

CALIFORNIA COASTAL COMMISSION

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180th Day: Mar. 26, 2013
Staff: F. Sy-LB
Staff Report: February 14, 2013
Hearing Date: March 6-8, 2013

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-12-224

Applicant: Shirish Shah

Agent: Walt Bushman

Location: 2600 West Oceanfront, City of Newport Beach (County of Orange)

Project Description: Demolition of an existing two-story single-family residence and construction of a new 2,043 square foot, approximately 29-feet above finished grade, three-story single-family residence with an attached 376 square foot two (2)-car garage on a beach fronting lot. The foundation for the proposed residence would consist of concrete slab and continuous spread footings. Grading will consist 195 cubic yards of recompaction, which will balance on site.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing the demolition of an existing single-family residence and construction of a new single-family residence on a beach fronting lot. The major issue of this staff report concerns water quality and beachfront development that could be affected by waves, erosion, storm conditions, sea level rise or other natural hazards in the future.

Staff is recommending **approval** of the proposed project with **Seven (7) Special Conditions** regarding: **1)** assumption of risk; **2)** no future shoreline protective device; **3)** future development; **4)** storage of construction materials, mechanized equipment, and removal of construction debris; **5)** conformance with the submitted drainage and run-off control plan; **6)** landscaping controls; and **7)** 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 (LCP). The City of Newport Beach only has a certified Land Use Plan (LUP) 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.

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APPENDICES

Appendix 1 – Substantive File Documents

EXHIBITS

Exhibit #1 – Location Map
 Exhibit #2 – Site Plan
 Exhibit #3 – Floor Plans/Roof Plan
 Exhibit #4 – Elevation Plans
 Exhibit #5 – Drainage Plan

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 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. 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.

II. 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 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.
2. **No Future Shoreline Protective Device.**
 - A. By acceptance of this permit, the applicant agrees, on behalf of himself or herself 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. 5-12-224 including, but not limited to, the residence and garage, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, sea level rise or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of himself or herself 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 further agrees, on behalf of himself or herself and all successors and assigns, that the landowners shall remove the development authorized by this permit, including the residence and garage, 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.
3. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-12-224. 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. 5-12-224. Accordingly, any future improvements to the residence 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. 5-12-224 from the Commission or shall require an additional Coastal Development Permit from the Commission or from the applicable certified local government.

4. 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.
- 5. Conformance with Drainage and Run-Off Control Plan.** The applicant shall conform with the drainage and run-off control plan received on September 27, 2012 showing roof drainage and runoff from all impervious areas directed to permeable areas, dry wells percolation pits or trench drains. 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. Landscaping-Drought Tolerant, Non-Invasive Plants.** 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. 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 landowners 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 LOCATION AND DESCRIPTION

The subject site is located at 2600 West Oceanfront within the City of Newport Beach, Orange County (Exhibit #1). The lot size is 1,875 square feet and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Single-Unit Residential Detached (RSD) and the proposed project adheres to this designation. The project is located within an existing urban residential area, located generally east of the Newport Pier.

The site is a beachfront lot located between the first public road and the sea. There is public boardwalk and a wide sandy beach approximately 300-feet wide between the subject property and the Pacific Ocean. Due to its location, by the ocean, the project site may be potentially exposed to the hazard of wave uprush during a severe storm event.

The proposed project will not have an adverse effect on public access. The project site is located on the inland portion of Oceanfront fronted by the City's paved public lateral access way (boardwalk). The Commission has found through previous permit actions in this area that the City's setback in this area is acceptable for maintaining public access. The proposed project is consistent with the City's 5-foot required setback from the seaward property line. Vertical public access to this beach is available to the adjacent south at the end of 26th Street. Lateral public access is available along the boardwalk and wide sandy beach seaward of the subject site (Exhibit #1).

