

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: December 28, 2005
49th Day: February 15, 2006
180th Day: June 26, 2006
Staff: Anne Blemker-LB
Staff Report: April 20, 2006
Hearing Date: May 10-12, 2006
Commission Action:

**W 5e****STAFF REPORT: CONSENT CALENDAR**

APPLICATION NUMBER: 5-05-515

APPLICANT: Allen Steiner, Trustee of Steiner Living Trust

AGENT: Kurt Donat, Architect

PROJECT LOCATION: 1354 and 1358 East Oceanfront, City of Newport Beach,
County of Orange

PROJECT DESCRIPTION: Lot line adjustment to combine two existing lots into a 0.17-acre parcel and remodeling of two existing residences to create one 6,879 square foot single-family residence with two 492 square foot 2-car garages, swimming pool, spa, landscape and hardscape improvements. No grading is proposed.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-In-Concept No. 1676-2005 dated December 5, 2005 and Zoning Administrator approval of Lot Line Adjustment No. LA2005-005 dated June 20, 2005.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing to combine two beach-fronting single-family residences on two lots into a single development. Typically, the primary issue related to projects in the subject area is hazards related to flooding during strong storm events. In this case, the project involves structural improvements that do not rise to the level of new development (less than 50% demolition of existing exterior walls) and therefore the project does not necessitate the same level of scrutiny as new development would on a beachfront lot. Where new development would require the imposition of special conditions related to assumption of risk and prohibition of protective devices, the current project does not. The major issues discussed in this staff report are extent of demolition/renovation and water quality.

Staff is recommending **APPROVAL** of the proposed project with four (4) special conditions regarding: 1) submittal of a termite inspection report; 2) confirmation of the extent of demolition; 3) future development; and 4) submittal of a drainage and run-off control plan (including landscape controls).

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits.

Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan and Coastal Development Permit No. 5-01-240 (De La Pena).

LIST OF EXHIBITS:

1. Location Map
2. Assessor's Parcel Map
3. Project Plans

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

RESOLUTION:

I. APPROVAL WITH CONDITIONS

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

II. STANDARD CONDITIONS

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

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

III. SPECIAL CONDITIONS

1. Termite Inspection

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a termite inspection report, prepared by a licensed professional, indicating the degree, if any, of termite damage that exists within the existing residential structure that is the subject of the permit.

The termite inspection report shall also be submitted to the City of Newport Beach Building Department.

If the termite inspection report indicates that additional demolition will be necessary in order for the structure to meet building and safety standards, the applicant shall submit a complete amendment request application or a complete application for a new coastal development permit. Whether an amendment or permit application is submitted shall be determined by the Executive Director. The application shall address the issue of revisions to the project due to the need for additional demolition.

No development may proceed if an amendment or new coastal development permit application pursuant to the special conditions of this permit is pending.

2. Confirmation of the Extent of Demolition

After demolition has been completed, and the framing of the walls to remain is exposed pursuant to the demolition plan approved in this permit, but prior to any new construction, the applicant shall submit to Executive Director, via bonded messenger from the City of Newport Beach Building Department, for the review and approval of the Executive Director, a certified copy of the City building inspector's report which indicates whether any demolition beyond the amount shown on the demolition plan approved by this permit has occurred or would be necessary in order to meet building and safety codes.

In the event that the City cannot perform this function, the building inspector's report may be prepared by a licensed professional building inspector acceptable to the Executive Director.

If the building inspector's report, accepted by the Executive Director, indicates additional demolition has already occurred or must occur due to the deteriorated state of the walls which were proposed by the applicant to remain, the applicant shall submit a complete amendment request application or a complete application for a new coastal development permit. The application shall address the issue of revisions to the project due to the need for additional demolition. Whether an amendment or a new application is submitted shall be determined by the Executive Director.

No further development may occur until either:

- a) The Executive Director determines, pursuant to the City building inspector's report, that all walls identified as walls to remain are intact and structurally sound; or
- b) The applicant submits an amendment request application if so directed by the Executive Director and the amendment request is subsequently approved by the Coastal Commission and the permit amendment is issued by the Executive Director; or
- c) The applicant submits a new coastal development permit application if so directed by the Executive Director and the coastal development permit is approved by the Coastal Commission and issued by the Executive Director.

3. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-05-515. 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. 5-05-515. Accordingly, any future improvements to the development 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. 5-05-515 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. Submittal of Drainage and Run-Off Control Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a drainage and run-off control plan showing roof drainage and runoff from all impervious areas directed to a trench drain 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.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 1354 and 1358 East Oceanfront within the City of Newport Beach, Orange County (Exhibits 1 & 2). The lot size at the 1354 address is 3,633 square feet and the lot size at 1358 is 3,815 square feet. The combined lot size will be 7,448 square feet/0.17 acre. The City of Newport Beach Land Use Plan (LUP) designates the site Medium Density Residential and the proposed project adheres to this designation. The project is located within an existing urban residential area, located at the downcoast end of the Balboa Peninsula.

The site includes two beachfront lots located between the first public road and the sea. There is a wide sandy beach (approx. 250 feet wide) between the subject property and the Pacific Ocean. Due to its oceanfront location, the project site may be potentially exposed to the hazard of wave uprush during a severe storm event.

The proposed project will not have an adverse effect on public access. The project site is located south of the portion of Oceanfront bordered by the City's paved beachfront public lateral access way (boardwalk). The Commission has found through previous permit actions in this area that the City's setback in this area is acceptable for maintaining public access. The proposed project is consistent with the City's 10-foot required setback from the seaward property line. Vertical public access to this beach is available at the end of F Street, approximately 50 feet west of the site. Lateral public access is available along the wide sandy beach seaward of the subject site.

The applicant is proposing a lot line adjustment to combine two existing lots into a 0.17-acre parcel. The applicant is also proposing to remodel the two existing two-story residences on each lot to create one two-story 6,879 square foot single-family residence with two 492 square foot 2-car garages (Exhibit 3). The residence at 1354 is currently 3,372 gross square feet and the residence at 1358 is 4,491 square feet. The project will result in a 70 square foot reduction in gross square footage at 1354 and a 123 square foot increase at 1358. The height of 1354 is 25'6" (pitched roof) and the height of 1358 is approximately 20' (flat roof). The project will result in an increase in height of more than 10% where the roof at 1358 will be replaced to match the roof at 1354. The proposed project also consists of hardscape and landscape improvements, including a new swimming pool and spa, planters, and a new 5'0" high glass pool enclosure along the seaward property line. No grading is proposed.

The applicant's agent previously asserted that the structural component of the project (combination of the two residences) was exempt from permit requirements because 1) the increase in gross building area at 1354 and 1358 is less than 10%, 2) the proposed roof change at 1358 is less than the existing roof height at 1354, thus less than 10% increase in height; 3) the total length of exterior walls to be removed is less than 50%. The agent has provided calculations for each residence as well as for the total project (combined residences). For determining consistency with Coastal Act requirements, staff considers calculations for each structure individually, not the project as a whole. The residences are presently separate structures on separate lots and the extent of demolition must be determined based on existing conditions.

The issue of whether a project constitutes demolition and new construction rather than a remodel of an existing structure becomes significant when determining whether a project should be subject

to restrictions regarding the construction of protective devices to support new development. In the case of the proposed project, the existing residences to be combined are located on a beach subject to wave attack. On beachfront lots, the Commission routinely requires the submittal of wave uprush studies. When a demolition and new construction project is reviewed by the Commission, the issue of hazard from wave attack are addressed. Wave uprush studies are used to address Coastal Act issues including hazard, public views, minimizing the potential need for shoreline protection devices, and public access. In this case, a wave uprush study would be used to address the Coastal Act issue of hazards and minimizing the potential need for shoreline protection devices. The Commission would use this information to analyze potential risk to new development. Because the Coastal Act prohibits the use of protective devices to protect new development, special conditions relating to future protective devices and assumption of risk would be imposed. Recordation of a deed restriction would also be required.

The applicant has submitted detailed information about the amount of demolition that would occur with the proposed project. The majority of work will occur where the residences are to be combined along the current interior property line and where the flat roof at 1358 will be replaced to match the pitched roof at 1354. Typically, the Commission has quantified demolition by tabulating the extent of exterior linear walls to be removed compared to the total overall amount of exterior linear walls existing prior to the proposed development. The walls proposed to remain must retain their structural components such as studs. Cosmetic portions of the wall, such as exterior stucco and interior drywall, may be removed.

In the case of the proposed project, the total existing linear footage to be removed at 1354 is 22 linear feet and the total to be removed at 1358 is 212 linear feet. The applicant is proposing to demolish 5% of the exterior linear footage of the existing walls at the 1354 address and 46.5% of the exterior linear footage of the existing walls at the 1358 address. The Commission has generally found that if less than 50% of the linear feet of the existing exterior walls are removed, the project can be reviewed as a remodel rather than new construction. The significance of this distinction is that existing development is not subject to the requirements related to new development of beachfront lots.

