

CALIFORNIA COASTAL COMMISSION

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Th13a

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original staff report

ADDENDUM

January 8, 2016

TO: Coastal Commissioners and Interested Parties

FROM: South Coast District Staff

SUBJECT: **ADDENDUM TO ITEM Th13a, CDP NO. 5-15-0255 (ATKINS) FOR THE COMMISSION MEETING OF THURSDAY, JANUARY 14, 2016.**

CHANGES TO STAFF REPORT

Commission staff recommends modifications to the staff report dated December 18, 2015. Language to be added to the findings and conditions is shown in **underlined italicized bold text**, and language to be deleted is identified by ~~strike-out~~.

A. Pages 1-4 – Revise Summary of Staff Recommendation, as follows:

The subject site has an existing pool safety wall at elevation 7.9 **foot** MLLW located adjacent to the sandy beach harborward of the proposed residence that is subject to coastal hazards. **In previously approving Coastal Development Permit No. 5-02-302 (Barth) in May 2003 for the subject site, the Commission found that the pool safety wall (that currently exists on site) would not be a bulkhead/seawall (see Revised Findings dated September 18, 2003 for Coastal Development Permit No. 5-02-302 (Barth)).** The harborside boundary line separates private property from Public Trust Tidelands created through an adjudicated line, established through a 1928 judgment rendered in action No. 23678 in the Superior Court of the State of California in and for the County of Orange.

...

~~The project as submitted is inconsistent with the “principal structure stringline”. As such, the proposed development encroaches harborward and impacts public views and is inconsistent with the existing community character. Therefore, the Commission imposes **Special Condition No. 2**, which requires submittal of revised plans showing the residence to be consistent with the “principal structure stringline”.~~

B. Page 7 – Revise Section III Special Conditions by Eliminating Special Condition No. 2, as follows:

~~**2. Revised Plans.** 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~~

~~revised plans, including site plan, floor plans, elevation plans, foundation plans, grading plans, pool plans, pool foundation plans, etc. showing that the principal structure adheres to the “principal structure” stringline. The final project plans shall be in substantial conformance with the plans received on June 26, 2015 and October 1, 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.~~

NOTE: As a result of deleting Special Condition No. 2, all references to this special condition shall be deleted in the staff report. Additionally, as a result of deleting Special Condition No. 2, all the other special conditions will need to be renumbered.

C. Page 11 – Revise Section IV.A. Project Description and Location, as follows:

The applicant proposes to demolish an existing 9,488 square foot two-story single-family residence with a basement and construction of a new 12,933 square foot, three-story over the existing basement, single-family residence with an attached 1,310 square foot five-car garage on a bayfronting lot (**Exhibits No. 2-4**). The footprint of the new residence will be expanded minimally from the existing residence, ***but would not extend any more harborward than the existing development***. The existing basement will be incorporated into the new residence with no additional expansion of the basement proposed. The entire grade level foundation and basement level foundation and basement perimeter retaining wall system will be left intact and will be reused to support the proposed residence. The proposed at-grade portion of the house slightly varies from the existing in a few locations and in those locations new slab on grade, grade beam and caissons will be added and will be tied into the existing grade beam and caisson system. The plans for the proposed project show the top of the finished floor elevation of the first floor of the residence will be at 10.93 feet Mean Lower Low Water (MLLW). The project has been designed to be above the highest high tide elevation of 7.8 feet MLLW, 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). No grading is proposed. There is an existing boat dock system on site, but no work is proposed to it.

D. Pages 14-16 – Revise Section IV.C. Hazards, as follows:

The subject site is a bayfronting lot with an existing pool safety wall at elevation 7.9 foot MLLW located adjacent to the sandy beach harborward of the proposed residence. The pool safety wall runs parallel to the shoreline across the entire length of the property. ***In previously approving Coastal Development Permit No. 5-02-302 (Barth) in May 2003 for the subject site, the Commission found that the pool safety wall (that currently exists on site) would not be a***

bulkhead/seawall (see Revised Findings dated September 18, 2003 for Coastal Development Permit No. 5-02-302 (Barth)).

...

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 area, the range of sea level rise projections for 2100 are between 17 inches and 66 inches 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 an 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 10.8 feet MLLW (7.8 feet MLLW + 3 feet = 10.8 feet MLLW) and thus the proposed finished first floor elevation of 10.93 feet MLLW would be .13 feet ~~below~~ **above** 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 13.3 feet (7.8 feet MLLW + 5.5 feet = 13.3 feet MLLW) could result. Such a rise would exceed the finished first floor elevation, result in water up to 2.37 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 addition, the existing basement that will remain with the proposed development is at elevation 0.05 feet MLLW and would flood under any sea level rise scenario.

...

In addition, the applicant has not provided any adaptation measures to deal with potential flooding in the event that the basement, foundation and pool safety wall are overtopped and inundated. ~~Such adaptation may not result in the~~ **The lack of such adaption measures may result in the** installation of or reliance upon shoreline armoring. Acceptable adaptation options could include implementing measures such as flood proofing the basement and first floor, installing pumps in the basement to pump pout water, 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 finished floor elevation shall be at a minimum elevation of 10.93 feet MLLW 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. 3** 2 ensures that future adaptation measures will not rely upon or require the construction of any shoreline protection structures.

E. Page 20 – Revise Section IV.D. 1 Effects of Seawalls, as follows:

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 (**approximately 27-feet harborward from the pool safety wall based on the applicant’s plans**) 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 pool safety wall 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 adjacent to the site via the vertical public access point at the end of "K" 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

F. Page 22 – Revise Section IV.D.2 Parking, as follows:

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~~ five parking spaces ~~located in two individual attached garages.~~ Therefore, as currently designed, the development provides adequate parking.

G. Page 24 – Revise Section IV.E. Biological Resources, as follows:

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~~ if 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 have the first floor finished floor elevation be at 10.93 feet MLLW and to plan for adaptation measures for sea level rise 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. 3** ~~2~~ that prohibits the construction of future shoreline protective devices at the site.

H. Page 26 – Revise Section IV.F. 2 Stringline Policy, as follows:

In 2003, the Commission previously approved a single-family residence development on site (Coastal Development Permit No. 5-02-302-(Barth)) that was consistent with “principal structure stringline”. This development was built and as stated will be demolished (except for the basement) to make room for the new proposed residence. The proposed residence would not extend any more harborward than the existing development. The applicants have submitted a stringline drawing to Commission staff for analysis (**Exhibit No. 5**). The drawings shows a “principal structure stringline” which shows portion of the principal structure extending beyond the “principal structure stringline”. *However, Commission staff compared this stringline to the stringline of the previously approved development and determined that there was a minor discrepancy with the applicant’s current “principal structure stringline” and that the proposed development is actually consistent with the past Commission approved “principal structure stringline”. Additionally, the proposed residence is not extending any more harborward than the existing development and this along with the consistency with the “principal structure stringline” protects views of the bay and is consistent with the pattern of development for principal structures and does not cause any adverse cumulative visual impacts.* BY extending beyond the stringline, the project encroaches further harborward. The encroachment impacts public views along the bay and is inconsistent with the character of the area. In 5-02-302 (Barth), the principal structure was designed to adhere to the “principal structure stringline” and thus consistent with the character of the area. Revising the proposed principal structure to do the same would also result in consistency with the area. Therefore, as submitted, the proposed residence results in adverse impacts to visual resources and is inconsistent with Section 30251 of the Coastal Act. Therefore, the Commission imposes **Special Condition No. 2**, which requires submittal of revised plans showing the residence to be consistent with the “principal structure stringline”. As conditioned, the principal structure would adhere to the “principal structure stringline” and be located no further bayward than adjacent principal structures. Furthermore, as conditioned, the proposed principal structure would be consistent with the existing pattern of development for principal structures and not cause any adverse cumulative visual impacts.

