

CALIFORNIA COASTAL COMMISSION

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



Th7a

Filed: 11/20/2015
180th Day: 05/18/2016
Staff: M. Alvarado-LB
Staff Report: 03/24/2016
Hearing Date: 04/14/2016

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-15-1367

Applicant: Bapu Development, LLC

Agent: Eric Mossman

Location: 2404 W. Oceanfront, Newport Beach (Orange County)
(APN 047-141-16)

Project Description: Demolition of a one-story single family residence and construction of an approximately 2,022 sq. ft., 29 ft. high three-story single-family residence with an attached 364 sq. ft. two-car garage, a 69 sq. ft. balcony, a 224 sq. ft. covered deck, open decks totaling approximately 386 sq. ft., and hardscape improvements on a beachfront lot.

SUMMARY OF STAFF RECOMMENDATION:

The proposed residential project raises issues regarding hazards concerning beachfront development, compatibility with the existing character of the area, impact to public access, and water quality.

Given that the applicant has chosen to implement the project on a beachfront lot despite risks from liquefaction, wave attack, erosion, sea level rise, and storm flooding, the applicant must assume the risks and agree to no future shoreline protective devices. Therefore, the Commission imposes **Special Conditions 1 and 2**. Any future improvements to the single-family house authorized by this Coastal Development Permit No. 5-15-1367, including but not limited to repair and maintenance identified as requiring a permit, will require an amendment to Permit No. 5-15-1367 from the Commission as imposed by **Special Condition 3**. The Commission imposes **Special Condition 4** to ensure consistency with the geotechnical recommendations. In addition, because the project site is on a beachfront lot and in proximity to coastal waters, the Commission imposes construction-related requirements and best management practices under **Special Condition 5**, and to address water quality, imposes **Special Condition 6** to prevent pollution of the coast. The

5-15-1367 (Bapu Development, LLC)

Commission imposes **Special Condition 7** requiring the applicant to record a Deed Restriction against the property acknowledging the restrictions on the use of the property.

Staff is recommending **APPROVAL** of the proposed coastal development permit as conditioned.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

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APPENDICES

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EXHIBITS

- Exhibit 1 – Vicinity Map
- Exhibit 2 – Aerial
- Exhibit 3 – Plans and Elevations

I. MOTION AND RESOLUTION

Motion:

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

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

Resolution:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS:

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS:

This permit is granted subject to the following special conditions:

1. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant(s) 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(s) and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
2. **No Future Shoreline Protective Device.**
 - A. By acceptance of this permit, the applicant(s) 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. 5-15-1367 including, but not limited to, the residence, garage, foundations, and patio, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards in the future. By acceptance of this permit, the applicant(s) and landowner(s) hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
 - B. By acceptance of this permit, the applicant(s) further agrees, on behalf of himself and all successors and assigns that the landowners shall remove the development authorized by this permit, including the residence, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
3. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-15-1367. 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. 5-15-1367. Accordingly, any future improvements to the single-family house authorized by this Coastal Development Permit No. 5-15-1367, including but not limited to repair and

maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-15-1367 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. Recommendations of the Geotechnical Report. All final design and construction plans shall be consistent with all recommendations contained in the *Geotechnical Investigation for Proposed Residential Development Located at 2404 West Oceanfront, Newport Beach, California* prepared by EGA Consultants, dated October May 28, 2015. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

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

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

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant(s) shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.

- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

6. Conformance with the submitted Drainage and Run-Off Control Plan. The applicant(s) shall conform to the drainage and run-off control plan submitted on October 15, 2015 to the South Coast Region office showing roof drainage and paved walkways designed to slope into French drains at the front and back sides of the property. 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 required.

7. Deed Restriction PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant(s) shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) 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 DESCRIPTION & LOCATION

The applicants propose to demolish a one-story single-family residence with an attached one-car garage, and construct an approximately 2,022 sq. ft., 29 ft. high three-story single-family residence with an attached 364 sq. ft. two-car garage, a 69 sq. ft. balcony, a 224 sq. ft. covered deck, open decks totaling approximately 386 sq. ft., and hardscape improvements on a beachfront lot (**Exhibit 3**). Hardscape improvements include new concrete front and side yards. No landscaping is proposed. To address water quality concerns, the applicant proposes to direct site drainage and runoff from roof drains, gutters, and downspouts to paved walkways sloping into continuous French drains at both beachfront and alley front sides of the property for onsite infiltration. In addition, the applicant is proposing an increase in pervious areas along the side yards to allow for additional percolation of runoff. The applicant has indicated that the project will comply with the applicable water efficiency and conservation measures of the City of Newport Beach's adopted CALGreen standards concerning efficient fixtures and appliances. Grading will consist of 253 cubic yards.