However, it must be noted that the amount of proposed demolition is within 3.5% of the amount that would constitute new development at the subject site. The amount of demolition could easily exceed the critical 50% point once demolition is begun, either by accident or for other reasons. For example, an additional wall segment could be accidentally knocked down unwittingly by a contractor. Or it may appear prudent to the contractor to remove and rebuild a section of existing wall to facilitate construction. Further, it is not uncommon to discover structural problems such as termites or dry rot within walls that were proposed to remain once they are exposed to the studs. When this happens the wall must be taken down to meet building safety standards. Once a new wall is erected in the same location, it is virtually impossible to determine that the wall replacement has occurred. This leads to the situation where a remodel project really constitutes demolition and new development, and would have been required to conform to the appropriate requirements.

The Commission finds that application of the 50% demolition threshold provides a consistent and equitable method of determining when a project constitutes new development. Therefore, the Commission finds that because the proposed project does not exceed the 50% threshold, it does not constitute demolition and new construction. However, contingencies must be in place once the demolition is under way to assure that the critical threshold is not exceeded, or if it is exceeded, to

establish an avenue which allows the project to be re-assessed based on the revised demolition figure.

As stated above, a frequent reason additional demolition becomes necessary is the discovery of termites and termite damage within the walls proposed to remain. In order to minimize the chances of this issue arising after demolition has begun, a special condition is being imposed which requires the applicant to submit a termite inspection report prior to issuance of the coastal development permit. If the report indicates that the walls proposed to remain are damaged, the applicant is required to submit an amendment application or an application for a new coastal development permit. Whether an amendment or new permit application is appropriate would be determined by the Executive Director. Once a complete application is received, the project would be evaluated based on the newly discovered information.

In addition, another special condition is being imposed which requires that the applicant submit a copy of the City building inspector's report done after the proposed demolition is complete and the framing of the walls to remain is exposed, but before any new construction has commenced. The inspector's report would verify the extent of demolition and the condition of the walls remaining. If the inspector's report indicates that more demolition has occurred than was approved or that the walls originally proposed to remain are not structurally sound, the applicant is required to submit an amendment application or an application for a new coastal development permit. Again, whether an amendment or new permit application is appropriate would be determined by the Executive Director. Once a complete application is received, the project would then be evaluated based on the newly discovered information. These special conditions are necessary to assure that development is carried out as proposed and that the development is consistent with the Chapter 3 policies of the Coastal Act. These conditions are consistent with the Commission's action on CDP Application 5-01-240 (De La Pena), among others.

No work is proposed within the City of Newport Beach Oceanfront public right-of-way at the seaward side of the home. 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 certified Land Use Plan prohibits encroachments in this area (E Street to Channel Road) except landscaping trees existing prior to October 22, 1991 and groundcover.

Although no encroachments are proposed by the current application, encroachments currently exist beyond the property line. Landscaping (beyond groundcover), improved pathways, planter pots and a wooden lawn border exist up to 25' beyond the property line. The agent states the applicant is not responsible for the existing encroachments and does not propose to remove or modify any development beyond the property line. Commission approval of the current application does not constitute approval of any unpermitted development located adjacent to the subject site. This matter has been referred to the Commission's Enforcement Unit for investigation.

To ensure that no development 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 improvements beyond those described in this permit. This would allow the

Commission to evaluate future development for exposure to hazards related to new beachfront development.

No drainage and runoff control plan was submitted with the current application, but the agent has stated in correspondence, *“stormwater from the roofs and proposed hardscape will be directed to proposed planter areas to percolate into the sand or collected in pavement drains and run thru a perforated in-grade drain pipe to a gravel dry well.”* Water quality improvements must be formally incorporated as part of the proposed project. Such measures include directing roof and surface runoff to trench drains or vegetated/landscaped areas as indicated by the agent. Any vegetated landscaped areas located on site shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. Special Condition 4 specifies these requirements.

