CALIFORNIA COASTAL COMMISSION South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302

 Filed:
 April 13, 2004

 49th Day:
 June 1, 2004

 180th Day:
 October 10, 2004

 Staff:
 FSY-LB

 Staff Report:
 May 20, 2004

 Hearing Date:
 June 9-11, 2004

 Commission Action:
 Staff



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(562) 590-5071

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-03-532

APPLICANT: David P. Granoff

PROJECT LOCATION: 7308 West Oceanfront, Newport Beach, Orange County

PROJECT DESCRIPTION: Demolition of an existing two-story duplex and construction of a new ocean-fronting 2,863 square foot three-story single-family residence with an attached 254 square foot one (1)-car garage and an outdoor one (1)-car _arport space. Grading consisting of 25 cubic yards for recompaction and import of 15 cubic yards for fill will take place. In addition, the project includes the request for after-the-fact approval of an existing as-built deck and walls that extend into a 15-foot encroachment zone on the public beach and for new proposed improvements and changes to the as-built deck including replacement of decking and the relocation of stairs and a gate.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval In Concept (No. 2737-2003) dated November 3, 2003.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing demolition and construction of a new beach fronting single-family residence. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events and retention of existing encroachments onto a public right-of-way. Staff is recommending **APPROVAL** of the proposed project with **Eight (8) Special Conditions** regarding: **1)** assumption of risk; **2)** no future shoreline protective device; **3)** future development; **4)** deviation from Approved Encroachments; **5)** City's Right to Revoke the encroachments; **6)** compliance with the proposed drainage and run-off control plan; **7)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report; and **8)** condition compliance.

SUBSTANTIVE FILE DOCUMENTS:

City of Newport Beach certified Land Use Plan; and Wave Runup & Coastal Hazard Study for 7308 West Oceanfront, Newport Beach, CA prepared by Skelly Engineering dated February 2004.

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LIST OF EXHIBITS

- 1. Location Map
- 2. Assessor's Parcel Map
- 3. Site Plan
- 4. Floor Plans
- 5. Elevations
- 6. Encroachment Area
- 7. Grading/Drainage Plan

STAFF RECOMMENDATION:

Staff recommends that the Commission APPROVE the permit application with Special Conditions.

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 <u>YES</u> 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:

I. APPROVAL WITH CONDITIONS

The Commission hereby <u>APPROVES</u> 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

- 1. <u>Notice of Receipt and Acknowledgment.</u> 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. <u>Expiration.</u> If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. 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.

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- 3. <u>Interpretation</u>. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. <u>Assignment.</u> 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. <u>Terms and Conditions Run with the Land.</u> 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 flooding and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

2. <u>No Future Shoreline Protective Device</u>

- A(1). By acceptance of this Permit, the applicant agrees, on behalf of itself 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. 5-03-532 including, but not limited to, the residence, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural 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.
- A(2). By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the house, 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 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.

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3. <u>Future Development</u>

This permit is only for the development described in Coastal Development Permit No. 5-03-532. 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. 5-03-532. Accordingly, any future improvements to the single family house authorized by this permit, 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. 5-03-532 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. Deviation from Approved Encroachments

- A. The only encroachment onto the City of Newport Beach Oceanfront public right-of-way allowed by this coastal development permit are an approximate 240 square foot deck accessed by a stairway and a 42-inch wide gate surrounded by a 29-inch high perimeter wall. 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 required.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit evidence, for the review and approval of the Executive Director, that the encroachment fee required by the City to retain the existing and proposed encroachments has been paid.

5. <u>City's Right to Revoke Encroachment Permit</u>

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.

6. Drainage and Polluted Runoff Control Plan

The applicant shall conform with the drainage and run-off control plan received on March 19, 2004 showing roof drainage and runoff from all impervious areas directed to dry wells or vegetated/landscaped areas. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. 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.

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7. 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 landowner has executed and recorded against the residential 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 residential 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.

8. <u>Condition Compliance</u>

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. <u>PROJECT DESCRIPTION AND LOCATION</u>

The subject site is an ocean front lot, located at 7308 West Oceanfront within the City of Newport Beach, Orange County (Exhibits #1-2). A vegetated dune and a wide (approximately 400 feet) public, sandy beach are adjacent to the subject site. The project is located within an existing urban residential area, just downcoast of the Santa Ana river mouth.