The subject site is located at 2404 W. Oceanfront within the City of Newport Beach, Orange County (**Exhibit 1 & 2**). The lot area is 1,875 sq. ft. and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Single-Unit Residential Detached (RSD). The proposed project adheres to this designation. The project is on a beachfront lot located within an existing urban residential area, located generally east of the Newport Pier, and located between the first public road and the sea (**Exhibit 1 & 2**). There is an approximately 300-foot wide sandy beach between the subject property and the Pacific Ocean.

Given that the applicant has chosen to implement the project on a beachfront lot despite risks from liquefaction, wave attack, erosion, sea level rise, and storm flooding, the applicant must assume the risks and agree to no future shoreline protective devices. Therefore, the Commission imposes **Special Conditions 1 and 2**. Any future improvements to the single-family house authorized by this Coastal Development Permit No. 5-15-1367, including but not limited to repair and maintenance identified as requiring a permit, will require an amendment to Permit No. 5-15-1367 from the Commission as imposed by **Special Condition 3**. The Commission imposes **Special Condition 4** to ensure consistency with the geotechnical recommendations. In addition, because the project site is on a beachfront lot and in proximity to coastal waters, the Commission imposes construction-related requirements and best management practices under **Special Condition 5**, and to address water quality, imposes **Special Condition 6** to prevent pollution of the coast.

The Commission imposes **Special Condition 7** requiring the applicant to record a Deed Restriction acknowledging that, pursuant to this permit (CDP No. 5-15-1367), 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 proposed project will not have an adverse effect on public access. The project site is located on the inland portion of Oceanfront fronted by the City's paved public lateral access way (boardwalk). The Commission has found through previous permit actions in this area that the City's setback in this area is acceptable for maintaining public access. The proposed project is consistent with the City's 5-foot required setback from the seaward property line. Vertical public access to this beach is available to the adjacent north at the end of 25th street and to the adjacent south at the end of 24th street. Lateral public access is available along the boardwalk and wide sandy beach seaward of the subject site (**Exhibit 1 & 2**).

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

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; adherence to the geotechnical recommendations; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition must be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

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

E. WATER QUALITY

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

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, 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.

G. 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 updated on October 2005. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

