

CALIFORNIA COASTAL COMMISSION

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Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NUMBER: 5-09-063
APPLICANT: Ron Simon, Ronald M. Simon Trust
AGENT: Kevin L. Crook, Architect
PROJECT LOCATION: 2 Harbor Island, Newport Beach, Orange County

PROJECT DESCRIPTION: Demolition of an existing single family residence and construction of a new 2,545 square foot, 25 foot high, two story single family residence with one detached, 438 square foot, two-car garage and one detached, 270 square foot single-car garage. Above the two-car garage, a 408 square foot office is proposed.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing demolition and construction of a new harbor fronting single-family residence. In addition, there is an at-grade patio, low walls, planters and steps to the boat dock that are located in an area of filled public tidelands seaward of the subject lot and leased to the applicant by the County of Orange. No new development is proposed in this leased area. Also, a wooden retaining wall exists along the bulkhead line and a boat dock exists seaward of this wall. No changes are proposed to the retaining wall or boat dock. The major issue of this staff report concerns retention of existing encroachments onto County administered filled public tidelands and waterfront development that could be affected by flooding during strong storm events and other coastal hazards. 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)** notifies the applicant that this coastal permit doesn't authorize any existing encroachments; **4)** permit requirements for future development; **5)** County's right to revoke its authorization for the encroachments; **6)** public rights, **7)** compliance with the proposed drainage and run-off control plan, **8)** landscape requirements; and **9)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval in Concept No. 0235-2009, dated March 10, 2009.

SUBSTANTIVE FILE DOCUMENTS: County of Orange Tidelands Lease No. HA55D-26-2 (Lower Newport Bay, Tidelands); City of Newport Beach certified Land Use Plan.

I. APPROVAL WITH CONDITIONS

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

MOTION:

I move that the Commission approve Coastal Development Permit No. 5-09-063 pursuant to the staff recommendation.

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 erosion, sea level rise, 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. 5-09-063 including, but not limited to, the residence, and any future improvements, in the event that the development is threatened with damage or destruction from sea level rise, 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 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.

3. Limited Scope of Approval

- A. No improvements to the at-grade patio, low garden and planter walls, and steps leading to the boat dock and existing non-conforming wooden retaining wall, identified on Exhibit B to the staff report dated December 17, 2009 and depicted on the applicant's Site Plan prepared by Kevin. L. Crook, Architect, Inc. and dated 2/16/09 and received by the Commission on April 3, 2009, are authorized by this coastal development permit.
- B. The property owner shall be responsible for monitoring the condition of the non-conforming wooden retaining wall over time. If the monitoring reveals that the wooden retaining wall poses a threat to public safety or is contributing to shoreline erosion, the applicant shall apply for a coastal development permit to remove the structure.
- C. The permittee shall undertake the development in accordance with the plan referenced in subsection A above. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Future Improvements

This permit is only for the development described in Coastal Development Permit No. 5-09-063. 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 entire parcel. Accordingly, any future improvements to the development authorized by this permit, including but not limited to division of land, repair and maintenance activities 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. 5-09-063 from the Commission or shall require an additional coastal development permit from the Commission.

5. County's Right to Revoke Permission to Retain Development Within Filled Public Tidelands Lease Area

Approval of this coastal development permit shall not restrict the County's right and ability to revoke, without cause, the permission it granted the applicant to construct certain development outlined in the County's lease to the applicant within the County administered filled public tidelands lease area adjacent to the subject site.

6. Public Rights

The Coastal Commission's approval of this permit shall not constitute a waiver of any

public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

7. Drainage and Polluted Runoff Control Plan

The applicant shall conform with the precise grading plan prepared by Adams Streeter Civil Engineers, Inc., dated 7/15/09 showing roof drainage and runoff from all impervious areas directed to vegetated/landscaped areas, infiltration areas, or filtering devices. 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.

8. Landscape Requirements

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>).