The applicant is proposing the demolition of an existing two-story single-family residence and construction of a new 2,043 square foot, approximately 29-feet above finished grade, three-story single-family residence with an attached 376 square foot two (2)-car garage on a beach fronting lot (Exhibits #3-6). The foundation for the proposed residence would consist of concrete slab and continuous spread footings. Grading will consist 195 cubic yards of recompaction, which will balance on site.

The applicant is proposing water quality improvements as part of the proposed project, consisting of rooftop and surface drainage directed to permeable areas and a continuous trench drain that spans the rear width of the property along the driveway (Exhibit #6).

Due to the oceanfront location of the proposed development, there is a substantial risk of bird strikes. Clear glass walls are known to have adverse impacts upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which exposes them to predation. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat.). The applicant has proposed to address this issue by using frosted glass instead of clear glass for the glass railings along the ocean-facing decks.

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 to: require an appropriate set-back from the water; require a drainage and run-off control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. 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 a future improvements special condition be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

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, as proposed the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted run-off 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, the appropriate management of equipment and construction materials, reducing run-off through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the run-off discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with 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 one additional condition 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, 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 (LCP)

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 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 a Local Coastal Program that is in conformity with the provisions of Chapter 3.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is ministerial or categorically exempt. Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

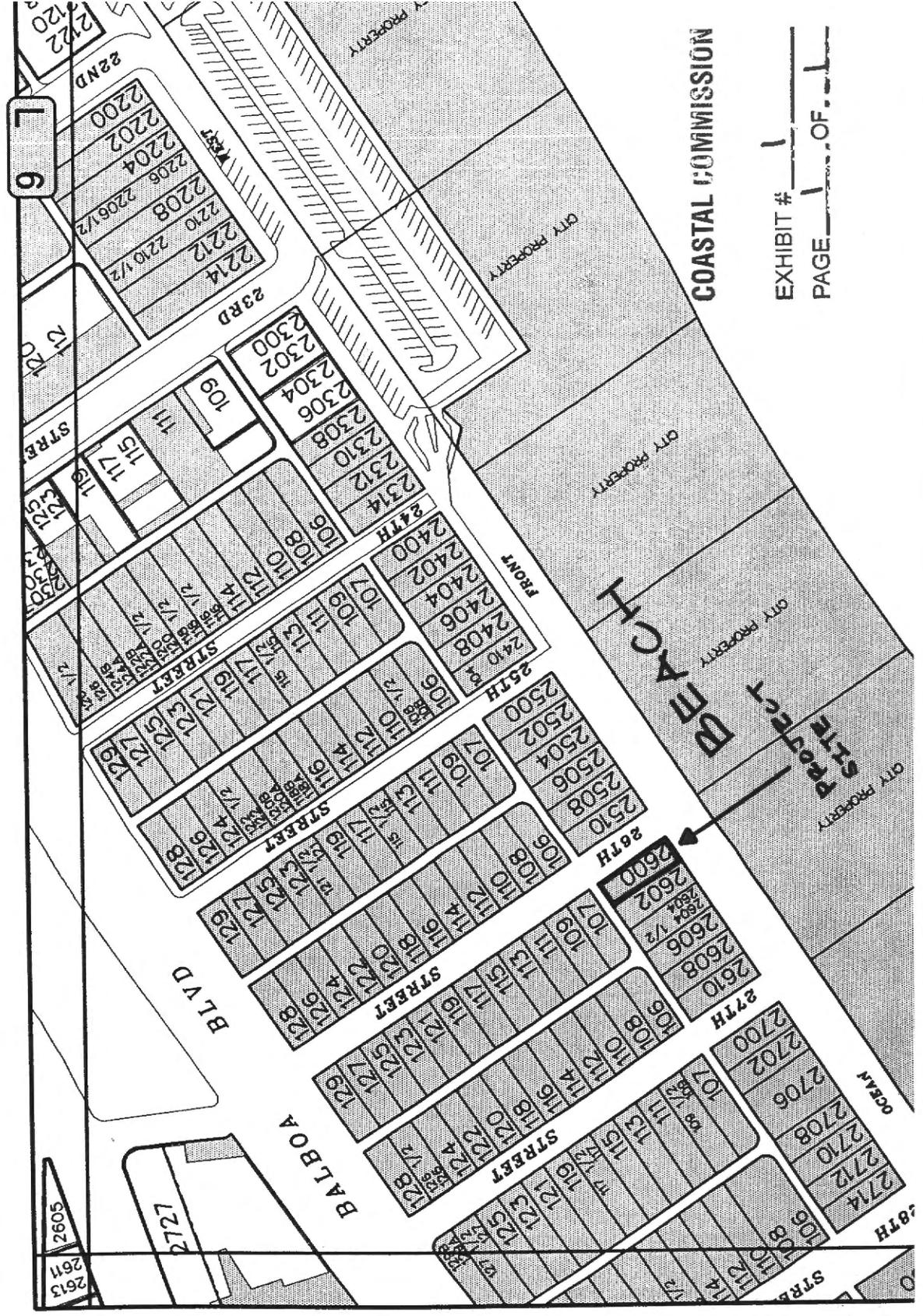
Although the proposed development is categorically exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant 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 consistent with the requirements of the Coastal Act and CEQA.