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Th13a

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Staff Report: 12/18/15
Hearing Date: 1/14/16

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-15-0255

Applicant: Craig Atkins

Agent: Todd Skendarian

Project Location: 1813 East Bay Avenue, Newport Beach, Orange County

Project Description: Demolition of an existing 9,488 square foot two-story single-family residence with a basement and construction of a new 12,933 square foot, three-story over the existing basement, single-family residence with an attached 1,310 square foot five-car garage on a bayfronting lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION:

Commission staff is recommending **APPROVAL** of the demolition of an existing single-family residence and construction of a new single-family residence on a 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 pool safety wall at elevation 7.9 MLLW located adjacent to the sandy beach harborward of the proposed residence that is subject to coastal hazards. The harborside boundary line separates private property from Public Trust Tidelands created through an adjudicated line, established through a 1928 judgment rendered in action No. 23678 in the Superior Court of the State of California in and for the County of Orange.

While the proposed project will incorporate an existing basement that will be subject to flooding under any sea level rise scenario, a coastal hazards analysis was completed that concludes the proposed 10.93 foot Mean Lower Low Water (MLLW) finished first floor is at an elevation that would not expose the habitable portions (above the basement) to flooding from even the highest current tides under present sea level conditions and that no shoreline protective device will be required over the life of the proposed development (100 years).

The plans for the proposed project show the finished floor elevation of the residence will be at 10.93 feet MLLW. The project has been designed to be above the maximum highest high tide elevation of 7.8 feet MLLW and above the City of Newport Beach design flood height of +9.0 feet NAVD88. The proposed finished floor will be at 10.93 feet, 3.13 feet above the highest high tide elevation, and 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 10.8 feet MLLW (7.8 feet MLLW + 3 feet = 10.8 feet NAVD88). However, the proposed finished first 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 13.3 feet (7.8 feet MLLW + 5.5 feet = 13.3 feet MLLW) would flood the entire site and even an average high tide could exceed the elevation of the proposed finished first floor elevation. In addition, the existing basement that will remain with the proposed development is at elevation 0.05 feet MLLW and would flood under any sea level rise scenario.

In an attempt to minimize risks to life and property from sea level rise-related flood hazards, the applicant has proposed the finished first floor level to be 10.93 feet MLLW. Also, there is an existing pool safety wall (CDP No. 5-02-302) at elevation 7.9 MLLW located adjacent to the sandy beach harborward of the proposed residence, 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 designs will provide some increased flood protection to the proposed residence. However, elevated foundation could be overtopped by a combination of high tide, waves and sea level rise that would result in a water level higher than 10.93 feet MLLW and the pool safety wall would be overtopped at water levels above 7.9 feet MLLW. Such water levels could result from an extreme high tide with sea level rise greater than 3 feet, or a moderately high tide level with some small waves and future sea level rise of 4 to 5 feet. In addition, the basement level is at an elevation where any sea level rise scenarios would result in its flooding. 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 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 basement, foundation and pool safety wall are overtopped and inundated. Acceptable adaptation options could include implementing measures such as flood proofing the basement and first floor, installing pumps in the basement to pump out water, elevating the structure, temporary barriers such as sand bagging, converting the lower floor to non-habitable uses. etc. . Such adaptation may not result in the installation of or reliance upon shoreline armoring. 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 finished floor elevation shall be at a minimum elevation of 10.93 feet MLLW 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).

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. 3** requiring the applicant to agree that no 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. 4**, 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. 5**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-15-0255 or a new coastal development permit.

The project as submitted is inconsistent with the “principal structure stringline”. As such, the proposed development encroaches harborward and impacts public views and is inconsistent with the existing community character. Therefore, the Commission imposes **Special Condition No. 2**, which requires submittal of revised plans showing the residence to be consistent with the “principal structure stringline”.

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. 6** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris; **Special Condition No. 7** requires the applicant to conform with the submitted Water Quality Management Plan (WQMP); and **Special Condition No. 8** requires submittal of a revised landscape plan 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 harborward 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. 9** 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. 10**, 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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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit No. 1 – Location Map
- Exhibit No. 2 – Site Plan
- Exhibit No. 3 – Floor Plans
- Exhibit No. 4 – Elevation Plans
- Exhibit No. 5 – Stringline Plan

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-15-0255 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 5-15-0255 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, including site plan, floor plans, elevation plans, foundation plans, grading plans, pool plans, pool foundation plans, etc.. The final project plans shall incorporate the following: 1) the finished floor elevation of the first floor shall be at a minimum 10.93 feet Mean Lower Low Water (MLLW) 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 basement and first floor, installing pumps in the basement to pump out water, 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; and 3) revise the project so that the principal structure adheres to the “principal structure” stringline. The final project plans shall be in substantial conformance with the plans received on June 26, 2015 and October 1, 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. Revised Plans. 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 revised plans, including site plan, floor plans, elevation plans, foundation plans, grading plans, pool plans, pool foundation plans, etc. showing that the principal structure adheres to the “principal structure” stringline. The final project plans shall be in substantial conformance with the plans received on June 26, 2015 and October 1, 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.

3. 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 shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-15-0255 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 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 harborward of the subject property shall require an amendment to this coastal development permit or a new coastal development permit, if legally required.

4. 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.

5. Future Development. This permit is only for the development described in Coastal Development Permit No. 5-15-0255. 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. 5-15-0255. 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. 5-15-0255 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. 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.

7. Conformance with the Water Quality Management Plan (WQMP). The applicant shall conform with the Water Quality Management Plan (WQMP) dated April 2015 prepared by C&V Consulting, Inc. 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.

8. Revised Landscape Plan.

A. 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 revised landscape plans prepared by an appropriately licensed professional which demonstrates the following:

1. The plans shall demonstrate that:

- (a) All planting shall provide 90 percent coverage within ninety (90) days and shall be repeated if necessary to provide such coverage;
- (b) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
- (c) All landscaping shall consist of native drought tolerant on-invasive plant species native to coastal Orange County and appropriate to the habitat type. 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>); and

2. The plan shall include, at a minimum, the following components:

- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features,
- (b) a schedule for installation of plants; and
- (c) Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall also be considered, such as use of weather based irrigation controllers.

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.

9. 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.

10. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the 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 demolish an existing 9,488 square foot two-story single-family residence with a basement and construction of a new 12,933 square foot, three-story over the existing basement, single-family residence with an attached 1,310 square foot five-car garage on a bayfronting lot (**Exhibits No. 2-4**). The footprint of the new residence will be expanded minimally from the existing residence. The existing basement will be incorporated into the new residence with no additional expansion of the basement proposed. The entire grade level foundation and basement level foundation and basement perimeter retaining wall system will be left intact and will be reused to support the proposed residence. The proposed at-grade portion of the house slightly varies from the existing in a few locations and in those locations new slab on grade, grade beam and caissons will be added and will be tied into the existing grade beam and caisson system. The plans for the proposed project show the top of the finished floor elevation of the first floor of the residence will be at 10.93 feet Mean Lower Low Water (MLLW). The project has been designed to be above the highest high tide elevation of 7.8 feet MLLW, 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). No grading is proposed. There is an existing boat dock system on site, but no work is proposed to it.

The subject site has an existing pool safety wall at elevation 7.9 MLLW located adjacent to the sandy beach harborward of the proposed residence. The pool safety wall runs parallel to the

shoreline across the entire length of the property. As originally submitted, work on the existing pool was to consist of moving the east pool wall slightly to the west and extend the east end of the pool to the east to create a spa inside the pool. No work to extend the pool harborward of the pool safety wall is proposed. The applicant has recently revised their work on the pool to now consist of as well the installation of an infinity edge to the pool, while still not extending the pool harborward of the pool safety wall. No work is proposed to the existing pool safety wall.

The subject site is a bayfronting lot located at 1813 East Bay Avenue within Newport Harbor, within the City of Newport Beach, Orange County (**Exhibit No. 1**). The lot size is 14,490 square feet and it is located within an existing urban residential area. To the north of the subject site is a narrow sandy beach and Newport Harbor; to the east of the subject site is “K” Street; to the west of the subject is an existing single-family residences and to the south of the subject site is an alley.

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 March 22, 1988, the Commission approved Waiver No. 5-88-101-W (Voit). Waiver No. 5-88-101-W allowed the removal and demolition of an existing dock and construction of a new dock.

On March 17, 1994, the Commission approved Waiver No. 5-94-041-W (Barth). Waiver No. 5-94-041-W allowed the revision of an existing boat dock and gangway.

