

**CALIFORNIA COASTAL COMMISSION**

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# W14a



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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 5-13-1231

**Applicant:** Marcos Khalil

**Project Location:** 912 East Oceanfront, Newport Beach, Orange County

**Project Description:** Demolition of an existing one-story duplex, and construction of a new 2,537 sq. ft., 29 ft. tall, three-story duplex including an attached two-car garage and two new carports, and a 15-foot easement dedication at the rear property line to the City for the creation of a new public right-of-way on an ocean front lot.

**Staff Recommendation:** Approval with conditions.

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### SUMMARY OF STAFF RECOMMENDATION:

The applicant proposes to demolish the existing single story duplex and construct a new three-story duplex on an oceanfront lot in the City of Newport Beach. The proposed project includes development in the public right-of-way along Oceanfront Boardwalk, pursuant to an unpermitted street vacation from the City of Newport Beach to the applicant in February, 2013, and does not adhere to the 6 foot setback requirement for structures in this location as required by the City of Newport Beach's Certified Land Use Plan. Therefore, the major issues raised by this proposed development concern encroachment into the public right-of-way, impacts to community character and visual resources if set-backs are not adhered to, and development concerns normally associated with oceanfront development, such as wave up rush and flooding during strong storm events.

The applicant proposes to construct the seaward portion of the duplex within the unpermitted vacated area encroaching within the public right-of-way by approximately 2 feet as measured from the original property line. The vacation of the public right-of-way removes the approximately 300 square foot area from future public use and is inconsistent with the pattern of development in the area. Therefore, the Commission imposes **Special Condition 1** which requires that prior to the issuance of this coastal development permit, the applicant must submit final revised plans showing that the principal structure adheres to the original seaward property line which is located approximately 8.86 ft. inland from the landward edge of the concrete boardwalk (hereinafter “original property line”), and the City’s 6 foot setback requirement from that property line. In the event that the applicant chooses to construct an at-grade patio or similar low-scale improvement within the setback area consistent with past Commission action and the City of Newport Beach Land Use Plan, the Commission imposes **Special Condition 2** which requires prior to issuance of this coastal development permit, the applicant submit evidence, for the review and approval of the Executive Director that the applicant has made the initial payment to the City’s public access impact mitigation program (i.e. annual payment to City for encroachment). In addition, **Special Condition 3** 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.

The proposed project is located in an area where coastal hazards exist and can adversely impact the development. To ensure the development on the site does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes **Special Condition 4**, which requires no future shoreline protective device will be constructed. The Commission also imposes **Special Condition 5**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-13-1231 or a new coastal development permit.

During construction and post construction, the proposed project has potential for adverse impacts to water quality and marine resources. Therefore, as a result, several special conditions address and minimize impacts to water quality as follows: **Special Condition 6** outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris; **Special Condition 7** requires the applicant to submit a Water Quality Management Plan (WQMP) prior to the issuance of this permit.

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 8**, 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.

Commission staff recommends **approval** of Coastal Development Permit Application 5-13-1231, 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 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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### EXHIBITS

Exhibit No. 1 – Vicinity Map/Project Location

Exhibit No. 2 – Project Plans

Exhibit No. 3 – Site Plan

Exhibit No. 4 – CCC Memorandum re: Vacations of Right-of-Way

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-13-1231 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 5-13-1231 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 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, and grading plans, etc. showing that the principal structure adheres to the original property line and the City's 6 foot setback requirement from that original property line as depicted in **Exhibit 3**. The final project plans shall be in substantial conformance with the plans received on December 5, 2013. 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. Encroachment Permit.** Should the applicant choose to participate in the City's Oceanfront Encroachment Program, PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit evidence, for the review and approval of the Executive Director that the applicant has made the initial payment to the City's public access impact mitigation program (i.e. annual payment to City for encroachment.) Such permissible encroachments include at-grade patios and similar low-scale improvements. The applicant and all other successors and assigns must remain enrolled in the City's public access impact mitigation program (i.e. annual payment to City for encroachment) and make the recurring annual payment so long as the encroachment remains in place.

**3. Drainage Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director, two (2) copies of a final Drainage and Runoff Control Plan, including supporting calculations. The plan shall be prepared by a licensed civil engineer or qualified licensed professional and shall incorporate Best Management Practices (BMPs) including site design and source control measures designed to control pollutants and minimize the volume and velocity of stormwater and dry weather runoff leaving the developed site. In addition to the specifications above, the consulting civil engineer or qualified licensed professional shall certify in writing that the final Drainage and Runoff Control Plan is in substantial conformance with the following minimum requirements:

1. BMPs should consist of site design elements and/or landscape based features or systems that serve to maintain site permeability, avoid directly connected impervious area and/or

retain, infiltrate, or filter runoff from rooftops, driveways and other hardscape areas on site, where feasible. Examples of such features include but are not limited to porous pavement, pavers, rain gardens, vegetated swales, infiltration trenches, cisterns.

2. Landscaping materials shall consist primarily of native or other low-maintenance plant selections which have low water and chemical treatment demands. An efficient irrigation system designed based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design should be utilized for any landscaping requiring water application.
  3. All slopes should be stabilized in accordance with provisions contained in the Landscaping and/or Erosion and Sediment Control Conditions for this Coastal Development Permit.
  4. Runoff shall be conveyed off site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of outflow drains.
  5. For projects located on a hillside, slope, or which may otherwise be prone to instability, final drainage plans should be approved by the project consulting geotechnical engineer.
  6. Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.
  7. The final Drainage and Runoff Control Plan shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil engineer/water quality professional or engineering geologist shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.
- 4. 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. 5-13-1231 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 ocean 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.

**5. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-13-1231. 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. 5-13-1231. 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 5**, 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. 5-13-1231 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. Water Quality Management Plan (WQMP).** 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 Water Quality Management Plans.