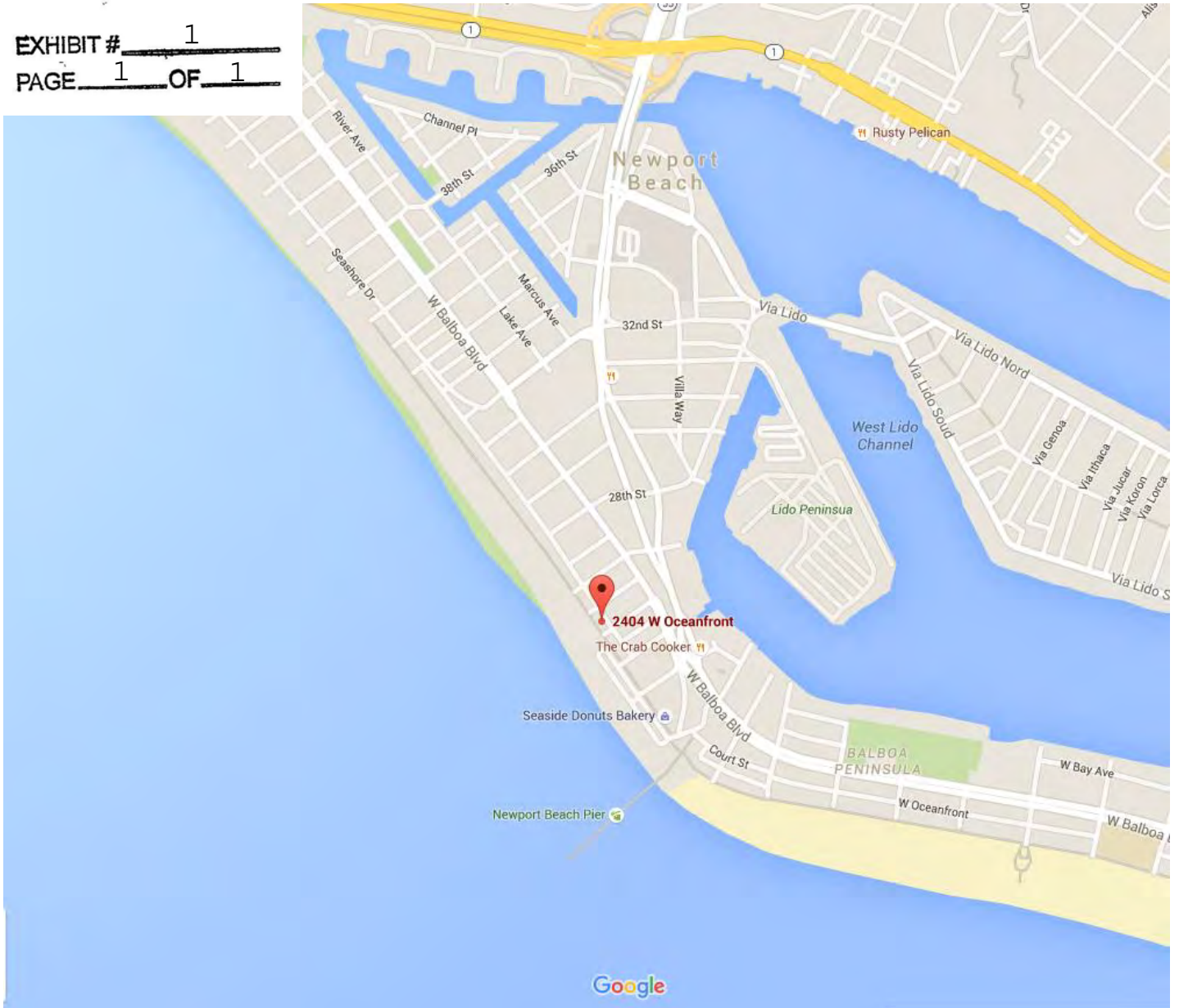
As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

Appendix A - Substantive File Documents

- City of Newport Beach certified Land Use Plan
- *Coastal Hazard and Wave Runup Study, 2404... [West] Oceanfront, Newport Beach, California* by GeoSoils, Inc. dated 03/23/2015
- City of Newport Beach Approval-in-Concept No. AIC2015031, dated 07/13/2015 and 03/03/2016
- Coastal Development Permit Application No. 5-15-1367
- *Geotechnical Investigation for Proposed Residential Development Located at 2404 West Oceanfront, Newport Beach, California* by EGA Consultants, dated 05/28/15.

COASTAL COMMISSION

EXHIBIT # 1
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COASTAL COMMISSION