On June 14, 2001, the Commission approved Waiver No. 5-01-142-W (Barth). Waiver No. 5-01-142-W allowed the demolition of an existing two-story single-family residence with an attached garage on two lots. No additional development or grading was proposed.

On May 7, 2001, the Commission approved Waiver No. 5-01-102-W (Barth). Waiver No. 5-01-102-W allowed the removal of an existing 670 square foot pier with fourteen (14) 10” piles, gangway, float, and two (2) guide piles and replace with a new 4’ x 64’ (256 sq. ft.) pier with four (4) 14” “T” piles; 10’ x 14’ platform; 3’ x 24’ gangway; 6’ x 30’ float with 2’ x 8’ gangway landing (or lobe) and two (2) 12” guide piles.

On May 6, 2003, the Commission approved Coastal Development Permit No. 5-02-302-(Barth) for the following development: 1806 East Bay avenue: only the demolition of an existing single-family residence, garage and storage structure at 1806 East Balboa Boulevard and adjust lot lines. No further development is proposed at 1806 East Balboa Blvd. 1813 East Bay Avenue: demolition of an existing single-family residence, garage and storage structure and construction of a 9,488 square foot two-story single-family residence with a basement, attached 921 square foot garage and rear yard (bayside) pool, with 785 cubic yards of grading and export and adjustment of lot lines.

The Commission approved the project subject to Nine (9) Special Conditions. In their approval, the Commission modified Commission Staff’s proposed Special Condition No. 5 to eliminate a

requirement that would have required the project to adhere to an “accessory structure stringline.” The Commission found that since the proposed accessory development was located inland of both the intertidal zone and the line of existing bulkheads located on properties that surround this site it conformed visually with existing community character.

The following Nine (9) Special Conditions were imposed on the proposed project: 1) geotechnical conformance; 2) assumption of risk; 3) no future shoreline protective device; 4) future development restriction; 5) the permittees shall undertake development in accordance with the approved final plans; 6) storage of construction materials, mechanized equipment and removal of construction debris; 7) a final drainage and run-off control plan; 8) a revised landscape plan, and 9) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

On August 7, 2003, the Commission denied Revocation No. R-5-02-302-(Barth). The contention alleged that the applicant intentionally withheld information: 1) that the 1813 East Bay Avenue property was dredged and the beach nourished, thus creating an artificially enlarged bayfront yard; and 2) that the swimming pool would need to be constructed with a protective bulkhead/seawall or that the swimming pool itself would have to be constructed as a protective bulkhead. The contention also alleged that there was a failure to comply with notice provisions: 1) the public notice stated that a “rear yard” pool was to be constructed, which should have stated “front yard” instead; and 2) letters of opposition were not heard by the Commission. In addition, the contention alleged that the applicant moved the hearing to Monterey to prevent opposing views from being heard. The Commission denied his revocation request after determining that his contentions were incorrect and did not have merit.

On October 7, 2003, the Commission approved Revised Findings for Coastal Development Permit No. 5-02-302-(Barth).

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 pool safety wall at elevation 7.9 MLLW located adjacent to the sandy beach harborward of the proposed residence. The pool safety wall runs parallel to the shoreline across the entire length of the property.

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 prepared by William Simpson & Associates, Inc. (WSA Job #6939-1) dated June 17, 2015. The analysis states that the highest high tide elevation in this project area is 7.8 feet Mean Lower Low Water (MLLW) and Mean Higher High Water (MHHW) is at 5.49 feet. At 10.93 feet MLLW (10.55 feet NAVD 88), the finished floor elevation of the first floor of the proposed residence will be 5.44 feet above MHHW and 3.13 feet above the maximum highest high tide elevation. However, the proposed development also includes incorporation of the existing basement, which has a finished floor elevation of 0.05 feet NAVD88. The finished floor elevation is below both the highest high tide elevation and the MHHW and would result in flooding under any sea level rise scenario. Even though the residence consists of an existing basement that would flood under any sea level rise scenario, the analysis concludes that the proposed finished floor elevation of the first floor is at an elevation that would not expose the habitable portions (above the basement) to flooding from even the highest current tides under present sea level conditions and that no shoreline protective device will be required over the life of the proposed development (100 years).

The analysis states that due to its location, the site is not subject to typical waves and the associated wave runoff. Furthermore, the analysis states that bay generated waves that may arrive at the site are very small wind waves and boat wakes. These waves are generally dampened by the moored vessels and dock systems in front of the site and have no significant energy and runoff effect.

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 area, the range of sea level rise

projections for 2100 are between 17 inches and 66 inches 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 10.8 feet MLLW (7.8 feet MLLW + 3 feet = 10.8 feet MLLW) and thus the proposed finished first floor elevation of 10.93 feet MLLW would be .13 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 13.3 feet (7.8 feet MLLW + 5.5 feet = 13.3 feet MLLW) could result. Such a rise would exceed the finished first floor elevation, result in water up to 2.37 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 addition, the existing basement that will remain with the proposed development is at elevation 0.05 feet MLLW and would flood under any sea level rise scenario.

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 the finished first floor level to be 10.93 feet MLLW. Also, there is an existing pool safety wall at elevation 7.9 MLLW located adjacent to the sandy beach harborward of the proposed residence, 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 designs will provide some increased flood protection to the proposed residence.

However, elevated foundation could be overtopped by a combination of high tide, waves and sea level rise that would result in a water level higher than 10.93 feet MLLW and the pool safety wall would be overtopped at water levels above 7.9 feet MLLW. Such water levels could result from an extreme high tide with sea level rise greater than 3 feet, or a moderately high tide level with some small waves and future sea level rise of 4 to 5 feet. In addition, the basement level is at an elevation where any sea level rise scenarios would result in its flooding. 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 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 basement, foundation and pool safety wall are overtopped and inundated. 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 basement and first floor, installing pumps in the basement to pump out water, 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 finished floor elevation shall be at a minimum elevation of 10.93 feet MLLW 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. 3** ensures that future adaptation measures will not rely upon or require the construction of any shoreline protection structures.

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 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.

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 if there were to be a 5.5-foot rise (the upper range of the NRC projections for southern California), the entire Newport bay area would be flooded. 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 finished floor elevation of the first floor will be at 10.93 feet MLLW to accommodate a moderate amount of rise in sea level, 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, the Commission imposes **Special Condition No. 3**, which 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. 3** 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. 4**, 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. 5**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-15-0255 or a new coastal development permit.

Since the original submittal, the applicant has made revised their plans for the existing pool to now incorporate an infinity pool edge. While the applicant has provided some revised plans showing this change, the remaining plans need to be revised as well. Therefore, Commission staff imposes **Special Condition No. 1** which requires the applicant submit final plans including revisions to the existing pool.

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 pool safety wall 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 adjacent to the site via the vertical public access point at the end of "K" 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.

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 have the first floor finished floor elevation be at 10.93 feet MLLW and to plan for adaptation measures for sea level rise through **Special Condition No. 2**, 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. 3**, 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 adjacent to the site via the vertical public access point at the end of “K” 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. 9** 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 have the first floor finished floor elevation be at 10.93 feet MLLW and to plan for adaptation measures for sea level rise 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. 3** 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 . . ." Harborward encroachment of new development can often have adverse visual impacts. In order to determine whether the proposed project is consistent with the established line of development, the Coastal Commission has typically used two methods to review bayward

encroachment of development along this section of East Bay Avenue in Newport Beach: 1) setbacks from the bayward property line; and 2) string line evaluation. The City of Newport Beach setback requirement for habitable space in this area varies from the bayward property line. For the project site, the City of Newport Beach setback requirement for habitable space is 77 feet from the harborward property line. However, use of the City setback and/or stringline to establish the bayward limit of development is determined at a site-specific level. Setbacks and string lines are applied to limit new development from being built any further bayward than existing adjacent development.

In addition to using fixed setbacks and development stringlines as means of preventing visual impacts, on a case-by-case basis, the Commission has also given consideration to the overall pattern of development in an area in determining whether development is appropriately sited on a particular lot. This approach differs from the stringline approach described herein in that the stringline approach focuses on the line of development established by the two adjacent, flanking residential properties, whereas consideration of the overall pattern of development in the area would look at the predominant line of development on several similarly situated residential properties adjacent to the bay upcoast and downcoast of the project site.

