

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Filed: January 30, 2008
49th Day: March 19, 2008
180th Day: July 28, 2008
Staff: Liliana Roman-LB
Staff Report: February 14, 2008
Hearing Date: March 5-7, 2008
Commission Action:



Item W12b

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-07-453

APPLICANT: Shoreline Properties, Inc.

PROJECT LOCATION: 304 East Oceanfront, Newport Beach (Orange County)

PROJECT DESCRIPTION: Demolition of an existing one-story single family residence and construction of a new 2,586 sq. ft., 27'.66" high, three-story single family residence with attached 478 sq. ft. garage, a 98 sq. ft. deck, minimal grading for site preparation, hardscape improvements and minimal landscaping on a beachfront lot. The project also requests approval of an approximately 8' deep by 30' wide concrete patio and 33" tall block wall within the City's oceanfront encroachment area.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-In-Concept (No. 2438-2007) dated 12/6/07, Annual Oceanfront Encroachment Permit No. EPN2008-0023 issued 1/16/08

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan and *Coastal Hazard and Wave Runup Study for 304 East Oceanfront, Newport Beach, CA prepared by GeoSoils, Inc. dated December 2007.*

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing 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.

Staff is recommending **APPROVAL** of the proposed project with nine (9) special conditions regarding: 1) assumption of risk; 2) no future shoreline protective device; 3) conformance with the submitted drainage plan; 4) landscape requirements; 5) storage of construction materials, mechanized equipment and removal of construction debris 6) conformance with requirements related to the encroachments; 7) the right to revoke encroachment permit; 8) future development; and 9) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

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.

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. 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. No Future Shoreline Protective Device

- A. 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. 5-07-453 including, but not limited to, the residence, garage, foundations, and patio, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions 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.
- B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the residence, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. Drainage Plan

The applicant shall conform to the site drainage details depicted in the hardscape plan dated 11/16/07 and received in the Commission's office on 1/30/08 indicating use of porous concrete pavers in the front and side yards entrance for on-site percolation of runoff. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Landscaping - Drought Tolerant, Non Invasive Plants

Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>).

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

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

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (c) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;
- (d) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.

6. Deviation from Approved Encroachments

- A. The only encroachment up to the inland edge of the Oceanfront encroachment area within the City of Newport Beach Oceanfront public right-of-way allowed by this coastal development permit is a 6-foot, 6-inch wide entry walk constructed with stone pavers, a 33" tall block patio wall and wrought iron gate encroaching 7-8 feet ocean ward of the rear property line and within an ocean ward prolongation of the side property lines (approx 30 feet). 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 through written confirmation that no amendment or new permit is legally required.

- B. The applicants and all other successors and assigns must remain enrolled in the City's public access impact mitigation fee program (i.e. annual encroachment permit/fee system) and pay the recurring encroachment fee so long as the encroachment remains in place.

7. City's Right to Revoke Encroachment Permit

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

8. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-07-453. 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. 5-07-453. 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. 5-07-453 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

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

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 304 East Oceanfront within the City of Newport Beach, Orange County (Exhibits 1 and 2). The lot size is 2,100 square feet. The City of Newport Beach Land Use Plan (LUP) designates the site as Medium Density Residential; the proposed project is a single-family residence allowable under this designation. The project is located within an existing urban residential area on an oceanfront lot in the vicinity of Balboa Pier.

The applicant is proposing to demolish an existing one-story single-family residence and garage and construct a new ocean-fronting, 2,586 sq. ft., 27'-66" high, three-story single-family residence, 478 sq. ft. two-car garage, 98 sq. ft. second story deck and hardscape improvements, including new porous concrete pavers along the side yard walkways and an after-the-fact approval of a 6-foot, 6-inch wide entry walk constructed with stone pavers, a 33" tall block patio wall and wrought iron gate encroaching 7-8 feet into the encroachment area within the City of Newport Beach oceanfront public right-of-way on the seaward side of the lot.

The site is a beachfront lot located between the first public road and the sea. There is a wide sandy beach (approximately 350 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 up-rush during a severe storm event.