The applicant proposes to demolish an existing two-story duplex and construct a new oceanfronting 2,863 square foot three-story single-family residence with an attached 254 square foot one (1)-car garage and an outdoor one (1)-car carport space (Exhibits #3-5 & 7). Grading consisting of 25 cubic yards for recompaction and import of 15 cubic yards for fill will take place (Exhibit #7). In addition, there will be a total of 65 square feet for 2nd floor decks and an 83 square foot roof deck (Exhibit #3). In addition, the project includes the request for after-the-fact approval of an existing as-built deck and walls that extend into a 15-foot encroachment zone on the public beach and for new proposed improvements and changes to the as-built deck including replacement of decking and the relocation of stairs and a gate.

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The project site is located north of the portion of Oceanfront fronted by the City's paved beachfront public lateral accessway (boardwalk). The proposed development is located in an area where a 15-foot encroachment onto the City of Newport Beach Oceanfront public right-of-way on the seaward side of the home is allowed under the Commission certified Land Use Plan. The applicant proposes improvements and changes to an existing deck and walls that extend into this 15-foot encroachment zone as follows: 1) replacement of the existing deck materials; 2) moving the existing deck stairs from the side to the middle of the deck; 3) and moving the existing 42-inch wide gate from the side to the middle of the existing 29-inch high, 30-foot wide rear yard (Beach) wall (Exhibit #6).

The Commission has found through previous permit actions in this area that the City's setback for primary structures is acceptable for maintaining public access. The proposed residence is consistent with the City's 5-foot required setback from the seaward property line. Vertical public access to this beach is available approximately 30 feet West (upcoast) of the project site at the Olive Street, street end and approximately 120 feet East (downcoast) of the project site at the Sonora Street, street end (Exhibit #2).

1. Prior Commission Actions at Subject Site

On June 10, 1998, the Commission approved De-Minimus Waiver # 5-98-181 (Bush) for improvements to an existing single-family residence consisting of an addition of 554 square feet to the 2nd floor, 234 square feet to a 2nd floor deck, and 385 square feet to the 3rd floor.

On March 9, 1979, the Commission approved Coastal Development Permit A-79-4906-(McCall) for the transfer of Coastal Development Permit A-11-14-77-2221 (White).

On December 5, 1977, the Commission approved Coastal Development Permit A-11-14-77-2221-(White) for the construction of a 462 square foot 1st and 2nd story addition to an existing 1,994 square foot two-story duplex. The completed structure would be a two-story 2,455 square foot duplex with an attached two-car garage. No Special Conditions were imposed.

2. <u>Hazards</u>

The subject site is located on a beach fronting lot on the Balboa Peninsula at the northern end of Newport Beach near the mouth of the Santa Ana River. Presently, there is a vegetated dune and wide sandy beach between the subject development and the ocean. According to the Wave Runup & Coastal Hazard Study prepared by Skelly Engineering dated February 2004, the beach is approximately 400 feet wide. This wide sandy beach presently provides homes and other structures in the area some protection against wave uprush and flooding hazards.

The hazards analysis concludes that: "...[W]ave runup and overtopping will not significantly impact this property over the life of the proposed improvement. The proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area. There are no recommendations necessary for wave runup or shore protection over the life of the proposed development. The proposed project minimizes risks from flooding."

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3. Encroachments

The applicant is requesting after-the-fact approval of an existing unpermitted deck with walls that encroaches onto the City of Newport Beach Oceanfront public right-of-way at the seaward side of the home (Exhibit #6) and proposing new improvements and changes to the same existing deck including replacement of decking materials and the relocation of stairs and a gate. The City holds the public right-of-way for street/walkway/bikeway purposes. The portions of Oceanfront in the central part of the Balboa Peninsula near the City's two municipal piers are developed with a public walkway/bikeway. In the vicinity of the subject site, however, the City has never constructed any part of the Oceanfront Street, but it has at times addressed the possibility of constructing a bike path and pedestrian walkway in the right-of-way in this area. The development now pending proposes: 1) replacement of the existing deck materials; 2) moving the existing deck stairs from the side to the middle of the deck; 3) moving the existing 42-inch wide gate from the side to the middle of the existing 29-inch high, 30-foot wide rear yard (Beach) wall and 4) includes a request for After-the-Fact authorization of existing elements to be retained.

