

CALIFORNIA COASTAL COMMISSION

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

**Th10d**

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original staff report](#)

ADDENDUM

Date: October 6, 2014

To: COMMISSIONERS & INTERESTED PERSONS

From: SOUTH COAST DISTRICT STAFF

Subject: Addendum to Item Th10d, Coastal Development Permit Application No. 5-14-0613 (New Port Beach Townhouse, LLLP), for the Commission Meeting of Thursday, October 9, 2014.

This addendum provides the following correspondence received on the above-referenced item:

1. Form for disclosure of an Ex Parte Communication, which took place on September 25, 2014 between David Neish and Commissioner Wendy Mitchell.
2. Letter in support of the staff recommendation from the applicant, New Port Beach Townhouse, LLLP, dated September 23, 2014. In the letter, the applicant's clarifies that its legal name is New Port Beach Townhouse, LLLP, and not Newport Beach Townhouse, LLLP as indicated in the staff report. In addition, according to the applicant, the roof access structures and architectural features occupy approximately 1/3 of the roof areas as indicated on page 12 of the staff report and not 1/2 of the roof areas as indicated on page 2 of the staff report. Finally, the applicant requests that this item be moved from the Regular Calendar to the Consent Calendar.
3. Letter in support of the staff recommendation from James Mosher, dated October 3, 2014.

**FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATION**

Date and time of communication: September 25, 2014 11:30am
Location of communication: Sherman Oaks, CA. Conference call

Person(s) initiating communication: David Neish

Person(s) receiving communication: Wendy Mitchell

Name or description of project: 5-14-0613 (New Port Beach Townhouse, LLLP)

Detailed substantive description of content of communication:

Mr. Neish explained that the Townhouse application was to demolish two existing buildings and construct 23 three-story buildings on a 1.2 acre property .The project would also include approximately 2,500 feet of open space and landscaping.

The applicant has agreed to all of the staff recommended findings and Special Conditions and will not be contesting anything. CCC Staff has indicated that if not contested the matter may be moved to the Consent Calendar.

Date

Signature of Commissioner



3120 Sovereign Drive, Suite 4B
Lansing, Michigan 48911
P: 888-327-8001
F: 517-244-3601

New Port Beach Mixed Development LLLP + New Port Beach Townhouse LLLP

September 23, 2014

VIA EMAIL & OVERNIGHT DELIVERY

Matt Stone
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

SUBJECT: Staff Report (Item Th 10d) Applicant Concurrence – Coastal Development Permit Application No. 5-14-0613

Dear Mr. Stone,

New Port Beach Townhouse, LLLP, the project applicant, is in receipt of the Staff Report and recommendation contained therein, as posted on the Commission's website on September 19, 2014.

After careful review of the subject report, we are in full support of the findings and concur with the recommendation for approval, as conditioned. We agree to adhere to and implement Standard Conditions 1 through 5, and Special Conditions 1 through 6, and have already commenced redesign efforts to meet the reduced height requirement and revised landscaping plans. Accordingly, we would respectfully request being moved to the Consent Calendar at our regularly scheduled hearing on Thursday, October 9, 2014.

Please note, however, the correct legal spelling of our name is New Port Beach Townhouse, LLLP (New Port being two words). Additionally, the roof access structures and architectural features are correctly stated as occupying approximately 1/3 of the roof areas on page 12 of the Staff Report, but are incorrectly stated as approximately half of the roof areas on page 2.

We appreciate your responsiveness throughout this application process, and commend your efforts to bringing our project to a successful recommendation and expeditious hearing.

Sincerely,

Steve Mills

cc: Alison Evans, Dudek
Sieglinde Pukke, Shubin+Donaldson Architects
Scott Wieland, Wieland-Davco Corporation
Justin Park, Wieland-Davco Corporation
Susan Graham, Allen Matkins Leck Gamble Mallory & Natsis LLP
Matthew Fogt, Allen Matkins Leck Gamble Mallory & Natsis LLP
David Neish, DBN Planning

Date of comments: October 3, 2014
Agenda Item: Th10d-10-2014
Application No.: 5-14-0613
My position: Support staff recommendation

California Coastal Commission (attn: Matt Stone)
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Dear Mr. Stone,

I would like to express my support of CCC staff's recommendation that the applicant for these 23 townhomes be required to complete their project entirely within the 35-foot height limit imposed by Policy 4.4.2-1 of the City of Newport Beach's certified Coastal Land Use Plan.

I say this because I believe the people of California should have a reasonable expectation that publicly adopted policies mean what they say. In this case, the 35 foot height limit in the CLUP seems simple, straightforward and unambiguous. Making one-off exceptions and allowing an otherwise clear policy to mean whatever the local City Council or staff declares it to mean in documents that are not part of the publicly agreed to CLUP makes the policy all but meaningless and erodes public confidence in predictable governance.


As an example of the continuing rush for "exceptions" to the Policy 4.4.2-1 height limitation that CCC staff properly anticipates, just last night the Newport Beach Planning Commission approved a Mitigated Negative Declaration for new conceptual development in the parking lot at the southeast corner of the Upper Newport Bay Bridge – the lot locals will remember as once serving the Reuben E. Lee floating paddle-boat restaurant. On page 26 of Appendix M2 to the MND a building with a roof sloping to 40' is found "consistent" with the 35' limit of the certified CLUP.

Likewise, to make way for the Back Bay Landing project across PCH from this, that is, adjacent to the northeast corner of the UNB Bridge, the CCC will soon be receiving a request to amend the CLUP to allow for a 60 or 70 foot tall architectural feature. And at the September 9, 2014, City Council meeting the public saw plans approved for a new hotel on the old City Hall site (across the street from the present townhome project) much of which the city plans to allow to be built to 65'.

Apparently in the view of some, 35' is a flexible limit that doesn't in itself mean much when there is a desire to do something different. To me, this is as if in an area requiring 5' setbacks, 2' or 3' was regarded as equally good whenever 5 was inconvenient, because 2 and 3 are close to 5.

Again I agree with staff's recommendation that development be required to stay within the limitations imposed by the certified CLUP and that exceptions not be allowed unless a coherent policy for granting them has been incorporated into the CLUP or a publicly agreed to implementation plan for it.