**8. 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 1,443 square foot one-story duplex and construct a new ocean-fronting, 2,537 square foot, three-story, 29-ft. high duplex with an attached 428 square foot two-car garage, balcony deck and roof deck. A carport providing two additional parking spaces is also proposed onsite for a total of four parking spaces with the associated development (**Exhibit 2**). Additionally, the applicant proposes a 15-foot easement dedication at the rear property line to the City for the creation of a new public alley. Plans are included as Exhibit 2 of the staff report.

The subject site is located at 912 East Oceanfront in the City of Newport Beach, Orange County (**Exhibit 1**). The City of Newport Beach Land Use Plan (LUP) designates the site as RT (Two-Family Residential); the proposed project is a two unit duplex, which is allowable under this land use designation. The project is located within an existing urban residential area on Balboa Peninsula.

The site is a beachfront lot located between the first public road and the sea. The current lot size is 2,338 square feet. There is a wide sandy public beach (approximately 530 feet wide) between the subject property and the Pacific Ocean (**Exhibit 1**). The beach seaward of the site is developed with the City's paved approximately 20 foot wide Ocean Front Boardwalk, (a multi-use public lateral access way which extends approximately 2.75 miles from 36<sup>th</sup> Street downcoast to F Street), and Peninsula Park, a grass lawn passive recreation public park. The City holds the public right-of-way for street/walkway/bikeway purposes along Ocean Front. The public right-of-way is identified on the site survey as Ocean Front (**Exhibit 3**). Twelve feet of the most seaward portion of the right-of-way is improved with a paved boardwalk for pedestrian and bicycle access. The remaining approximately 8 feet along the eastern portion of the right-of-way is an area the City has previously allowed for minor private encroachments, under their encroachment program as described in City's Certified Land Use Plan.

The subject site is located along East Oceanfront in the central part of the Balboa Peninsula near the City's two municipal piers developed with a public walkway/bikeway. Other portions of the Ocean Front public right-of-way remain unimproved with no boardwalk. Vertical public access to the park and beach is available approximately 200 feet west at the A St. street-end, and 200 feet east at the B St. street-end. Lateral public access is available along the Ocean Front Boardwalk and the wide sandy beach immediately seaward of the subject site.

Currently, the 900 block of East Ocean Front (located between A Street and B Street, where the proposed project is located) only has a partial alley for half the block, located along the landward side of the property, with access from A Street. The subject site is located in the center of the block, on East Oceanfront between A Street and B Street. It is the City's intent to require the remaining properties on the block to dedicate a public easement along the rear property line at the time these residential sites are re-developed. The public easement along the rear property wall is for purposes of constructing a public alleyway for through traffic between A Street and B Street, and to enable the homes on the 900 block of East Ocean Front to have alley access to parking garages. The current lot size is 2, 338 square feet, with the proposed 15-foot alley dedication, the

adjusted lot size will be approximately 1,888 sq. ft. (**Exhibit 2**). The proposed project also includes development in the public right-of-way along Ocean Front Boardwalk, pursuant to an unpermitted vacation from the City of Newport Beach to the applicant in February, 2013. Additionally, the proposed project does not adhere to the 6 foot setback requirement from the original property line for structures in this location as required by the City of Newport Beach's Certified Land Use Plan.

## **B. PUBLIC ACCESS AND 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 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.*

On February 12, 2013, the City of Newport Beach summarily vacated an approximately 10 ft. x 30 ft. of the public right-of-way along Ocean Front Boardwalk to the applicant without the benefit of a coastal development permit. Any activity defined as "development" within the coastal zone requires a coastal development permit, and under the Coastal Act, the vacation or transfer to a private entity of any public land or interest in public land (including a road easement or right-of-way) that provides public access to the beach/ocean (including pedestrian or vehicular access) is an action that results in a "change in the intensity of use of water, or access thereto" and constitutes "development" as defined by Section 30106 of the Coastal Act. As such, the vacation of the public right-of-way is "development" which requires a CDP, and without a CDP to authorize the vacation, the applicant's property line remains where it was prior to the vacation (**See attached Memorandum, Exhibit 4**). A memorandum written by the Commission's enforcement staff in 2003 outlining this policy was emailed by Commission staff to the City of Newport Beach and all interested parties on April 18, 2016.

Pursuant to Section 1402 of the City of Newport Beach's own Charter regulations, "*no public water-front or beach property shall be sold or conveyed other than to the State or to the County*

*for use as a public beach or park.*” According to the City, the subject property is not waterfront or beachfront property because it “fronts an improved public boardwalk and an improved public park.” Commission staff disagrees with this assertion because there are no permanent structures between the sandy beach and the proposed project, and Commission staff routinely analyzes properties in this location as oceanfront. Regardless of the interpretation and application of the charter to this project, the vacation required a CDP from the Commission and is, thus, unpermitted development due to the City’s failure to obtain the CDP.

In addition, according to the Certified Land Use Plan and zoning ordinance, the setback for structures in this area is 6 feet from the seaward property line, so the ground floor of the applicant’s proposed duplex would need to be setback 6 feet from the original property line. According to the City’s CLUP, the applicant would be allowed, however, to construct at-grade patios and similar low-scale improvements between the original property line and the landward edge of the concrete boardwalk, which is approximately 7 to 8 feet oceanward of the original property line (i.e. within the setback and encroachment area), which is consistent with past Commission action and the pattern development along this area of East Ocean Front in Newport Beach. No permanent structures other than those permitted in the City’s Encroachment Program are permitted, preserving the City’s right to utilize the area for future public projects.