The existing unpermitted encroachment of the deck and walls and construction of new ones would contribute to the cumulative adverse impact on beach use resulting from the various 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.

In 1991, the Commission certified an amendment to the City of Newport Beach Land Use Plan (LUP). The LUP acknowledges the adverse public access impacts that will result from the development on the sandy beach area, which is owned by the City for street purposes. This cumulative impact is addressed in the certified LUP by imposition of a mitigation plan. The mitigation plan requires that fees paid by encroaching homeowners be applied to improving public access in Newport Beach. The City has constructed a number of public access improvements (including street end improvements which provide additional parking spaces) using the encroachment fee funds. When it certified the LUP amendment allowing these encroachments, the Commission found that, if developed consistent with the mitigation plan, encroachments onto the City's Oceanfront public right-of-way would be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

The LUP encroachment policies allow encroachment onto the Oceanfront right-of-way in the area of the subject site, which is between 52nd Street to the Santa Ana River. Encroachments in this area may encroach up to 15 feet. The LUP policies allow encroachments only if they do not interfere with access to the beach or ocean, when no building permit is required, and subject to payment of a mitigation fee.

In this case, the Commission finds that the proposed encroachments are 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. In addition, the City is continuing to carry out the public access improvements required by the LUP mitigation plan to offset any adverse impacts of the encroachments. However, in order to assure that the encroachments are consistent with the Land Use Plan policies addressing Oceanfront encroachments as certified by the Commission, and so are consistent with the public access policies of the Coastal Act, evidence that the required

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encroachment fee has been paid must be submitted. Therefore, as a condition of approval the applicant is required to submit, for the review and approval of the Executive Director, evidence that the current encroachment permit fee has been paid.

Section 13250 of the California Code of Regulations provides that development such as the proposed encroachments are not exempt from obtaining a coastal development permit pursuant to Coastal Act Section 30610(a). However, to ensure that no further encroachments occur without an approved amendment to this coastal development permit or approval of a new coastal development permit, the Commission imposes a Special Condition which requires that an amendment to this permit or a new coastal development permit be obtained for any deviations to the encroachments described in this permit. This would allow the Commission to evaluate future encroachment deviations for adverse public access and recreation impacts.

As a condition of the City's approval of an encroachment permit, the permittee must sign an encroachment agreement in which the permittee waives his or her right to contest the ability of the City to remove the encroachments in order to build public access improvements within the public right-of-way. Thus the proposed project is being conditioned to provide that issuance of the coastal development permit does not restrict nor interfere with the City's right to revoke its encroachment permit, without cause, in order to construct public access and recreation improvements in the public right-of-way. This would ensure future opportunities for public access and recreation.

4. Water Quality

The applicant is proposing water quality improvements as part of the proposed project, including multiple drain inlets and catch basins directed towards permeable areas (Exhibit #7). Any vegetated landscaped areas located on site shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

The placement of vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (http://www.caleppc.org/) and California Native Plant Society (www.CNPS.org) in their publications.

Furthermore, any plants in the landscaping plan should be drought tolerant to minimize the use of water. The term "drought tolerant" is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm.

B. <u>HAZARDS</u>

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: comply with an appropriate set-back from the water; comply

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with a drainage and runoff 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. <u>DEVELOPMENT</u>

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, 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 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, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non invasive drought tolerant vegetation to reduce and treat the runoff 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. <u>DEED RESTRICTION</u>

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To ensure that any prospective future owners of the residential property that is the subject of this permit 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 residential 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 residential property. Thus, as conditioned, any prospective future owner of the residential property 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.