Yours sincerely,



James M. Mosher, Ph.D.
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Newport Beach, CA. 92660
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CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Long Beach, CA 90802-4302
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Th 10d

Filed:	7/21/2014
180th Day:	1/17/2015
Staff:	M.Stone-LB
Staff Report:	9/18/2014
Hearing Date:	10/9/2014

STAFF REPORT: REGULAR CALENDAR

Application No.:	5-14-0613
Applicant:	Newport Beach Townhouse, LLLP
Agent:	Dudek
Location:	3303 and 3355 Via Lido, City of Newport Beach, County of Orange. (APN 423-112-02 and 423-112-03)
Project Description:	Demolition of the existing 32,469 square foot office building; 7,176 square foot church; 1,785 square foot associated church reading room; and 54-space associated surface parking lot; and construction of 23 three-story townhouses, each with an attached two-car garage, roof deck, and roof access structure. Grading consists of 6,000 cubic yards of cut and 6,000 cubic yards of fill.
Staff Recommendation:	Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to demolish the two existing buildings on the site, including a 32,469 square foot three-story commercial office building and 7,176 square foot church building, as well as the associated surface parking lots, and construct 23 three-story townhouses on an approximately 1.2-acre site. The new townhouses will consist of five buildings including, one duplex building, one four-plex building, one five-plex building, and two six-plex buildings, consisting of 2- and 3-bedroom units. The buildings measure 32 feet 5 inches high to the top of the roof deck with 39-inch high guardrails, and 39 feet high to the top of the roof access structure. The proposed project also includes 46 covered on-site parking spaces [two (2) parking spaces in each townhouse garage], and

12 on-site guest parking spaces. The proposed project will contain 2,483 square feet of open space with landscaping.

The subject site is located at 3303 & 3355 Via Lido, which is in the northerly section of the Balboa Peninsula, City of Newport Beach, County of Orange. The subject site is located in a developed area, surrounded by residential and commercial uses, approximately 0.3 miles to the east of the Pacific Ocean, and approximately 165 feet to the west of Newport Bay.

The primary issue areas identified with the proposed development include potential adverse impacts to visual resources with regards to height and community character, and prejudicing the City's ability to prepare a Local Coastal Program (LCP). The City's certified Land Use Plan (LUP) limits development in the Shoreline Height Limitation Zone, where the project is located, to a maximum height of 35 feet, with no exceptions for architectural features or other structures, such as stairway or elevator access structures. The proposed project is designed with a significant roof stairway access structure and architectural features that cover approximately half of the roof areas of each individual building and extend 6.5 feet above the 32 foot- 5 inch roof height for a total building height of 39 feet. Since the certified LUP limits the maximum height to 35 feet and does not allow for any projections above the height limit, the proposed project is inconsistent with the certified LUP. The Commission has previously dealt with this Shoreline Height Limitation Zone height issue in Coastal Development Permit No. 5-10-229(City of Newport Beach). The Commission found that the proposed multi-purpose and sailing program building with 71-ft. high architectural design feature (faux lighthouse) was inconsistent with the height limit in the certified LUP and conditioned the CDP to a height limit of 35 feet.

If the City wants to continue to allow structures above the maximum height limit stated in the LUP, the City should comprehensively address the heights in the Shoreline Height Limitation Zone in an LUP amendment and/or LCP that would provide design criteria and allowable projections above the height limit so that height, scale and bulk, in terms of community character and visual impacts within this area, could be adequately and comprehensively addressed. The alternative is to accommodate such projections within the maximum 35 foot height limit. As proposed, exceeding the maximum height in the certified LUP can have individual and cumulative adverse impacts to the visual resources and to the community character of the area. To ensure that any potential adverse impacts are addressed, Commission staff is recommending **Special Conditions 1 through 6**, which would incorporate into this permit requirements to: 1) submit a revised final project plan which conforms to the 35-foot height limit in this area; 2) seek an amendment or Coastal Development Permit for any future improvements to the project; 3) follow the recommendations of the geotechnical report; 4) conform with the Submitted Grading, Drainage and Erosion Control Plan; 5) submit a revised landscaping plan; and 6) comply with construction-related best management practices (BMPs). As conditioned, the proposed development conforms with the resource protection and coastal access policies of the Coastal Act.

Commission staff recommends **approval** of coastal development permit application 5-14-0613, as conditioned.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1— Vicinity Map
Exhibit 2— Aerial Photographs
Exhibit 3— Site Plan
Exhibit 4— Renderings
Exhibit 5— Topographic Survey
Exhibit 6— Unit Plans & Elevations
Exhibit 7— Elevations
Exhibit 8— Site Photographs

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 5-14-0613 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit and adoption of the following resolution and findings. 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 of 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. Revised Final Project Plan.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of a Revised Final Project Plan, including floor, elevation, grading, foundation, etc. The Revised Final Project Plan shall be in substantial conformance with the plans received by the South Coast District staff on April 3, 2014, except they shall be modified as follows: 1) all proposed development, including but not limited to, the roof access structure and architectural features, shall be reduced in height and shall be no higher than the Shoreline Height Limitation Zone permitted maximum height of 35-feet.
- B. 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 to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

2. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-14-0613. 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. 5-14-0613. Accordingly, any future improvements to any aspect of the entire proposed development 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. 5-14-0613 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
3. **Recommendations of the Geotechnical Report.** All final design and construction plans shall be consistent with all recommendations contained in the Geotechnical Engineering Services Report prepared by Professional Service Industries, Inc. dated August 24, 2012. 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.

4. **Conformance with the Submitted Grading, Drainage and Erosion Control Plan.** The applicant shall conform to the Grading, Drainage and Erosion Control Plan received on June 9, 2014. 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.
5. **Drought Tolerant Landscaping, Non Invasive Plants.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of a Revised Final Landscape Plan consisting of low or very low water plants as identified by California Department of Water Resources for South Coastal Region 3.(See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>). In general, 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.
6. **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.

IV. FINDINGS AND DECLARATIONS:

A. PROJECT DESCRIPTION AND LOCATION

The subject site is located at 3303 & 3355 Via Lido, which is in the northerly section of the Balboa Peninsula, City of Newport Beach, County of Orange (**Exhibits 1-2**). The site is located in a developed residential area, approximately 0.3 miles to the east of the Pacific Ocean, and approximately 165 feet to the west of Newport Bay. The subject site is bounded by Via Lido to the east, Via Oporto to the west, and Via Malaga to the South.

The subject site is located within Lido Village, just southeast of Lido Marina Village. The City of Newport Beach certified Coastal Land Use Plan (CLUP) describes Lido Village as primarily developed with commercial uses. Lido Marina Village is a pedestrian-oriented waterfront development that includes visitor-serving commercial uses, specialty stores, and marina uses.

To the north, at the southeastern corner of Via Oporto and Via Lido, is an existing commercial office building and accessory structure currently occupied by a hair salon, real estate broker, and day spa. To the east, on the opposite side of Via Lido are several existing office buildings, mixed-use office and residential buildings, and two-story residential homes. Newport Bay is beyond these developments with a row of boat docks along the harbor frontage. To the east is Lido Island Bridge. The former City Hall site is located to the north, and to the northwest there's an existing retail shopping center "Via Lido Plaza." To the south, there's a commercial real estate office building and church facility (St. James Church). Beyond the church, there's a 10-story residential building at the intersection of Via Lido and Lafayette Road. Southerly of 32nd street is Cannery Village.

The subject site was previously subdivided and encompasses a total of six (6) existing lots. Coastal Land Use Plan amendment No. LCP-5-NPB-13-0227-1 was approved by the Commission on March 12, 2014 to change the land use designation for the property located at 3303 Via Lido from Private Institutions (PI-B) to Multiple-Unit Residential (RM-D). The subdivided properties, which will be combined to create one parcel, are 1.2 acres in total.

