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Th22b

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STAFF REPORT: REGULAR CALENDAR

Application No.:	**5-15-0694**
Applicant:	**Richard Robin**
Agent:	Mark Becker Inc.
Project Location:	1509 East Bay Avenue, Newport Beach, Orange County
Project Description:	Construction of a new 2,599 square foot, 29-foot high, three-story single-family residence with two attached garages totaling 412 square feet on a currently vacant 4,482 sq.ft. bayfronting lot.
Staff Recommendation:	Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION:

Commission staff is recommending **APPROVAL** of the construction of a new single-family residence with two attached garages on a currently vacant bayfronting lot in the City of Newport Beach. The major issues raised by this proposed development concern bayfront development that could be affected by waves, erosion, storm conditions, and sea level rise or other natural hazards in the future.

The subject site has an existing wooden bulkhead/seawall located on the sandy beach bayward of the proposed residence approximately 10 to 16 feet inland from the northern (harborward) property line adjacent to the waters of the harbor that is subject to coastal hazards. The harborside boundary line separates private property from Public Trust Tidelands created through an adjudicated line, established through a1928 judgment rendered in action No. 23678 in the Superior Court of the State of California in and for the County of Orange.

A coastal hazards analysis was completed that concludes the proposed 9.0 foot finished floor is at an elevation that would not expose the habitable portions to flooding from even the highest current tides under present sea level conditions. While this analysis states that the site will be safe for the life of the project, it does not conclude that no future shoreline protective device will be needed over the life of the proposed development. However, two additional analyses do conclude that the proposed development does not rely upon the existing wooden bulkhead/seawall for protection of the proposed residence.

The plans for the proposed project show the finished floor elevation of the residence will be at 9.0 feet. The project has been designed to be above the maximum highest high tide elevation of 7.2 feet NAVD88 and above the City of Newport Beach design flood height of +9.0 feet NAVD88. While the proposed finished floor will be at 9.00 feet, 1.8 feet above the maximum highest high tide elevation, the proposed development has not been designed for a 3 foot rise in sea level which is the National Research Council projection for Los Angeles for the year 2100. A 3 foot rise in sea level would result in a still water level of 10.2 feet NAVD88 (7.2 feet NAVD88 + 3 feet = 10.2 feet NAVD88). Additionally, the proposed finished floor would also be below the upper range (maximum) of sea level rise projections by 2100, which based on the 2012 National Research Council Report, is 5.5 feet. If there were to be 5.5 feet of sea level rise, an extreme high tide water level of 12.70 feet (7.2 feet + 5.5 feet = 12.70 feet MLLW) would flood the entire site and even an average high tide could exceed the elevation of the proposed finished floor elevation.

In an attempt to minimize risks to life and property from sea level rise-related flood hazards, the applicant has proposed to raise the perimeter of the foundation and hardscape to 9.5 feet. The applicant has also stated that a patio seat wall, not constructed or to serve as a bulkhead/seawall, located at the bayward end of the 1st floor rear bayside patio adjacent to the sandy beach will be at an elevation of 10.5 feet, which would also assist in temporarily minimizing risks to life and property from temporary flooding conditions by dampening the force of floodwaters. These two design measures should be sufficient to minimize flood risks from a low to moderate amount of sea level rise. However, these measures might not result in a design that permanently aids in minimizing risks to life and property from hazards related to the higher, but possible future sea level rise conditions. The applicant has proposed to raise the perimeter of the foundation and hardscape to be 9.5 feet (0.5 feet above the finished floor elevation) and to use the patio seat wall for flood protection for water levels up to 10.5 feet, and has provided information stating that the proposed residence is not reliant upon the existing wooden bulkhead/seawall for any current or future protection. However, water level above 10.5 feet is within the NRC range of sea level rise by 2100 and at the highest range of sea level rise provided by the NRC Report, the water level could reach 12.7 feet during the highest tides and the applicant has not provided any adaptation measures to deal with potential for water level above 10.5 feet that will not require the need of a protective device. Such adaptation measures could include flood proofing the first floor, raising the structure, installing temporary barriers such as sand bags, and, if the site is flooded regularly during routine high tides, possibly converting the lowest building level to non-habitable uses, etc. Therefore, the Commission imposes **Special Condition No. 1**, which requires the applicant submit final plans indicating that the perimeter of the foundation and hardscape shall be at a minimum elevation of 9.5 feet NAVD88; and to provide adaptation measures to address potential flooding from sea level rise (up to 5.5 feet).

Bulkheads/seawalls contribute to the destruction of sites through impacts to marine habitats and regional sediment dynamics. Further, bulkheads/seawalls adversely impact public access and recreation. Public Trust Tidelands are harborward of the subject site and they must be protected for public trust allowed uses, such as public recreational piers, visitor-serving facilities and boating facilities. To ensure that the proposed new development does not contribute to the destruction of the site or the surrounding area and is consistent with Section 30253 of the Coastal Act and the public access and recreation and marine resource protection policies of the Coastal Act, the Commission imposes **Special Condition No. 2** requiring the applicants to agree that no existing shoreline protective device(s) shall be maintained or expanded or new shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to this CDP, including but not limited to, the residence and garage, foundations, patio and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural hazards in the future.

The proposed project is located in an area where coastal hazards exist and can adversely impact the development. Therefore, the Commission imposes **Special Condition No. 3**, requiring the applicant to assume the risk for the development.

Any potential changes to the proposed project may result in adverse impacts to coastal processes. To ensure that development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition No. 4**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-15-0694 or a new coastal development permit.

During construction and post construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, as a result, several special conditions address and minimize impacts to water quality and marine resources as follows: **Special Condition No. 5** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris; **Special Condition No. 6** requires the applicant to conform with the submitted drainage and runoff control plan and to adequately maintain it throughout the life of the proposed development; and **Special Condition No. 7** imposes landscape controls that require that all vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

Public Trust Tidelands are located bayward of the subject site. The proposed project does not involve any development on Public Trust Tidelands. As conditioned, the proposed development will not impact public access to or along the Public Tidelands. To preserve and maintain access to the Public Trust Tidelands, **Special Condition No. 8** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

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 **Special Condition No. 9**, which requires 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.

As conditioned, the proposed project will conform with Coastal Act Policy Sections 30253, 30210, 30211, 30212, 30220, 30221, 30222, 30224, 30212, 30230, 30231, 30232, 30251 and 30252 of the Coastal Act.

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 is Chapter 3 of the Coastal Act. The certified Coastal Land Use Plan may be used for guidance.

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-15-0694 pursuant to the staff recommendation.*

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

Resolution:

The Commission hereby approves Coastal Development Permit 5-15-0694 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 will 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 permittees 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 permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Final Plans and Sea Level Rise Adaptation Measures. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of final plans. The final project plans shall incorporate the following: 1) the perimeter of the foundation and hardscape shall be at a minimum elevation of 9.5 feet NAVD88 to accommodate a rise in sea level; and 2) plans and accompanying analysis of potential adaptation measures to minimize hazards to life and property from potential flooding from sea level rise (up to 5.5 feet) including but not limited to, flood proofing the first floor, elevating the structure, sand bags and, if the site is flooded regularly during routine high tides, possibly converting the lowest building level to non-habitable uses. The final project plans shall be in substantial conformance with the plans dated October 22, 2015. The revised plans submitted to the Executive Director shall bear evidence of Approval-in-Concept of the revised design from the City of Newport Beach Community Development Department.

The applicant 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. No Future Shoreline Protective Device and Future Removal of Development.

A. By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no existing shoreline protective device(s) shall be maintained or expanded and no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-15-0694 including, but not limited to, the residence and garages, foundations, patio and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural coastal hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself 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 and all successors and assigns, that the landowners shall remove and/or relocate, in whole or in part, the development authorized by this permit, including the residence and garage, foundations, patio and any future improvements, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above, in subsection A. of this condition. In the event that portions of the development fall to the bay before they are removed, the landowner shall remove all recoverable debris associated with the development from the bay and lawfully dispose of the material in an

approved disposal site. Removal of any development from the subject property and from areas bayward of the subject property shall require an amendment to this coastal development permit or a new coastal development permit, if legally required.

3. 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.

4. Future Development. This permit is only for the development described in Coastal Development Permit No. 5-15-0694. 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. 5-15-0694. Accordingly, any future improvements to the residence and garages, foundations and patio authorized by this permit, including but not limited to any sea level rise adaptation measures as required in **Special Condition No. 1**, above, and 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. 5-15-0694 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris. The applicant 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 subject 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; and
M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

6. Conformance with the Drainage and Runoff Control Plan. The applicant shall conform with the Grading and Drainage Plan prepared by Mark Becker, Inc. dated October 22, 2015 showing roof top and surface drainage directed to a trench drain and to adequately maintain the plan throughout the life of the proposed development. 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.

7. Landscaping-Drought Tolerant, Non-Invasive Plants. Vegetated landscaped areas shall only consist of native plants (preferably native to Orange County and appropriate to the habitat type) 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). If potable water is used for irrigation only drip or micro spray irrigation systems may be used. Other water conservation measures shall also be considered, such as use of weather based irrigation controllers.

8. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The applicant shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

9. 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

A. PROJECT LOCATION AND DESCRIPTION

The applicant proposes to construct a new 2,599 square foot, 29-foot high, single-family residence with two attached single car garages for a total of two car parking spaces totaling 412 square feet on a currently vacant bayfronting lot (**Exhibits No. 2-5**). The foundation will consist of a mat slab foundation. The plans for the proposed project show the top of the slab/finished floor elevation of the residence will be at 9.0 feet. The project has been designed to be above the maximum highest high tide elevation of 7.2 feet NAVD88, as identified by the applicant's consultant, and above the City of Newport Beach design flood height of +9.0 feet MLLW. The project also includes hardscape and landscape work along the side yards and the rear yard (harborside). Grading will consist of 277 cubic yards of recompaction.

The subject site is a vacant bayfronting lot located at 1509 East Bay Avenue within Newport Harbor, within the City of Newport Beach, Orange County (**Exhibit No. 1**). The lot size is 2,550 square feet and t is located within an existing urban residential area. To the north of the subject site is a sandy beach and Newport Harbor, to the east and west of the subject site are similar single-family residences, to the south of the subject site is an alley. The harborside boundary line separates private property from Public Trust Tidelands created through an adjudicated line, established through a 1928 judgement rendered in action No. 23678 in the Superior Court of the State of California in and for the County of Orange. Currently, there is an existing wooden bulkhead/seawall bayward of the proposed residence, but still on the applicant's private property.

The City of Newport Beach Coastal Land Use Plan (CLUP) designates the site as Single-Unit Residential Detached (RSD-B) and the proposed project adheres to this designation.

B. PRIOR COMMISSION PERMIT ACTIONS

On April 14, 2014, the Commission approved Coastal Development Permit No. 5-13-0962-(Kochis) for the following development: demolition of an existing 5,224 square foot single-family residence with an attached garage located on a 10,980 square foot bayfront property; approval of a tentative parcel map to subdivide the property into two separate parcels: Parcel 1 would be 6,498 square feet and Parcel 2 would be 4,482 square feet; and construction of a new 28-foot high, two-story single-family residence on Parcel 1 consisting of 3,182 square feet of living area with an attached three-car, 668 square foot garage (total structure would be 3,850 square feet. Grading consisted of 414 cubic yards of cut and fill. No residence was proposed for Parcel 2 at the time of this approval. Nine (9) Special Conditions were imposed regarding: 1) assumption of risk; 2) no future shoreline protective device; 3) future development of boating facilities; 4) future development; 5) consistency with recommendations of the geotechnical report and sea level rise analysis; 6) conformance with the submitted grading, drainage and erosion control plans; 7) landscape plans; 8) storage of construction materials, mechanized equipment and removal of construction debris; and 9) a deed restriction.

On October 9, 2014, the Commission approved Coastal Development Permit No. 5-13-0962-A1-(Kochis), a Material Amendment for the following development: removal of an existing 'W" shaped approximately 1,339 square foot floating dock, approach, pier, and gangway, as well as nine 12 inch square concrete piles and six 14 inch square concrete "T" piles; and replacement with two new "I" shaped approximately 1,316 square foot combined boat dock systems (one for each of the subdivided properties), with a total of four 14 inch concrete piles and ten 14 inch square concrete "T" piles. Nine (9) Special Conditions were imposed regarding: 1) future development; 2) pre-construction eelgrass survey; 3) pre-construction *Caulerpa taxifolia* survey; 4) construction responsibilities and debris removal; 5) best management practices (BMPs); 6) public rights; and 7) permitted uses on dock structures.

C. HAZARDS

Section 30253 of the Coastal Act states, in pertinent part:

> *New development shall do all of the following:*
>
> *(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
>
> *(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Section 30235 of the Coastal Act states:

> *Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when*

> *required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible*

Section 30253 of the Coastal Act states that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard and requires that new development shall not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, or require construction of protective devices that substantially alter natural landforms along bluffs and cliffs.

The subject site is a bayfronting lot with an existing wooden bulkhead/seawall located on the sandy beach bayward of the proposed residence, on the applicant's property, approximately 10 to 16 feet inland from the northern (harborward) property line adjacent to the waters of the harbor. The bulkhead/seawall runs parallel to the shoreline increasing in height above the existing sandy beach from ½ foot to approximately 4 feet high at the eastern property line.

To analyze the suitability of the site for development relative to potential coastal hazards, Commission staff requested the preparation of a wave run-up, flooding, erosion hazard and sea level rise analysis, prepared by an appropriately licensed professional (e.g. civil engineer with coastal experience).

The applicant provided a Hazard Analysis/Sea Level Rise Analysis prepared by GeoSoils, Inc. dated August 24, 2015 and additional analysis prepared by GeoSoils, Inc. regarding the Existing Angled Timber Wall dated October 12, 2015 and a letter from ESI/FME Inc. (Structural Engineers) dated October 12, 2015, which address the reliance of the proposed project on the existing bulkhead/seawall. The analysis states that the maximum highest high tide elevation in this project area is 7.20 feet NAVD88 and mean higher high water (MHHW) is 5.25 feet NAVD88. At 9.00 feet NAVD 88, the finished floor elevation of the proposed residence will be 3.75 feet above MHHW and 1.8 feet above the maximum highest high tide elevation. The analysis concludes that the proposed finished floor is at an elevation that would not expose the habitable portions to flooding from even the highest current tides under present sea level conditions. The analysis states that sea level rise will not reach 1.8 feet above present levels, even using the highest projected range of sea level rise, until approximately 35 years from now. Additionally, the analysis states that under the U.S. Army Corps of Engineers (USACOE) low and intermediate sea level rise estimates the project will be safe for the next 75 years (life of the development). While this analysis states that the site will be safe for the life of the project, it does not conclude that no future shoreline protective device will be needed over the life of the proposed development. However the additional analysis prepared by GeoSoils, Inc. dated October 12, 2015 and the letter from ESI/FME Inc. (Structural Engineers) dated October 12, 2015 do conclude that the proposed development does not rely upon the existing wooden bulkhead/seawall.

The GeoSoils report did not provide any analysis of flooding by waves. This location is sheltered from most waves, and although some small chop and wind wave conditions area possible, waves

will not significantly increase water levels. For analyses of future flood conditions, waves could be a contributing factor to the flooding risks at the site and all examination of the water levels that could put the proposed development at risk would include wave concerns for resulting water levels.

The NRC Report provides both a range of future sea level rise for south of Cape Mendocino that are based upon all the emission scenarios developed by the Intergovernmental Panel on Climate Change and a 'projection' of future sea level rise amounts for Los Angeles for the years 2030, 2050 and 2100 that is based only on one of the future emission scenarios (a middle range emission scenario called A1B). For the southern California are, the range of sea level rise projections for 2100 are between 17 inches and 66 inched and the 'projection' for Los Angeles for 2100 is 37 inches +/- 10 inches and a 3-foot rise in sea level by 2100 has become a average, middle amount of sea level in many planning and design situations. A 3 foot rise in sea level over the next 100 years would result in an extreme high tide still water level of 10.2 feet NAVD88 (7.2 feet NAVD88 + 3 feet = 10.2 feet NAVD88) and thus the proposed finished floor of 9.0 feet NAVD 88 would be 1.2 feet below the flooding height. If there were to be a 5.5-foot rise (the upper range of the NRC projections for southern California), an extreme high tide still water level of 12.7 feet (7.2 feet + 5.5 feet = 12.7 feet MLLW) could result. Such a rise would exceed the finished floor elevation, result in water up to 3.7 feet higher than the floor during peak tide or tide and wave events. Therefore, the proposed development may be impacted by future flooding hazards if sea level rise approaches the upper range of the NRC projections.

In considering sea level rise impacts, the Commission has recognized that there can be differences between the conditions that should be used in planning level analysis and those that are used in design decisions. It is important to understand the range of impacts from the highest possible sea level rise conditions; however, it may not be appropriate or possible to design all projects for the worst possible sea level rise projections. Thus, the Commission considers both the initial design, as well as options for adaptation, to minimize risks to life and property in cases where future sea level may exceed the amount used in the initial design However, some adaptation measures, such as the installation of, or reliance upon, barrier walls, seawalls, or levees, can result in significant impacts to coastal resources and when design alone is not used to minimize risk, it is important to determine whether there are adaptation that will not result in future impacts to coastal resources. In reviewing projects for flood risk and hazards related to sea level rise, the Commission considers both the design elements and the options for adaptation.

In an attempt to minimize risks to life and property from sea level rise-related flood hazards, the applicant has proposed to raise the perimeter of the foundation and hardscape to 9.5 feet. Also, the applicant has stated that a patio seat wall, not constructed or to serve as a bulkhead/seawall, located at the bayward end of the 1st floor rear bayside patio adjacent to the sandy beach will be at an elevation of 10.5 feet, which would also aid in temporarily minimizing risks to life and property from temporary flood conditions because it will have the effect of dampening the force of floodwaters. These two design modification will provide some increased flood protection to the proposed residence.