The proposed project, however, indicates that the seaward portion of the duplex will encroach into the unpermitted vacated area (i.e. within the public right-of-way) by approximately 2.5 feet as measured from the original property line. In addition, the proposed second story deck will encroach an additional 3 feet into the unpermitted vacated area, resulting in a 5.5 ft. encroachment into the public right-of-way. This encroachment could potentially interfere with the public’s right of access to the beach in this location if in the future the City decides to widen the public right-of-way, because such development would preclude the City from widening the boardwalk to improve public access. Therefore, the Commission imposes **Special Condition 1** which requires that prior to the issuance of this coastal development permit, the applicant must submit final revised plans showing that the principal structure adheres to the original property line and the City’s 6 foot setback requirement. In the event that the applicant chooses to construct an at-grade patio or similar low-scale improvement within the setback and encroachment area for allowable encroachments consistent with past Commission action and the City of Newport Beach Land Use Plan, the Commission imposes **Special Condition 2** which requires prior to issuance of this coastal development permit, the applicant submit evidence, for the review and approval of the Executive Director that the applicant has made the initial payment to the City’s public access impact mitigation program (i.e. annual payment to City for encroachment).

In April of 1986, the Commission approved Waiver No. 5-86-191-W (Fluter). Waiver No. 5-86-191 allowed the construction of a 32 ft. high, two-unit condominium approximately four parcels downcoast from the applicant’s property, at 922 East Ocean Front in Newport Beach. In that instance, the City of Newport Beach also vacated a 6.5 foot portion of the public right-of-way along East Oceanfront to the owners of that parcel without the benefit of a coastal development permit. In this case the resulting structure did not encroach into the right-of-way, but was built on the original property line without a setback from that line. It is worth noting that the resulting project is setback approximately 10 feet inland of their “new” property line along Ocean Front Boardwalk.

On July 14, 2016, the Commission approved Coastal Development Permit Nos. 5-15-2057 and 5-15-2059 for the construction of single family residences at 924 and 926 East Oceanfront, proposed to be approximately 2,260 and 2,338 square feet, respectively. Although neither of those parcels were granted vacations of public right-of-way, the Commission enforced the 6 foot setback requirement from the seaward project property line for both of those projects. In addition, both of those projects have granted a 15-foot easement dedication at the rear property line to the City of Newport Beach for the creation of a new public alley, and both are on similar sized lots as the applicant's property. Both projects propose to remove the existing 3 foot tall concrete block wall encroachment onto the public right of way.

For the reasons discussed, the project as proposed could potentially have an adverse effect on public access. However, the project as conditioned is consistent with Sections 30210, 30211 and 30221 of the Coastal Act.

### **C. 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 . . ." The City's CLUP designates certain setback requirements for specific locations in order to prevent impacts to such scenic and visual resources. The setback requirement designated by the City's CLUP for this location for habitable space is 6 feet inland of the seaward property line, and most all of the structures built in this location along the 900 block of East Ocean Front (with the exception of some that were constructed prior to the Coastal Act), adhere to this 6 foot setback requirement. In addition, as discussed in more detail below, recent Commission action in this location demonstrates strict adherence to this designated 6 foot setback.

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. Although the plans submitted by the applicant show that the project is setback 6 feet from the "new" property line immediately adjacent to the encroachment wall along Ocean Front Boardwalk, as discussed, the public right-of-way vacation that created this "new" property line was unpermitted, and is therefore invalid.

The original property line, therefore, (located approximately 8.86 ft. inland from the landward edge of the concrete boardwalk) is the governing property line from which the 6 foot setback should be measured. Allowing this development to be sited and configured based on the “new” property line would not achieve the objectives of Coastal Act Section 30251, as the proposed project would encroach into the public right-of-way and would not, therefore, be compatible with the character of the surrounding area. In addition, the project proposes a second story cantilevered balcony that extends an additional 3 feet over the setback, encroaching into the view-shed along the right-of-way. The required setbacks establish an adequate visual buffer along the boardwalk where the public can enjoy the views along the boardwalk, and permanent structural encroachments into the public right-of-way will diminish those views. Section 30251 of the Coastal Act states that permitted development should protect views and be visually compatible with the surrounding area. Therefore, the project must conform to the City’s setback requirement.

#### **D. HAZARDS**

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

*New development shall:*

- (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 30253 of the Coastal Act requires that new development assures stability and structural integrity and does not create or contribute to significant erosion, geologic stability of destruction of the area in any way that necessitate the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

To analyze the suitability of the site for the proposed development relative to potential hazards from sea level rise, erosion, wave attack, flooding and other coastal hazards, Commission staff requested the preparation of a hazards analysis, prepared by an appropriately licensed professional (e.g. coastal engineer). The purpose of this analysis is to determine the potential for future storm damage and any possible mitigation measures, which could be incorporated into the project design.

The applicant has submitted the following coastal hazard investigation: *Coastal Hazard & Wave-Runup Study, 912 East Oceanfront, Newport Beach, California* prepared by Geosoils Inc. dated March 10, 2016. The study states the presence of a relatively wide area of approximately 600 feet between the proposed duplex and the mean high tide line, consisting of a concrete public boardwalk, a grass sports field, and a wide sandy beach, protects the proposed improvements from maximum wave runup elevation. Additionally, the study states that even with a 5-foot rise in sea level rise over the next 75 years, the proposed improvements are reasonably safe from

flooding and wave runup erosion. Ultimately, this study concludes: “*The overtopping waters over the next 75 years most likely will not reach the subject site even under the extreme design conditions.*”

Although the applicant’s report indicates that the site is safe for development at this time, beach areas are dynamic environments and may be subject to unforeseen changes. Such changes may affect beach processes. For example, the study states that: “*Rather than being inundated by sea level rise, the beach and the near shore will readjust to the new level over time such that waves and tides will see the same profile that exists today, but the berm will be at a higher elevation. This is the principle of beach equilibrium...*” As long as the wide sandy beach is intact, the new development should be safe from sea level rise. However, if something were to happen that would cause damage to the beach, then shoreline retreat may occur. Therefore, the proposed development is located in an area where coastal hazards exist and can adversely impact the development. To minimize the project’s potential future impact on shoreline processes, the Commission imposes **Special Condition 4**, which prohibits construction of any future shoreline protective device(s) to protect the development approved pursuant to Coastal Development Permit No. 5-13-1231 including, but not limited to residence, foundations, decks, balconies, patios, hardscape and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise or other natural coastal hazards in the future. Pursuant to **Special Condition 5**, the applicant agrees to waive any right to construct any future shoreline protective devices such as revetments, seawalls and other such construction that armors or otherwise substantially alters the bluff. Additionally, **Special Condition 5** does not preclude the applicant from applying for future coastal development permits for maintenance of existing development or future improvements to the site (other than shoreline protective devices). The Commission would determine the consistency of such proposals with the Coastal Act in its review of such applications. Future development includes, but is not limited to, structural additions, landscaping, hardscape and fencing. Thus, as conditioned, the Commission finds that the proposed project is consistent with Section 30253 of the Coastal Act with regard to hazards.