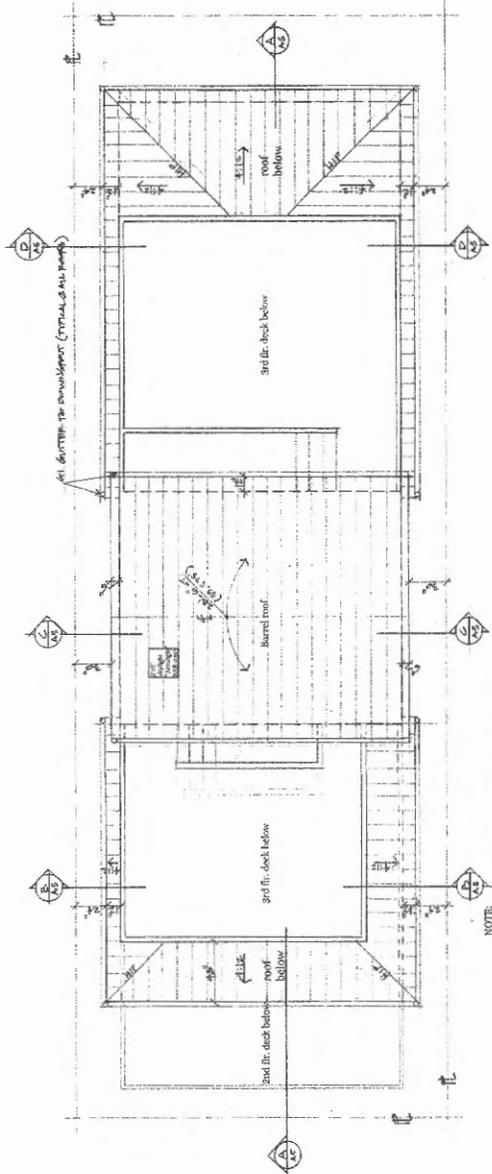
APPENDIX A

SUBSTANTIVE FILE DOCUMENTS: Approval-In-Concept from the City of Newport Beach Planning Department July 30, 2012; Letter from agent to Commission staff dated August 17, 2012; Letter from Commission staff to agent dated September 12, 2012; *Geotechnical Engineering Investigation of Proposed New Residence at 2600 West Oceanfront, Newport Beach, CA* prepared by *Coast Geotechnical, Inc. (W.O. 438012-01)* dated July 19, 2012 and *Coastal Hazard and Wave Runup Study, 2600 West Oceanfront, Newport Beach* prepared by *Geosoils, Inc.* dated July 3, 2012.