However, elevated foundation could be overtopped by an combination of high tide, waves and sea level rise that would result in a water level higher than 9.5 feet NAVD 88 and the seat wall

would be overtopped at water levels above 10.5 feet NAVD 88. Such water levels could result from an extreme high tide with sea level rise greater than 3.3 feet, or a moderately high tide level with some small waves and future sea level rise of 4 to 5 feet. There are numerous possible water level combinations that would exceed the design conditions of the project site and that could result in future flooding of the lower level of the proposed residence. Thus, the proposed residence has not been designed to minimize risks to life and property for the full range of possible future sea level rise conditions.

In addition, the applicant has not provided any adaptation measures to deal with potential flooding in the event that the foundation and seat wall are overtopped. Such adaptation may not result in the installation of or reliance upon shoreline armoring. Acceptable adaptation options could include implementing measures such as flood proofing the first floor, elevating the structure, temporary barriers such as sand bagging, converting the lower floor to non-habitable uses. etc. In the future, other flood-reduction options may have been developed; however it is important to demonstrate now that there are options other than shoreline armoring for future adaptation. Therefore, the Commission imposes **Special Condition No. 1** which requires the applicant submit final plans indicating that the perimeter of the foundation and hardscape shall be at a minimum elevation of 9.5 feet NAVD88 and the rear bayside patio seat wall shall be at a minimum elevation of 10.5 feet NAVD88 to aid in minimizing risks to life and property from hazards related to the rise in sea level; and to provide adaptation measures to address potential flooding from sea level rise (up to 5.5 feet). Special Condition No. 2 ensures that future adaptation measures will not rely upon or require the construction of any shoreline protection structures.

As stated, the consultant has indicated that the proposed development is not reliant on the existing seawall and based on staff's observation the existing wooden wall appears to only function as partial support of a perched beach for the adjacent residential property to the east (there is no seawall on the adjacent property to the west). The provenance of this wall is presently unknown and may have been built prior to the effective date of the California Coastal Zone Conservation Act of 1972 ("Proposition 20") and may not have received proper approvals from relevant authorities, or it may have been built after the effective date of Proposition 20 and may never have received a coastal development permit. The existing seawall, if unpermitted, should be removed. As explained further, below, the proposed development cannot rely on the existing seawall (repaired or expanded) or a future seawall to protect the structure.

Section 30253 of the Coastal Act states that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard and states that new development shall not create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. Should the proposed new development require maintenance or expansion of the wooden bulkhead/seawall, or the construction of a bulkhead/seawall in the future, such bulkhead/seawall would contribute to the destruction of the surrounding area, inconsistent with section 30253(b) of the Coastal Act. For example, the construction of a seawall would lead to significant erosion/destruction of beach area in front of the seawall, scour of the beach seaward of the wall and severing of the biological connectivity between the tidal and upland zones. Shoreline protective devices can cause changes

in the shoreline profile, particularly changes in the slope of the profile resulting from a reduced beach width. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines and beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy.

Current aerial images of the harbor provide evidence of such erosion on sites near to the subject site. In the following image there is a beach at 1501 East Bay Avenue (adjacent to the subject site), which has no apparent seawall; whereas, the site at 1417 East Bay Avenue clearly has a seawall but little to no beach. Such effects will become more pronounced with sea level rise.

The effects of this destruction on biological resources, and public access and recreation are discussed in those sections of this staff report.

The Hazard Analysis states that many areas around and adjacent to Newport Harbor are at elevations well below 9.0 feet NAVD88 and are at risk to flooding besides this site. This statement highlights the importance of planning ahead for possible sea level rise, notifying future property owners of potential hazards, understanding the impacts of adaptation options on coastal resources, and planning regionally. Efforts should be taken by the City of Newport Beach and County of Orange, including in their capacity as Trustees of Public Tidelands in Newport Harbor, to create such a regional adaptation plan.

As conditioned the perimeter of the foundation and hardscape shall be at a minimum elevation of 9.5 feet NAVD88 to accommodate more of a rise in sea level than the current design, while maintaining the applicant's desired design of the home. The condition requires the applicant to develop sea level rise adaptation measures for the future (**Special Condition No.1**). As conditioned, the proposed project will minimize risks to life and property in areas of high flood hazard and will avoid impacts to the surrounding area and not contribute significantly to erosion because it will not be dependent on a shoreline protective device. To ensure the proposed new development does not contribute to the destruction of the surrounding area nor contribute

significantly to erosion throughout the life of the development. **Special Condition No. 2** requires the applicant to waive any rights that may exist to retention of the existing shoreline protective device(s) or expansion of the existing or construction of a new shoreline protective device(s) to protect the development approved pursuant to this CDP, including but not limited to, the residence and garage, foundations, patio and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, sea level rise or other natural hazards in the future. **Special Condition No. 2** also requires that the landowner remove the development authorized by this permit if any government agency has ordered that the structure is not to be occupied due to the hazards identified above. The landowner must also remove any recoverable debris associated with the development that should fall into bay waters before they are removed.

Although no shoreline protection is necessary, the proposed development is located in an area where coastal hazards exist and can adversely impact the development. Therefore, the Commission imposes **Special Condition No. 3**, which requires the applicant to assume the risk of development.

Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach could adversely affect future shoreline conditions if not properly evaluated and potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition No. 4**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-15-0694 or a new coastal development permit.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30253 of the Coastal Act.

D. Public Access & Recreation

Coastal Act Section 30210 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.*

Coastal Act Section 30211 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.*

Coastal Act Section 30212 states:

> *(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*
>
> *(b) For purposes of this section, "new development" does not include:*
>
> > *(1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.*
> >
> > *(2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.*
> >
> > *(3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.*
> >
> > *(4) The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.*
> >
> > *(5) Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.*
> >
> > *As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.*
>
> *(c) Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.*

Coastal Act Section 30220 states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Coastal Act Section 30221 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.

Coastal Act Section 30222 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.

Coastal Act Section 30224 states:

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

1. Effects of Seawalls

Seawalls are known to interrupt normal processes of erosion and sediment transport, which can lead to regional sediment starvation in beaches, inconsistent with Coastal Act policies protecting access and recreation. In addition, shoreline protection is placed on waterfront areas that are protected for public access and recreational uses. While no part of the proposed project takes place on Public Trust Tidelands, the site is adjacent to Public Trust Tidelands. The harborside boundary line separates private property from Public Trust Tidelands created through an adjudicated line, established through a 1928 judgement rendered in action No. 23678 in the Superior Court of the State of California in and for the County of Orange. Currently, there is an existing wooden bulkhead/seawall harborward of the proposed residence, but still on the applicant's private property. Public trust lands must be protected for public trust allowed uses, such as public recreational piers, visitor-serving facilities, and boating facilities. The Public Trust Tidelands in Newport Harbor were granted by legislation to the County of Orange and City of Newport Beach. Public trust doctrine traditionally describe navigation, commerce and fisheries as the acceptable uses within public tidelands, but these uses have been broadened to include the right of the public to fish, hunt, bathe, swim; boating and general recreation; preservation; scientific study; use as open space; and the right of the public to use the bottom of the navigable waters for anchoring, walking, or standing. The grant to the County further limits these uses, stipulating that the Public Trust Tidelands near the subject site can only be used for purposes of general statewide interest, including the operation of docks and similar structures,

recreational facilities, preservation of nature for scientific study, open space, and wildlife habitat. Coastal Act Sections 30220, 30221, 30222 and 30224 require that coastal areas suited for water-oriented recreational activities be protected for such uses; that oceanfront land suitable for recreational use be protected for such uses; that visitor-serving commercial recreational facilities shall have priority over private residential uses on private lands; and that recreational boating be encouraged by limiting non-water dependent land uses that congest access corridors and preclude boat support facilities. Further Coastal Act Sections 30210 through 30212 requires maximum public access and recreational opportunities to be provided. The public trust lands harborward of the site, which can be accessed approximately 75-100 feet upcoast and downcoast of the site via vertical public access points at the end of "G" and "H" street, are coastal areas suitable for boating and other water-oriented recreation activities. From every street end along the Balboa Peninsula, in fact, members of the public may access Public Trust Tidelands and, for example, launch a kayak

When seawalls/bulkheads are constructed along the shores of Newport Bay they have a generally consistent design that involves placing a vertical sheetpile, embedded in bedrock, parallel to the shoreline. To provide lateral support tie backs are affixed to the wall, extending landward, that are embedded in soil or a large block of concrete known as a 'deadman' behind the wall. Such walls lead to erosion of the soils and beach in front of the seawall. Where the shoreline is eroding and armoring is installed, the armoring will eventually define the boundary between the bay and the upland. On an eroding shoreline, a beach will exist between the shoreline or waterline as long as sand is available to form a beach. As erosion proceeds, the profile of the beach also retreats and the beach area migrates inland. This process stops, however, when the backshore is fronted by a hard protective structure such as a seawall/bulkhead. While the shoreline on either side of the armor continues to retreat, shoreline in front of the armor eventually stops at the armoring. The beach area will narrow, being squeezed between the moving shoreline and the fixed backshore. Eventually, there will be no available dry beach area and the shoreline will be fixed at the base of the structure. In the case of an eroding shoreline, this represents the loss of a beach as a direct result of the armor.

