

CALIFORNIA COASTAL COMMISSION

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| Filed: | 3/16/16 |
| 180th Day: | 9/09/16 |
| Staff: | M. Revell-LB |
| Staff Report: | 7/21/16 |
| Hearing Date: | 8/11/16 |

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-16-0149

Applicants: Linda Bosserman and Ted Piatt

Agent: William Guidero

Location: 3803 Seashore Drive, City of Newport Beach (County of Orange) APN 423-325-06

Project Description: Demolition of an existing duplex, and construction of a new 29 ft. high, 2,838 sq. ft., three-story, single-family residence with an attached two-car garage on an oceanfront lot. In addition, the project includes the replacement of a 10 ft. deep by 30 ft. wide concrete patio and approximately 3-foot high perimeter wall within City's oceanfront encroachment area.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing to demolish an existing two-story duplex and to construct a new three-story, 29-foot high single-family residence with 2,766 square feet of total living area, an attached two-car, 383-square foot garage on an oceanfront lot. The project includes the replacement of a 10 ft. deep by 30 ft. wide concrete patio and approximately 3-foot high perimeter wall within the City of Newport Beach Oceanfront Encroachment Area. Grading consists of 2 cubic yards of cut and fill.

The project includes development in the public right-of-way on the seaward side of the home. Due to its oceanfront location, the project site may be potentially exposed to the hazard of waves, erosion, storm conditions, sea level rise or other natural hazards. However, the project is consistent with previous Commission approvals in the area and conditions have been imposed in order to minimize potential adverse impacts from the development consistent with Coastal Act. Private

improvements are allowed in the Seashore Drive public right-of-way under a policy and mitigation program approved by the Commission in June 1991 and incorporated into the City's Coastal Land Use Plan. As conditioned, the proposed development conforms to the requirements of the program outlined in the CLUP.

Staff is recommending **APPROVAL** of the proposed project with **Nine Special Conditions** regarding: **1)** assumption of risk; **2)** no future shoreline protective device; **3)** storage of construction materials, mechanized equipment, and removal of construction debris; **4)** conformance with the submitted drainage and run-off control plan; **5)** landscape controls; **6)** no deviation from approved encroachments/participation in the City mitigation program; **7)** City's right to revoke authorization of encroachment and compel removal of the encroachments; **8)** future development; and **9)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

I. MOTION AND RESOLUTION

Motion: *I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.*

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

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

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the

date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

2. No Future Shoreline Protective Device.

- A. By acceptance of this Permit, the applicant agrees, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-16-0149 including, but not limited to, the residence, foundation, or patio including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, bluff retreat, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicant hereby waives, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- B. By acceptance of this Permit, the applicant further agrees, on behalf of itself (or himself or herself, as applicable) and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the residence, foundation, or patio if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, or if any public agency requires the structures to be removed. If any portion of the development at any time encroaches onto public property, the permittee

shall either remove the encroaching portion of the development or apply to retain it. Any application to retain it must include proof of permission from the owner of the public property. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director determines that no coastal development permit is legally required.

- C. Prior to removal/relocation, the permittee shall submit two copies of a Removal/Relocation Plan to the Executive Director for the review and written approval. The Removal/Relocation Plan shall clearly describe the manner in which such development is to be removed/relocated and the affected area restored so as to best protect coastal resources, including the Pacific Ocean. In the event that portions of the development fall to the bluffs or ocean before they are removed/relocated, the landowner shall remove all recoverable debris associated with the development from the bluffs and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. Storage of Construction Materials, Mechanized Equipment and Removal of Construction

Debris. The permittees 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 applicants 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.

4. Conformance with Drainage and Run-Off Control Plan. The applicants shall conform with the drainage and run-off control plan received on February 23, 2016 showing roof top and surface drainage directed to permeable areas and a trench drain. 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. Landscaping-Drought Tolerant, Non-Invasive Plants. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).

6. Deviation from Approved Encroachments. The only encroachments into the encroachment zone within the City of Newport Beach Oceanfront public right-of-way allowed by this coastal development permit are a patio, and a 3’ high perimeter wall that extends 10-feet into the 10-foot deep encroachment zone on the public beach. Any development in the public right of way, including improvements, repairs, and maintenance, cannot occur without an amendment to this coastal development permit or a new coastal development permit from the Coastal Commission, unless the Executive Director determines that no amendment or new permit is legally required.