## **E. 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.

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.

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 Commission imposes **Special Condition 7**, requiring the applicant to submit a Water Quality Management Plan (WQMP) for Executive Director approval prior to issuance of this coastal development permit. Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

## **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 (**Special Condition 8**) 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 constructive 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 last updated in October 2009. Regulations pertaining to vacations of the public right-of-way on oceanfront property are discussed in the Implementation Plan, which is scheduled for the September, 2016 Coastal Commission Hearing. Approval of the project as proposed could prejudice the ability of the Commission to certify the City's Local Coastal Plan. 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)**

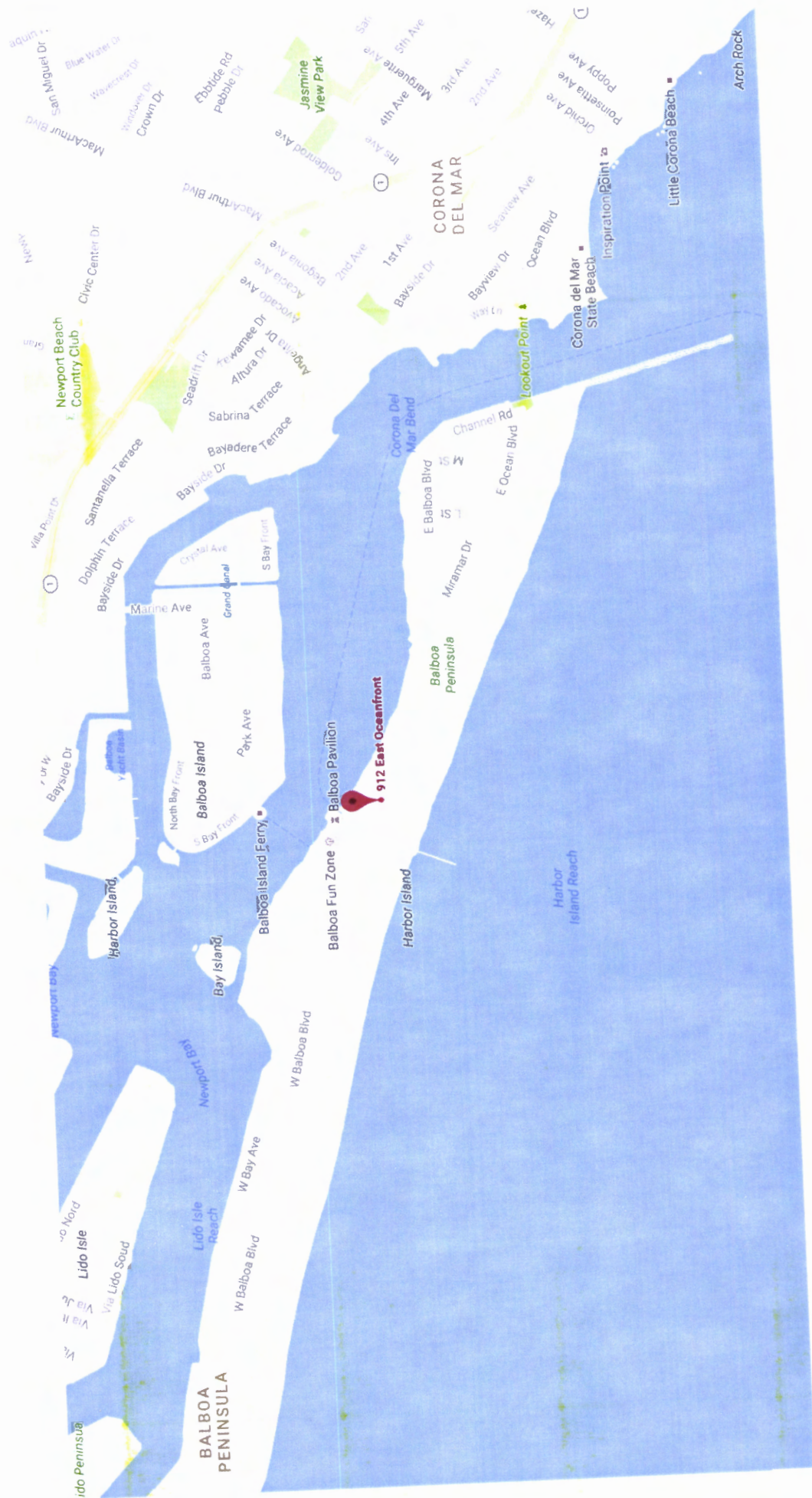
As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the 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.

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.