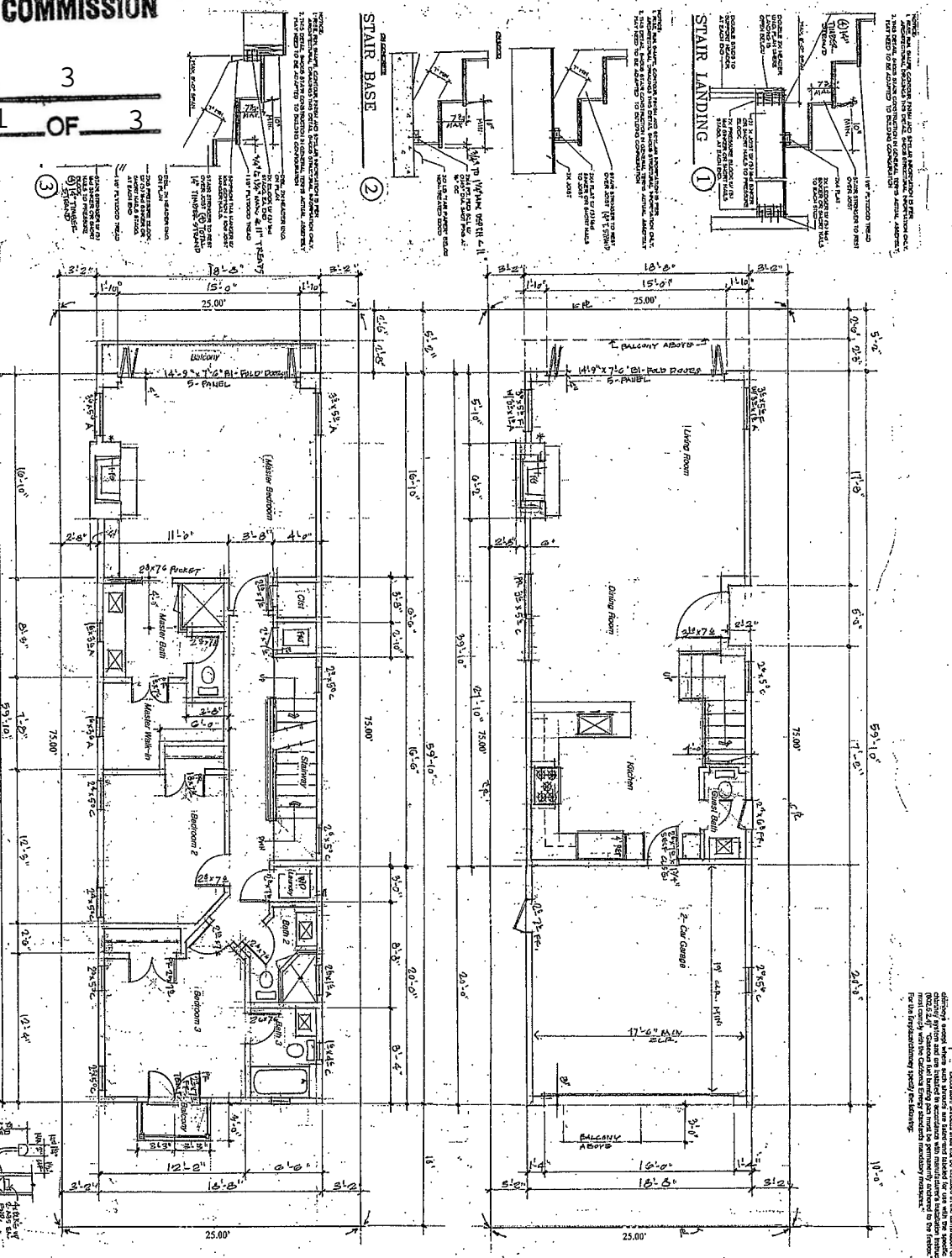
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COASTAL COMMISSION

EXHIBIT # 3
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Additional notes regarding construction details and material specifications.

NOTE: THESE PLANS ARE THE PROPERTY OF ERIC F. MOSSMAN ARCHITECT. ANY REPRODUCTION OR MODIFICATION WITHOUT WRITTEN PERMISSION IS STRICTLY PROHIBITED.

WHOLE HOUSE VENTILATION CALCULATION

2nd floor	1500 SF	1500
1st floor	2000 SF	2000
Total	3500 SF	3500

First Floor
 UNING 730.48 SF
 GARAGE 353.64 SF

BALCONY	69 SF
COVERED DECK	224 SF
DECKS	368 SF

BUILDING STANDARDS SHALL COMPLY WITH:

- 2013 CBC
- 2013 CMC
- 2013 CEC
- 2013 CFC
- 2013 CIG
- 2013 CIB
- 2013 CIE
- 2013 CIP
- 2013 CIO
- 2013 CIN
- 2013 CIO
- 2013 CIP
- 2013 CIN
- 2013 CIO
- 2013 CIP
- 2013 CIN

Second Floor
 SECOND FLOOR UNING 1044 SF

REVISIONS

NO.	DATE	DESCRIPTION

Custom Residence For:
Bapu Development, LLC, Suru Manek, Mgr.
 Located at:
2404 W. Oceanfront, Newport Beach, CA