7. City’s Right to Revoke Encroachment Permit. Approval of this coastal development permit shall not restrict the City’s right and ability to revoke, without cause, the approved City encroachment permit in order to construct public access and recreation improvements within the public right of way.

8. Future Development. This permit is only for the development described in coastal development permit CDP No. 5-16-0149. Pursuant to Title 14 California Code of Regulations (CCR) Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(a) shall not apply to the development governed by coastal development permit CDP No. 5-16-0149.

Accordingly, any future improvements to the permitted single family residence authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b), shall require an amendment to Permit No. 5-16-0149 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

9. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowners have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCATION

The applicants are proposing to demolish a two-story duplex with an attached two-car garage, and construct a new three-story, 29-foot high, 2,766 square foot, single family residence with an attached 426 square foot two-car garage on a 1,950 square foot beach-front lot (**Exhibit 2**). There is also an existing concrete beachfront patio within the City of Newport Beach encroachment zone, which will be replaced as a part of this project. The applicant currently possesses an encroachment permit with the City of Newport Beach to maintain the same development in the public right-of-way.

The subject site is a residential lot located at 3803 Seashore Drive in the City of Newport Beach, up coast from the Newport Pier (**Exhibit 1**). The lot size is 1,950 square feet. The city's certified Land Use Plan (LUP) designates the property as Two-Unit Residential, and the proposed single-family residence is consistent with this designation. The project is located within an existing urban residential area on the Balboa Peninsula (**Exhibit 1**).

As noted above, the site consists of a single lot located between the first public road and the sea. There is a sandy beach (approximately 300 feet wide) between the subject property and the Pacific Ocean. Due to its oceanfront location, the project site may be potentially exposed to the hazard of wave run-up during a severe storm event.

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. 5-16-0149, including but not limited to repair and maintenance identified as requiring a permit, will require an amendment to Permit No. 5-16-0149 from the Commission as imposed by **Special Condition 8**. In addition, because the project site is on a beachfront lot and in proximity to coastal waters, the Commission recommends construction-related requirements and best management practices under **Special Condition 3**, and to address water quality, recommends **Special Condition 4** to prevent pollution of the coast.

The proposed project will not have an adverse effect on public access. The Commission has found through previous permit actions that the City's structural setback in this area is acceptable for maintaining public access. The proposed project is consistent with the City's required 5 ft. setback for primary structures from the seaward property line. Vertical public access to the beach is available nearby approximately 30 ft. to the east of the subject site at the 38th Street seaward terminus. Lateral public beach access is available along the 300 ft. wide sandy beach of this area, seaward of the subject site. However, the proposed patio encroachment on the beach could contribute to the cumulative adverse impact on beach use resulting from the various existing

encroachments on the public right-of-way in the area. In addition, the encroachments could make it difficult in the future for the City to improve the public right-of-way for lateral access purposes.

The proposed patio is located in an area where 10 ft. limited patio encroachments onto the public beach on the seaward side of the home are allowed. In 1991, the Commission certified an amendment to the City of Newport Beach Land Use Plan (LUP). The LUP encroachment policies allow encroachments seaward of the subject site, which is between 52nd Street and 36th Street. Properties between 52nd Street and 36th Street can encroach into the beach up to 10 ft. The LUP policies allow encroachments only if they do not interfere with access to the beach or ocean, when a building permit is not required, and subject to payment of a mitigation fee. The City of Newport Beach reserves the right to use the encroachment area right-of-way for public projects in the future. **Special Conditions 6 and 7** address these requirements.

The applicants provided a copy of the Annual Oceanfront Encroachment Permit issued April 16, 1992. In this case, the Commission finds that the proposed encroachment is consistent with the certified LUP encroachment policies and the Chapter 3 public access policies of the Coastal Act. The findings for which are found in the Newport Beach LUP Amendment 90-1 approved by the Commission on June 11, 1991 and which are incorporated here by reference.

The Commission imposes **Special Condition 9** requiring the applicant to record a Deed Restriction acknowledging that, pursuant to this permit (CDP No. 5-16-0149), 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.

