# CALIFORNIA COASTAL COMMISSION

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March 11-13, 2009

Commission Action:

Hearing Date:



# STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-09-003

APPLICANT: Allen Steiner

AGENT: David Kaech & Associates

PROJECT LOCATION: 1358 East Oceanfront, Newport Beach (Orange County)

PROJECT DESCRIPTION: Subdivide beachfront lot into 2 lots for single-family

purposes and demolition of existing single family

residence and construction of a new 1,606 sq. ft., 2-story single-family residence with a 541 sq. ft. basement and 662 sq. ft. 2-car garage, hardscape improvements and

no landscaping.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-In-Concept (No.

2318-2008) dated December 19, 2008 and Parcel Map

No. NP2008-008(PA 2008-057)

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan

(LUP); CDP 5-05-515 (Steiner); Coastal Hazard & Wave Runup Study, 1358 East Ocean Front Newport Beach, CA prepared by GeoSoils, Inc. dated December 2, 2008.

# SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing a land division and demolition and construction of a new beachfronting 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 six (6) special conditions regarding: 1) assumption of risk; 2) no future shoreline protective device; 3) conformance with the submitted drainage plan; 4) bird strike prevention; 5) future development and 6) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report. A landscaping condition is not imposed as no landscaping is proposed.

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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**

- Location Map
- 2. Assessor's Parcel Map
- 3. Project Plans
- 4. Parcel Map No. NP2008-008, PA2008-057

#### **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.

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#### 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.
- 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. By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to

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Coastal Development Permit No. 5-09-003 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 himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

B. By acceptance of this permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the 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. <u>Drainage and Run-Off Control Plan</u>

The applicant shall conform with the drainage and run-off details depicted on the site plan dated February 10, 2009 and received in the Commission's office on February 10, 2009 indicating use of roof drainage downspouts and concrete swales to direct roof and runoff from all of the site's impervious areas to two bottomless trench drains one along the length of the garage at the alley and one located in the front patio parallel to the proposed pool. 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. Bird Strike Prevention

A. Where the back or front yard of the residence abuts a coastal sandy beach, there shall be walls, fences, gates, safety devices and boundary treatments, as necessary, to protect coastal habitat. Ocean front fences and gates subject to this permit shall use materials designed to minimize bird-strikes with the fence, or gate. Fence and gate materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed. All materials shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittees shall submit final revised plans showing the location, design, height and materials of

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fences, and gates for the review and approval of the Executive Director. Said plans shall reflect the requirements of this special condition. The plans shall have received prior review and approval by the City of Newport Beach.

B. The permittees shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

# 5. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-09-003. 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. 5-09-003. 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. 5-09-003 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

# 6. <u>Generic Deed Restriction</u>

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:

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The Commission hereby finds and declares:

# A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 1358 East Oceanfront within the City of Newport Beach, Orange County (Exhibits 1 and 2). The lot size is 7,451 square feet and is developed with two single-family residences. The City of Newport Beach Land Use Plan (LUP) designates the site Single-Family Residential and the proposed project adheres to this designation. The project is located within an existing oceanfront urban residential area on the Balboa peninsula, located between the Balboa Pier and the mouth of Newport Channel.

The site is a beachfront lot located between the first public road and the sea. There is a wide sandy beach (approximately 450 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.

The applicant is proposing to subdivide the existing 7,451 square foot lot into its two original underlying legal lots, lot 5 and lot 6 of Tract 6466. Lot 5 (1354 East Ocean Front) will be 3,817 square feet in size and lot 6 (1358 East Ocean Front) will be 3,634 square feet in size. The proposed Parcel Map is included as Exhibit 4. The existing lot was originally established as two lots, lot 5 and lot 6 of tract 6466 and later merged through a lot line adjustment approved under CDP 5-05-515. Each lot is developed with a single family residence both owned by the applicant.