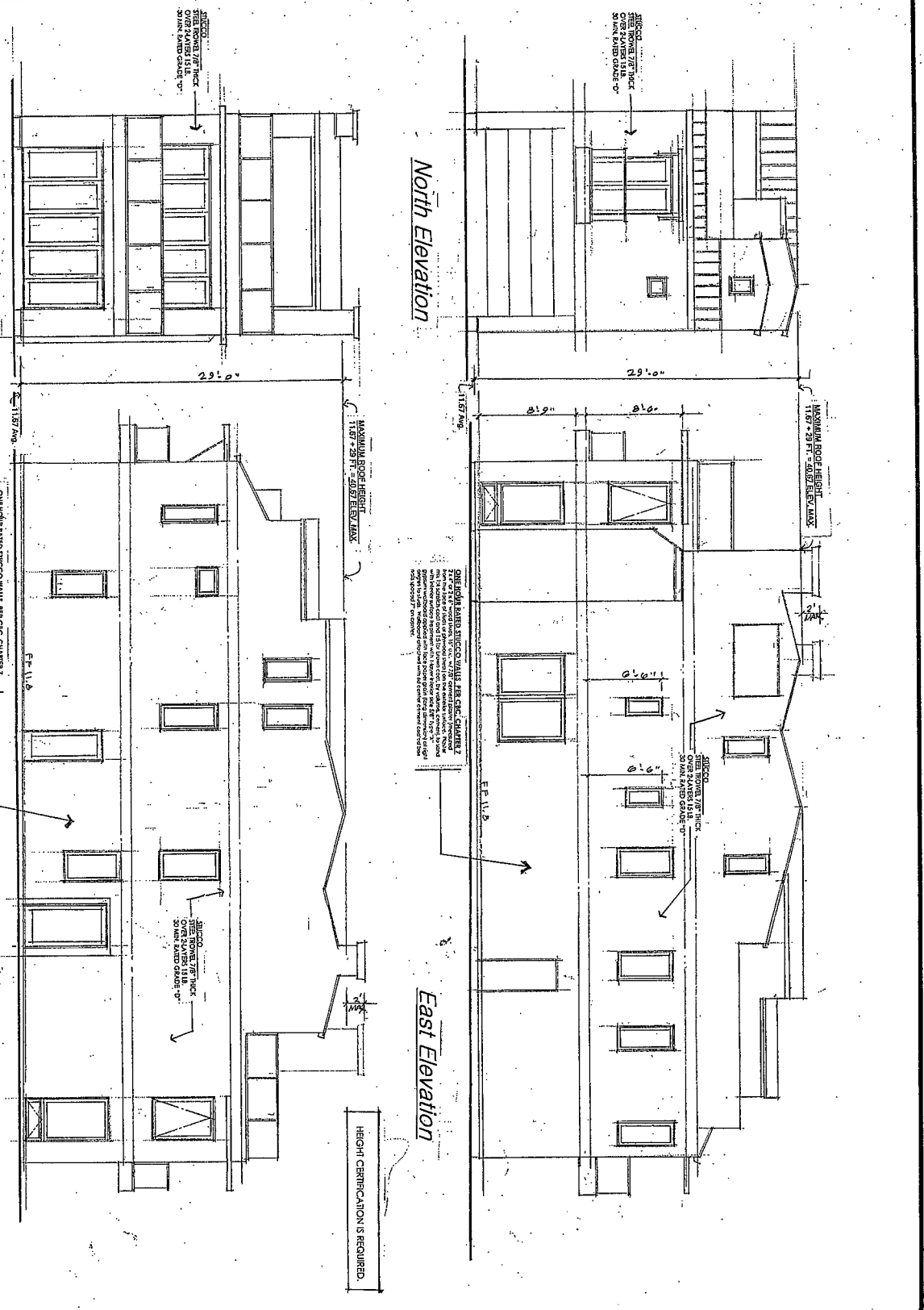
ERIC F. MOSSMAN ARCHITECT
 AIA RAIC NCARB
 (949) 675-1252
 2025 W. BALBOA BLVD, SUITE B, NEWPORT BEACH, CA 92663

REVISIONS

NO.	DATE	DESCRIPTION

COASTAL COMMISSION

EXHIBIT # 3
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North Elevation

South Elevation

West Elevation

East Elevation

HEIGHT CERTIFICATION IS REQUIRED.

ONE ROW HARD SIPICO WALL PER CIRC. CHAMBER Z
 Note: See the table below for the number of rows of wall required. The
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AVERAGE NATURAL GRADE
 12.15' - 11.86' - 11.77' - 11.50' =
 46.07' - 4' - 11.87' ASB.
 MAXIMUM ROOF HEIGHT
 12.15' - 11.86' - 11.77' - 11.50' =
 46.07' - 4' - 11.87' ASB.

DATE	CHECKED	DRAWN
SCALE	1/4" = 1'-0"	
SHEET		
NO.		
A7		

Current Residence For:
Bapu Development, LLC, Suru Manek, Mgr.,
 Located at:
 2404 W. Oceanfront, Newport Beach, CA

ERIC F. MOSSMAN
 ARCHITECT
 AIA RAIC NCARB
 (949) 675-1252
 2025 W. BALBOA BLVD., SUITE B, NEWPORT BEACH, CA 92663

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