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G. UNPERMITTED DEVELOPMENT

Development has occurred on site without the required coastal development permit consisting of an existing deck and walls that extend into a 15-foot encroachment zone upon the public beach. Consequently, the work that was undertaken requires a coastal development permit. The applicant is requesting after-the-fact approval for the as-built deck and walls. The applicant is also proposing new improvements to the as-built deck in the encroachment zone consisting of: 1) replacement of the existing deck materials; 2) moving the existing deck stairs from the side to the middle of the deck; 3) and moving the existing 42-inch wide gate from the side to the middle of the existing 29-inch high, 30-foot wide rear yard (Beach) wall.

To ensure that the unpermitted development component of this application is resolved in a timely manner, Special Condition No. 8 has been imposed which requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. The Executive Director may grant additional time for good cause.

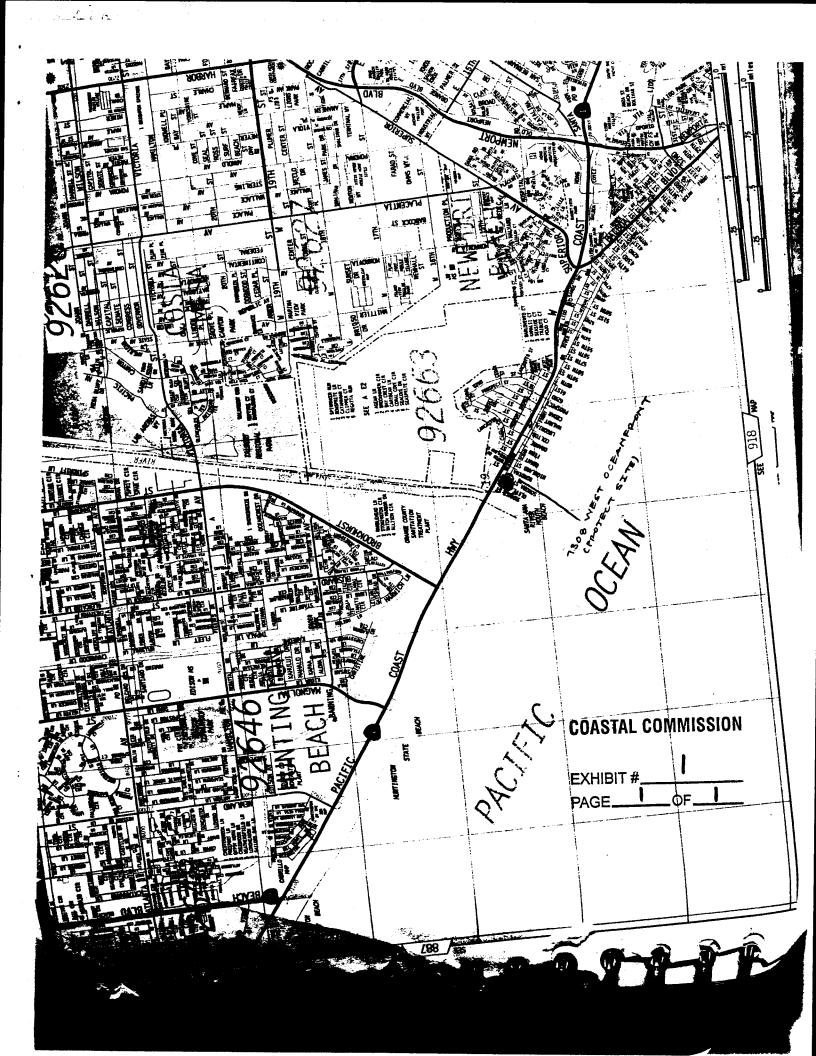
Although construction has taken place prior to submission of this permit application. Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site without a coastal development permit.