In addition, sea level has been rising for many years. Also, there is a growing body of evidence that there has been an increase in global temperature and that an increase in sea level can be expected to accompany this increase in temperature (some shoreline experts have indicated that sea level could rise by as much as 5.5 feet by the year 2100). Mean sea level affects shoreline erosion in several ways, and an increase in the average sea level will exacerbate all these conditions. On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean/bay with the shore, leading to a faster loss of the beach as the beach is squeezed between the landward migrating ocean and the fixed backshore.

Maintaining or expanding the existing bulkheads/seawall or placement of a new seawall to protect the proposed residence would impact use of the adjacent Public Trust Tidelands for recreational uses. Even a wall located further landward will result in beach scour and eventually submerge the Public Trust Tidelands adjacent to the subject property, which puts limitations on the usefulness of the Public Trust Tidelands area for standing and walking along the shoreline. Thus, a future seawall at the site would be inconsistent with public access and recreation policies of the Coastal Act, including Sections 30210 through 30212 and 30220, 30221, 30222 and

30224. Therefore as conditioned to raise the perimeter of the foundation and hardscape and the inclusion of the bayside patio seat wall and to plan for adaptation measures should sea level rise above the finished floor elevation through **Special Condition No. 1**, the project is the feasible alternative that will avoid future impacts to public access because it has been designed in a manner that will not require shoreline protection. To ensure that future impacts to public access resources identified above are avoided throughout the life of the development that is approved under this permit, thereby enabling the Commission to find the development consistent with the public access and recreation policies of the Coastal Act, noted above, the Commission imposes **Special Condition No. 2**, which prohibits the construction of any shoreline protective device to protect the development authorized by this coastal development permit.

2. Parking

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 30252 of the Coastal Act states, in relevant part:

> *The location and amount of new development should maintain and enhance public access to the coast by…*
>
> *(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation…*

Section 30210 of the Coastal Act requires that public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where adequate access exists nearby. Section 30252 of the Coastal Act requires that public access to the coast be maintained and enhanced by supplying adequate parking to support new development.

The Commission has consistently found that two parking spaces are adequate to satisfy the parking demand generated by one individual residential unit. The proposed single family residence provides a total of two parking spaces located in two individual attached garages. Therefore, as currently designed, the development provides adequate parking.

The public trust lands harborward of the site can be accessed approximately 75-100 feet upcoast and downcoast of the site via vertical public access points at the end of "G" and "H" street. From every street end along the Balboa Peninsula, the public can access the Public Trust Tidelands area seaward of the subject site by watercraft or by swimming to the site. The proposed project does not involve any development on Public Trust Tidelands. Therefore, the proposed development will not impact current public access resources to or along the Public Trust Tidelands. In order to preserve and maintain access to the Public Trust Tidelands, **Special**

Condition No. 8 is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30210, 30211, 30212, 30220, 30221, 30222, 30224, 30212 and 30252 of the Coastal Act.

E. BIOLOGICAL RESOURCES

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 surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Bulkheads/seawalls are known to adversely impact marine resources if the structures are placed on actual marine resources, resulting in the destruction of surrounding marine habitat areas. Newport Harbor contains eelgrass beds, which are important nursery habitats for many fish species that maintain the populations of open ocean fish species, many of which are fished commercially and recreationally. Eelgrass beds are the type of habitat area that, pursuant to Section 30230 of the Coastal Act, deserves special protection as an area of special biological significance. The National Marine Fisheries Service Eelgrass Mitigation Policy (October 2014) states the following about eelgrass:

> *Eelgrass species (Zostera marina L. and Z. pacifica) are seagrasses that occur in the temperate unconsolidated substrate of shallow coastal environments, enclosed bays, and estuaries. Eelgrass is a highly productive species and is considered to be a "foundation" or habitat forming species. Eelgrass contributes to ecosystem functions at multiple levels as a primary and secondary producer, as a habitat structuring element, as a substrate for epiphytes and epifauna, and as sediment stabilizer and nutrient cycling facilitator. Eelgrass provides important foraging areas and shelter to young fish and invertebrates, food for migratory waterfowl and sea turtles, and spawning surfaces for invertebrates and fish such*

> *as the Pacific herring. Eelgrass also provides a significant source of carbon to the detrital pool which provides important organic matter in sometimes food-limited environments (e.g., submarine canyons). In addition, eelgrass has the capacity to sequester carbon in the underlying sediments and may help offset carbon emissions. Given the significance and diversity of the functions and services provided by seagrass, Costanza et al. (2007) determined seagrass ecosystems to be one of Earth's most valuable.*

Thus, eelgrass beds are the kind of habitat area that, pursuant to Section 30230 of the Coastal Act, deserves special protection as an area of special biological significance.

The NMFS October 2014 eelgrass policy also reports the following adverse effects of human development on eelgrass beds like those in front of the subject site:

> *Seagrass habitat has been lost from temperate estuaries worldwide (Duarte 2002, Lotze et al. 2006, Orth et al. 2006). While both natural and human-induced mechanisms have contributed to these losses, impacts from human population expansion and associated pollution and upland development is the primary cause (Short and Wyllie-Echeverria 1996). Human activities that affect eelgrass habitat distribution and abundance, including, but not limited to, urban development, harbor development, aquaculture, agricultural runoff, effluent discharges, and upland land use associated sediment discharge (Duarte 2008) occur throughout California. For example, dredging and filling; shading and alteration of circulation patterns; and watershed inputs of sediment, nutrients, and unnaturally concentrated or directed freshwater flows can directly and indirectly destroy eelgrass habitats.*

Eelgrass surveys performed by the City show eelgrass grows in the harbor offshore of the subject site. Coastal Act Section 30230 states that marine resources shall be maintained and enhanced, and Coastal Act Section 30231 states that the biological productivity of coastal waters shall be maintained, so construction of a future bulkhead or seawall that encroach on this habitat would be inconsistent with these policies.

Furthermore, on a shoreline without a fixed back beach, habitat along that shoreline would move inland along with rising sea levels. However, where there is a back beach fixed by a structure, like a bulkhead/seawall, that inland migration of habitat would be stopped at the face of the wall. As seas continue to rise, the habitat in front of the wall will convert to deep water habitat type. So, in this case, even if the existing bulkheads/seawall were maintained or expanded or a new bulkhead/seawall were placed further inland, erosive forces would eventually reach the wall, converting the nearshore sandy beach environment to deep-water habitat due to seawalls effect of deflecting wave energy which results in the scouring of the nearshore sandy beach sediment. Eelgrass thrives in shallow water areas of the harbor. As the area converts to deeper water it becomes less suitable to the growth of eelgrass and subsequent loss of eelgrass beds. As such, the construction of a future bulkhead or seawall would not maintain, enhance, or lead to restoration of eelgrass beds which are areas of special biological significance and would not sustain the biological productivity of coastal waters. Therefore as conditioned to raise the perimeter of the foundation and hardscape and the inclusion of the bayside patio seat wall and to plan for adaptation measures should sea level rise above the finished floor elevation pursuant to

Special Condition No. 1, the proposed project is the feasible alternative that will avoid marine resource impacts because it has been designed in a manner that will not require shoreline protection. To ensure that marine resource impacts identified above are avoided throughout the life of the development that is approved under this permit, and to assure that the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act, the Commission imposes **Special Condition No. 2** that prohibits the construction of future shoreline protective devices at the site.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act.

F. 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 . . ."

If the existing bulkheads/seawall were maintained or expanded, or a new bulkhead/seawall installed, it would contribute to further private development along the coast. The existing shoreline in the surrounding area do include residential properties that include bulkheads/seawalls; however, the subject site at 1509 East Bay Ave. and the property directly to the west at 1501 East Bay Ave. provide one of the last remaining open stretches of sandy beach on the north side of that area of the Balboa Peninsula (refer to aerial picture on page 15 of the staff report). Allowing the maintenance or expansion of the existing bulkhead/seawall or installation of a new bulkhead/seawall would segment the open beach area and reduce the size of the sandy beach, thereby constraining views to and along the harbor in this area.

Therefore as conditioned to raise the perimeter of the foundation and hardscape and the inclusion of the bayside patio seat wall and to plan for adaptation measures should sea level rise above the finished floor elevation pursuant to **Special Condition No. 1**, the proposed project is the feasible alternative that will avoid visual resource impacts because it has been designed in a manner that will not require shoreline protection. To ensure that visual resources are protected throughout the

life of the development that is approved under this permit, and to assure that the proposed project is consistent with Section 30251 and 30231 of the Coastal Act, the Commission imposes **Special Condition No. 2** that prohibits the construction of future shoreline protective devices at the site.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30251 of the Coastal Act.

G. 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 surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Section 30232 of the Coastal Act states:

> *Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

Section 30230 of the Coastal Act requires that marine resources including biological productivity be protected. Section 30231 of the Coastal Act requires that the biological productivity of coastal waters be maintained, and where feasible, restored. In addition, Sections 30230 and 30231 require that the quality of coastal waters be maintained and protected from adverse impacts. Section 30232 of the Coastal Act requires protection against the spillage of crude oil, gas, petroleum products, or hazardous materials in relation to any development.

1. Construction Impacts to Water Quality

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition No. 5**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

2. Post-Construction Impacts to Water Quality

The proposed project is considered development and there is an opportunity to improve water quality. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. In order to deal with these post construction water quality impacts, the applicant has submitted a drainage and runoff control plan. To minimize any impacts to water quality the proposed project may have after construction; all onsite runoff will be directed to a trench drain. In order to ensure that the drainage and runoff control plan is adhered to, the Commission imposes **Special Condition No. 6**, which requires the applicant to conform with the submitted drainage and runoff control plan and to adequately maintain it throughout the life of the proposed development.