COASTAL COMMISSION

EXHIBIT # 1
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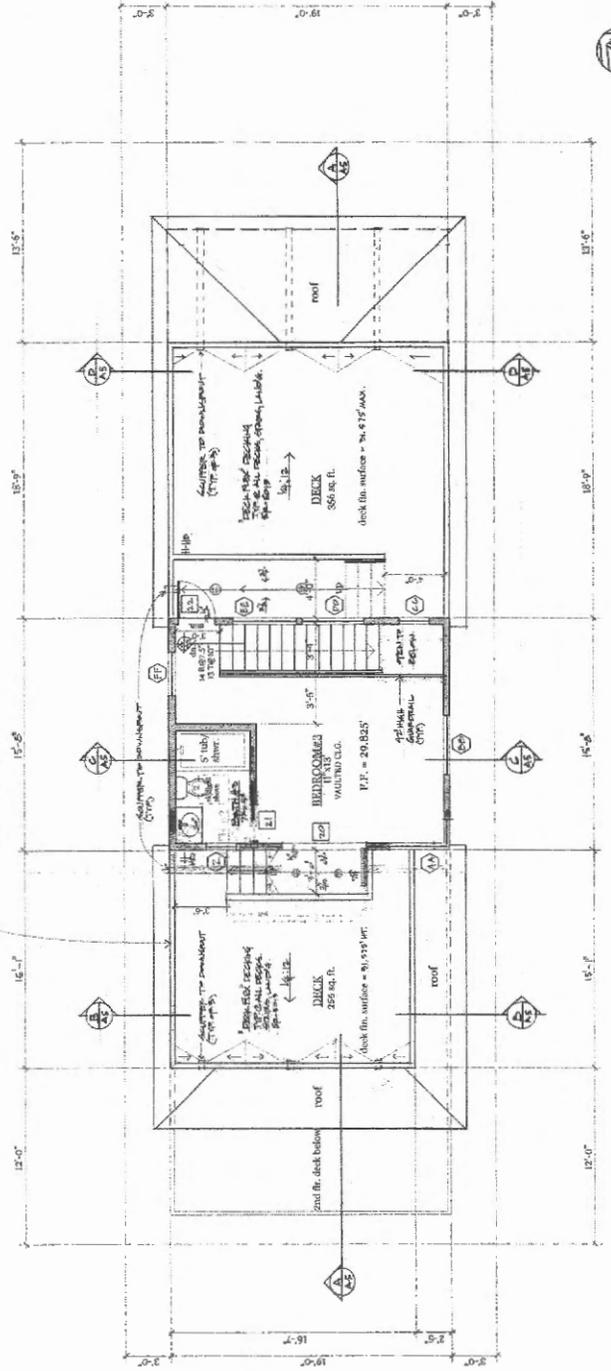


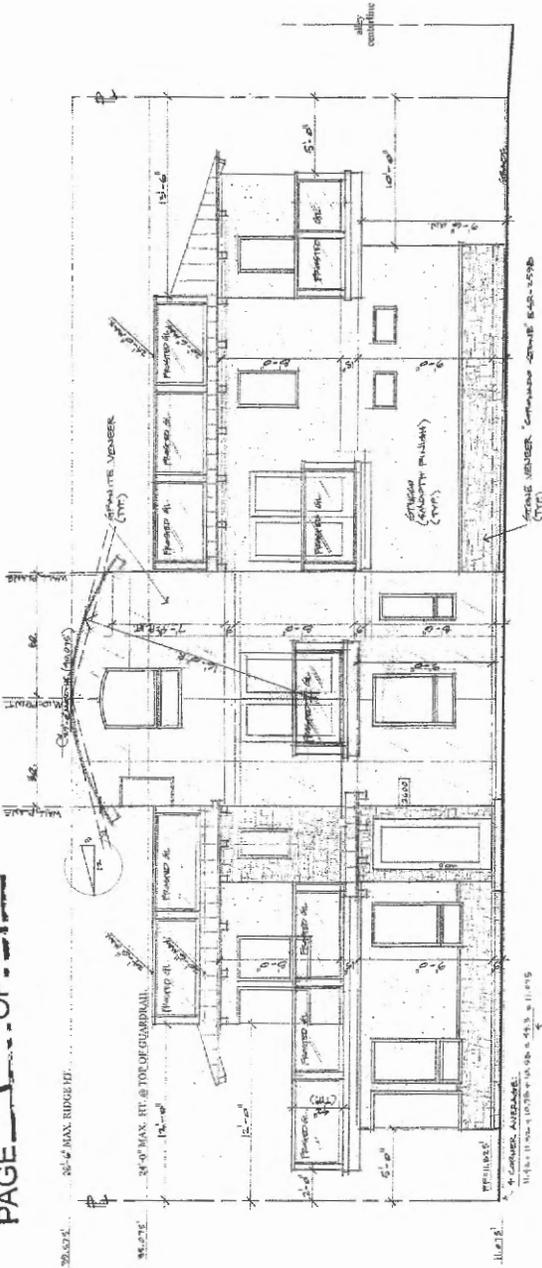
NOTE:
Existing beam floor over lapped 30x A.S. Gl.
(Typical @ all roofs) Custom RR Material' 288, 2448'