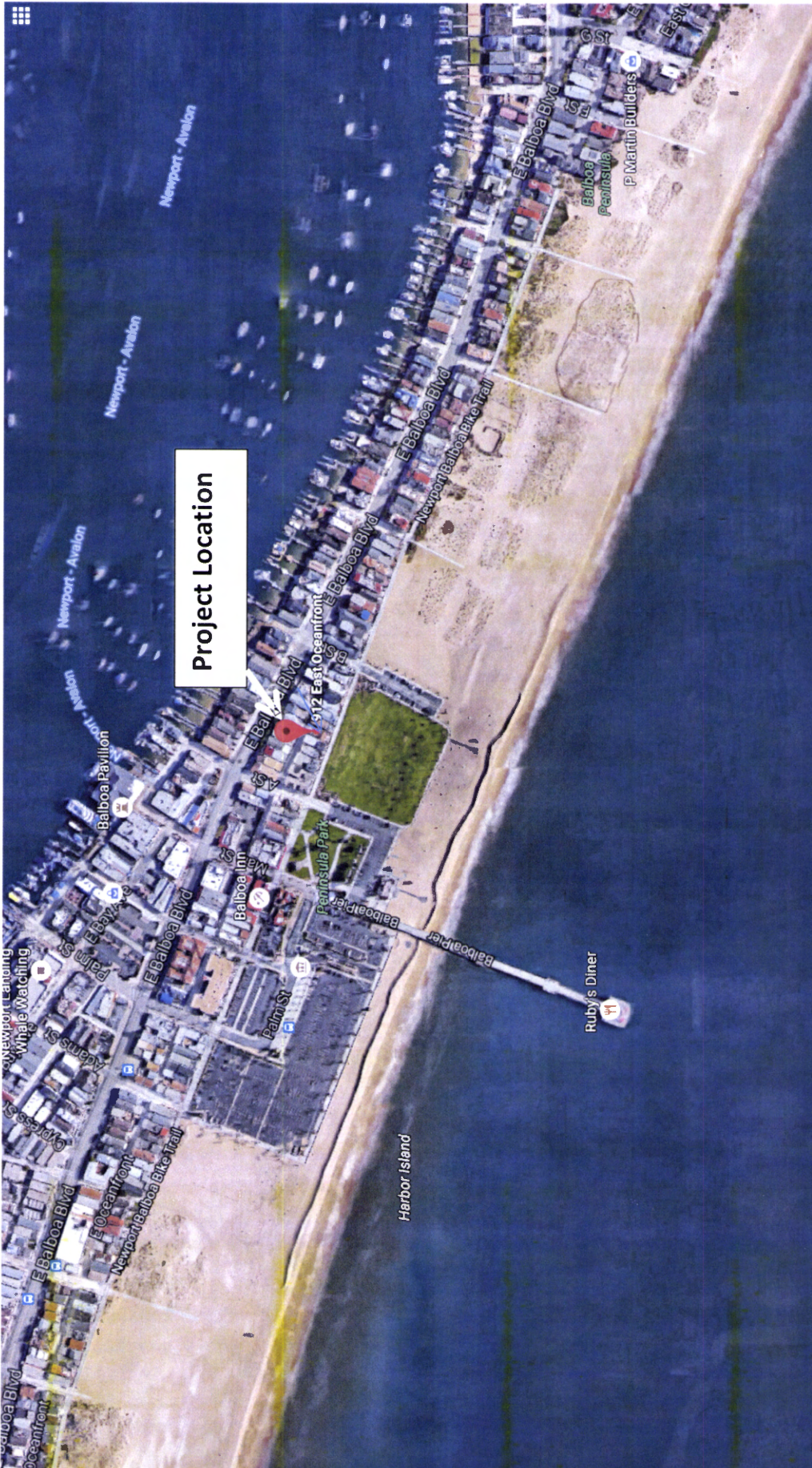




COASTAL COMMISSION

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 PAGE 1 OF 2





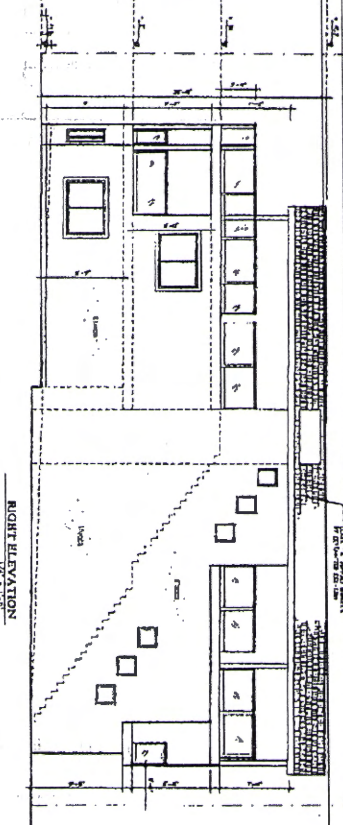
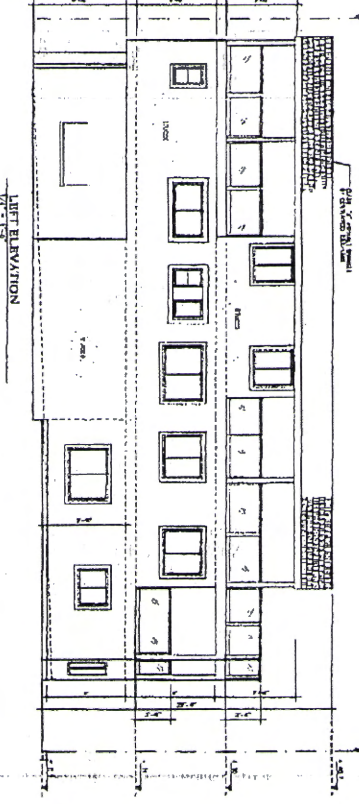
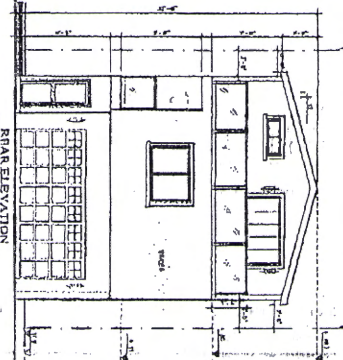
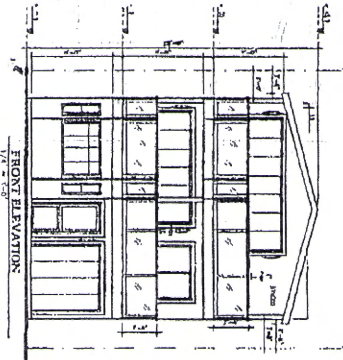
Project Location