1. City Setbacks

Section 30251 of the Coastal Act states that permitted development shall be designed “*to be visually compatible with the character of the surrounding area.*” Therefore, proposed development must be compatible with its surroundings. Though the plans submitted by the applicant show that the project conforms to the City zoning setback requirements of 77 feet from the harborward property line, conformance to the City required setback would allow bayward encroaching development here. Allowing development to be sited and configured based solely on the City setbacks would not achieve the objectives of Coastal Act Section 30251, as the proposed project would encroach harborwardward and would not, therefore, be compatible with the character of the surrounding area. Section 30251 of the Coastal Act states that permitted development should protect views and be visually compatible with the surrounding area. Therefore, the City setback cannot be used in this particular situation.

2. Stringline Policy

The stringline policy is used by the Commission as one means of determining the appropriate setback for coastal developments. Since the City setback cannot be used in this particular situation, the stringline may be used instead. This policy applies to infilling development and establishes two separate types of stringlines, a structural stringline for the principal structure and an accessory structure (i.e., deck, patios, etc.) stringline. A structural stringline for principal structures refers to the line drawn between the *nearest* adjacent corners of adjacent principal structures. Similarly, an accessory structure (i.e., deck, patios, etc.) stringline refers to the line drawn between the *nearest* adjacent corners of adjacent accessory structures.

A principal structure stringline and accessory structure stringline use the corners of *nearest* adjacent principal structures and accessory structures, normally located to the adjacent sides of the development. However, in this case there is an existing street (“K” Street) to the east instead of an existing principal structure or accessory structure. In this case the residence located East of

this street is used and serves as the *nearest* adjacent corner for principal structures and accessory structures.

The applicants have submitted a stringline drawing to Commission staff for analysis (**Exhibit No. 5**). The drawings shows a “principal structure stringline” which shows portion of the principal structure extending beyond the “principal structure stringline”. BY extending beyond the stringline, the project encroaches further harborward. The encroachment impacts public views along the bay an is inconsistent with the character of the area. In 5-02-302-(Barth), the principal structure was designed to adhere to the “principal structure stringline” and thus consistent with the character of the area. Revising the proposed principal structure to do the same would also result in consistency with the area. Therefore, as submitted, the proposed residence results in adverse impacts to visual resources and is inconsistent with Section 30251 of the Coastal Act. Therefore, the Commission imposes **Special Condition No. 2**, which requires submittal of revised plans showing the residence to be consistent with the “principal structure stringline”. As conditioned, the principal structure would adhere to the “principal structure stringline” and be located no further bayward than adjacent principal structures. Furthermore, as conditioned, the proposed principal structure would be consistent with the existing pattern of development for principal structures and not cause any adverse cumulative visual impacts.

The applicant did not submit an “accessory structure stringline”. In 2003, the Commission heard CDP No. 5-03-302 for the development of a single-family residence on the subject site that raised the issue of accessory development, in this case the existing pool, and its consistency with the “accessory structure stringline”. Commission staff had imposed a condition requiring that the pool adhere to the “accessory structure stringline”. However, the Commission approved the project, but eliminated this condition since they agreed that the pool conformed visually with the existing community character of the area. The single-family residence and pool associated with CDP No. 5-02-302 were built. The proposed project would continue to use the existing pool, and while the work on the pool is proposed; the work would not result in the pool extending harborward of the pool safety wall which was the previously approved most bayward element of the pool. Thus, the pool (accessory structure) remains consistent with the existing community character and does not result in adverse visual impacts.

Conclusion

Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 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. 6**, 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 Water Quality Management Plan (WQMP) dated April 2015 prepared by C&V Consulting, Inc. To minimize any impacts to water quality the proposed project may have after construction; all onsite runoff will be directed to perforated area drains and a bottomless trench drain. In order to ensure that the drainage and runoff control plan is adhered to, the Commission imposes **Special Condition No. 7**, which requires the applicant to conform with the submitted Water Quality Management Plan (WQMP) 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 submitted a landscape plan. 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). Commission staff has reviewed the submitted landscape plan and determined that it does not contain any invasive plants. However, the plan does contain the following non-drought tolerant plants: *Festuca Glauca* (*Blue Fescue*), *Rosa 'Pink Iceberg'* (*Pink Iceberg Rose*), *Equisetum* (*Horse Trail*) and *Metrosideros Excelsa* (*New Zealand Tree*). Thus, any non-drought tolerant plants need to be removed and replaced in order to reduce the amount of water use. Therefore, the Commission imposes **Special Condition No. 8**, which requires the applicant to submit a revised landscape plan that 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. 10**) requiring that the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land 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.

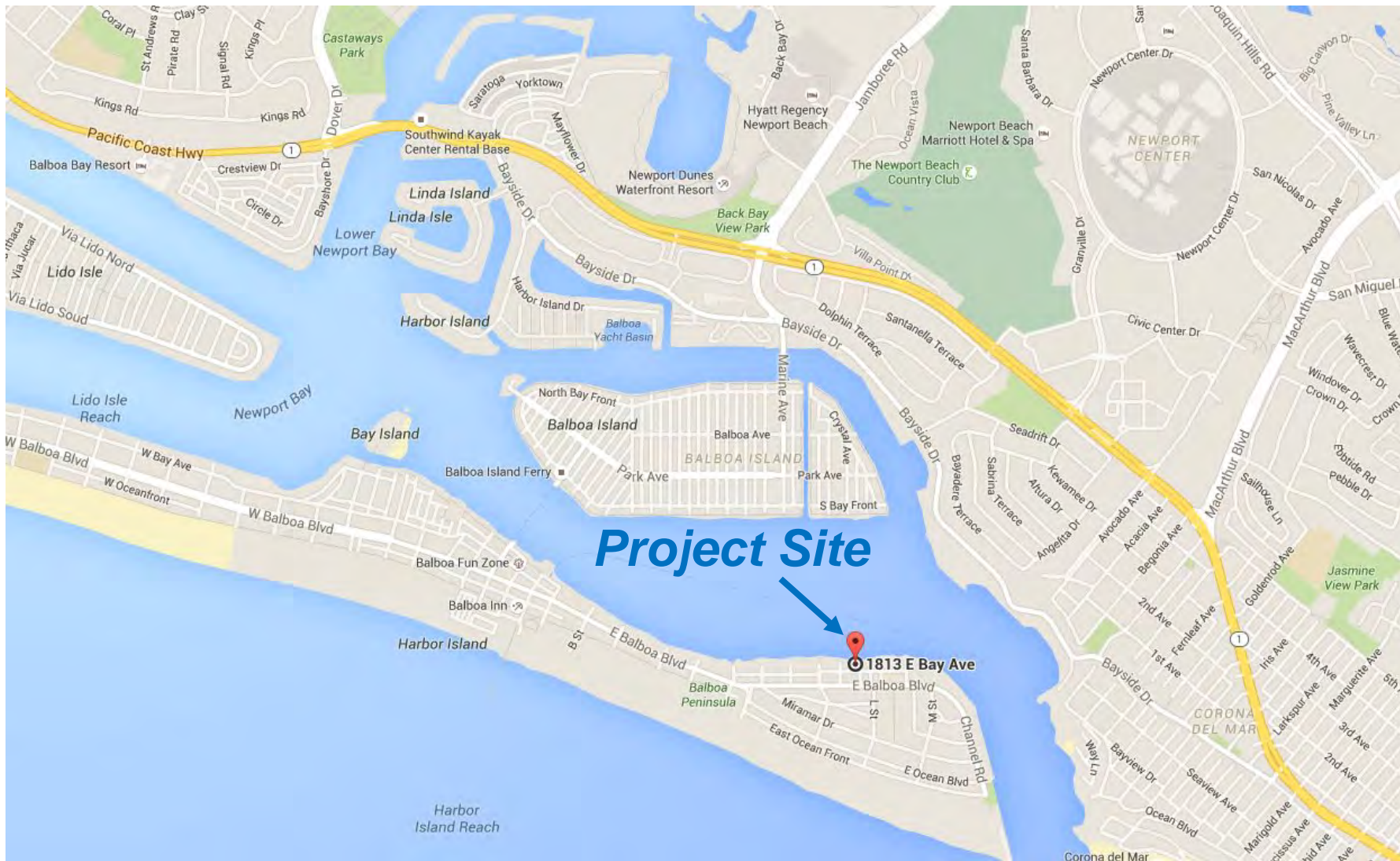
The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is Categorical Exempt from Provisions of CEQA for the construction. 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, public access and recreation, biological resources, visual resources and water quality 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. 5-02-302-(Barth); Revocation Request No. R-5-02-302-(Barth); Approval-In-Concept from the City of Newport Beach Community Development Department dated February 25, 2015; Letter from Commission staff to the agent dated April 15, 2015; Letter from the agent to Commission staff received on May 7, 2015; Geotechnical Update Report for 1813 East Bay avenue (W.O. 491915-01) dated March 30, 2015 prepared by Coast Geotechnical, Inc.; Water Quality Management Plan (WQMP) dated April 2015 prepared by C&V Consulting, Inc.; Letter from Commission staff to the agent dated July 24, 2015; Letter from the agent to Commission staff dated June 22, 2015 (received on July 28, 2015); Hazard Analysis prepared by William Simpson & Associates, Inc. (WSA Job #6939-1) dated June 17, 2015; and Coast Geotechnical, Inc. letter (W.O. 491915-02) dated July 27, 2015.