The applicant is proposing to demolish the two existing buildings on the site, including a 32,469 square foot three-story commercial office building and 7,176 square foot church building, as well as the associated surface parking lots, and construct 23 townhouses (**Exhibits 2-3**). The new townhouses will be incorporated into five buildings including, one duplex building, one four-plex building, one five-plex building, and two six-plex buildings, consisting of 2- and 3-bedroom units. The buildings measure 32 feet 5 inches high to the top of the roof deck, with a 39 inch high guardrail, and 39 feet high to the top of the roof access structure (**Exhibits 5-6**). The proposed project also includes 46 covered onsite parking spaces [two (2) private parking spaces in each townhouse garage], and 12 guest parking spaces. The proposed project will contain 2,483 square

feet of open space with landscaping consisting of native or non-native drought tolerant non-invasive species.

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 Coastal Land Use Plan (CLUP) 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 are the Chapter 3 Policies of the Coastal Act. The City's CLUP may be used for guidance.

B. VISUAL RESOURCES

Section 30251 of the Coastal Act states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting

As stated in the City's CLUP, "Newport Beach is located in a unique physical setting that provides a variety of spectacular coastal views, including those of the open waters of the ocean and bay, sandy beaches, rocky shores, wetlands, canyons, and coastal bluffs." And, "The City has historically been sensitive to the need to protect and provide access to these scenic and visual resources . . ."

Accordingly, the CLUP contains a number of policies that address adverse impacts to coastal views caused by new development including, but not limited to, the following:

- 4.4.1-1 *Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.*
- 4.4.1-2 *Design and site new development, including landscaping, so as to minimize impacts to public coastal views.*
- 4.4.1-3 *Design and site new development to minimize alterations to significant natural landforms, including bluffs, cliffs and canyons.*

- 4.4.1-4 *Where appropriate, require new development to provide view easements or corridors designed to protect public coastal views or to restore public coastal views in developed areas.*
- 4.4.1-5 *Where feasible, require new development to restore and enhance the visual quality in visually degraded areas.*

In addition, the City's CLUP contains a strict height limit for those areas within the Shoreline Height Limitation Zone. Specifically, Policy 4.4.2-1 states, in part "[m]aintain the 35-foot height limitation in the Shoreline Height Limitation Zone . . ." The Shoreline Height Limitation Zone has existed for around 40 years, and was not imposed upon the City by the Commission. In fact, as the CLUP explains:

[c]oncern over the intensity of development around Lower Newport Bay led to the adoption of a series of ordinances in the early 1970s that established more restrictive height and bulk development standards around the bay. The intent was to regulate the visual and physical mass of structures consistent with the unique character and visual scale of Newport Beach.

The proposed project is located on a relatively flat interior lot on the Balboa Peninsula within the Shoreline Height Limitation Zone. Since the proposed development is located within the Shoreline Height Limitation Zone, the 35-foot height limit applies. Notably, the CLUP does not provide for any exceptions to the 35-foot height limit, and the Commission has historically interpreted the 35-foot height limit strictly, meaning 35-feet above the finished grade is the absolute maximum height any structure may reach.

For example, in Coastal Development Permit Application No. 5-10-229 for the City of Newport Beach's Marina Park project located at 1600 West Balboa Boulevard, the initial proposal included, in part, a 71-foot high architectural feature representing a lighthouse. At that time the City had argued that the 35-foot height limit in the CLUP and the City's Municipal Code is exclusive of architectural projections. As indicated in the Commission staff report for the Marina Park project, however, the CLUP does not provide any exception to the height limit and the City's Municipal Code is not certified as the City's Implementation Plan. The Coastal Development Permit was approved with a structural height limit of 35 feet. Ultimately, the City was required to seek an amendment to the CLUP to allow for the architectural feature to exceed the 35-foot height limit.

Here, the proposed project measures 39-feet high to the top of the roof access structure, with architectural projections measuring 37 feet 6 inches above the finished grade. The applicant contends that the stair access structure is an architecture element that is not continuous along the entirety of the building, and provides visual interest in the façade. According to the applicant, the non-habitable structure is integral to the design of the building because it provides formal interest as a variation in the façade, as well as functionality (stair access to the roof deck) and a privacy screen.

The applicant has reiterated the claim made by the City in the Marina Park case that the 35-foot height limitation as provided for in the CLUP and the City of Newport's Municipal Code is exclusive of architectural projections. Specifically, the applicant argues that the height limit policy was incorporated into the City Zoning Code, which allows for sloping roofs, staircase/elevator enclosures, and certain architectural features to exceed a stated height limitation by up to 5 feet. Thus, the applicant claims that the structure is consistent with the certified CLUP and the Zoning Code, for the stair access structure reaches 39 feet high, which is less than the 5 feet above the height limit that is generally permitted by the City.

The applicant's claim is identical to that of the City's interpretation of the Shoreline Height Limitation Zone Policy. In fact, the City addressed the issue of height of the proposed project in the City's August 22, 2013 Planning Commission staff report, which also states, in part, that the Shoreline Height Limitation Zone Policy was incorporated within Zoning Code height limits, which has allowed sloping roofs, staircase/elevator enclosures and certain architectural features to exceed a stated height limitation. The City's staff report notes that sloping roofs and staircase/elevator enclosures in particular have been allowed to exceed the height limit by up to five feet, and provided examples of how this would apply to single-family homes, multi-family zones, as well as commercial zones. According to the staff report, the system with a stated height limit and a five foot exception for enclosed stairways or elevators has been in the Zoning Code since 1971.

In addition, the applicant points out that a number of buildings in the vicinity of the project location exceed the 35-foot height limit, such as the: 1) 48.9-foot high Church Tower at 3209 Via Lido; 2) 46.6-foot high Theater Tower at 3459 Via Lido; 3) 39.2-foot high Lido Marina Village building at 3434 Via Lido; 4) 38.65-foot high parking garage at 3439 Via Oporto; 5) 37.4-foot high Church Atrium at 3209 Via Lido; 6) 124-foot high 601 Lido Park; 7) 95.3-foot high 611 Lido Park; 8) 35.65-foot high Cannery Restaurant at 3010 La Fayette; and 9) 35.3-foot high private residence at 519 30th Street.

Again, the City's certified CLUP does not provide any exception to the 35-foot height limit in the Shoreline Height Limitation Zone and the 35 foot limit has been treated as a maximum height in the Shoreline Height Limitation Zone. The City's Municipal Code is not certified as the City's Implementation Plan, for the City only has a certified CLUP, which, again, is to be used as guidance in this matter. Therefore, the City's Municipal Code has no bearing on how visual resources and community character are to be analyzed under Section 30251 of the Coastal Act. Furthermore, although the subject site may not be visible from PCH, Balboa Boulevard, Newport Harbor, or Newport Boulevard due to its inland location, and while the proposed project will not obstruct public views of scenic vistas – any exception to the established height limit could result in individual and cumulative impacts to visual resources in the area by changing the scale and bulk of buildings in the area and changing the community character, which could potentially prejudice the City's ability to prepare a Local Coastal Program (LCP) that is in conformity with the provisions of Chapter 3 of the Coastal Act.