The applicant has also stated that they shall also comply with the applicable water efficiency and conservation measures of the City's adopted CALGreen standards concerning irrigation systems, and efficient fixtures and appliances.

The applicant has stated that only minor landscaping will take place on the subject site, but no landscape plans have been submitted. The use of non-native vegetation that is invasive can have an adverse impact on native vegetation. Invasive plants are generally those identified by the California Invasive Plant Council (http://www.cal-ipc.org/) and California Native Plant Society (www.CNPS.org). No plant species listed as problematic and/or invasive by the California Native Plant Society or the California Invasive Plant Council 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 shall be utilized within the property. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and native to coastal Orange County and appropriate to the habitat type). In order to verify that only landscaping consistent with these requirements are placed onsite, the Commission imposes **Special Condition No. 7**, which imposes landscape controls that require that all vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

H. 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 (**Special Condition No. 9**) 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 in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

I. LOCAL COASTAL PROGRAM (LCP)

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 last updated in October 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.

J. 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.

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 Categorically Exempt from Provisions of CEQA for the construction. 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 CEQA.

The proposed project is located in an urban area. Infrastructure necessary to serve the project exists in the area. The proposed project has been conditioned in order to be found consistent with the resource protection policies of the Coastal Act. As conditioned, the proposed project

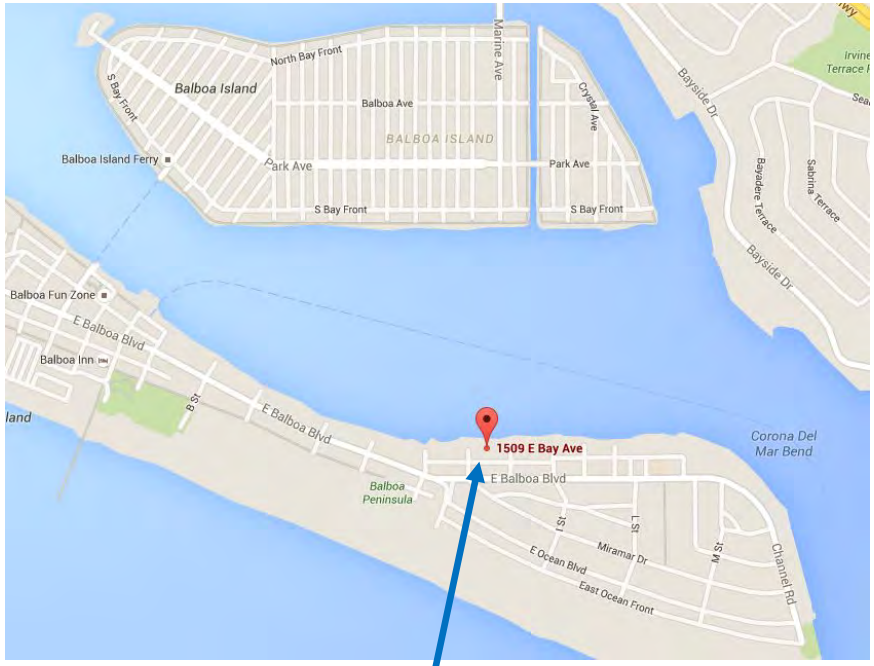
has been found consistent with the hazards, water quality and public access policies of the Coastal Act.

Therefore, as conditioned, the Commission finds that 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.

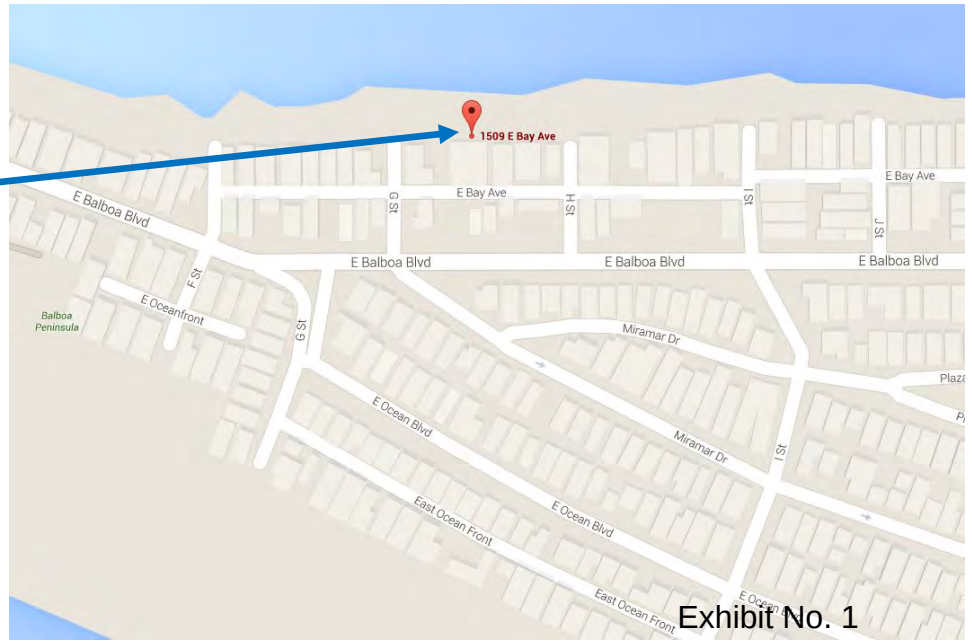
APPENDIX A

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit No. 5-13-0962-(Kochis); Approval-In-Concept from the City of Newport Beach Community Development Department dated May 21, 2015; Geotechnical Engineering Investigation of Proposed New Residence at 1509 East Bay Avenue Newport Beach, California prepared by Coast Geotechnical, Inc. (W.O. 465613-01) dated November 22, 2013; GeoSoils, Inc. Sea Level Rise Discussion dated August 24, 2015; GeoSoils, Inc. Existing Angled Timber Wall Discussion dated October 12, 2015; and ESI/FME Inc. letter dated October 12, 2015.