Additionally, the applicant proposes to demolish the existing two-story single-family residence on the underlying lot 6 (1358 East Ocean Front) and construct a new ocean-fronting, 1,606 enclosed sq. ft. and 566 sq. ft. in outdoor living and dining space for a total of 2,172 sq. ft. living area, 25' high, two-story single-family residence with a 541 sq. ft. basement, 662 sq. ft. attached two-car garage and 408 sq. ft. second story deck. Project plans are included as Exhibit 3. Grading consisting of 210 cubic yards of cut for the basement is proposed. In addition, the project consists of hardscape improvements, including paved patios, pool, spa and a 5' high glass screen wall along the front (ocean facing) property line to be an extension of the existing 5' high glass screen wall from the adjacent property at 1354 E. Ocean Front. No work is proposed for 1354 E. Ocean Front.

Due to the oceanfront location of the proposed tempered glass screenwall, there is a substantial risk of bird strikes to the screenwall. Glass walls are known to have adverse impacts upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which exposes them to predation. Some authors report that such birds strikes cause between 100 million to 1 billion bird deaths per year in North America alone. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat). Some type of boundary treatment is typically required where the backyards of residences abut coastal bluffs. To provide further protection to coastal avian species, **Special Condition 4** requires the applicant submit final revised plans for a screenwall that addresses bird strike issues, which is necessary to protect against significant disruption of habitat values. Newport Beach LUP identifies southern

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coastal fore dune habitat located along the ocean side of the Balboa Peninsula from 10<sup>th</sup> Street to the tip of the peninsula. Dune habitat is found in the vicinity at approximately 150 feet south of the site. Dune habitat is considered a sensitive plant community and is listed as rare or threatened or is otherwise protected by the U.S. Fish and Wildlife Service, the California Department of Fish and Game and the California Coastal Commission. Dunes can provide habitat for birds and small mammals. Furthermore, the Newport Beach LUP states, "Loss of dune habitat as a result of coastal development is considered to be a significant environmental impact, and any potential impacts to this resource must be avoided, minimized, or compensated."

There are a variety of methods available to address bird strikes against glass. For instance, glass can be frosted or etched in a manner that renders the glass more visible and less reflective. In the case of fences or walls, alternative materials can be used, such as wood, stone, or metal (although this approach isn't usually palatable when there is a desire to see through the wall). Use of frosted or etched glass, wood, stone or metal material is preferable to other types of treatments such as appliqués because of the lower maintenance and less frequent replacement that is required.

The applicant is proposing water quality improvements as part of the proposed project, such as roof downspouts and concrete swales to direct roof and on-site runoff from all of the site's impervious areas to two bottomless trench drains, one along the length of the garage at the alley and one located in the front patio parallel to the proposed pool for on-site infiltration. No landscaping is proposed as the entire site will comprise the residence and hardscape.

The proposed project will not have an adverse effect on public access. The project meets the Commission's typical parking requirement (2 spaces per residential unit) and is designed to be compatible with the character of the surrounding development. The Commission has found through previous permit actions in this area that the City's setback is acceptable for maintaining public access. The proposed project is consistent with the City's 10-foot required setback from the seaward property line. The project site is located along the portion of Ocean Front that is not developed with the City's paved beachfront lateral public access way (boardwalk). Vertical public access to the public beach is available at the end of F Street, approximately 60 feet west of the site and lateral public access is available along the wide sandy beach immediately seaward of the subject site. No encroachments are proposed into the adjacent public beach. However, there is an existing landscaping encroachment of an approximately 20' x 30' area seaward of the property line consisting of groundcover. Groundcover is an allowed use in the Newport Beach Certified Land Use Plan (LUP). An LUP policy regarding encroachments in this area of Ocean Front only permits encroachments consisting of landscaping trees existing prior to October 22, 1991 and groundcover. The applicant has not requested approval of the groundcover as part of this application and it is unclear to whether the existing groundcover conforms with all LUP requirements related to landscaping (e.g. native plant species and avoidance of public access impediments). In addition, existing coastal dunes located further seaward of the site would need to be protected. The proposed project does not impact the dunes.