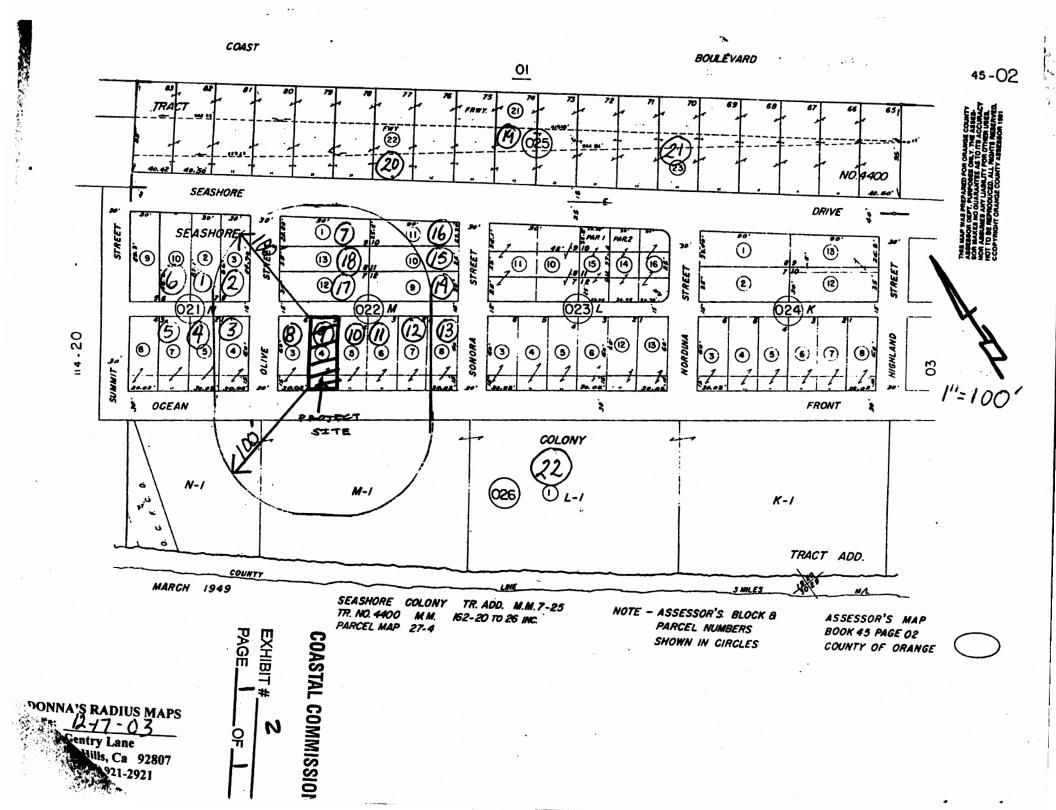
H. LOCAL COASTAL PROGRAM

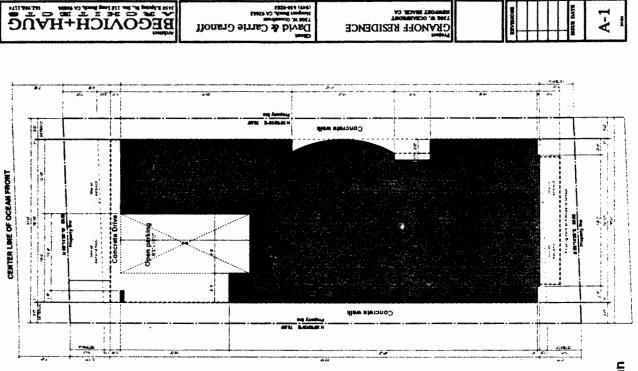
Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability 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 January 9 1990. 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.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT

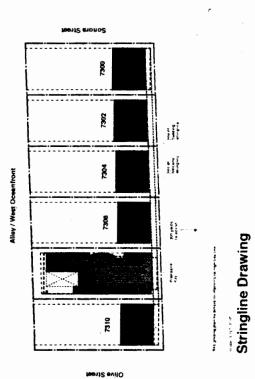
As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the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