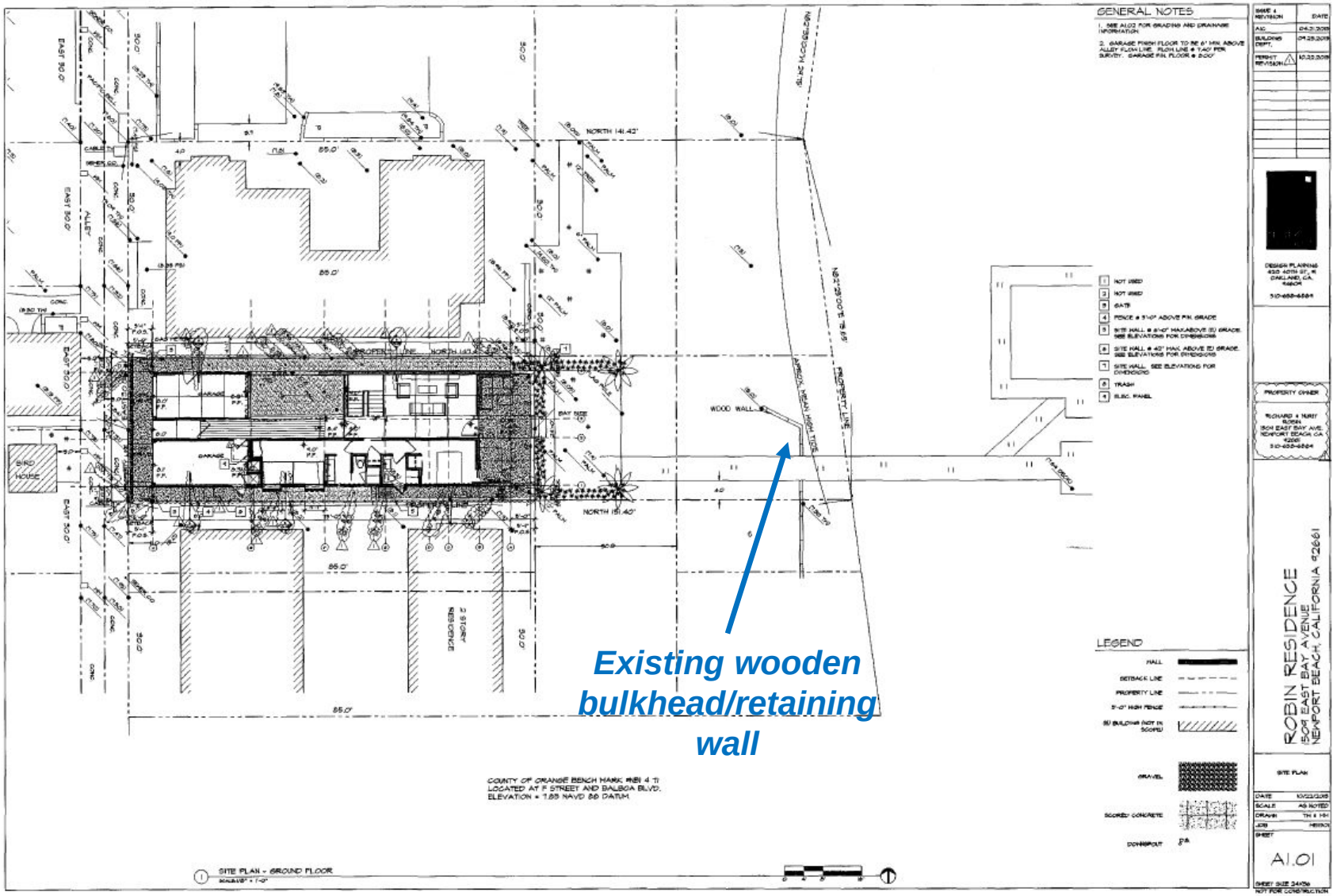
Location Map



Project Site



Site Plan



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Ground Floor Plan

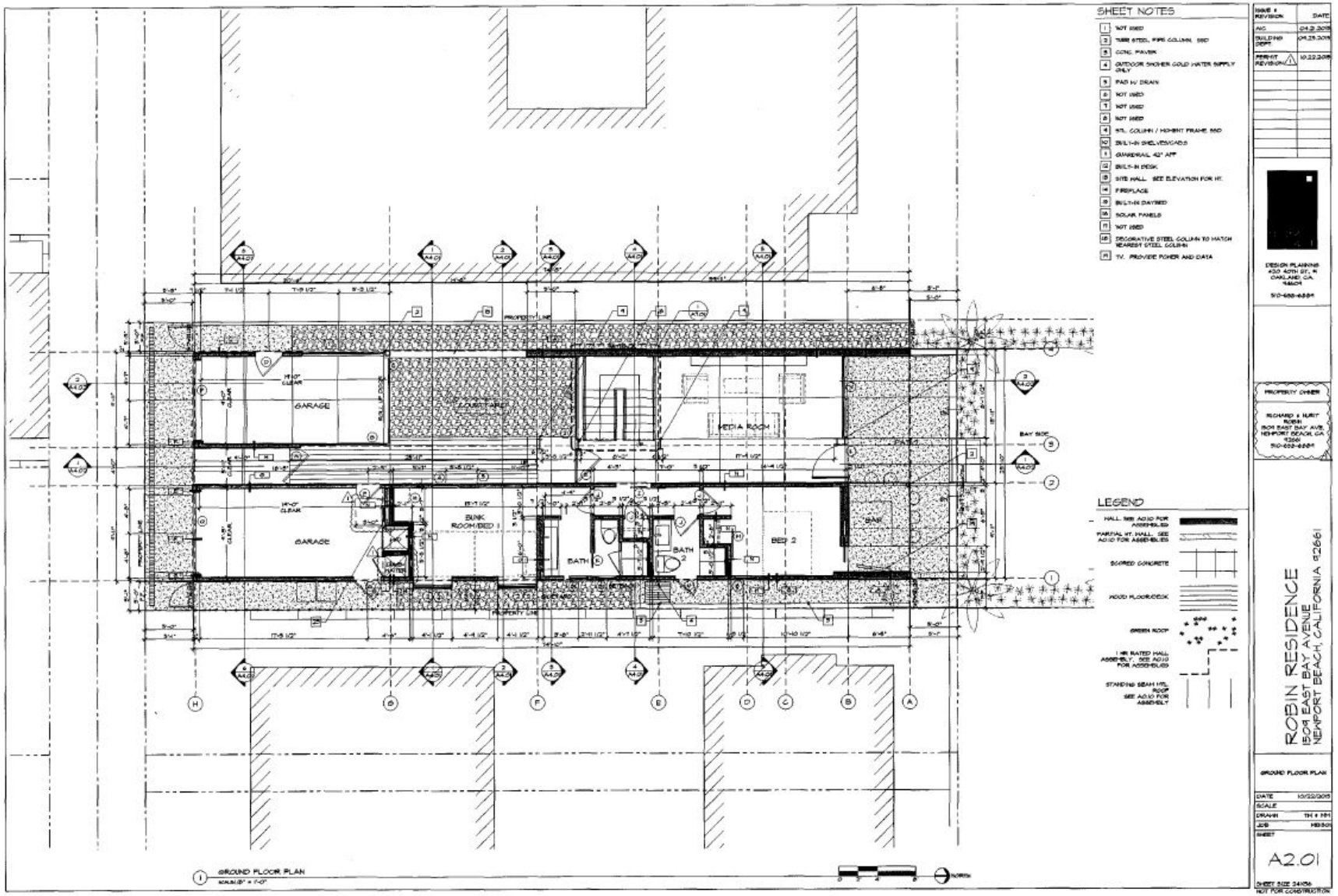

Exhibit No. 3
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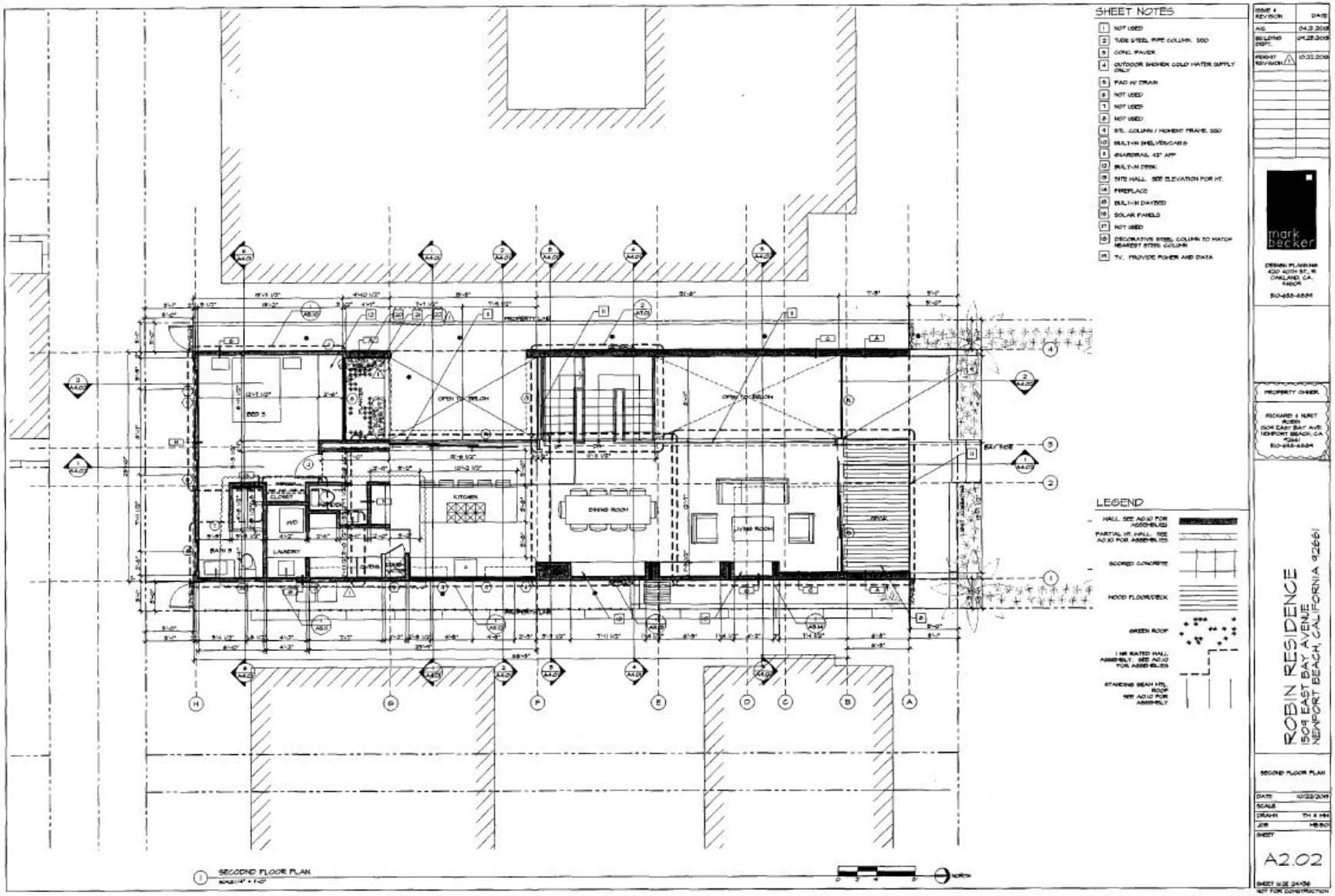