LEGEND

- CONDITIONED
- UNCONDITIONED SPACE
- COVERED LOBBY

CONDITIONED/UNCONDITIONED SPACE SQUARE FOOT

BASEMENT LEVEL CONDITIONED: 1,617 SQ. FT.
 BASEMENT LEVEL UNCONDITIONED: 1,479 SQ. FT.
 FIRST FLOOR LEVEL CONDITIONED: 891 SQ. FT.
 FIRST FLOOR LEVEL UNCONDITIONED: 1,151 SQ. FT.

TOTAL CONDITIONED: 2,508 SQ. FT.
 TOTAL UNCONDITIONED: 2,630 SQ. FT.
 GRAND TOTAL COVERED: 5,138 SQ. FT.

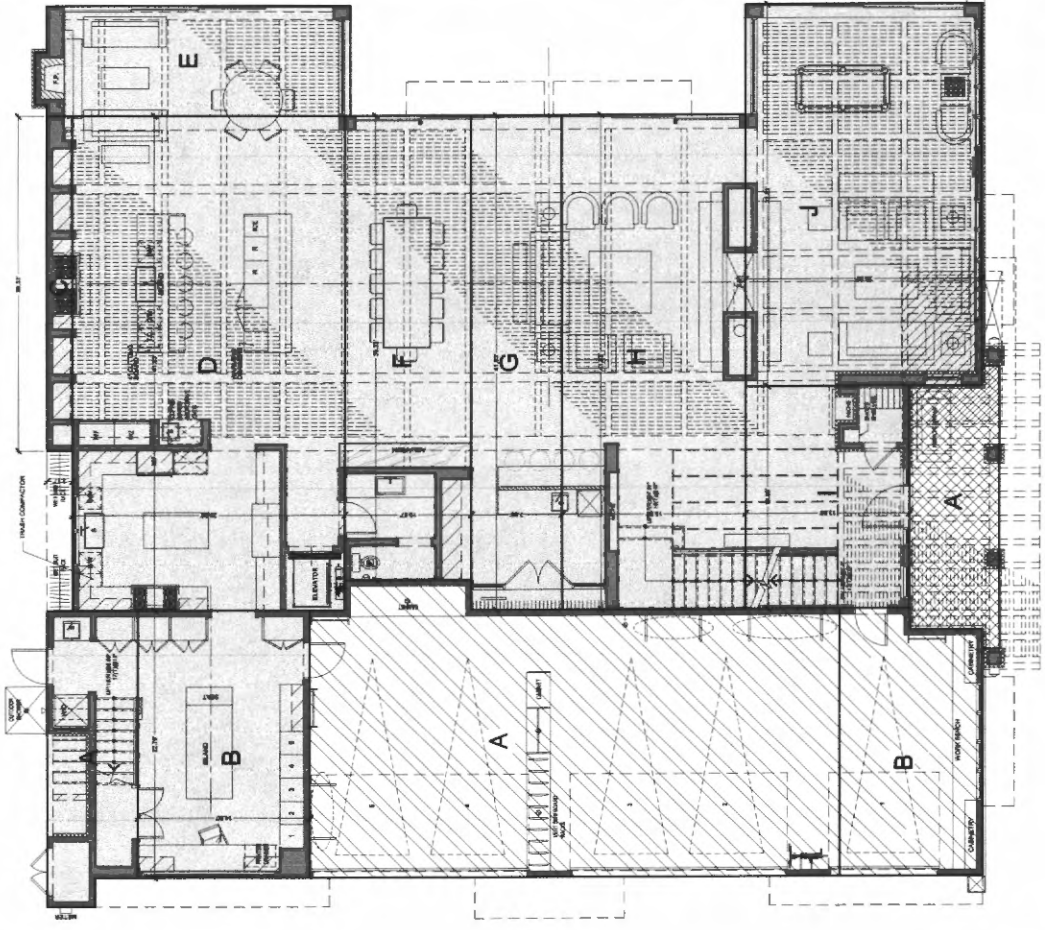
FIRST FLOOR

CELL	CODE (R)	VOLUME (R)	AREA (SQ. FT.)	TYPE
A	2.01A	1.618	20,000	CONDITIONED
B	2.01B	1.618	17,143	UNCONDITIONED
C	2.01C	2.117	17,143	UNCONDITIONED
D	2.01D	2.018	20,000	UNCONDITIONED
E	2.01E	1.618	17,143	UNCONDITIONED
F	2.01F	1.618	17,143	UNCONDITIONED
G	2.01G	1.618	17,143	UNCONDITIONED
H	2.01H	1.618	17,143	UNCONDITIONED
I	2.01I	1.618	17,143	UNCONDITIONED
J	2.01J	1.618	17,143	UNCONDITIONED
TOTAL				148,779

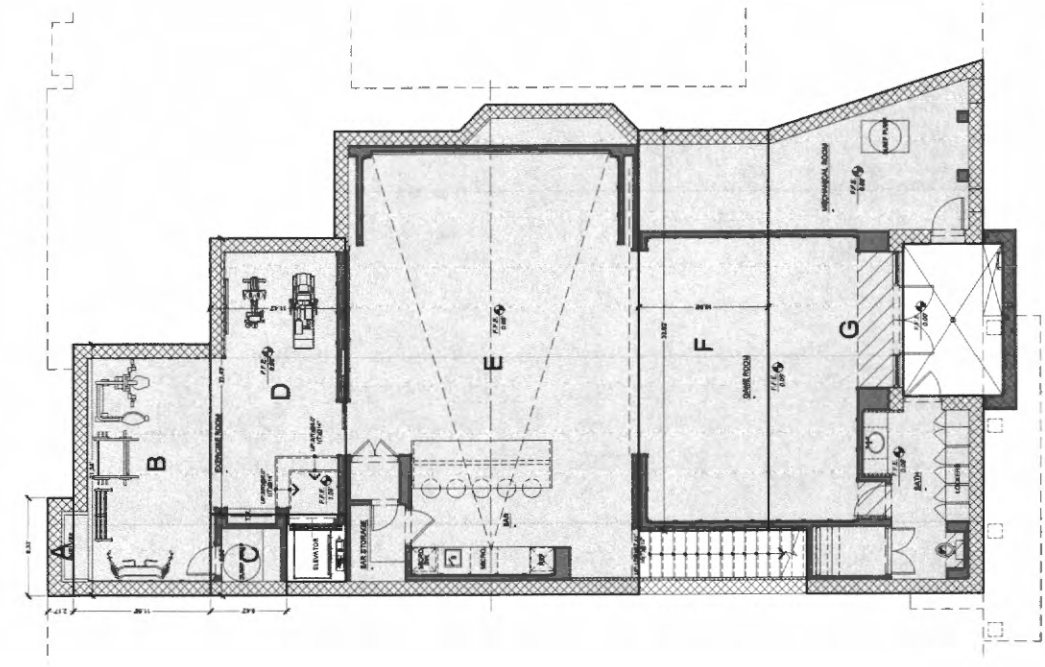
BASEMENT

CELL	CODE (R)	VOLUME (R)	AREA (SQ. FT.)	TYPE
A	2.01A	1.618	20,000	CONDITIONED
B	2.01B	1.618	17,143	UNCONDITIONED
C	2.01C	2.117	17,143	UNCONDITIONED
D	2.01D	2.018	20,000	UNCONDITIONED
E	2.01E	1.618	17,143	UNCONDITIONED
F	2.01F	1.618	17,143	UNCONDITIONED
G	2.01G	1.618	17,143	UNCONDITIONED
H	2.01H	1.618	17,143	UNCONDITIONED
I	2.01I	1.618	17,143	UNCONDITIONED
J	2.01J	1.618	17,143	UNCONDITIONED
TOTAL				148,779