# B. <u>HAZARDS</u>

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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 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, 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 with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

# F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the

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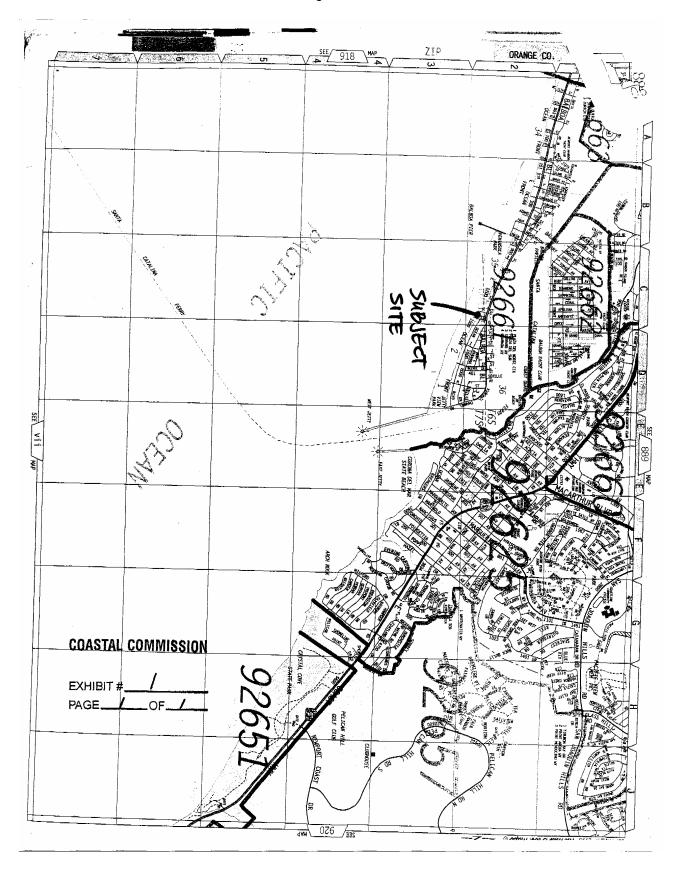
applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions 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.