9. 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.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description

The applicant proposes to demolish an existing two story, single family residence and construct a new 2,545 square foot, 25 foot high, two story single family residence with one detached, 438 square foot, two-car garage and one detached, 270 square foot, single-car garage. Above the two-car garage, a 408 square foot office is proposed. Seaward of the proposed residence, but on the subject lot, an at-grade patio, low walls, planters and a swimming pool exist and would be retained as is. Seaward of the property line, between the private lot and the harbor waters, is a 30 foot wide area of filled public tidelands administered by the County of Orange. The applicant has leased this land from the County and within this area are an at-grade patio, low walls, planters and steps to the boat dock. A wooden retaining wall exists along the bulkhead line (at the seaward edge of the leased area) and a boat dock exists seaward of this wall. No changes are proposed to the existing development seaward of the residence. (See exhibit B for site plan).

The subject site is a waterfront lot on Harbor Island in Newport Harbor. Harbor Island is a private gated community. No public access currently exists on the Island. The nearest public access is located along the public walkway around Balboa Island, approximately ¼ mile southeast of the subject site.

B. Hazards

Section 30253 of the Coastal Act states, in part:

New development shall:

- (1) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

In addition, Section 30235 allows construction of devices that alter natural shoreline processes, such as bulkheads and seawalls, to protect existing structures, but not for new development. Because the proposed development includes demolition and removal of the existing residence and construction of an entirely new residence, the development is

considered new development. Therefore, consideration as to whether the proposed development would require a shoreline protection device must be evaluated.

The City's certified Land Use Plan (not the standard of review, but used as guidance) includes the following policies regarding shoreline protection structures:

2.8.6-6

Design and site protective devices to minimize impacts to coastal resources, minimize alteration of natural shoreline processes, provide for coastal access, minimize visual impacts, and eliminate or mitigate adverse impacts on local shoreline sand supply.

2.8.6-7

Discourage shoreline protective devices on public land to protect private property/development. Site and design any such protective devices as far landward as possible. Such protective devices may be considered only after hazard avoidance, restoration of the sand supply, beach nourishment and planned retreat are exhausted as possible alternatives.

2.8.6-8

Limit the use of protective devices to the minimum required to protect existing development and prohibit their use to enlarge or expand areas for new development or for new development. "Existing development" for purposes of this policy shall consist only of a principle structure, e.g. residential dwelling, required garage, or second residential unit, and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping etc.

2.8.6-9

Require property owners to record a waiver of future shoreline protection for new development during the economic life of the structure (75 years) as a condition of approval of a coastal development permit for new development on a beach, shoreline, or bluff that is subject to wave action, erosion, flooding, landslides, or other hazards associated with development on a beach or bluff. Shoreline protection may be permitted to protect existing structures that were legally constructed prior to the certification of the LCP, unless a waiver of future shoreline protection was required by a previous coastal development permit.

2.8.6-10

Site and design new structures to avoid the need for shoreline and bluff protective devices during the economic life of the structure (75 years).

The subject site is located on a waterfront lot on Harbor Island in Newport Harbor. Waterfront development is inherently hazardous due to potential impacts from erosion, wave uprush, and flooding including such impacts due to sea level rise. The proposed development includes demolition and reconstruction of a single family residence. The demolition stage would be the appropriate stage to consider alternatives to shoreline protection, such as placing the structure in a more landward position.

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. The adjacent properties on either side of the subject site, at Nos. 1 and 3 Harbor Island, have bulkheads. However, other properties on Harbor Island do not have a bulkhead, such as site at No. 4.

The Coastal Act limits construction of protective devices because they have a variety of negative impacts on coastal resources including adverse affects on sand supply, public access, coastal views, natural landforms, and overall shoreline dynamics on and off site, ultimately resulting in the loss of beach. Under Coastal Act Section 30235, a shoreline protective structure must be approved if: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply. Coastal Act policies regarding shoreline protection are reinforced in the certified Land Use Plan (LUP) policies cited above.

The proposed development could not be found consistent with Section 30235 of the Coastal Act if the site were expected to become threatened by coastal hazards and necessitate construction of a shoreline protection device to protect the proposed development. In addition, the proposed development could not be found to be consistent with Section 30253 if it would result in hazardous conditions at the subject site or surrounding vicinity.