ROOF PLAN

SCALE: 1/4" = 1'-0"

NOTE:
EXISTING BEAM FLOOR SHALL BE
PROTECTED WITH
TYPICAL ALL OTHERS GENERAL FINISHES.
ALL DIMENSIONS SHALL BE
AS SHOWN.





SOUTHEAST ELEVATION (entry)

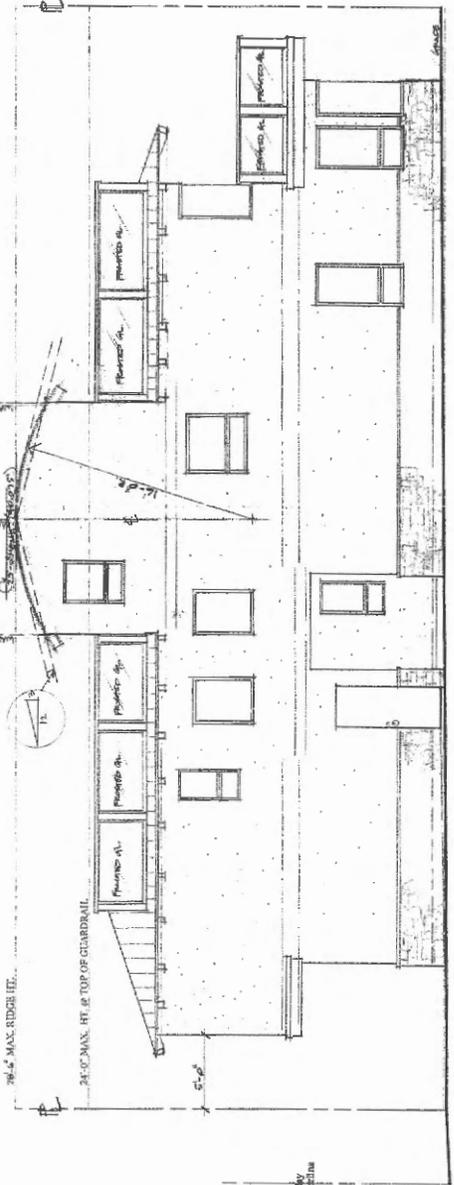
SCALE: 1/4" = 1'-0"

NOTES:

1. 7/8" thick stucco over 1/2" batt over grade to 60 min. building etc. (see note #2)
2. 1/2" thick plaster. Provide two layers of grade D paper over all wood base sheathing. CW 250.0.9
3. Provide a sweep screed for stucco at the foundation plane line a min. of 2" above the sixth or 2" above paved areas. R202.6.2.1

NOTE:

1. If any special railing details are provided above, typical is all. All other railing details are as shown on drawings.



NORTHEAST ELEVATION (alley)

SCALE: 1/4" = 1'-0"