To address water quality concerns, the applicant is proposing increasing the pervious area of the site by providing 418 sq. feet of porous concrete pavers in the side yards. The drainage system is designed to retain concentrated and surface sheet flow water within the site. Drainage swales direct surface runoff through the porous side yards for on-site infiltration and ultimately reaching the municipal storm drains in the rear alley. Minimal planter landscaping is proposed as the side yards and front patio will be paved. Front planter beds will contain drought tolerant, non-invasive plants.

The Commission has found through previous permit actions in this area that the City's setback for residential structures in this area is acceptable for maintaining public access and addressing visual impacts. The proposed residence is setback approximately 20 feet, exceeding the City's 10-foot required setback from the seaward property line. Vertical public access to this beach is available at the end of Coronado Street, approximately 60 feet west of the site. Lateral public access is available along the public Oceanfront Street boardwalk and along wide sandy beach immediately seaward of the subject site.

As noted above, the applicant is requesting after the fact approval for certain encroachments onto a public right of way. The City holds the public right-of-way for street/walkway/bikeway purposes. The public right-of-way is designated on assessor's parcel maps as Oceanfront Street (Exhibit #2). The portion of Oceanfront Street in the central part of the Balboa Peninsula near the City's two municipal piers is developed with a concrete public boardwalk (walkway/bikeway).

The proposed encroachment could contribute to the cumulative adverse impact on beach use resulting from the various existing encroachments on the public right-of-way in the area. In addition, the encroachments could make it difficult in the future for the City to improve the public right-of-way for lateral access purposes.

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 public 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 36th Street and E Street. Encroachments in this area may be up to the inland edge of the Oceanfront Street boardwalk (7-8 feet ocean ward of the rear property line) and within an ocean ward prolongation of the side property lines. The LUP policies allow encroachments only if they do not interfere with access to the beach or ocean, when a building permit is not required, and subject to payment of a mitigation fee. The Commission finds that construction of the encroachments at the subject site is consistent with the certified LUP encroachment policies.

The applicant provided a copy of the Annual Oceanfront Encroachment Permit issued on January 29, 2008 and proof of payment of the annual fee. In this case, the Commission finds that the proposed encroachment is consistent with the certified LUP encroachment policies and the Chapter 3 public access policies of the Coastal Act. The findings for which are found in the Newport Beach LUP Amendment 90-1 approved by the Commission on June 11, 1991 and which are incorporated here by reference. 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. The mitigation fee collected by the City is an annual recurring fee. 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, the applicant has submitted a copy of a current encroachment permit application and evidence that they are enrolled in the annual fee system. The applicant and any successors in interest must remain enrolled in the annual fee system and pay the recurring fee so long as the encroachment remains in place.

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.

Additionally, the permittee signed an encroachment agreement with the City in which he waived his 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 also 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.

The applicant is proposing landscape planters in the development. The placement of any 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 landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). 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>. A special condition has been imposed requiring the applicant to comply with the above requirements.

B. HAZARDS

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

C. DEVELOPMENT

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

D. PUBLIC ACCESS

As conditioned, 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 conditioned, the development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, one or more of the following:

the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, 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 to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

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

G. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 2005. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