Currently, there is an approximately 5 foot high retaining wall consisting of wood lagging placed behind buried wooden soldier piles along the bulkhead line on the seaward side of the subject site (at the seaward edge of the leased County area). The subject site, proposed development, and existing retaining wall were evaluated in a Geotechnical Evaluation prepared by Petra Geotechnical, Inc. dated July 14, 2009. The Evaluation was performed assuming a worst-case condition of failure of the wall. The Geotechnical Evaluation found:

“If the wall fails, an approximately 5-foot high, vertical section of native soil will be temporarily exposed. Based on our stability calculations, the lowermost section of the slope that will be left in a nearly vertical condition as a result of the wall failure will be unstable due to the non-cohesive and granular nature of the onsite soils and is expected to slump back over time to a natural angle of approximately 40 degrees. The exposed vertical face is expected to slump back a few feet within a short period of time; however, the thick protective growth of vegetation on the slope will

significantly slow down the upward advancement of additional slumping and erosion. A secondary sequence of stability calculations indicates that once the lower portion of the slope has slowly slumped and eroded until a natural equilibrium is reached at an angle of approximately 40 degrees (which will take many years), the slope will then remain stable under both static and pseudo-static loading conditions. Stability calculations to support this conclusion are presented in Appendix A. [Appendix A is not included in this staff report, but available in the file in the Commission's office]

It is expected that due to the slow process of slumping and erosion, the existing growth of vegetation on the slope will remain intact and continue to thrive. If the vegetation on any areas of the slope dies off, it should be replaced with a deep-rooted, drought-resistant, and maintenance-free plant species in order to enhance the slope's resistance against slumping and erosion.

In summary, it is our conclusion that if the existing toe-of-slope retaining wall fails, which is unlikely based on its past performance and present condition, the lowermost portion of the slope will experience slumping and erosion; however, at the completion of this slumping the slope will reach equilibrium and will remain stable and the existing residence, rear yard patio, swimming pool, and deck surrounding the swimming pool will not be affected. This same conclusion applies to the proposed residence as shown on the site plan prepared by the project architect, Kevin L. Crook which is located even further away from the slope than the existing rear swimming pool and surrounding deck."

In addition, the subject site and proposed development were evaluated by a coastal engineer with URS Corporation (7/21/09) for stability considering the possibility of future sea level rise. The engineer found:

"From a report prepared by The California Coastal Commission in June 2001, titled "Overview of Sea Level Rise and Some Implications for Coastal California", it was predicted that the sea level has a 90% probability to rise 8.6 inches (.086 in (0.007 ft) annual rise), 50% probability to rise 18.5 inches (0.185 in (0.015 ft) annual rise) and a 10% probability to rise 34.6 inches (0.36 in (0.029 ft) annual rise) in 100 years. Based on this information, the life span of 50 to 75 years, the elevation of the new residence of +14.60 MLLW, it is our opinion that the sea level rise will have no affect on this project."

The subject site is a waterfront lot. A retaining wall currently exists at the seaward edge of the subject site. According to the applicant's consultant, even if the existing retaining wall were to be removed or to fail, the site would remain stable. Based on these factors, no changes to the existing retaining wall are proposed at this time and the applicant's consultants indicate that none are expected to be needed in the future. In addition, the consultants indicate that the site is safe for the proposed development with or without the existing retaining wall and thus, that no future seawall would be necessary to protect the proposed development.

Because the proposed project is new development, it can only be found consistent with Section 30235 of the Coastal Act if a shoreline protective device is not expected to be needed in the future. The applicant's geotechnical and civil engineering consultants have indicated, as cited above, that no shoreline protection feature will be necessary to protect the subject site or proposed development for the life of the new structure. Were it not for this assurance by qualified professionals, the proposed development could not be found to be consistent with Section 30235 of the Coastal Act regarding shoreline protection or with Section 30253 of the Coastal Act regarding minimizing hazards. The Commission imposes Special Condition No. 2, which prohibits the applicant and his successors in interest from constructing shoreline protective devices to protect the proposed development and requiring that the applicant waive, on behalf of itself and all successors and assigns, any right to construct protective devices for the proposed project that may exist under 30235.