Furthermore, as an integral part of the design of the structure, the roof access structure and architectural features, which extend approximately 50 feet along each roof line and occupy approximately 1/3 of the roof areas, significantly add to the height, mass and overall visual appearance of the buildings and can have an adverse impact to the character of the area. Although the roof structures extend the total height only 4 feet above the 35 foot height limit, the structures are substantial in size and add to the size and bulk of the buildings' appearance from the surrounding area (see **Exhibit No. 4**). Finally, none of the buildings cited by the applicant which exceed the 35-foot height limit have been approved by the Commission and are pre-coastal and built prior to the certification of the CLUP, thus the applicant's reliance on those buildings as support for exceeding the CLUP's 35-foot height limit in this case is misplaced.

If the City wishes to allow structures to exceed the stated height limit in the Shoreline Height Limitation Zone, the City needs to seek an amendment to the certified CLUP that specifically outlines and sets development standards for the type and size of structures that will be allowed to exceed the height limit. Such an amendment to the CLUP will provide an opportunity for the City and the Commission to address potential individual and cumulative visual resource impacts and community character issues resulting from an increase in building heights in the Shoreline Height Limitation Zone. The alternative is to accommodate such projection within the maximum 35 foot height limit.

The City is currently working on the Implementation Plan (IP) and the City can incorporate these height exceptions for the Shoreline Height Limitation Zone and present these height exceptions to the Commission as part of the IP so that visual impacts and community character can be addressed comprehensively. However, at this time the certified CLUP lists 35 feet as the maximum height and the Commission has used this stated height limit as the maximum height limit for the area. Consequently, based on the certified CLUP, and past Commission permit action, the Commission finds that no component of the building may exceed the height limit including architectural projects and roof access structures. In order to ensure that the proposed development does not adversely impact visual resources and the character of the area by exceeding the Shoreline Height Limitation zone height limit of 35 feet, as set out in the certified LUP, the Commission imposes **Special Condition 1**, which requires the applicant to submit revised project plans which conform to the 35-foot height limit in this area. And, to ensure that future development of the property does not adversely impact visual resources or the coastal resource protection policies of the Coastal Act, the Commission also imposes **Special Condition 2**, which requires an amendment or Coastal Development Permit for any future improvement on the property. Therefore, the Commission finds the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

C. COASTAL-DEPENDENT AND COASTAL-RELATED USES

Section 30213 of the Coastal Act states, in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30255 of the Coastal Act states:

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

Policy 2.4.1-1 of the City of Newport Beach Coastal Land Use Plan states:

Give priority to coastal-dependent uses over other uses on or near the shoreline.

Policy 2.4.1-3 of the City of Newport Beach Coastal Land Use Plan states:

Discourage re-use of properties that result in the reduction of coastal-dependent commercial uses. Allow the re-use of properties that assure coastal-dependent uses remain, especially in those areas with adequate infrastructure and parcels suitable for redevelopment as an integrated project.

Policy 2.4.1-4 of the City of Newport Beach Coastal Land Use Plan states, in part:

Design and site new development to avoid impacts to existing coastal-dependent and coastal-related developments.

The Coastal Act is explicit about protecting, encouraging, and providing visitor-serving and coastal-dependent facilities over other uses. Here, the proposed residential development is not a priority use under the Coastal Act, however, the issue concerning priority uses for development of this site was contemplated in the CLUP amendment request (LCP-5-NPB-13-0227-1), which allowed a change in land use designation in order for this project to proceed. There, the Commission found that a change from Private Institutions to Multiple-Unit Residential for a portion of this project site would not result in the reduction of visitor-serving commercial uses, coastal-dependent and coastal-related uses, and lower cost visitor and recreation facilities primarily because the site was not

designated for such uses. And, the CLUP currently accounts for these other priority uses within the Lido Village and the vicinity of the subject site.

Furthermore, existing development on the subject property, an office building and religious institution, is not considered a coastal-dependent or coastal-related use. And, the proposed project would not reduce existing coastal-dependent commercial uses, nor would it affect the existing coastal-dependent uses in the Lido Village area. In fact, as suggested in the staff report for the CLUP amendment, a residential development in this location is compatible with the existing uses, and would serve to support nearby higher priority uses. For example, Via Lido Plaza and Lido Marina Village (located to the west and north of the project site) contain both visitor-serving and coastal-dependent businesses such as retail establishments, restaurants, yacht brokerage firms, and marinas. And, recent market surveys indicate a visitor-serving commercial vacancy rate of 41% in Lido Marina Village.

In addition, the subject property is surrounded by CLUP designated Multiple-Unit Residential (RM-D), Mixed-Use Water (MU-W), Mixed-Use Vertical (MU-V), Mixed-Use Horizontal (MU-H), General Commercial (CG), Corridor Commercial (CC), Visitor-Serving Commercial (CV), and Public Facilities (PF) uses, which encourage higher priority uses that provide opportunities for the public to enjoy the coast. The subject site is also not a waterfront site, therefore, water-related uses would not be an appropriate development.

According to the applicant, the City did consider the impact of the proposed project on the ability to maintain and/or provide new visitor-serving, coastal-dependent or coastal-related uses in the Lido Village area. As previously indicated, the City found that adequate public recreational and commercial uses exist in the area and support facilities are already maximized to meet demand. The City also considered whether the existing church building could be redeveloped to accommodate a visitor-serving use, and found that the site is not highly suitable as a park, parking lot, or open space. In fact, Lido Park, which is approximately 1/3 acres in size, is the nearest existing park, and is located approximately 230 feet away at the corner of Via Lido and Lafayette Avenue. Lido Park is deemed a passive recreational facility featuring benches and views of the Newport Harbor, which was found to be privately held and not available for public acquisition nor considered suitable for public access because it lacks direct access to coastal resource areas as it is separated from the Bay by development and roadways.

Accordingly, since the proposed project would have no impacts to existing coastal-dependent uses, nor would the proposed project limit existing coastal-dependent and coastal-related land uses on adjacent properties, the Commission finds that the development conforms with Sections 30213, 30222, and 30255 of the Coastal Act.

D. DEVELOPMENT

Section 30250 of the Coastal Act states, in part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it . . .

Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads . . . (4) providing adequate parking facilities or providing substitute means of serving development with public transportation . . .

Section 30253 of the Coastal Act states, in part:

New development shall do all of the following:

(d) Minimize energy consumption and vehicle miles traveled.