2 FIRST FLOOR
 1/4" = 1'-0"
 4,077 SQ. FT.



1 BASEMENT PLAN
 1/4" = 1'-0"
 2,637 SQ. FT.



**SINCLAIR ASSOCIATES ARCHITECTS
A.I.A.**

PRIVATE RESIDENCE

CONDITIONED / UNCONDITIONED
SPACE SQUARE FOOT
BUILDING DEPT. SUBMITTAL SET - June 18, 2015

SECOND FLOOR

CELL	NUMBER	VOLUME	AREA (SQ)	AREA (SQ)
A	4.83	217	42.04	
B	1.14	217	42.04	
C	48.41	317	106.97	
D	13.67	6.88	43.88	
E	26.17	29.89	448.56	
F	8.51	59.17	200.00	
G	20.21	1.00	200.00	
H	1.14	217	42.04	
I	41.48	58.88	462.88	
J	28.53	18.00	200.00	
K	28.53	18.00	462.88	
L	1.65	6.00	21.27	
M	4.71	20.00	49.00	
N	8.21	20.00	100.00	
O	13.02	7.15	100.00	
P	3.08	7.15	20.00	
Q	1.10	8.17	18.00	
R	1.10	8.17	20.00	
TOTAL			2071.1	

THIRD FLOOR

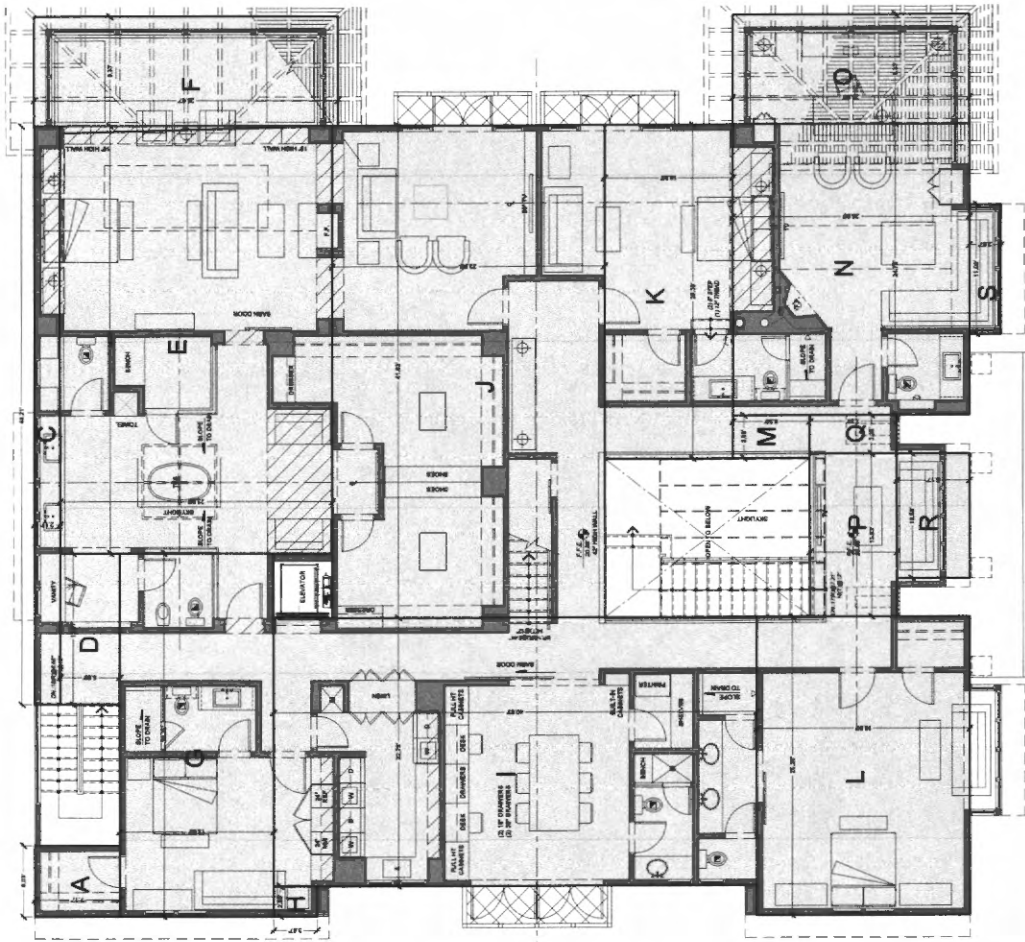
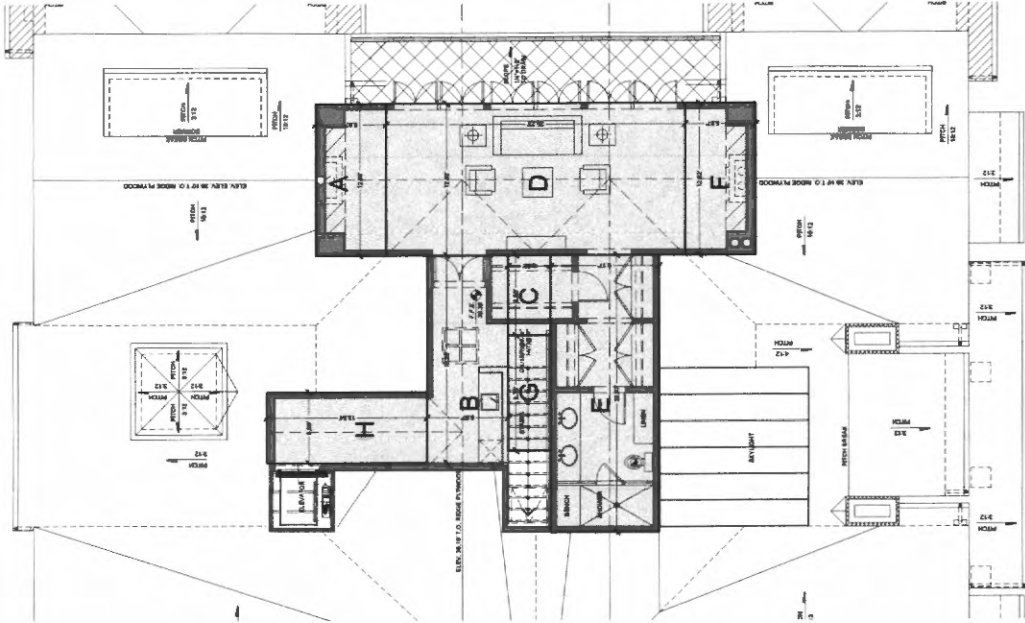
CELL	NUMBER	VOLUME	AREA (SQ)	AREA (SQ)
A	1.08	2.07	12.00	
B	1.08	2.07	12.00	
C	1.08	2.07	12.00	
D	1.08	2.07	12.00	
E	1.08	2.07	12.00	
F	1.08	2.07	12.00	
G	1.08	2.07	12.00	
H	1.08	2.07	12.00	
I	1.08	2.07	12.00	
J	1.08	2.07	12.00	
K	1.08	2.07	12.00	
L	1.08	2.07	12.00	
M	1.08	2.07	12.00	
N	1.08	2.07	12.00	
O	1.08	2.07	12.00	
P	1.08	2.07	12.00	
Q	1.08	2.07	12.00	
R	1.08	2.07	12.00	
TOTAL			120.00	

