroachment program area, including a three-foot high retaining wall, three concrete steps down from the beach to the front yard where a patio composed of stone pavers will be built. No landscaping is proposed except for two planter boxes on a second-floor deck overlooking the alley. The project also involves installation of roof drains, gutters, downspouts, and an underground drainage system to collect and direct stormwater runoff to a trench drain across the beachfront yard and trench drains at the back of each side yard next to the garage. The goal of the drainage system is to capture, treat, and minimize the flow of stormwater offsite. Stone pavers set 2" apart in the beachfront yard and concrete stepping stones set in crushed rock along part of the western side yard also will allow stormwater to percolate into the ground. Ornilux bird protection glass is specified for use on all glass railings to deter bird strikes.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned by **Special Conditions 1, 2, 4 and 5** to: require that the landowner and any successor-in-interest assume the risk of undertaking the development; prohibit construction of protective devices (such as a seawall) in the future; require conformance with recommendations in the applicant's geotechnical report, require an appropriate setback from the water; and require a drainage and run-off control plan to direct, treat, and minimize the flow of stormwater offsite. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the

Chapter 3 policies of the Coastal Act, the Commission finds that future development **Special Condition 3** be imposed. As conditioned the development conforms to the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

The proposed project will not have an adverse effect on public access. The project site is located along a portion of the Balboa Peninsula accessible to the public. The Commission has found through previous permit actions that the City's setback in this area is acceptable for maintaining public access. The proposed project is consistent with the City's required 5-foot setback for primary structures from the seaward property line. Vertical public access to the beach is available nearby at the end of 39th and 40th Street. Lateral public access is available along the wide sandy beach seaward of the subject site.

The project includes development within the Oceanfront public right-of-way that lies between the site's southern property line and the beach. Within this encroachment area designated in the City of Newport Beach's certified Coastal Land Use Plan, the applicants propose to construct a series of improvements. These improvements include construction of a three-foot high retaining wall, three concrete steps from the beach down to the front yard, and installation of patio pavers separated by a 2" gap to allow stormwater to percolate into the ground. On June 12, 2013, the applicant applied to the City of Newport Beach for an Annual Oceanfront Encroachment Permit for work within the Oceanfront right-of-way. To date, the permit has not been issued. Project plans note: "An Oceanfront Encroachment Permit will be required from the Public Works Department for structures within the West Oceanfront right-of-way prior to the issuance of a building permit."

Private improvements are allowed in the Oceanfront public right-of-way under an Oceanfront Encroachment Policy and mitigation program approved by the Commission in June 1991 (the findings in support of that action are incorporated here by reference). Proceeds from the annual encroachment fee charged to property owners have been used by the City of Newport Beach for a mitigation program to reconstruct 33 unimproved street ends on the Balboa Peninsula to provide additional parking and improved public access. Pursuant to the mitigation program, a minimum of 85 percent of the encroachment fees will be used for the construction and maintenance of improvements, which directly benefit the beach-going public, such as parking spaces, restrooms, vertical or lateral walkways along the beach and similar projects. The City of Newport Beach reserves the right to use the encroachment area right-of-way for public projects in the future. **Special Conditions 8 and 9** address these requirements.

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the proposed development, as conditioned, conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, one or more of the following: a construction-phase erosion control plan, appropriate management of equipment and construction materials, reducing runoff through use of permeable surfaces, installation of roof drains, gutters, downspouts, and an underground drainage system to direct stormwater runoff to a trench drain across the entire front yard and the back of each side yard next to the garage. Post-construction best management practices should minimize the project's potential adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes an additional **Special Condition 10** requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. 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 October 2005 and again in 2009. 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.

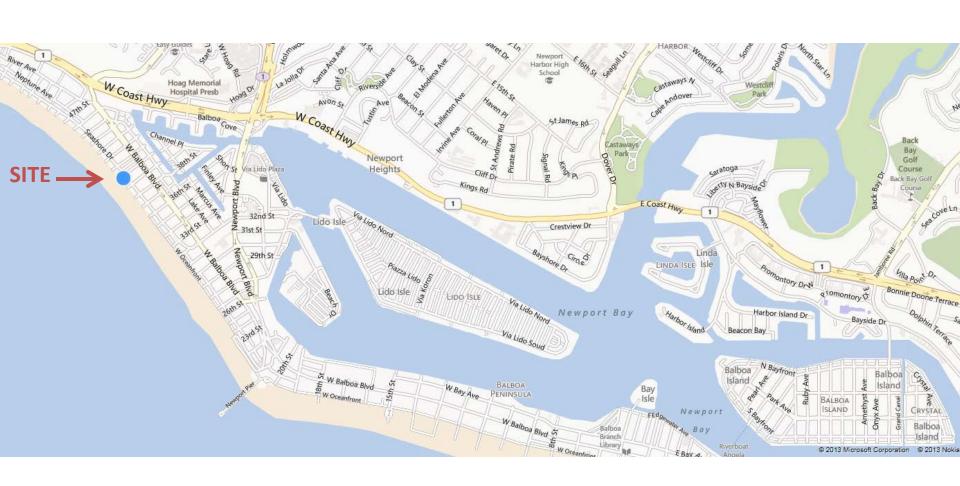
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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.

APPENDIX A

Substantive File Documents: City of Newport Beach Certified Land Use Plan; City of Newport Beach Approval-in-Concept No. 2013008, dated March 15, 2013; Coastal Development Permit Application File No. 5-13-070; City of Newport Beach Annual Oceanfront Encroachment Permit application submitted to Public Works Department on June 12, 2013; Geotechnical Investigation for Proposed Residential Development Located at 3915 Seashore Drive, Newport Beach, California presented to Mr. Levon Gugasian and prepared by EGA Consultants, LLC of Costa Mesa, California, dated February 27, 2013; Coastal Hazards & Wave Run-up Study, 3915 Seashore Drive, Newport Beach, prepared for Levon Gugasian on May 13, 2013 by GeoSoils, Inc. of Carlsbad, California; Findings in support of the Commission's approval of City of Newport Beach Land Use Plan Amendment No. 90-1.

3915 Seashore Drive, Newport Beach CDP 5-13-070 Exhibit 1

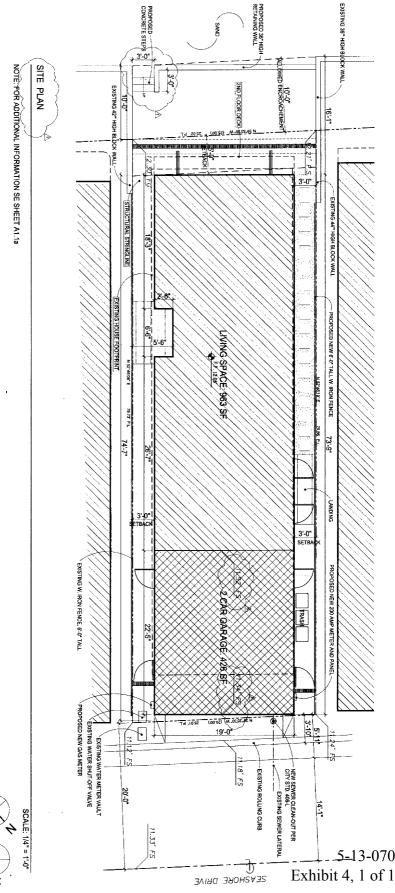


3915 Seashore Drive, Newport Beach CDP 5-13-070 Exhibit 2



3915 Seashore Drive, Newport Beach CDP 5-13-070 Exhibit 3





TRUE NORTH PROJECT NORTH