COASTAL COMMISSION

EXHIBIT # 1  
PAGE 2 OF 2



**RECEIVED**  
 South Coast Region  
 JUL 22 2016  
 CALIFORNIA  
 COASTAL COMMISSION



**COASTAL COMMISSION**

EXHIBIT # 2  
 PAGE 1 OF 2

1 of 1 sheets
A-2
DATE
2016
7/21/16
PROJECT
MARCOS DUPLEX
912 OCEAN FRONT E
ORANGE, CA 92663
CLIENT
FADY TAWADROUS
335 NUTWOOD ST
ORANGE, CA 92663
PHONE
(714) 993-1814
EMAIL
ftawadrous@arcadecorp.com

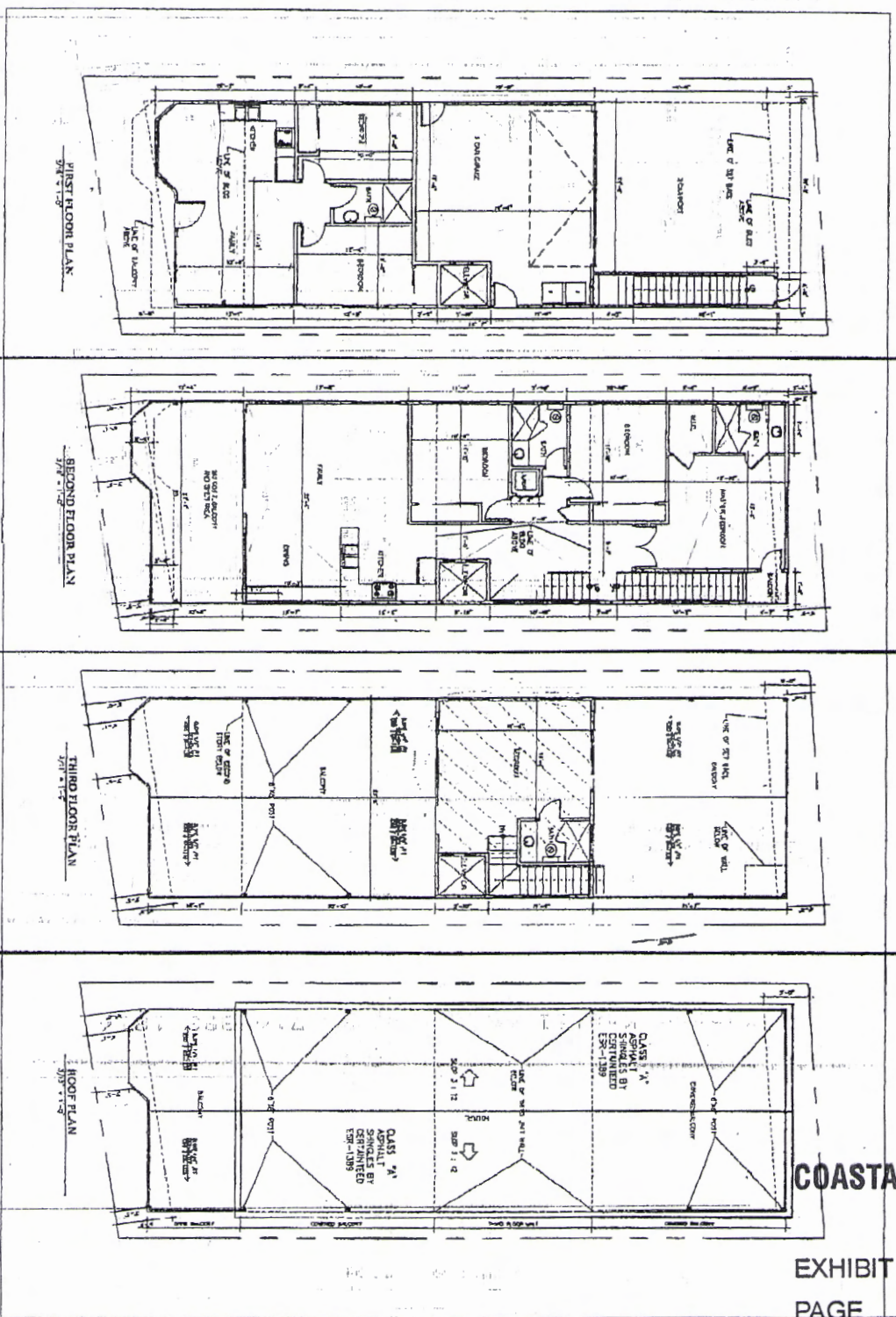
DESIGNED BY  
**ELEVATIONS**

PLAN PREPARED BY  
**FADY TAWADROUS**  
 335 NUTWOOD ST  
 ORANGE, CA, 92663  
 (714) 993-1814

PLAN PREPARED FOR  
**MARCOS KHIALEAL**  
 912 OCEAN FRONT E  
 ORANGE, CA 92663

PROJECT DESCRIPTION  
**MARCOS DUPLEX**  
 912 OCEAN FRONT E  
 NEWPORT BEACH, CA 92663





COASTAL COMMISSION

EXHIBIT # 2  
PAGE 2 OF 2

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South Coast Region

JUL 22 2016

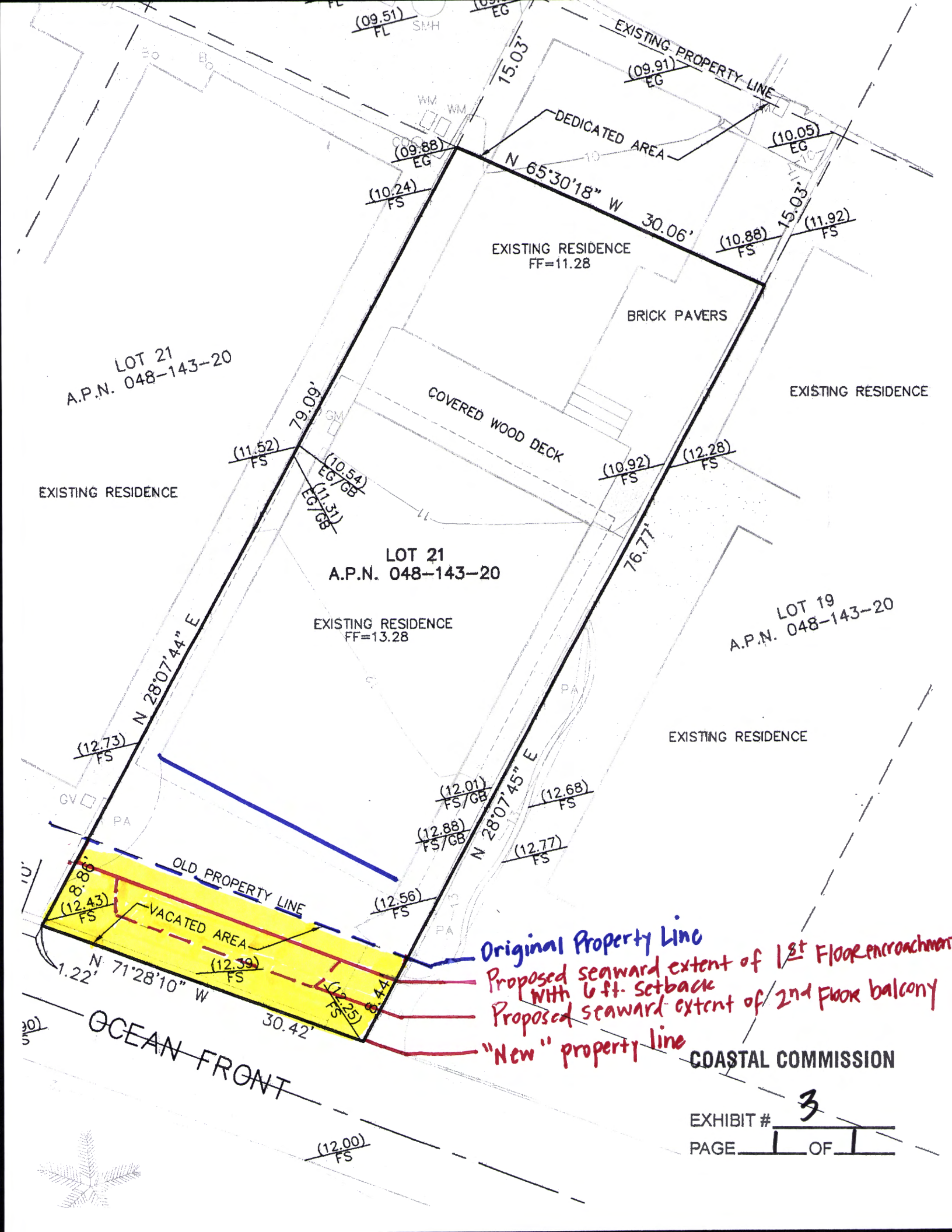
CALIFORNIA  
COASTAL COMMISSION

DATE	10/1/15
BY	10/1/15
FOR	10/1/15
BY	10/1/15
FOR	10/1/15
BY	10/1/15
FOR	10/1/15
BY	10/1/15
FOR	10/1/15

PLAN PREPARED FOR:  
FADY TAWADROUS  
J35 NUTWOOD ST  
BREA CA, 92821  
(760)885-5951

PLAN PREPARED FOR:  
MARCOS KHALEAL  
912 OCEAN FRONT E  
ORANGE, CA 92867

PROJECT LOCATION:  
MARCOS DUPLEX  
912 OCEAN FRONT E  
NEWPORT BEACH, CA 92663



LOT 21  
A.P.N. 048-143-20

LOT 21  
A.P.N. 048-143-20

LOT 19  
A.P.N. 048-143-20

EXISTING RESIDENCE

EXISTING RESIDENCE  
FF=13.28

EXISTING RESIDENCE

EXISTING RESIDENCE  
FF=11.28

EXISTING RESIDENCE

BRICK PAVERS

COVERED WOOD DECK

DEDICATED AREA

10'  
8'  
1.22'

N 28°07'44" E