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.cal-ipc.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. HAZARDS

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

C. DEVELOPMENT

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

D. PUBLIC ACCESS

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

E. WATER QUALITY

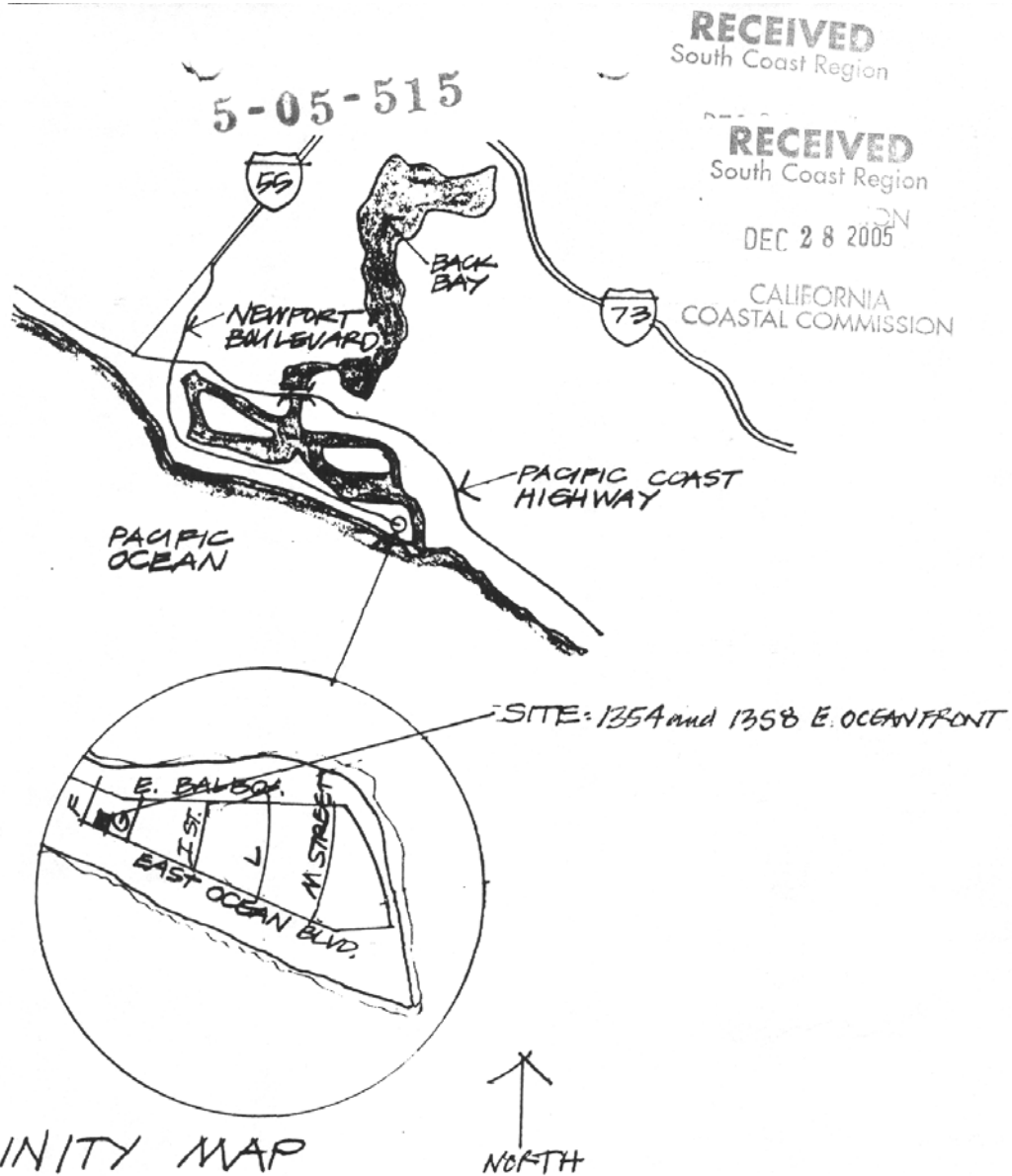
The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These 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. 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 comprehensively updated on October 13, 2005. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