CONDITIONED/UNCONDITIONED SPACE SQUARE FOOT

BASEMENT LEVEL UNCONDITIONED	1ST FLOOR UNCONDITIONED	2ND FLOOR UNCONDITIONED	3RD FLOOR UNCONDITIONED	TOTAL UNCONDITIONED
1,100.00 SQ. FT.	5,170.00 SQ. FT.	2,071.10 SQ. FT.	120.00 SQ. FT.	8,461.10 SQ. FT.
BASEMENT LEVEL CONDITIONED	1ST FLOOR CONDITIONED	2ND FLOOR CONDITIONED	3RD FLOOR CONDITIONED	TOTAL CONDITIONED
1,100.00 SQ. FT.	5,170.00 SQ. FT.	2,071.10 SQ. FT.	120.00 SQ. FT.	8,461.10 SQ. FT.
GRAND TOTAL CONDITIONED	10,331.10 SQ. FT.	4,142.20 SQ. FT.	240.00 SQ. FT.	14,713.30 SQ. FT.

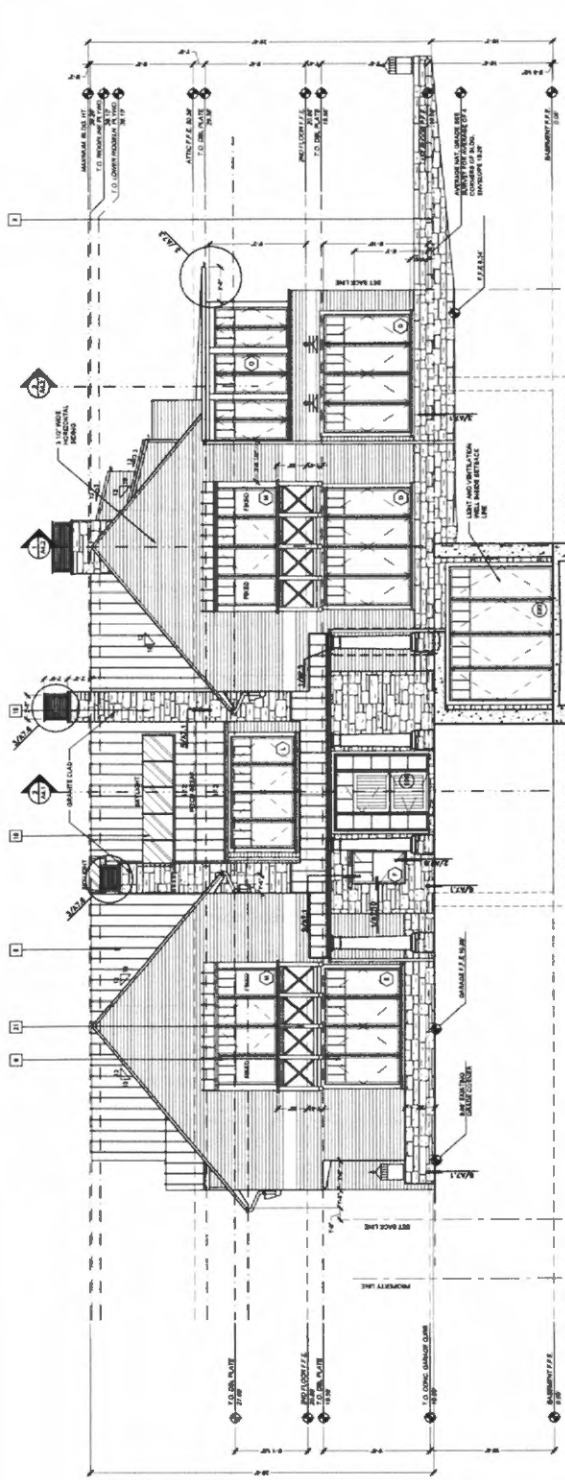
LEGEND

- CONDITIONED
- UNCONDITIONED SPACE
- COVERED LOGGIA

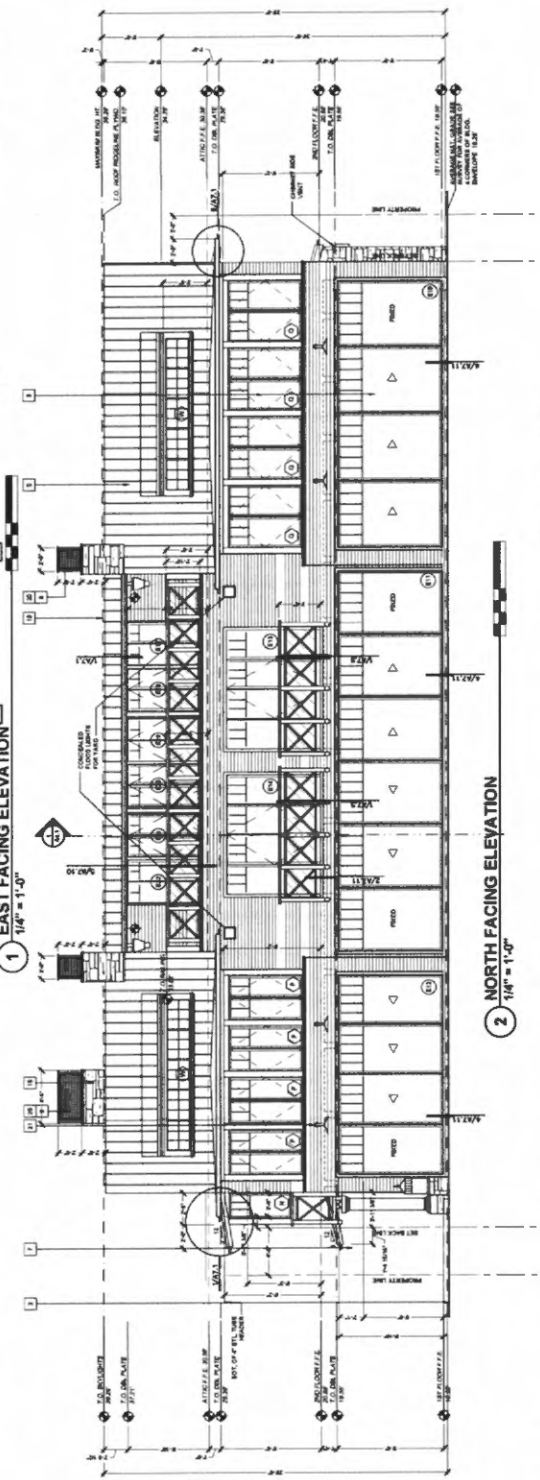


2 THIRD FLOOR
1/4" = 1'-0"
953 SQ. FT.

1 SECOND FLOOR
1/4" = 1'-0"
5,278 SQ. FT.



1 EAST FACING ELEVATION
 1/4" = 1'-0"

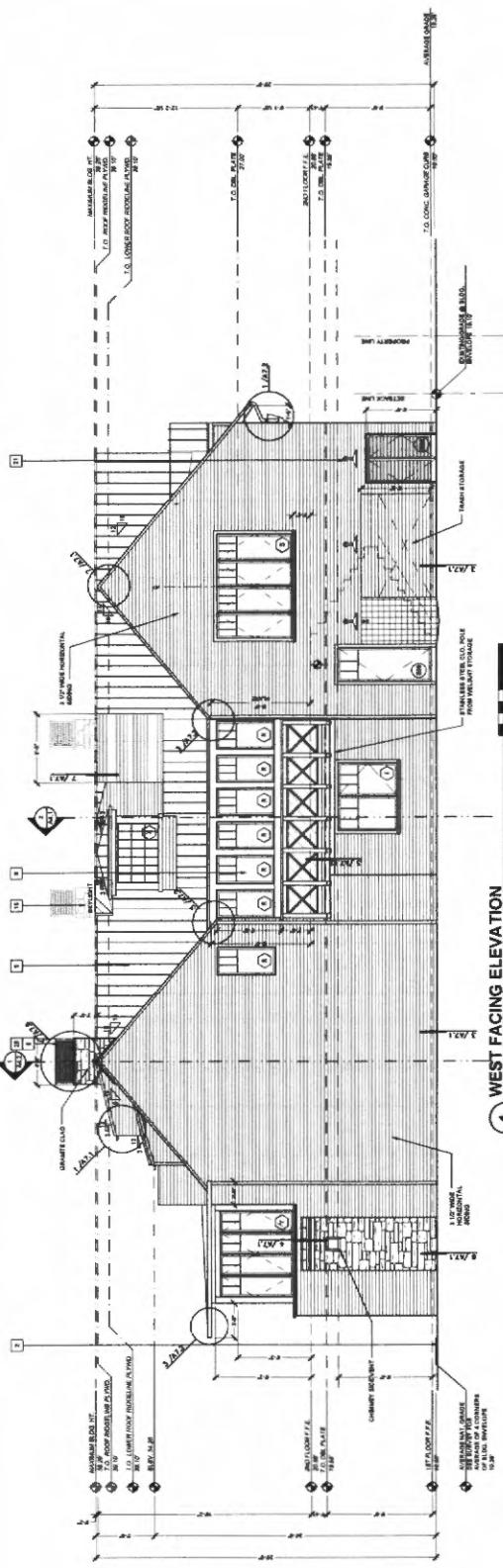


2 NORTH FACING ELEVATION
 1/4" = 1'-0"

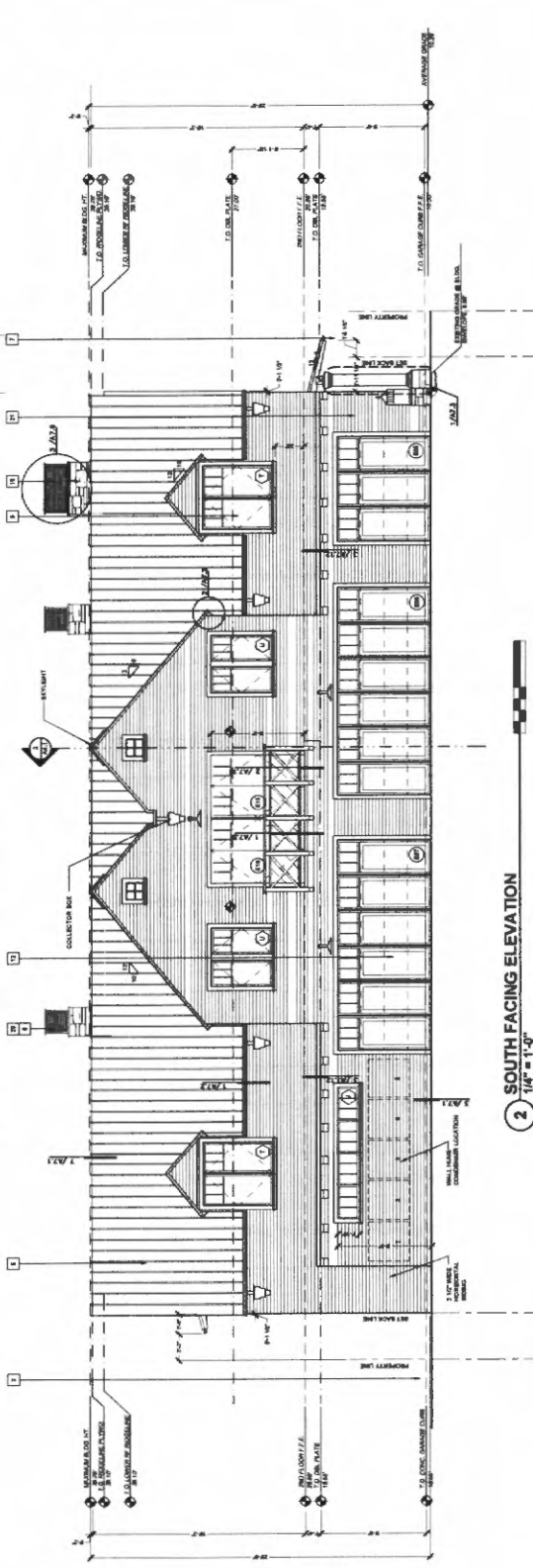
- ELEVATION NOTES**
1. EXTERIOR FINISHES, MATERIALS, AND COLORS SHALL BE AS SHOWN ON THESE ELEVATIONS AND SHALL BE APPROVED BY THE ARCHITECT PRIOR TO INSTALLATION.
 2. ALL MATERIALS SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.
 3. ALL MATERIALS SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.
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 9. ALL MATERIALS SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.
 10. ALL MATERIALS SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.

- MATERIAL AND FINISH INDEX**
- SEE COVER SHEET - A-3.1
- GENERAL NOTES**
1. ALL MATERIALS SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.
 2. ALL MATERIALS SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.