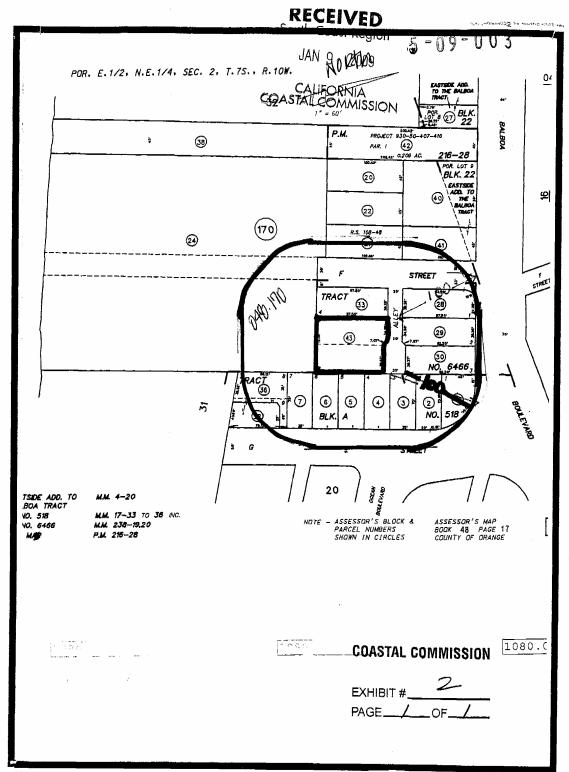
# G. LOCAL COASTAL PROGRAM

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

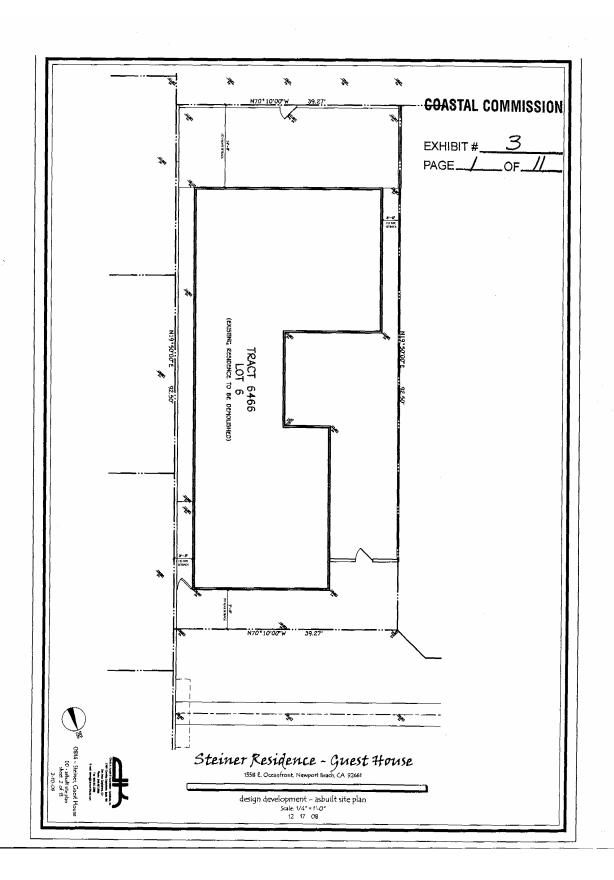
As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the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