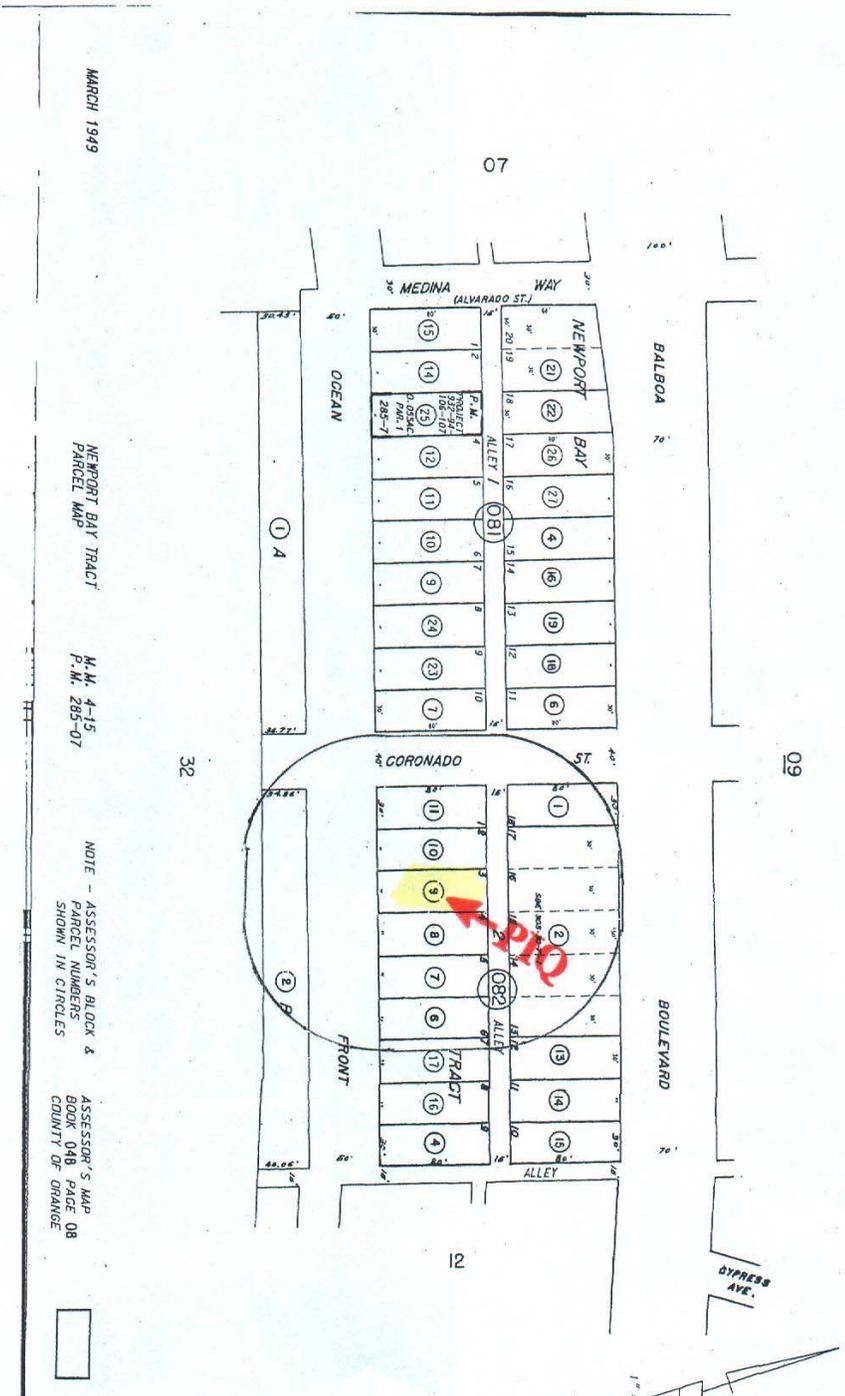
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

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.