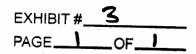


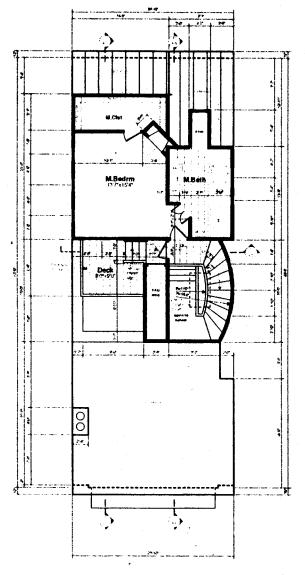


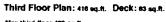
Site Plan









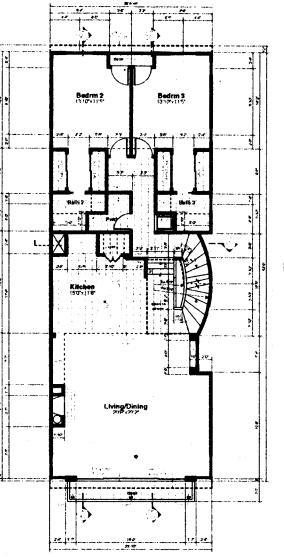




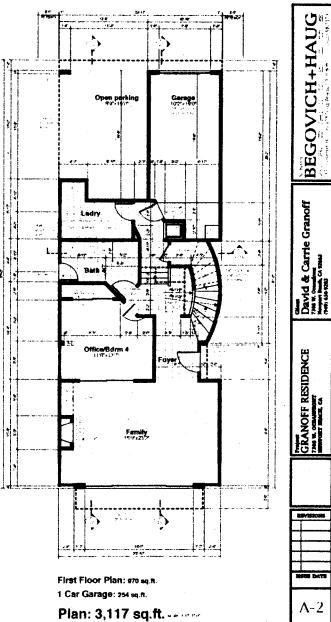


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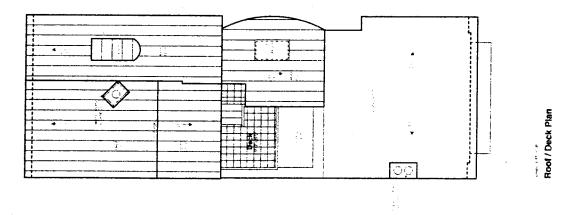
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Second Floor Plan: 1,477 sq.m.