The proposed project is located on 1.2 acres of land in a highly developed area of the Balboa Peninsula. As previously mentioned, the site is surrounded by a mix of land uses, consisting of priority and non-priority uses under the Coastal Act. The Coastal Act encourages new development in existing developed areas such as this location, because doing so helps reduce impacts to coastal resources, in part, by minimizing sprawl, preserving open space, and preventing adverse impacts to sensitive habitats. Locating residents closer to their places of employment, commercial, and recreational opportunities also serves to minimize energy consumption and vehicle miles traveled.

Here, the proposed project would potentially allow residents to be located closer to where they conduct their business, and increases the intensity of use of development within existing developed areas. And the proposed project has incorporated bike racks, as well as electric vehicle outlets within each garage to help minimize transportation related emissions. Therefore, the development, as conditioned, conforms with Sections and 30250, 30252, and 30253 of the Coastal Act.

E. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public

safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

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

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) adequate access exists nearby...

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The proposed project is located on a developed, interior parcel. As an interior lot on the inland side of Via Lido, the subject site does not provide access to the ocean, bay, nor associated coastal recreational facilities. Harbor areas are accessible along Via Malaga and Via Oporto, which are adjacent to the project site. The proposed project will not have any adverse impact to public access along the adjacent streets or to the ocean and bay.

All parking for the proposed project will be provided on-site, including 46 covered spaces for the residences [two (2) parking spaces in each townhouse garage], and 12 uncovered guest parking spaces, consistent with past Commission permit action. In addition, there are 28 existing on-street parking spaces along Via Lido, Via Oporto, and Via Malaga that will continue to be available for public use. The proposed project's parking demands are expected to be completely accommodated on-site and should not spillover into the surrounding commercial and residential village or Harbor area.

Accordingly, the Commission finds that adequate public access exists in proximity to the proposed development and that the proposed development does not pose significant adverse impacts on public access to the beach or coastal waters. Therefore, the proposed development is consistent with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

F. WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Currently, underground storm drain facilities do not exist adjacent to the site. As proposed, however, storm water runoff will flow into on-site catch basins. The flows will then be conveyed through an on-site storm drain system to a Katchall Filtration Vault, which treats the water. The Katchall Filtration Vault is an underground filtration vault comprised of weir wall filters. The vault is precast and set flush with the finished grade. The system is capable of removing heavy metals, oil and grease, pathogens, nutrients, phosphates, phosphorous, and nitrogen.

After treatment, flows are sent to a water pump which will pump the treated water off-site to a surface gutter along Via Oporto. The surface gutter conveys the flow to the north where it is collected in an off-site catch basin and is emptied into Newport Bay. Overall peak flows are anticipated to be less than or equal to pre-development flows.

The townhouses have been designed to collect the roof runoff using gutters and downspouts which will direct the drainage to pervious surface/landscaping areas. All of the townhouses will utilize splash blocks to prevent erosion. The landscaped areas will contain drain inlets to reduce storm water from transporting sediments over flatwork improvements. Area drains will connect to the proposed on-site storm drain system. Impervious areas on the subject site have been reduced from nearly 100% to approximately 88% through the use of permeable concrete pavements and new landscaping areas.

Water quality BMPs will be employed according to City of Newport Beach Model WQMP requirements. According to the applicant's consultants, deep infiltration BMPs are not feasible on this site due to high groundwater levels. Still, Hydrologic Source Control (HSC) BMPs were incorporated into the project to reduce the overall design capture volume.

As detailed above, the proposed project incorporates a number of measures to minimize adverse impacts to water quality and marine resources. Accordingly, the Commission imposes Special Condition 4, which requires the applicant to conform with the Submitted Grading, Drainage and Erosion Control Plan, as well as Special Condition 6, which requires the applicant to employ Best Management Practices pertaining to storage of construction materials, mechanized equipment and removal of construction debris. Therefore, as proposed and as conditioned, the Commission finds that the proposed development is consistent with Sections 30230 and 30231 of the Coastal Act.

G. LOCAL COASTAL PROGRAM

Section 30604(a) 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 permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The certified CLUP was updated on October 13, 2005, and again in 2009. The City currently has no certified Implementation Plan. Therefore, the Commission issues Coastal Development Permits within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The CLUP policies may be used for guidance in evaluating a development's consistency with Chapter 3.

The certified LUP limits development to a height limit of 35 feet in the Shoreline Height Limitation Zone. The LUP does not provide for any exceptions to the 35-foot height limit, and the Commission has historically interpreted the 35-foot height limit as a maximum height for all structures. Allowing structures to exceed the stated height limit could adversely impact public coastal views and significantly change the character of the area. Exceptions to the height limit could result in individual and cumulative impacts which could potentially prejudice the City's ability to prepare a Local Coastal Program (LCP) that is in conformity with the provisions of Chapter 3 of the Coastal Act. To allow structures to exceed the stated height limit the City should amend the LUP or submit an LIP to comprehensively address height, public views, and community character.

The proposed development, as conditioned, is consistent with Chapter 3 policies of the Coastal Act and with the City's CLUP. Therefore, approval of the proposed development will not

prejudice the City's ability to prepare a Local Coastal Program that is consistent with the Chapter 3 policies of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment.

As conditioned, the development will not cause significant adverse effects on the environment. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the proposed project is found to be consistent with CEQA and the policies of the Coastal Act.

APPENDIX A

Substantive File Documents: City of Newport Beach Certified Coastal Land Use Plan; City of Newport Beach Approval-in-Concept No. AIC2014, dated March 25, 2014; Coastal Development Permit Application File No. 5-14-0613; Mitigated Negative Declaration for the Lido Villas Residential Development; City of Newport Beach City Council Resolution No. 2013-77; Water Quality Management Plan for 3303 & 3355 Via Lido prepared by C&V Consulting, Inc. of Foothill Ranch, California on May 28, 2014.