COASTAL COMMISSION

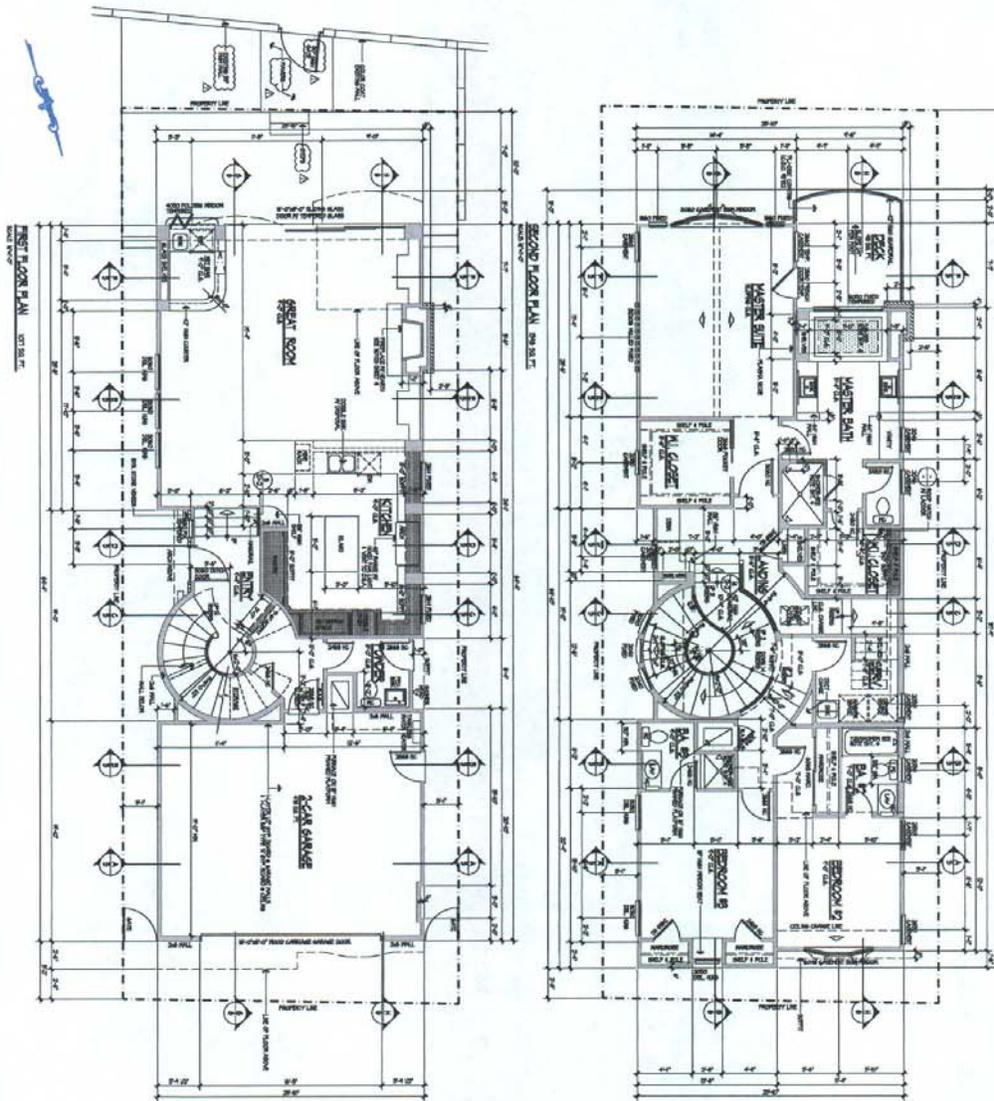
EXHIBIT # 2
 PAGE 1 OF 1

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EXHIBIT # 3
 PAGE 2 OF 3



NO.	REVISION	DATE
1	ISSUED FOR PERMIT	05/11/07
2	ISSUED FOR PERMIT	05/11/07

FLOOR PLAN
 2582 SQ. FT.

304 EAST OCEAN FRONT
 NEWPORT BEACH, CALIF.
 SC HOMES

Mark Gross &
 Associates, Inc.
 1000 Newport Blvd.
 Newport Beach, CA 92660
 (949) 861-1000