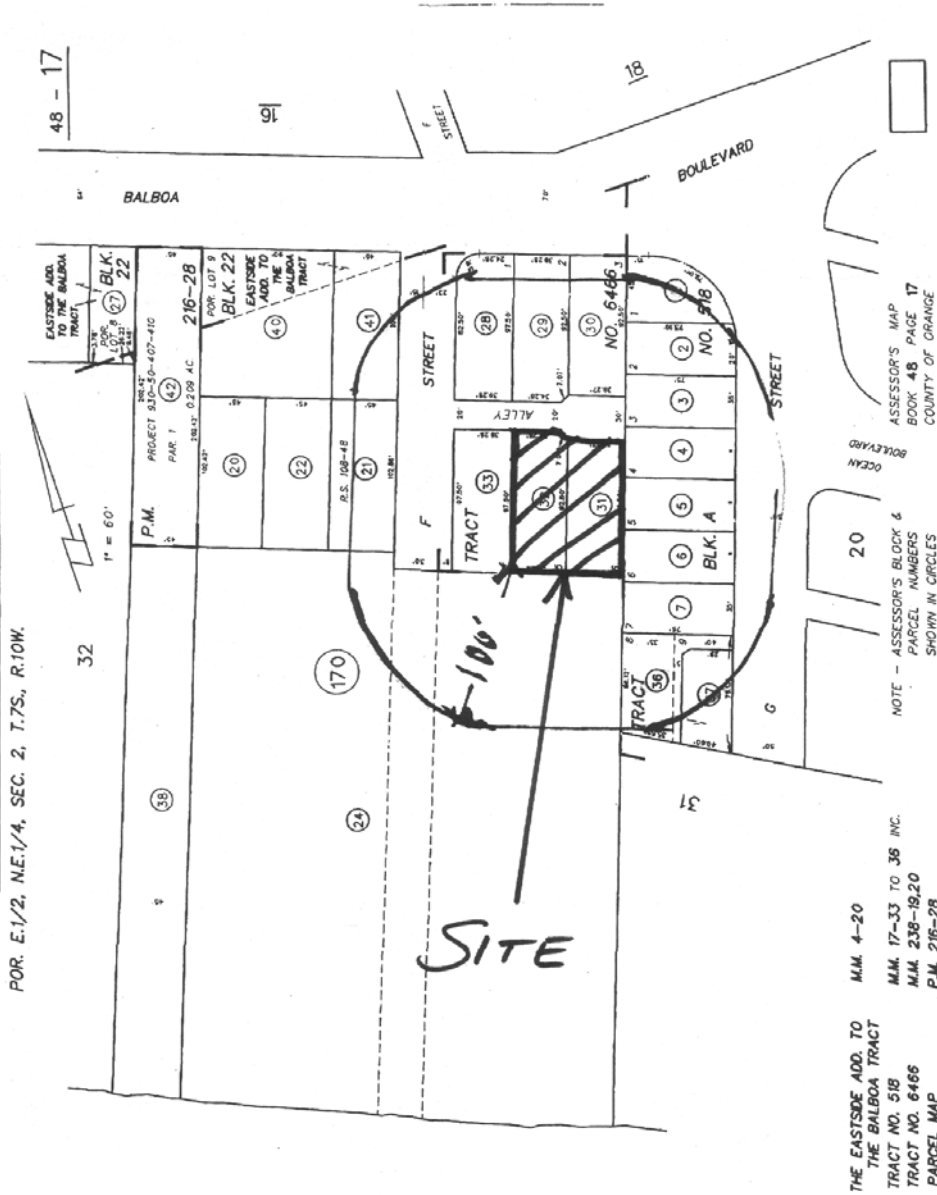
As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the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