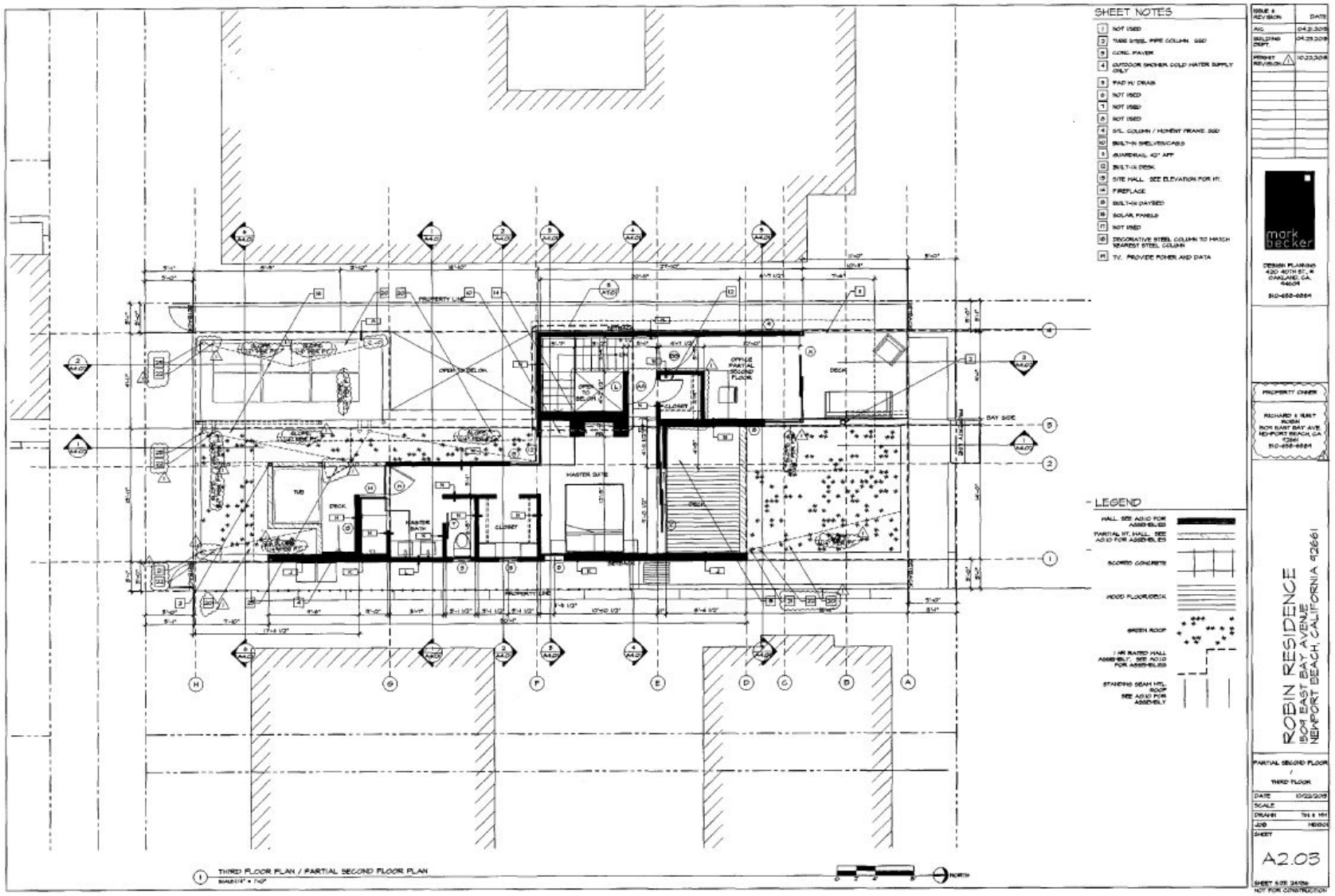
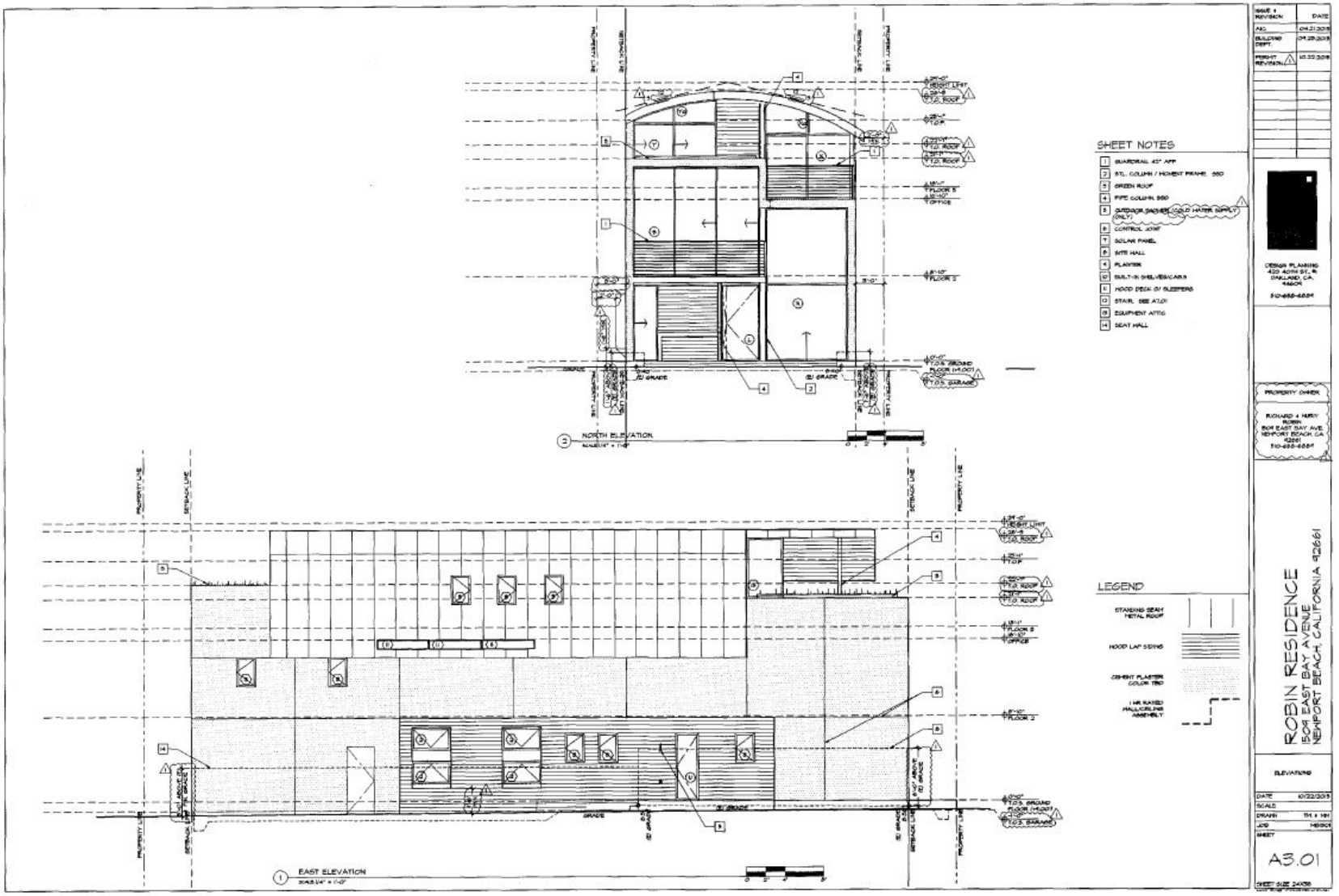
Second Floor Plan



Third Floor Plan



Elevation Plans



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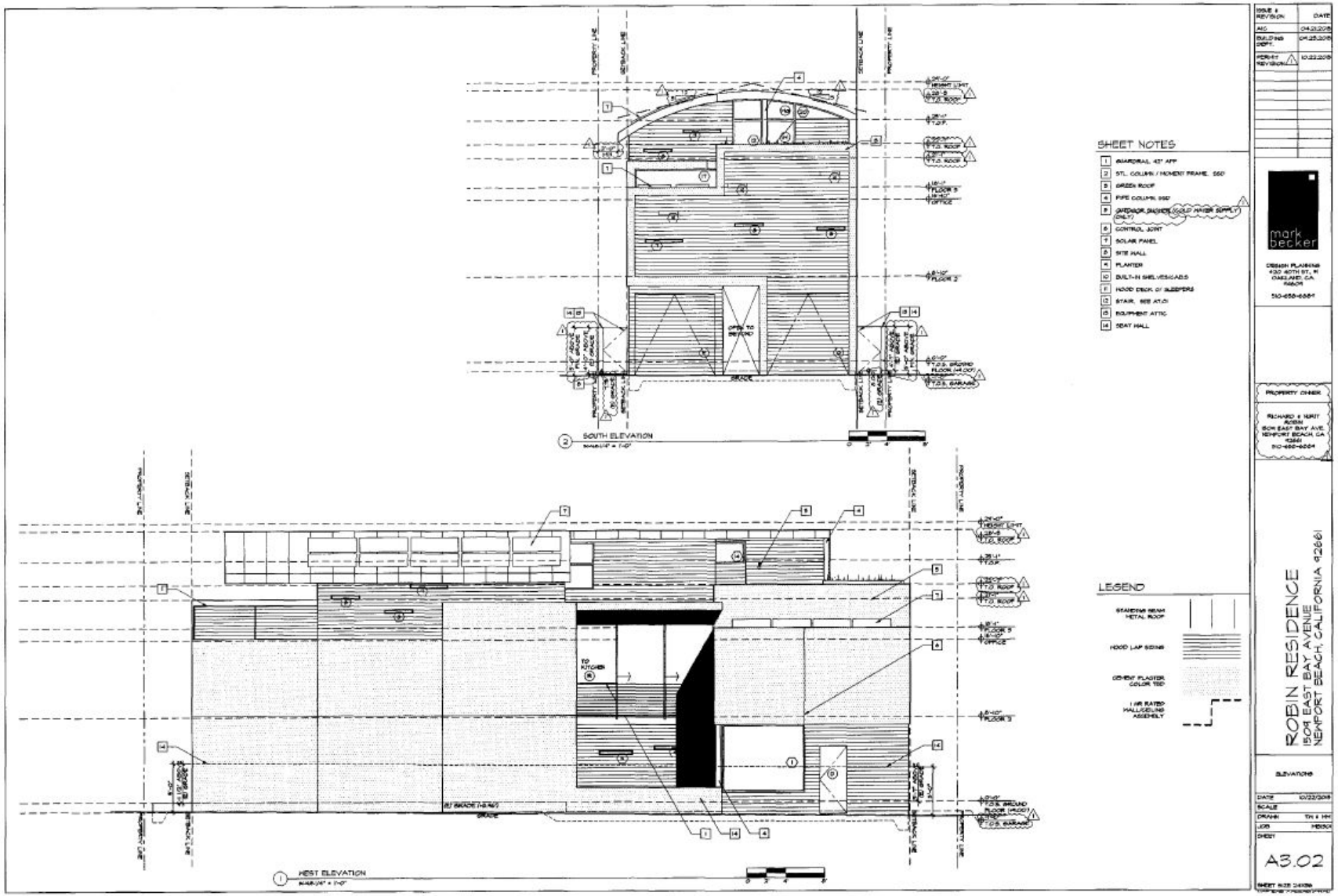
Elevation Plans