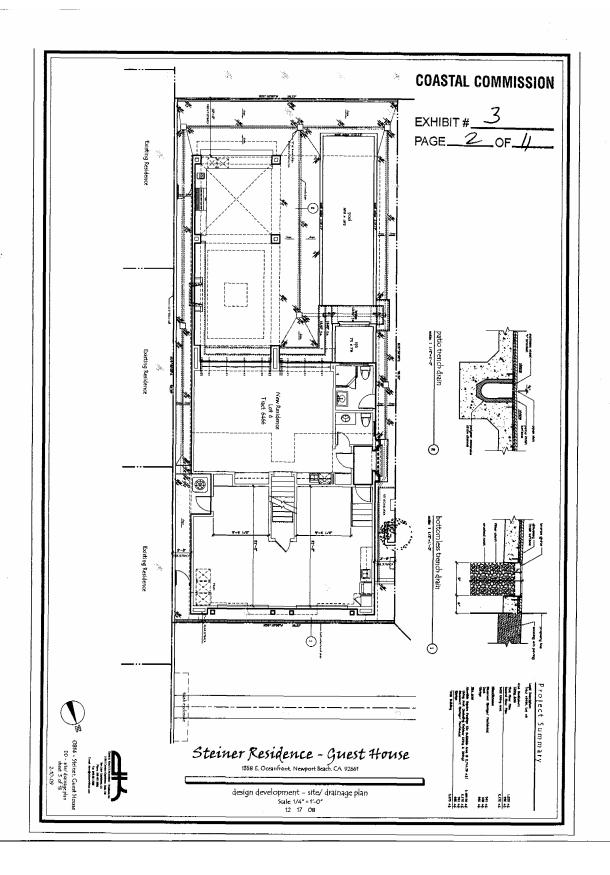


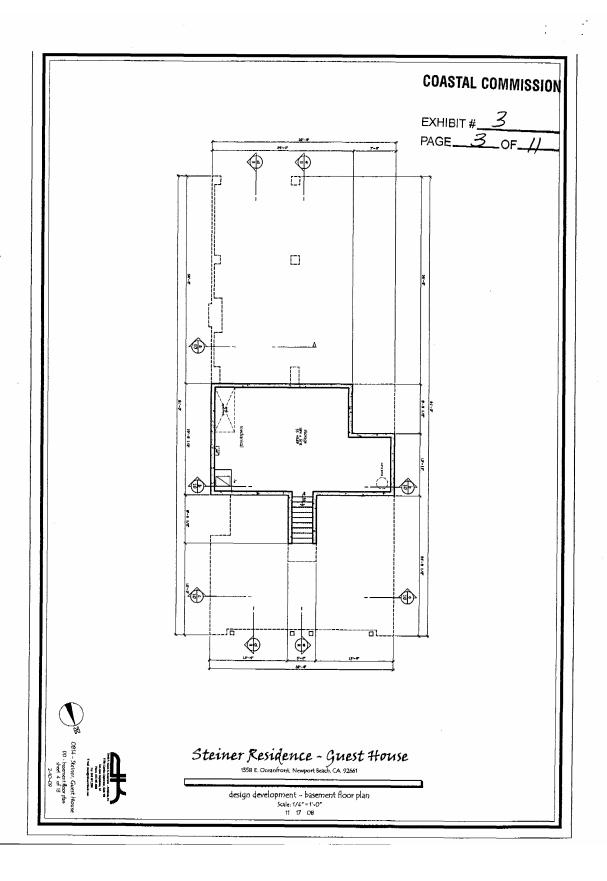


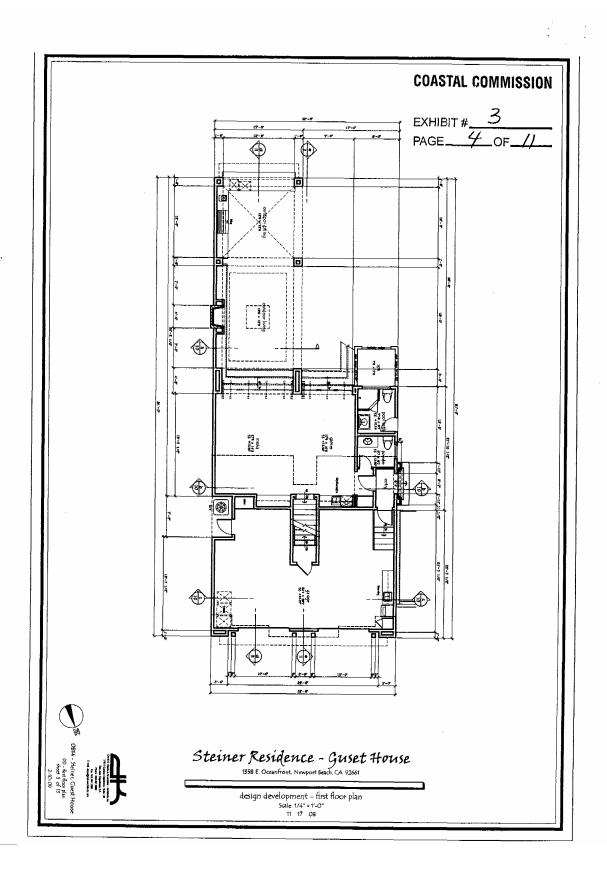
Ownership Map

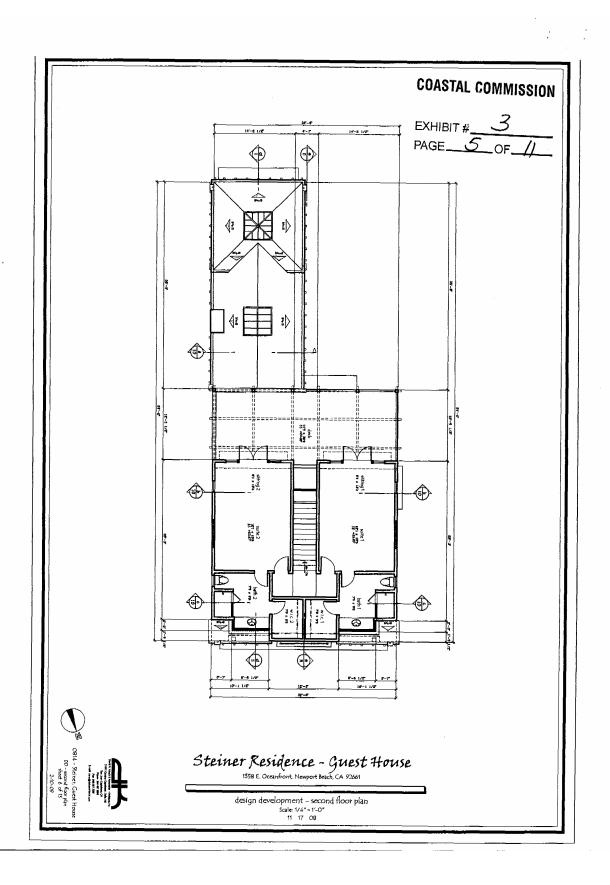