STEINER RESIDENCE
1354 and 1358 E. OCEANFRONT
NEWPORT BEACH, CA 92661

COASTAL COMMISSION
5-05-515
EXHIBIT # 1
PAGE 1 OF 1

5-05-515 (Steiner)
Staff Report-Consent Calendar
Page 11 of 15



1080.000 Feet

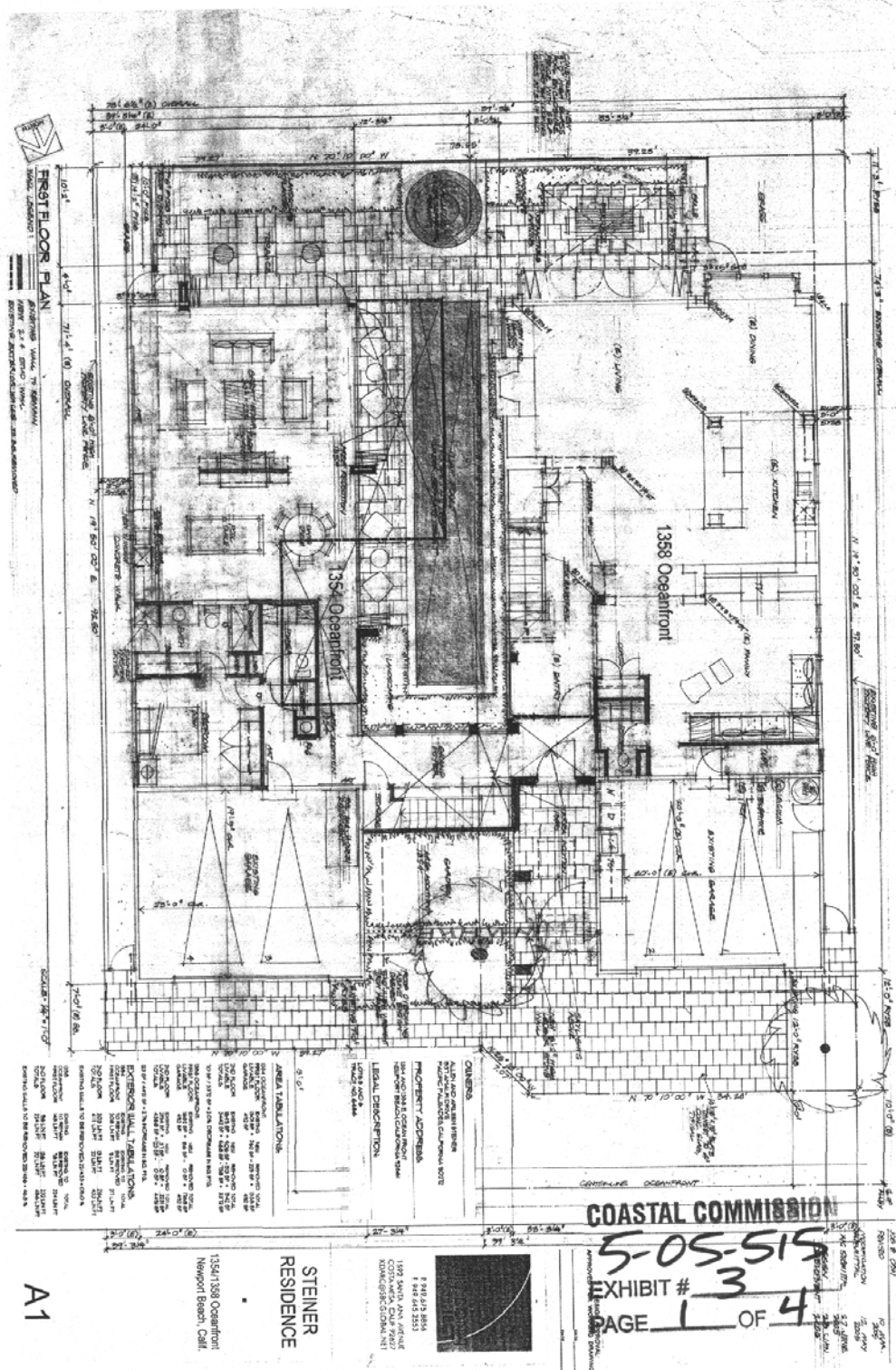
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South Coast Region
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CALIFORNIA
COASTAL COMMISSION