N 28°07'45" E

N 65°30'18" W

OCEAN FRONT

COASTAL COMMISSION

Original Property Line  
Proposed seaward extent of 1st Floor encroachment  
with 6 ft. setback  
Proposed seaward extent of 2nd Floor balcony  
"New" property line

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(12.00)  
FS

(12.73)  
FS

(12.01)  
FS/GB

(12.68)  
FS

(12.88)  
FS/GB

(12.77)  
FS

(12.56)  
FS

(12.43)  
FS

(12.39)  
FS

(12.25)  
FS

N 71°28'10" W

30.42'

(11.52)  
FS

(10.54)  
EG/GB

(10.92)  
FS

(12.28)  
FS

79.09'

(09.88)  
EG

(10.24)  
FS

15.03'

(09.91)  
EG

(10.05)  
EG

(10.88)  
FS

(11.92)  
FS

15.03'

(09.51)  
FL

SMH

EG

EXISTING PROPERTY LINE

30'  
5



**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200



## Memorandum

**Date:** 11/25/03

**To:** All Interested Parties

**From:** Lisa Haage, Chief of Enforcement  
Steven Hudson, Southern California Enforcement Supervisor

**Re:** Vacating or Transferring of Public Property and Roads by Public Agencies to Private Parties in the Coastal Zone

Questions have been raised recently about the requirement for public agencies to obtain a coastal development permit prior to vacating or transferring ownership or interest of certain public lands or road easements between the first public road and the sea to any private individual or non-public entity. The following information explains the state laws that govern all such actions within the Coastal Zone. We hope that this information will help public agencies which hold interest in such lands and other concerned citizens to better understand this process.