B. HAZARDS

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

C. DEVELOPMENT

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

D. PUBLIC ACCESS

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

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted run-off from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing run-off through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the run-off discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. LOCAL COASTAL PROGRAM (LCP)

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Coastal Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

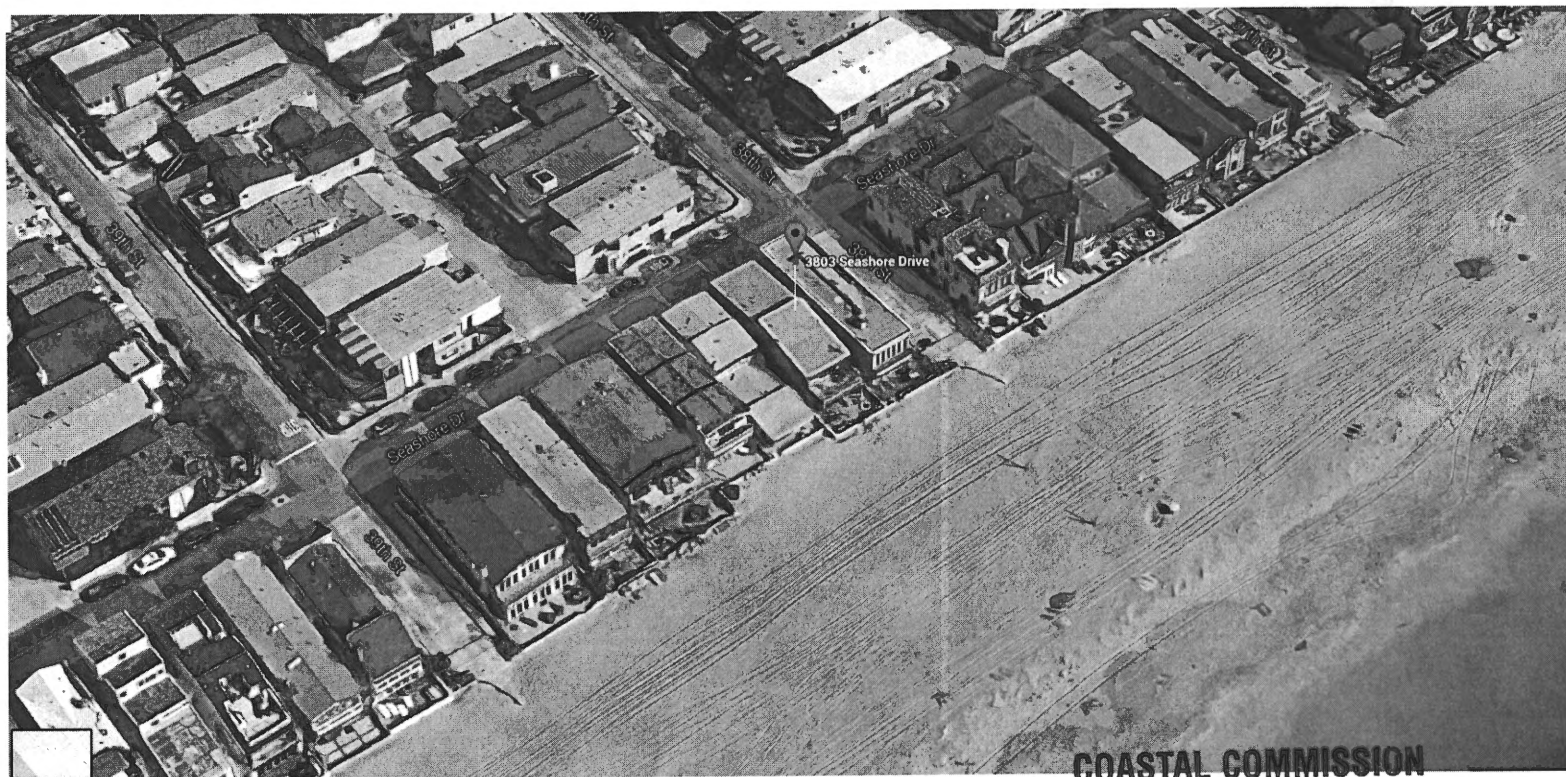
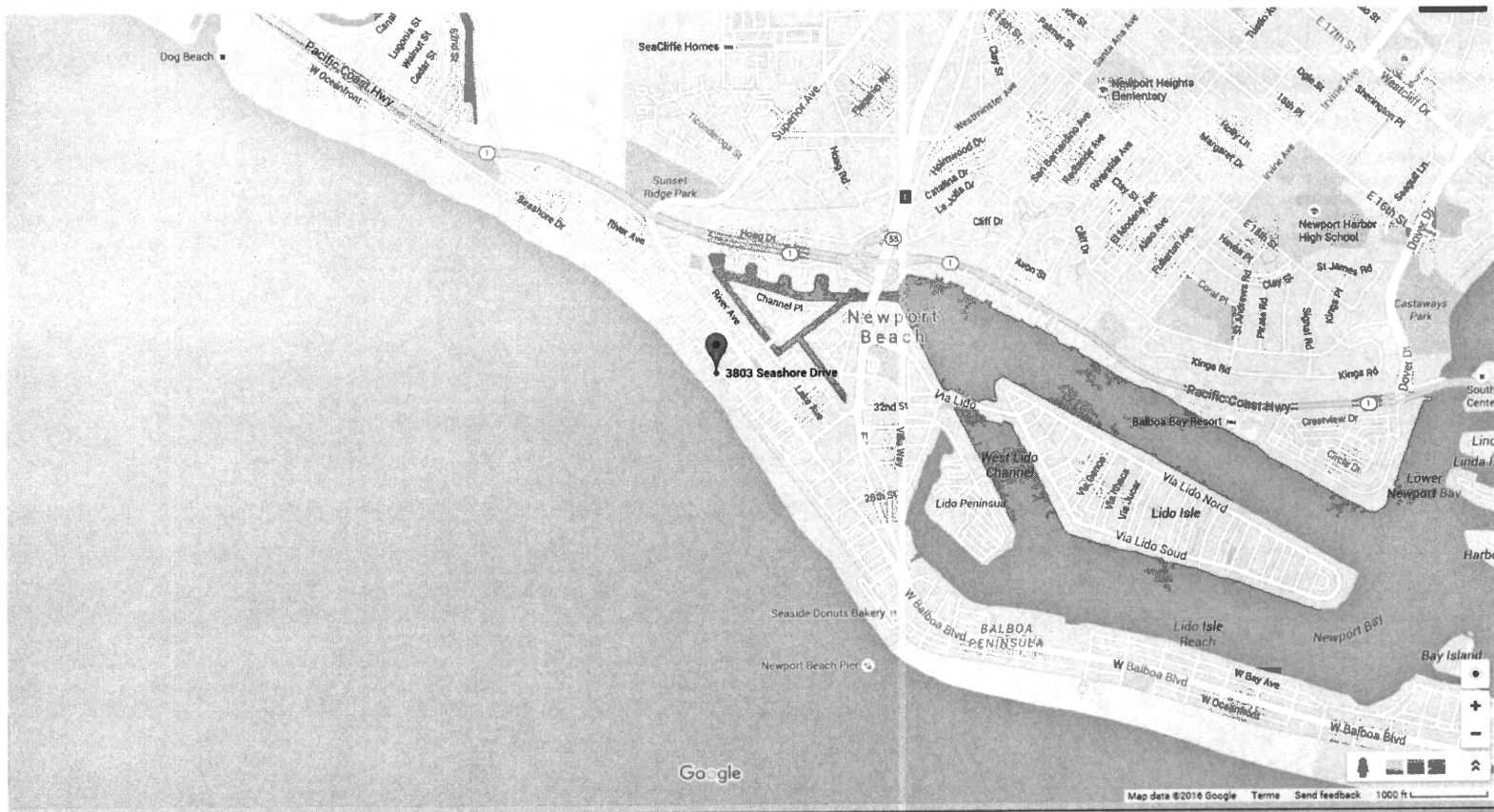
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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