SUSAN W. CASE, INC. 917 GLENNEYRE ST #7 LAGUNA BEACH CA 92651 (949) 494-6105

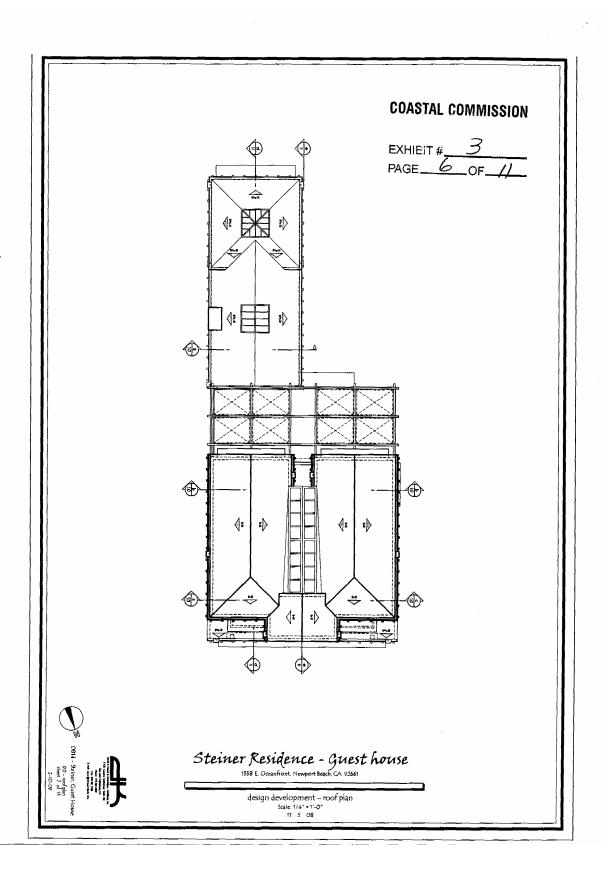




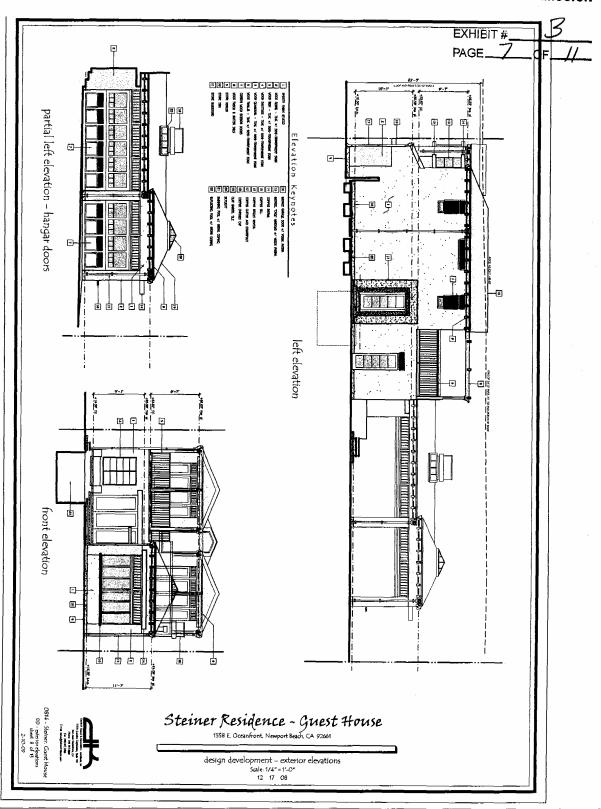