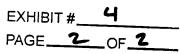


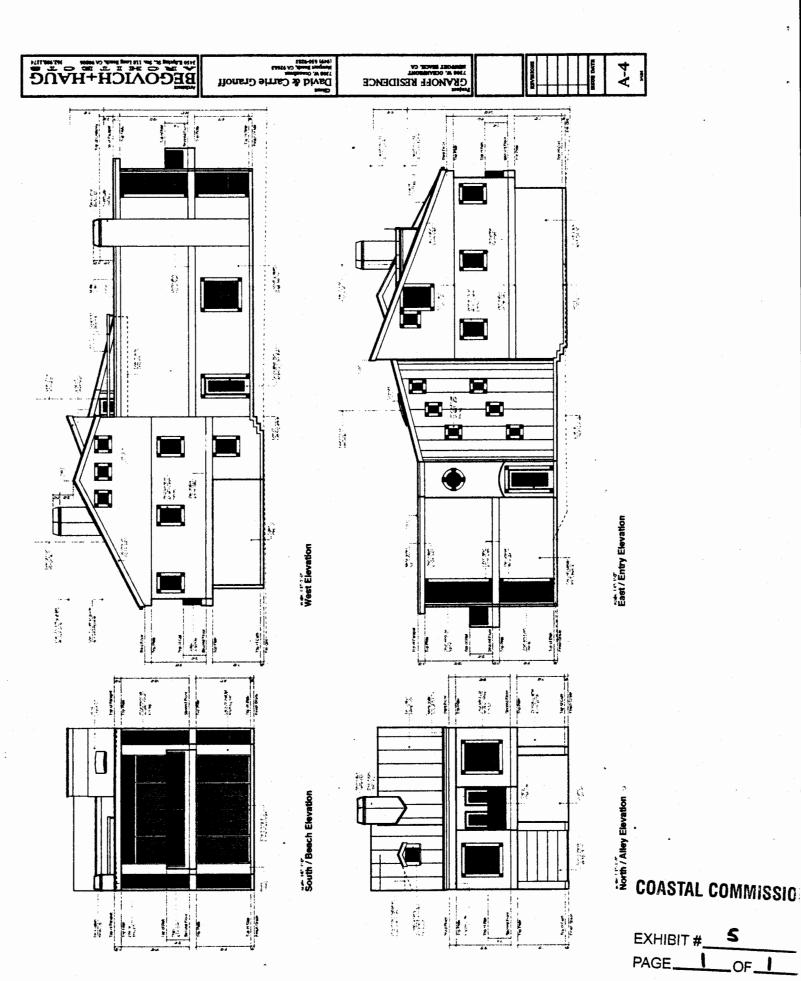
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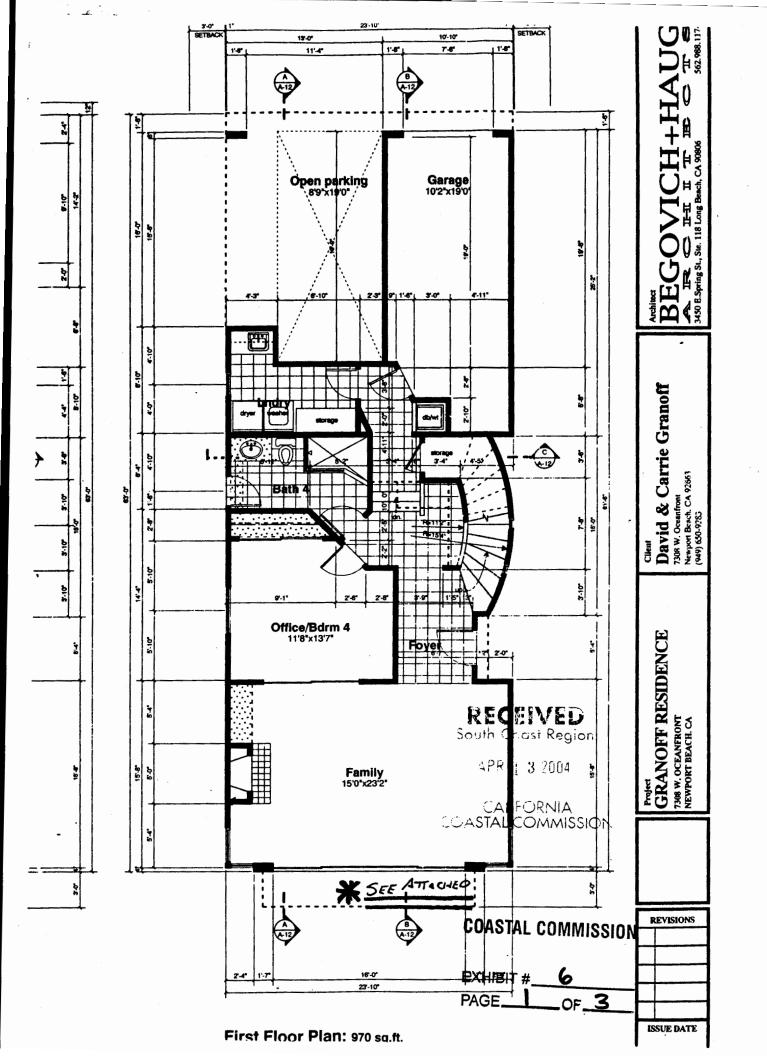