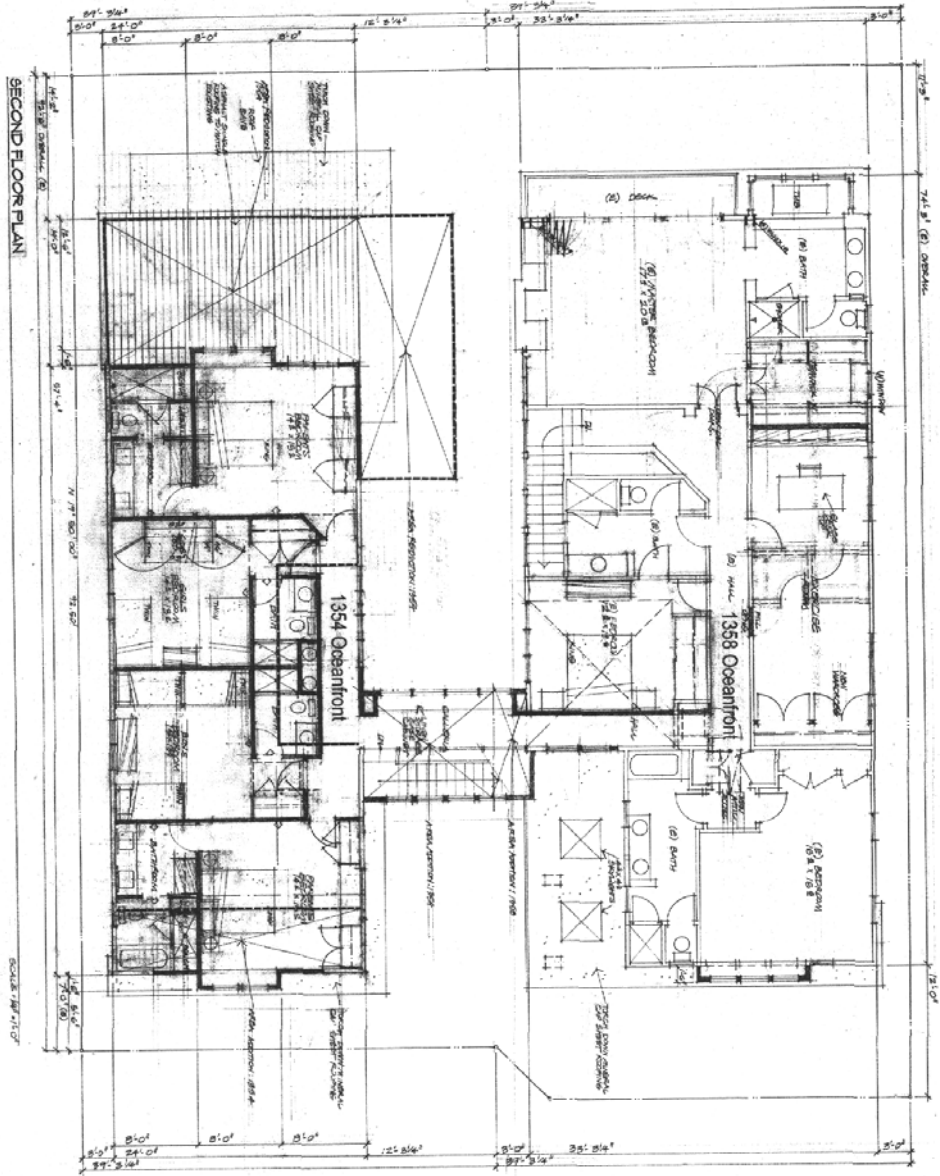
THIS MAP WAS PREPARED FOR ORANGE COUNTY ASSESSOR'S DEPT. PURPOSES ONLY. IT IS NOT TO BE USED FOR ANY OTHER PURPOSES. THE ASSessor'S DEPT. MAKES NO WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION SHOWN HEREON. FOR OTHER USES, NOT TO BE REPRODUCED. ORANGE COUNTY ASSESSOR 1983

THE EASTSIDE ADD. TO
THE BALBOA TRACT
TRACT NO. 518
TRACT NO. 6486
PARCEL MAP
M.M. 4-20
M.M. 17-33 TO 38 INC.
M.M. 238-19,20
P.M. 216-28

MARCH 1949
COASTAL COMMISSION
5-05-515
EXHIBIT # 2
PAGE 1 OF 1

NOTE - ASSESSOR'S BLOCK &
PARCEL NUMBERS
SHOWN IN CIRCLES
ASSESSOR'S MAP
BOOK 48 PAGE 17
COUNTY OF ORANGE

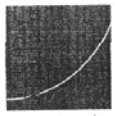




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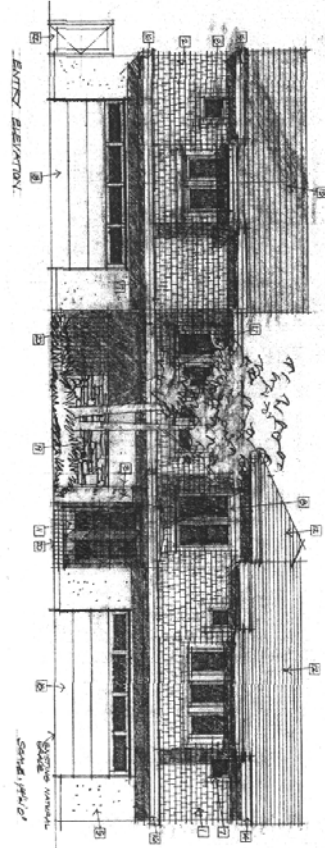
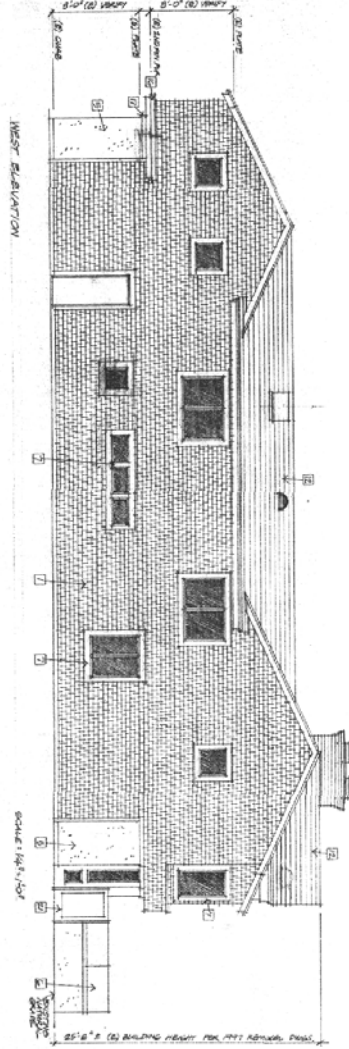
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COASTAL COMMISSION
 5-05-515
 EXHIBIT # 3
 PAGE 2 OF 4