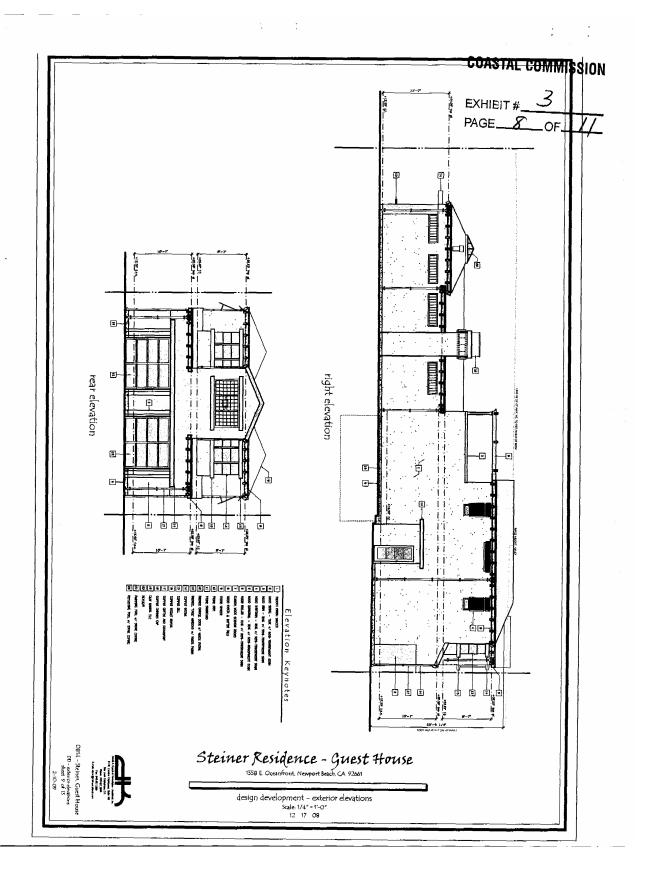


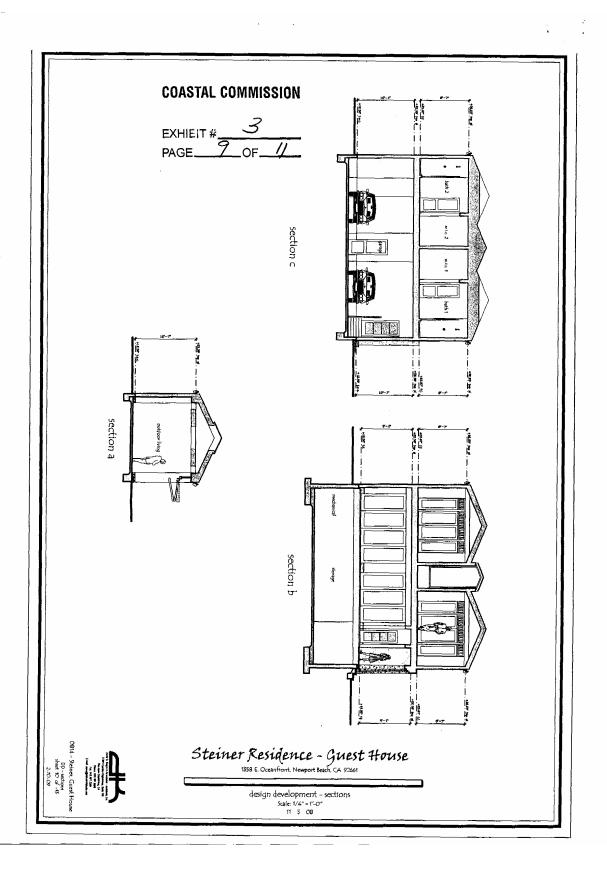


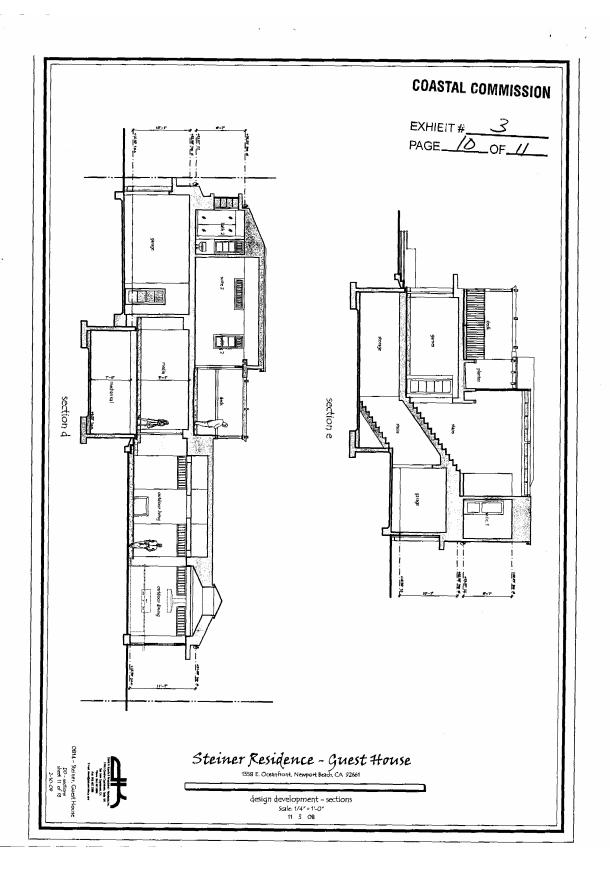


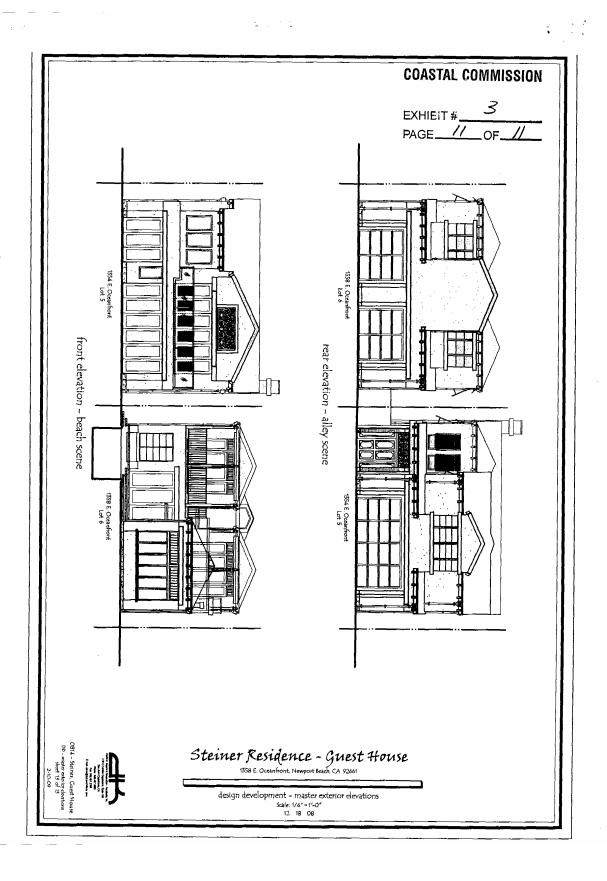
# COASTAL COMMISSION











# COASTAL COMMISSION EXHIEIT# VICINITY MAP PAGE. BALBOA BLVD E OCEAN BLVD Parcel Map No. NP2008-008

1354 and 1358 East Ocean Front

PA2008-057