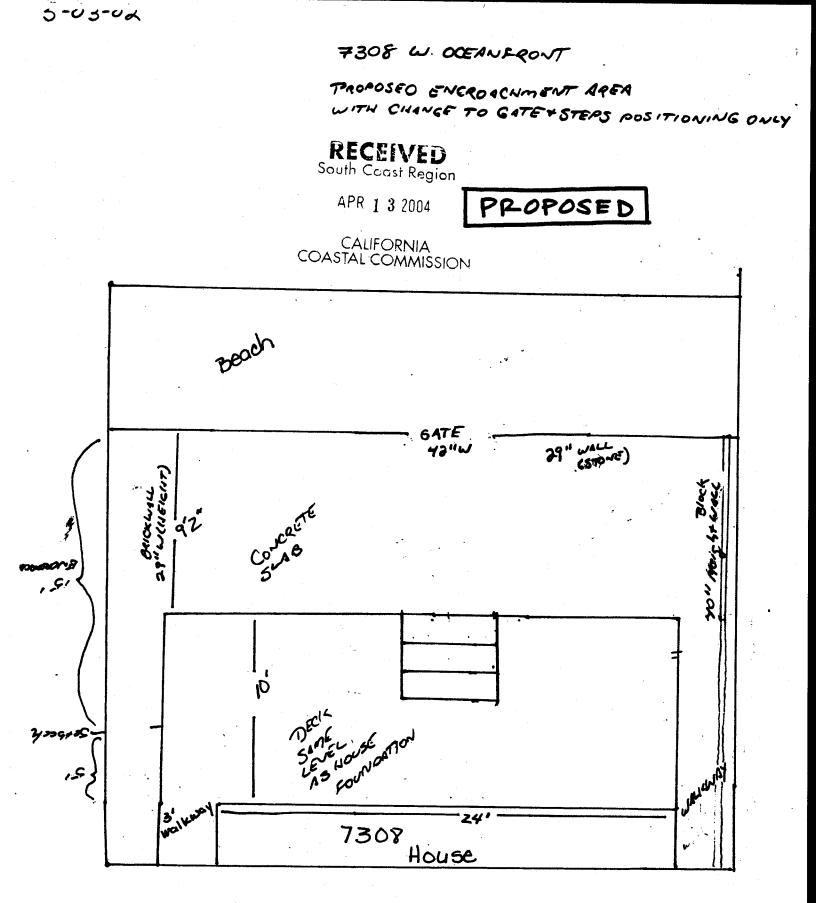
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COASTAL COMMISSION

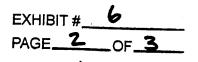


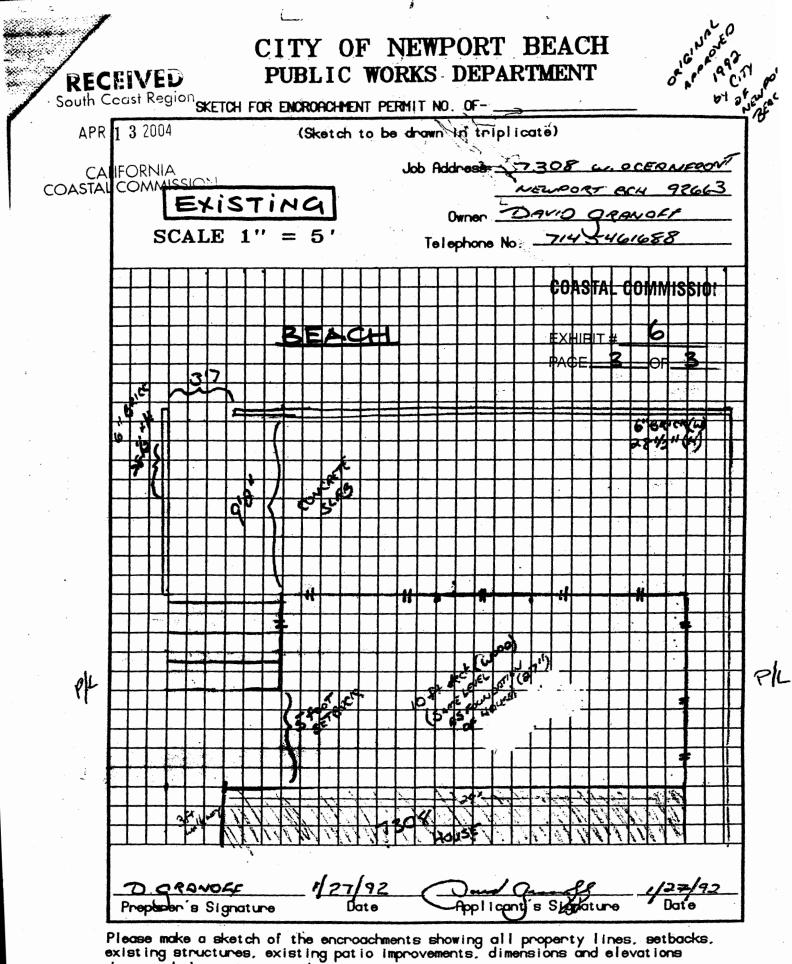






COASTAL COMMISSION





above on below exiting grade.

Works shall be done in accordance with City Ocean Front Policy L-14 and is subject to City inspection.