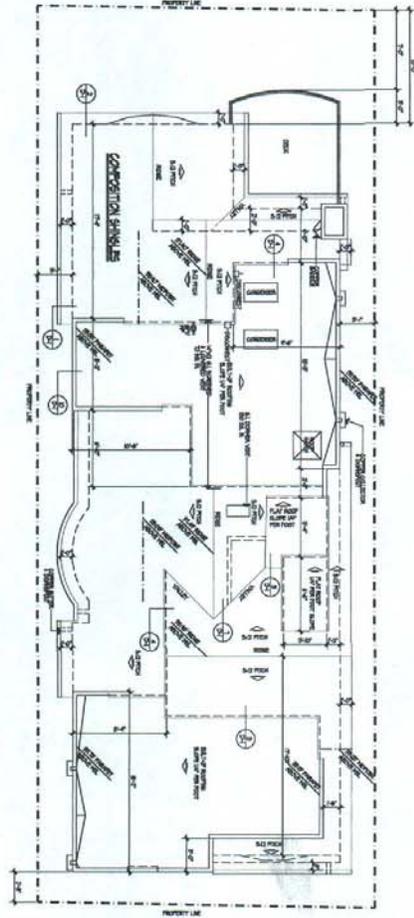
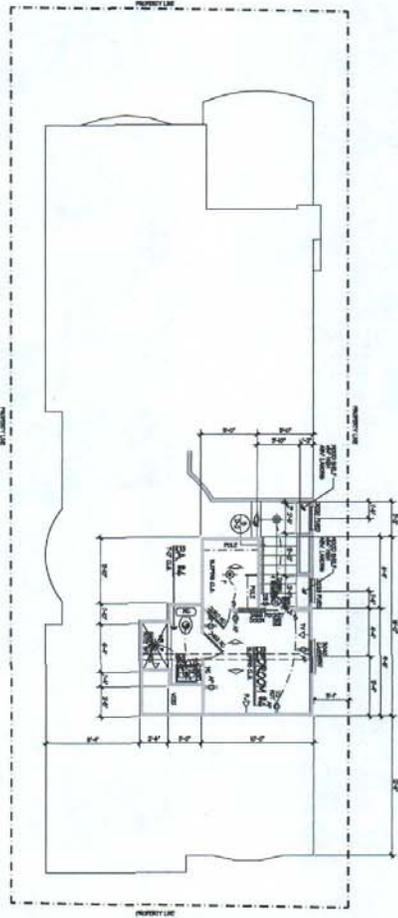


COASTAL COMMISSION

EXHIBIT # 3
 PAGE 3 OF 3

THIS PLAN IS A REVISION OF THE ORIGINAL PLAN SUBMITTED TO THE COASTAL COMMISSION ON 05/14/07. THE ORIGINAL PLAN WAS APPROVED BY THE COASTAL COMMISSION ON 06/11/07. THE REVISIONS TO THE ORIGINAL PLAN ARE AS FOLLOWS:
 1. REVISION TO THE ENTRANCE PORCH TO BE 10' 0" WIDE AND 10' 0" DEEP.
 2. REVISION TO THE ENTRANCE PORCH TO BE 10' 0" WIDE AND 10' 0" DEEP.
 3. REVISION TO THE ENTRANCE PORCH TO BE 10' 0" WIDE AND 10' 0" DEEP.
 4. REVISION TO THE ENTRANCE PORCH TO BE 10' 0" WIDE AND 10' 0" DEEP.

DATE: 05/14/07
 DRAWN BY: M. GROSS
 CHECKED BY: M. GROSS
 SCALE: 1/8" = 1'-0"



<p>3</p> <p>DATE: 05/14/07 DRAWN BY: M. GROSS CHECKED BY: M. GROSS SCALE: 1/8" = 1'-0"</p>	<p>FLOOR PLAN 2562 SQ. FT.</p>	<p>304 EAST OCEAN FRONT NEWPORT BEACH, CALIF. SC HOMES</p> <p>100 WEST BROADWAY SUITE 200 NEWPORT BEACH, CALIF. 92660 PHONE: 949-451-4571</p>	<p>Mark Gross & Associates, Inc. 100 WEST BROADWAY SUITE 200 NEWPORT BEACH, CALIF. 92660 PHONE: 949-451-4571</p> <p>MGA Architecture • Planning</p>
	<p>MARK GROSS & ASSOCIATES, INC. WARRANTS ITS GENERAL LAW COMPLIANCE TO THE EXTENT AND TO THE BEST OF ITS KNOWLEDGE AND BELIEF. THE INFORMATION, CHANGES OR TYPED REVISIONS PRINTED HEREON ARE THE SOLE PROPERTY OF MARK GROSS & ASSOCIATES, INC.</p>		