Although the proposed development is categorically exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and consistent with the requirements of the Coastal Act and CEQA.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS: Approval-In-Concept from the City of Newport Beach Planning Department dated April 2, 2014; *Coastal Hazard and Wave Runup Study, 5305 Seashore Drive, Newport Beach, California* prepared by *Geosoils, Inc.* dated March 19, 2014; Letter from Commission staff William Guidero dated May 21, 2014; and Letter from William Guidero to Commission staff dated May 30, 2014.



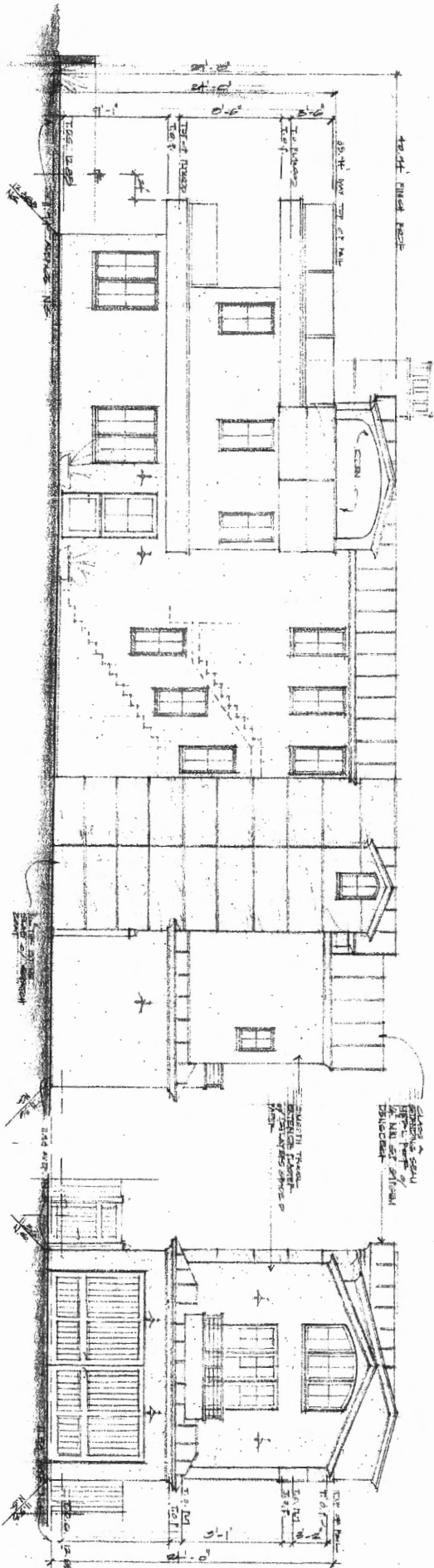
COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 1

EAST (ENTRY SIDE)

1/4" = 1'-0"

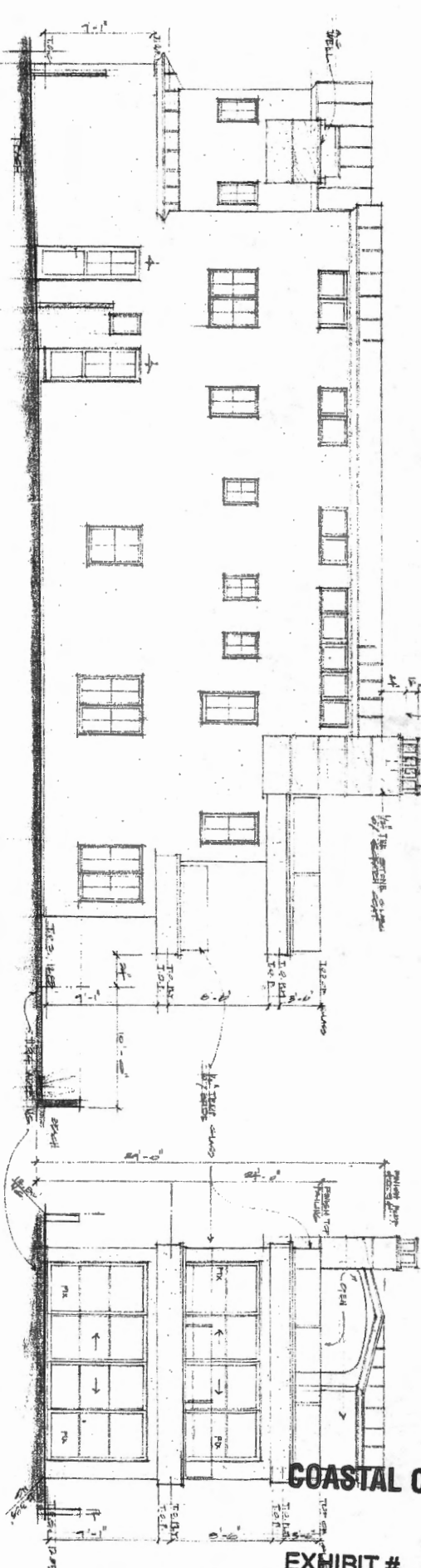
NORTH (SEASIDE DR) 1/4" = 1'-0"



WEST (SIDE)

1/4" = 1'-0"

SOUTH (SEASIDE DR) 1/4" = 1'-0"



COASTAL COMMISSION

EXHIBIT # 2 OF 2

5

DATE 1/6/12

A New Home for:
Bosserman / Platt
3803 Seashore Dr, Newport Beach, CA 92663 (909) 921-7492