Based on the access, recreation and development sections of the Coastal Act, the California Coastal Commission has required the dedication of recorded public access easements to and along the shoreline as a condition of approval for several development projects along the coast. In some cases, existing public land and public road easements may either provide: (1) direct public access to the sandy beach or (2) ingress for members of the public to access a recorded easement for beach access that has been previously required by the Commission across private property. In addition, in the event that such public land or public road easements have been historically utilized by members of the public to access the shoreline, the public may have acquired the prescriptive right for use of such land pursuant to the doctrine of implied dedication based on continuous public use over a five-year period. The vacation or transfer of ownership/interest in public lands or road easements may result in the direct loss of the public's ability to access the sandy beach directly where such lands immediately abut the sandy beach or indirectly where such public lands provide ingress to a recorded easement for beach access that has been previously required by the Commission across private property.

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The Coastal Act states that any activity defined as "development" within the Coastal Zone requires a coastal development permit. Under the Coastal Act, the vacation or transfer to a private entity of any public land or interest in public land (including a road easement or right-of-way) that provides public access to the beach/ocean (including pedestrian or vehicular access) is an action that results in a "change in the intensity of use of water, or access thereto" and constitutes "development" as defined by Section 30106 of the Coastal Act and, therefore, requires a coastal development permit.

In addition to the requirement that public agencies obtain a coastal development permit prior to the vacation or transfer of such lands, the Coastal Act also has specific restrictions that apply to state land adjacent to the ocean. Public Resources Code Section 30609.5 states: "no state land that is located between the first public road and the sea, with an existing or potential public accessway to or from the sea, or that the Commission has formally designated part of the California Coastal Trail, shall be transferred or sold by the state to a private entity unless the state retains a permanent property interest in the land adequate to provide public access to or along the sea." This expressly applies to any interest in land, including easements. Section 30609.5(e). There are some exceptions for land owned by the Department of Parks and Recreation or the Coastal Conservancy, when certain findings are made. This section became effective January 1, 2000. In addition, other state laws that apply to such transfers or vacations of land include the following:

The Government Code has a provision for property owned by a local agency. Section 53036 states that a local agency may not "sell, lease or otherwise transfer real property owned by it and lying between the high water line of the Pacific Ocean and the public street or highway nearest the Pacific Ocean without reserving a public right of access over such real property, unless such local agency or its grantee shall make available to the public an alternate route which, in the judgment of the local agency, gives equal or greater public access to the Pacific Ocean in the same immediate vicinity."

In addition, the California Constitution protects access to navigable waters. California Constitution, Article X, section 4, states: "No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall always be attainable for the people thereof." A provision of the Government Code that applies to city regulation of harbors also provides: "All navigable waters situated within or adjacent to city shall remain open to the free and unobstructed navigation of the public....Public streets, highways, and other public rights of way shall remain open to the free and unobstructed use of the public from such waters, and waterfront to the public streets and highways." (Government Code section 39933). Based on these provisions, in *Lane v. City of Redondo Beach* (1975) 49 Cal App 3d 251, 257, the court held that a city's power to vacate a municipal street does not include the power to destroy the right of public access to tidelands or navigable waters. A similar argument was rejected in *Heist v. County of Colusa* (1984) 163 Cal App 3d 841,

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851, because there was no evidence that the public could reach a navigable waterway (Butte Creek) from the road in question, without trespassing over private property.

Finally, the Streets and Highways Code Section 8324 applies to local agencies. It requires that prior to vacating a street, highway or public service easement, a local agency must hold a hearing and determine that the street "is unnecessary for present or prospective public use . . ." Cases challenging local agency actions are fairly fact-specific. In *Ratchford v. Sonoma County* (1972) 22 Cal.App.3d 1056, the court reversed the county's decision to abandon a subdivision because there was no evidence that the road was unnecessary for public use in the future. Further, in *Heist v. County of Colusa* (1984) 163 Cal.App.3d 841, 849, the court also imposed a second requirement: that abandonment must be in the public interest.

**How do I apply for a coastal development permit (CDP) from the Commission?**

As explained above, under the Coastal Act, the vacation or transfer to a private entity of any public land or interest in such land (including a road easement or right-of-way) that provides public access to the beach/ocean (including pedestrian or vehicular access) requires the issuance of a coastal development permit. If a public agency would like to vacate or transfer ownership/interest in public lands (including easements and right-of-ways) located between the ocean and the first public road, that agency must first obtain a coastal development permit from either the California Coastal Commission or from the appropriate local government in the event the land is located in an area where the Commission has certified a Local Coastal Program. The coastal development permit application process involves submitting an application form, which includes a detailed description of the proposed development project, as well as supplementary information required to determine if the project is consistent with the policies found in Chapter Three of the Coastal Act. After receiving an application with all supplementary information, staff will review the application for completeness, and will inform the applicant as to what additional information, if any, is needed to complete the application. Once the application is complete, staff will analyze the proposed project for consistency with the Coastal Act or Local Coastal Program and prepare a report that recommends approval, approval with conditions, or denial of the project, based on whether or not the project is consistent with the Coastal Act. The application will be then be scheduled for consideration by the Commission at one of its monthly meetings.

The Coastal Act encourages public participation in the permitting and development process. The staff report is mailed to interested parties and property owners within 100 feet of the proposed development project. The Commission considers the coastal development permit application at a public hearing, at which any interested member of the public is allowed to speak for or against the project. If any party is unable to attend the hearing, comments may also be submitted in writing. After the public hearing, the Commission votes on whether or not to approve the project and grant or deny the coastal development permit request.

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