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 10. ALL MATERIALS SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.

- ELEVATION NOTES**
1. EXTERIOR FINISHES, MATERIALS, AND COLORS SHALL BE AS SHOWN ON THESE ELEVATIONS AND SHALL BE APPROVED BY THE ARCHITECT PRIOR TO INSTALLATION.
 2. ALL MATERIALS SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.
 3. ALL MATERIALS SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.
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1 WEST FACING ELEVATION
 1/4" = 1'-0"



2 SOUTH FACING ELEVATION
 1/4" = 1'-0"

MATERIAL AND FINISH INDEX

SEE COVER SHEET - A-04
GENERAL NOTES
 1. ALL MATERIALS AND FINISHES SHALL BE LABELED TO THE MATERIAL SOURCE.
 2. MATERIALS SHALL BE SUBMITTED FOR APPROVAL AT THE PROJECT OFFICE.
 3. MATERIALS SHALL BE SUBMITTED FOR APPROVAL AT THE PROJECT OFFICE.

ELEVATION NOTES

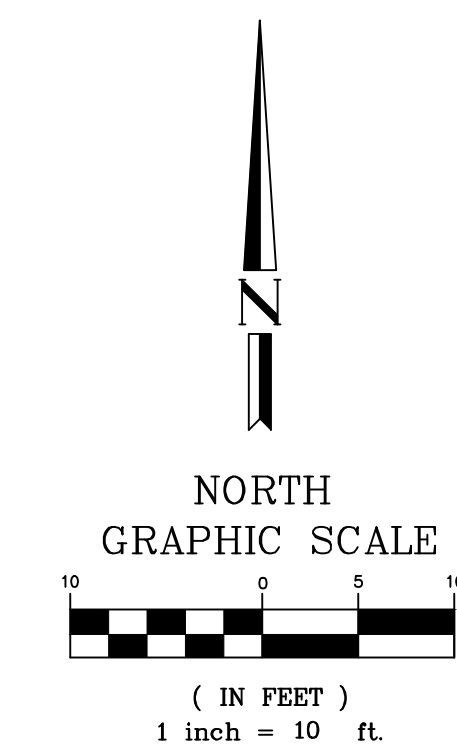
1. EXTERIOR FINISHES SHALL BE AS SHOWN AND SHALL BE LABELED TO THE MANUFACTURER.
2. ALL MATERIALS SHALL BE LABELED TO THE MANUFACTURER.
3. ALL MATERIALS SHALL BE LABELED TO THE MANUFACTURER.
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GENERAL NOTES

1. ALL MATERIALS SHALL BE LABELED TO THE MANUFACTURER.
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MATERIAL AND FINISH INDEX

1. ALL MATERIALS SHALL BE LABELED TO THE MANUFACTURER.
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9. ALL MATERIALS SHALL BE LABELED TO THE MANUFACTURER.
10. ALL MATERIALS SHALL BE LABELED TO THE MANUFACTURER.



LEGEND

- INDICATES PROP BUILDING LINE.
- INDICATES EXISTING BUILDING FOOTPRINT
- INDICATES STRUCTURAL STRING LINE.
- INDICATES PROPERTY LINE
- BC BUILDING CORNER

NOTE: NO DECKS ARE PROPOSED