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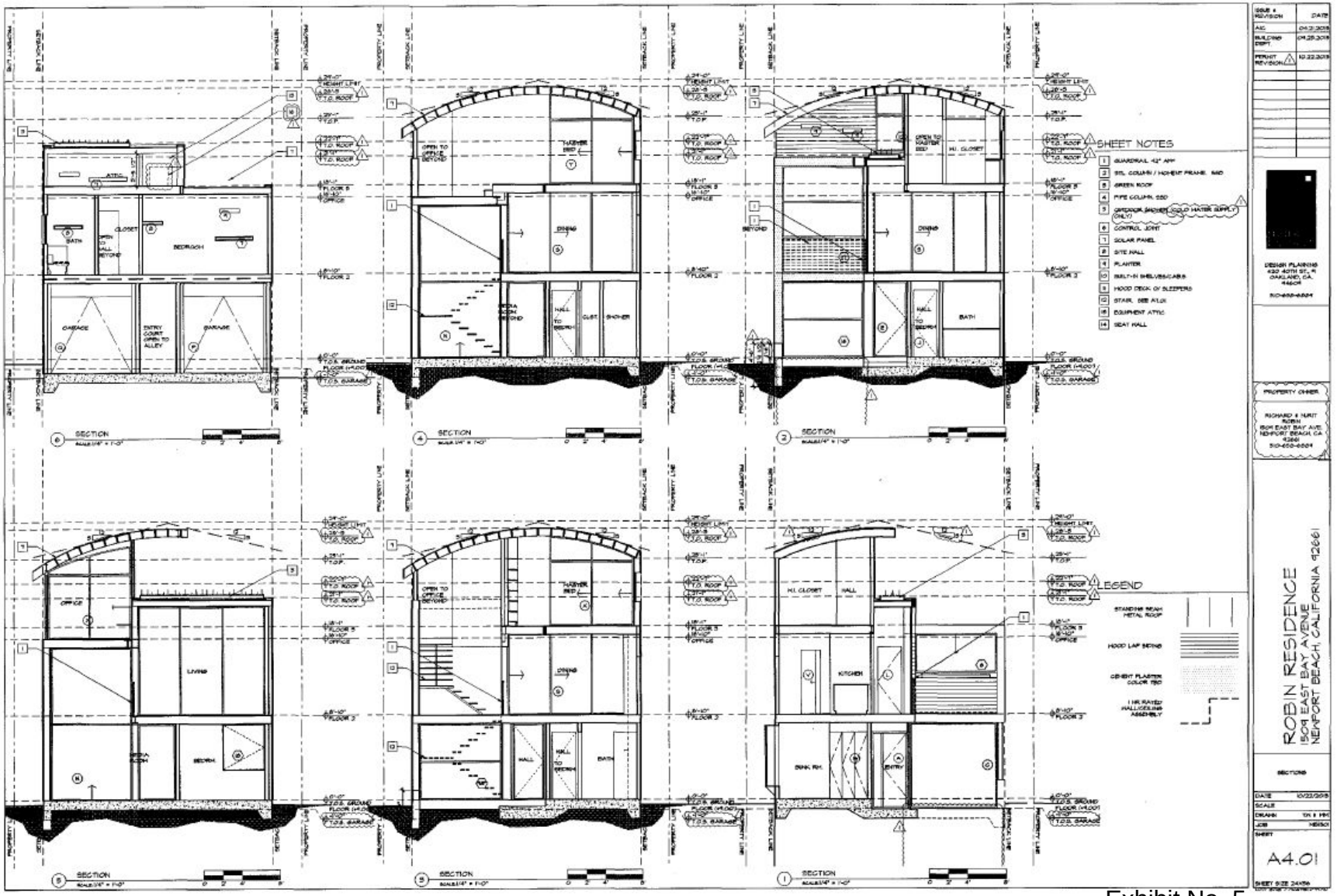
Section Plans



Section Plans

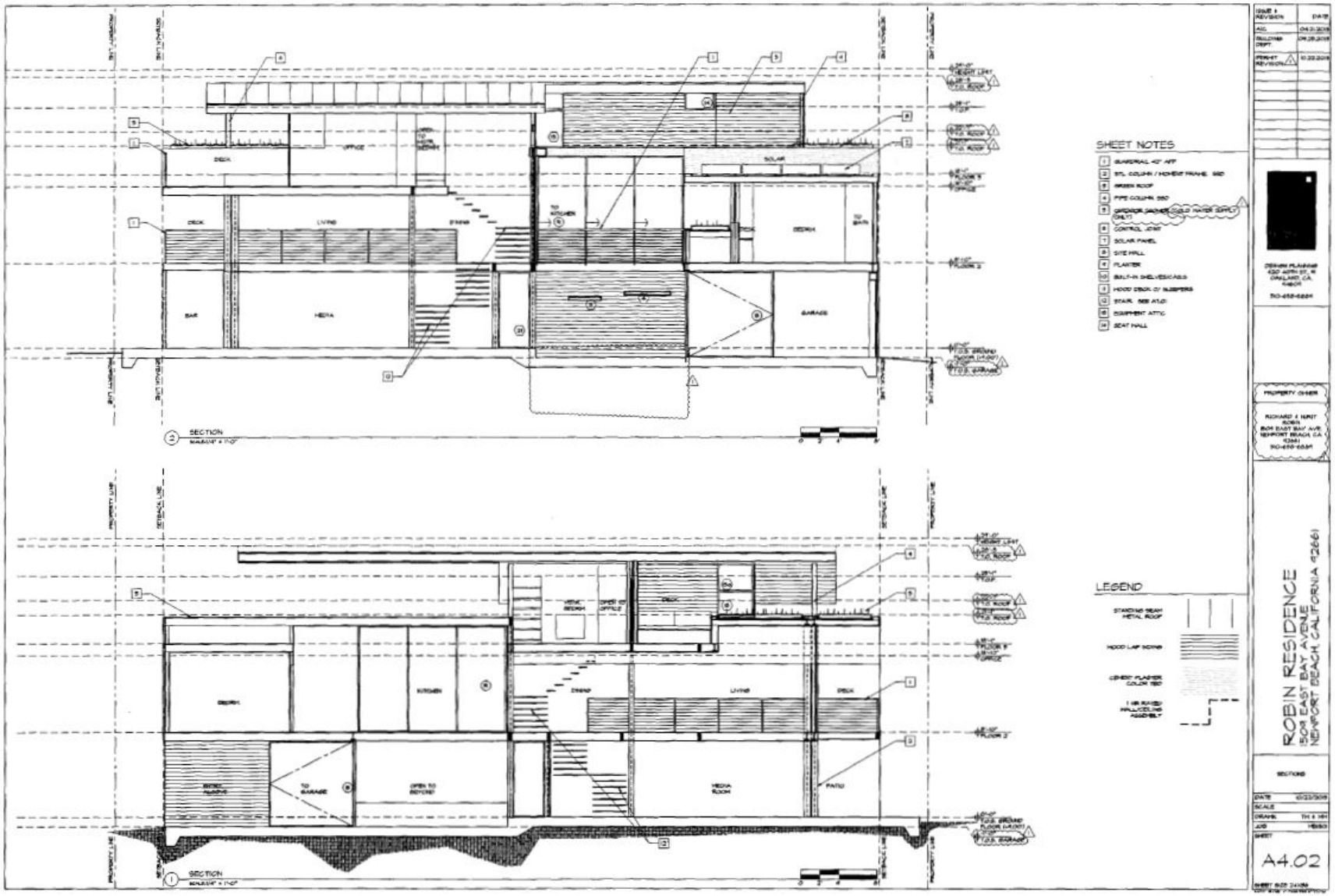


Exhibit No. 5
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