DATE: 5/15/2011
 DRAWN BY: J. STEINER
 CHECKED BY: J. STEINER
 SCALE: AS SHOWN
 SHEET: 25 OF 26



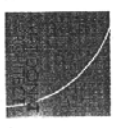
EXTERIOR ELEVATION NOTES:

1. EXTERIOR FINISHES SHALL BE AS SHOWN ON THE EXTERIOR ELEVATIONS.
2. EXTERIOR WALLS SHALL BE CONCRETE BLOCK WITH STUCCO FINISH.
3. EXTERIOR ROOF SHALL BE ASPH/FLT SHINGLES.
4. EXTERIOR FLOORS SHALL BE CONCRETE SLAB ON GRADE.
5. EXTERIOR STAIRS SHALL BE CONCRETE WITH METAL TREADS AND RISERS.
6. EXTERIOR DOORS SHALL BE 1 1/2\"/>

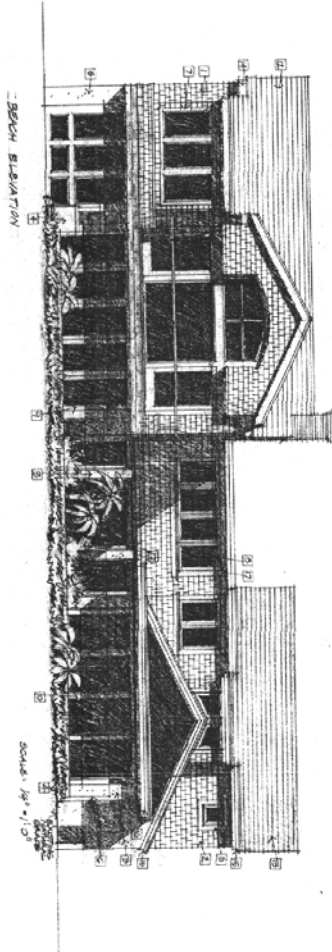
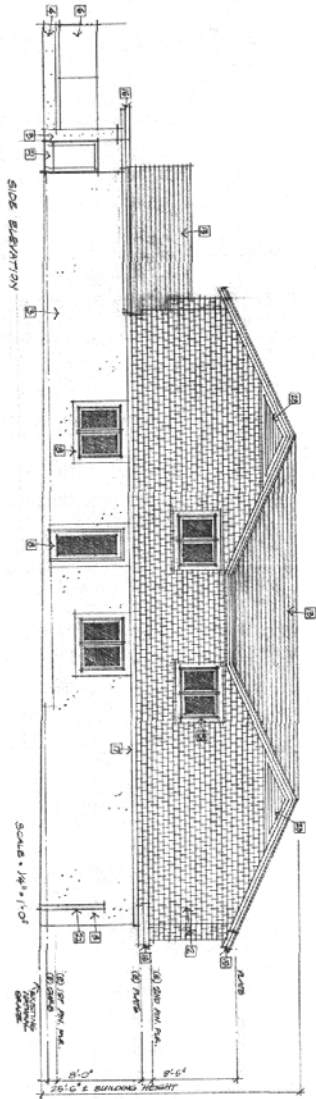
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COASTAL COMMISSION
5-05-515
EXHIBIT # 3
PAGE 3 OF 4

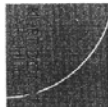


COASTAL COMMISSION

5-05-515

EXHIBIT # 3
 PAGE 4 OF 4

DESIGN APPROVAL
 APPROVED FOR RECORD DRAWINGS



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 F 119 473 1788
 503 210 1841 1418 130
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 562-678-1418 FAX 562-678-1419

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