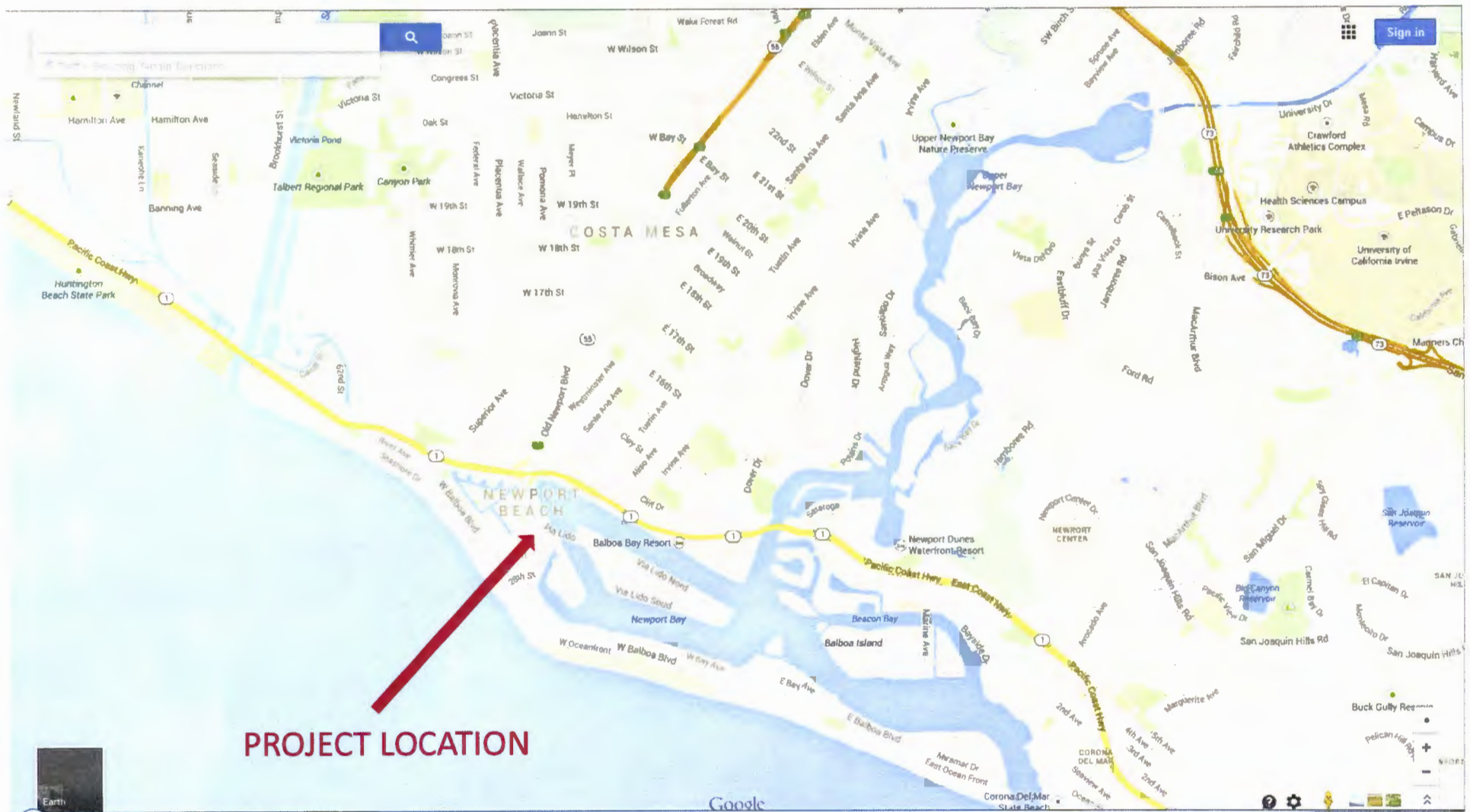
EXHIBIT# 1

Vicinity Map
1 of 1

Application Number:
5-14-0613



California Coastal
Commission





PROJECT LOCATION

EXHIBIT# 4
Renderings
1 of 1

Application Number:

5-14-0613

California Coastal
Commission

3355 & 3303 VIA LIDO - PLANNED COMMUNITY DEVELOPMENT PLAN

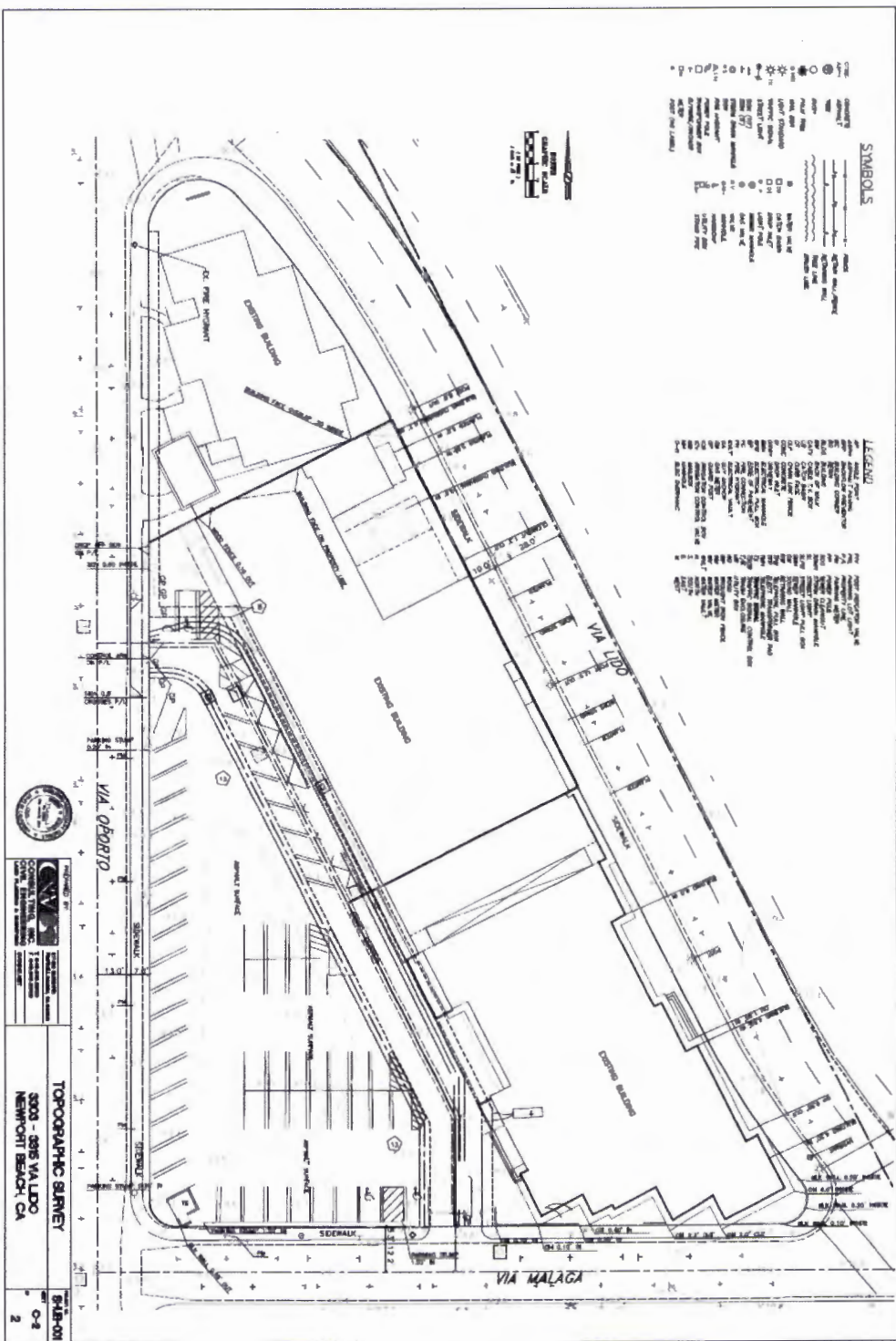
MAY 16, 2013



VIEW LOOKING SOUTH EAST VIA LIDO

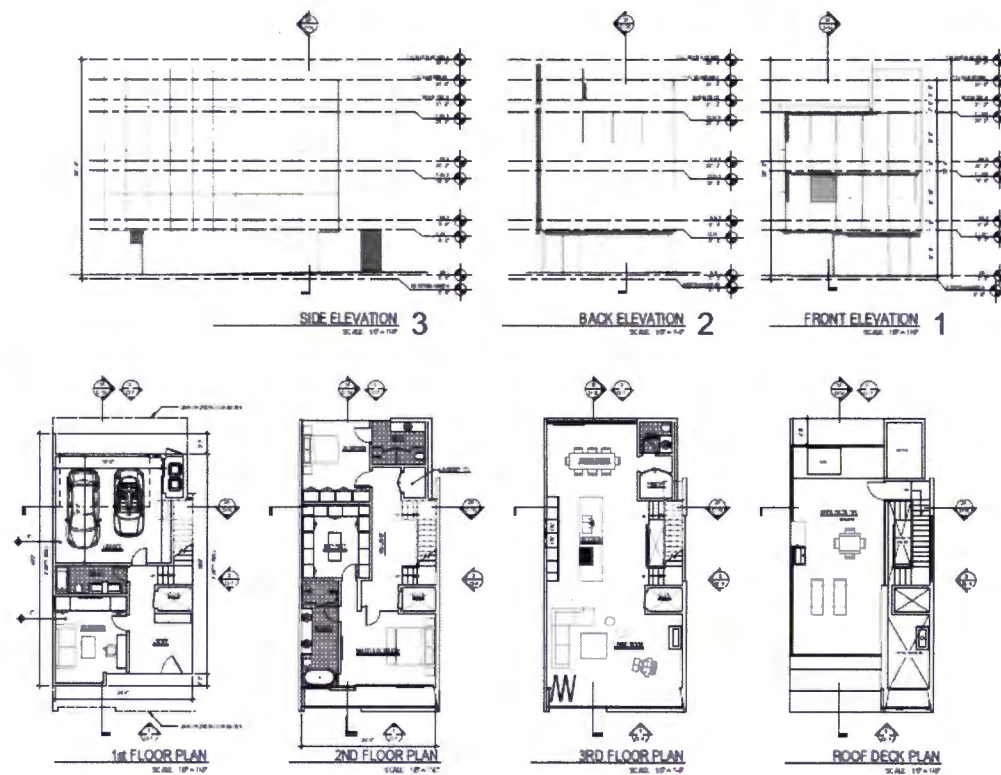






EXHIBIT# 6**Unit Plans &
Elevations
1 of 5**

Application Number:

5 - 1 4 - 0 6 1 3California Coastal
Commission**HARBOR UNIT - TYPE 1**

SHUBIN DONALDSON

PLANNED COMMUNITY DEVELOPMENT PLAN

UNIT PLANS & ELEVATIONS

SHEET No. D-7 #1230 3355 + 3303 WA LIDO

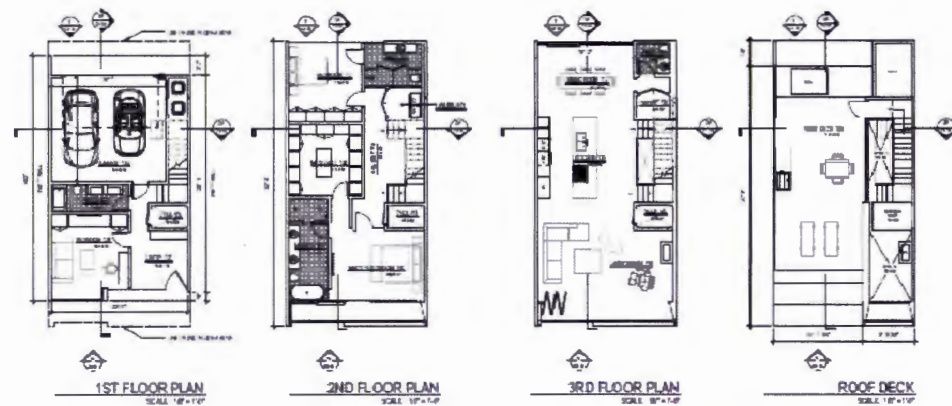
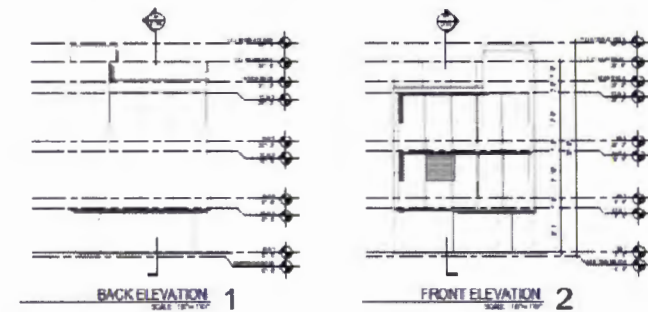
EXHIBIT# 6

Unit Plans &
Elevations
2 of 5

Application Number:

5-14-0613

California Coastal
Commission

HARBOR UNIT - TYPE 2

SHUPIN DONALDSON

PROGRESS PLANNED COMMUNITY DEVELOPMENT PLAN

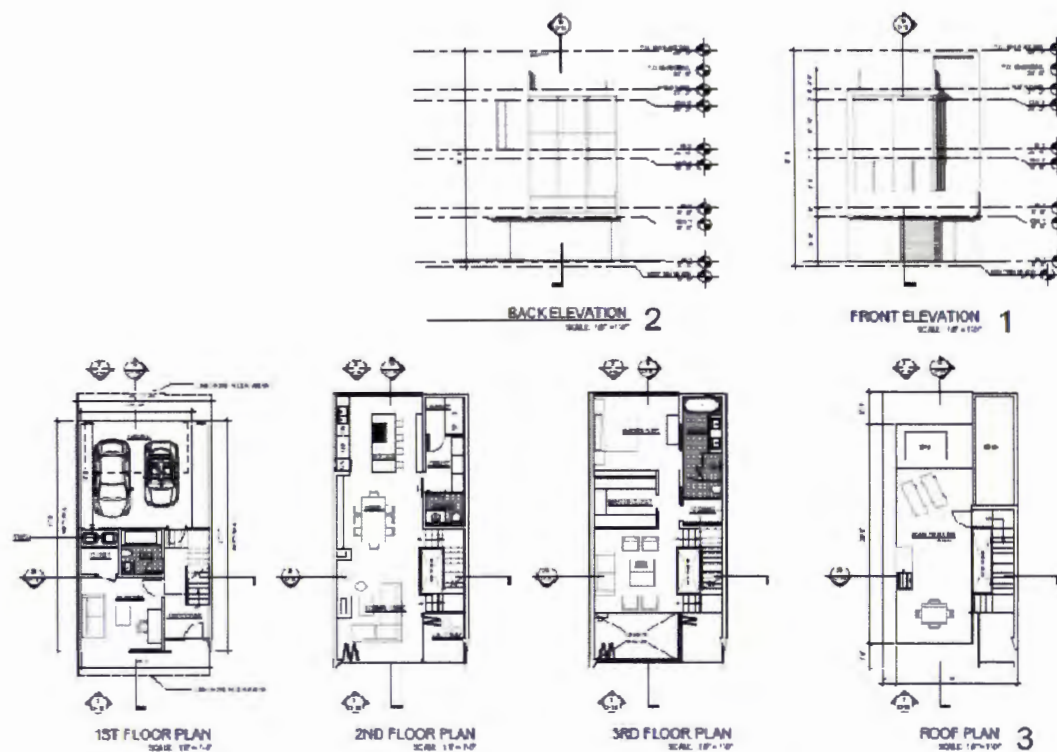
UNIT PLANS & ELEVATIONS

SHEET NO. D-B #1230 3355 + 3303 VA U00

RAC

EXHIBIT# 6**Unit Plans &
Elevations
3 of 5**

Application Number:

5-14-0613California Coastal
Commission**ISLAND UNIT - TYPE 1**

SHUBIN DONALDSON

PLANNED COMMUNITY DEVELOPMENT PLAN

UNIT PLANS & ELEVATIONS

SHEET No. D-10 #12303355 - 3303 VIA LIDO

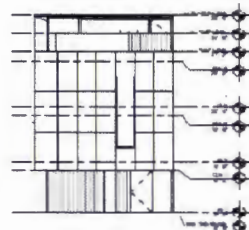
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Unit Plans &
Elevations
4 of 5

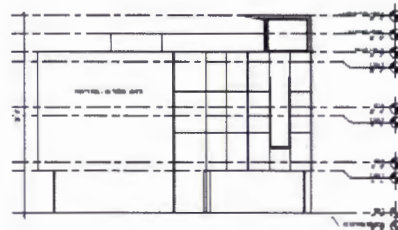
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5-14-0613

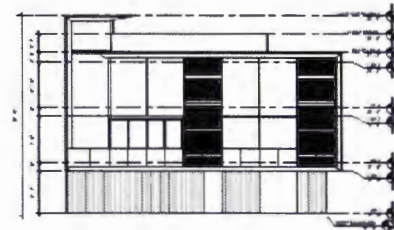
California Coastal
Commission

ISLAND UNIT - TYPE 2

EAST ELEVATION
SCALE: 1/8" = 1'-0"



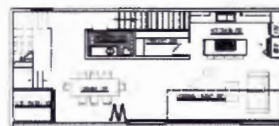
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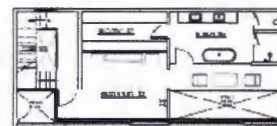
FRONT ELEVATION
SCALE: 1/8" = 1'-0"



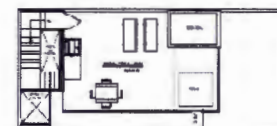
1ST FLOOR PLAN
SCALE: 1/8" = 1'-0"



2ND FLOOR PLAN
SCALE: 1/8" = 1'-0"



3RD FLOOR PLAN
SCALE: 1/8" = 1'-0"



ROOF PLAN
SCALE: 1/8" = 1'-0"

SHUBIN DONALDSON

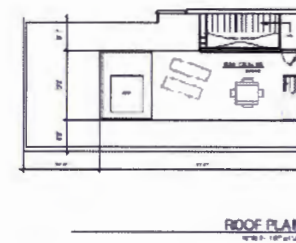
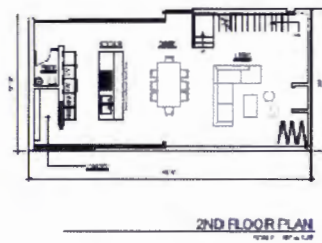
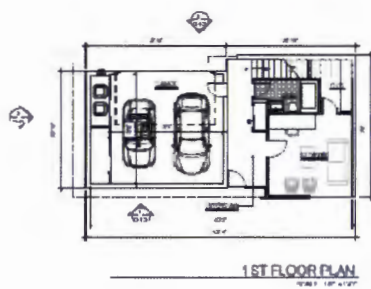
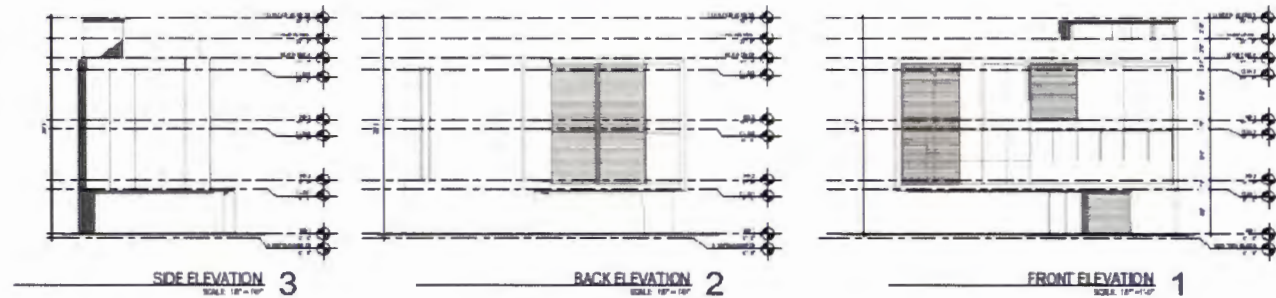
PLANNED COMMUNITY DEVELOPMENT PLAN

UNIT PLANS & ELEVATIONS

SHEET No. D-12 #12303355 - 3903 VIA LIDO

EXHIBIT# 6**Unit Plans &
Elevations
5 of 5**

Application Number:

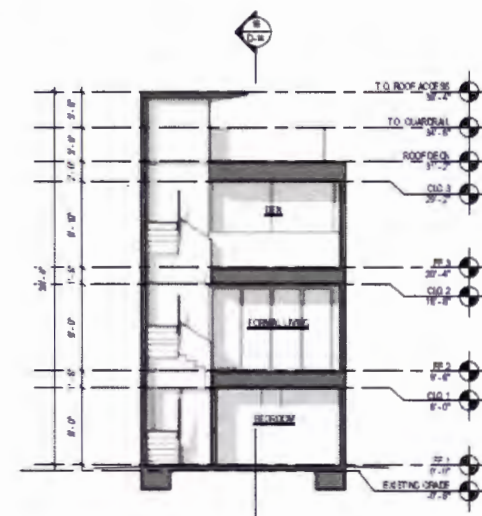
5-14-0613California Coastal
Commission**ISLAND UNIT - TYPE 3**

SHUBIN DONALDSON

PLANNED COMMUNITY DEVELOPMENT PLAN

UNIT PLANS & ELEVATIONS

SHEET No. D-13 #12303355 + 3303 VALUO



SUBJECT SITE – WEST LOOKING SOUTH



SUBJECT SITE – WEST LOOKING NORTH



SUBJECT SITE – EAST LOOKING EAST