Furthermore, the existing wooden retaining wall is non-conforming on two counts: 1) it is not necessary to protect the subject site or development on the site, and, 2) it is located on public, rather than private, land. The existing wooden retaining wall is not required for site stability, thus it is not required under Coastal Act section 30235. In addition, it is not necessary to minimize hazards which Coastal Act section 30253 requires. Moreover, it does not conform with the policy of the certified LUP which states that shoreline protective devices to protect private development should be discouraged on public land. The retaining wall is located on public land even though it is not necessary to protect existing development. The retaining wall also does not represent the minimum required to protect existing development in that it is not actually required to protect the site and existing development. This is inconsistent with LUP policy 2.8.6-8. For these reasons, the wooden retaining wall located along the bulkhead line is a non-conforming structure.

Typically, when a site is redeveloped, any existing project non-conformities are addressed by the new project. Relocation or removal of the non-conforming structure(s) is usually considered as well as the benefit(s) to coastal resources. For instance, if a non-conforming structure is subject to hazards, relocation or removal is a strong consideration.

This area of the harbor is highly urbanized with single family residences along the waterfront, many of which have walls or bulkheads in the same or nearly same alignment as the retaining wall on this site. While the demolition of the non-conforming structure would have some visual benefit, such removal at this time would not greatly minimize visual impacts. In addition, there is no evidence that the retaining wall is contributing to any shoreline erosion. However, abatement of the non-conforming structure should eventually be considered, such as at the point in time when the structure has reached the end of its economic/useful life. Thus, the economic/useful life of the existing structure should not be substantially extended. The applicant is not proposing any improvements to the structure. The life of the existing structure would not be extended. Any upgrade, modification and/or any other form of development related to the existing non-conforming structure (including repair and maintenance) is prohibited unless authorized in accordance with a separate Commission action. Special Condition No. 3 and 4 informs the applicant

that any future development at the site requires an amendment to this permit or a new coastal development permit. Future development includes, but is not limited to, structural additions, landscaping and fencing. Special Condition No. 3 requires that the non-conforming structure be monitored by the applicant and that if monitoring reveals that the wall has become a threat to public safety or is contributing to erosion, it must be removed.

Therefore, as conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding minimizing risk and the siting of development in hazardous locations.

C. Public Access/Encroachments

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Harbor Island is located in Newport Harbor. The bridge between the island and the mainland is gated on the mainland side so there is no public access via the existing bridge to the island. However, there is a 30 foot wide area of land ringing the island between the residential lots and the harbor water that is filled public tidelands administered by the County of Orange pursuant to the Tidelands Grant by the State of California to the County of Orange (Chapter 415, of the Statutes of 1975, State of California).

The City's certified Land Use Plan (a comprehensive update was certified by the Commission on October 13, 2005) describes Harbor Island:

Developed in 1926, Harbor Island is a 35-lot single-family community on a private island located between Linda Isle and Collins Island. Portions of tidelands surrounding Harbor Island have been filled or reclaimed and are no longer submerged or below the mean high tide line. Harbor Island residents have improved these lands with landscaping and other improvements. The State, through the adoption of Chapter 715, Statutes of 1984, found that these lands are generally inaccessible to the public and, in their present condition, are not suitable for public trust uses. Both the County of Orange (most of the subject lands are County tidelands) and the City of Newport Beach are authorized to allow the Harbor Island tidelands to be used for non-permanent recreational and landscaping uses. These leases are limited to terms of 49 years or less and lease revenues have to be deposited into tidelands trust funds.

The 30 foot wide area of filled public tidelands adjacent to the subject lot is leased to the applicant by the County of Orange. Similar lease agreements exist for the other residential lots on Harbor Island. See exhibit C for location of the filled tidelands area on Harbor

Island. At the subject site, this leased area is developed with an at-grade patio, low walls and planter walls (less than 36 inches above grade), and steps leading to the private boat dock. The lease allows "landscaping and non-permanent recreational improvements" including, specifically, the type of development currently existing in the leased area. See exhibit D for pertinent parts of the lease. The term of the lease is 49 years commencing on March 21, 1988. Thus the lease term is good through March 21, 2037. The lease specifies a rent of \$2,414 per year (1992 dollars) and the amount of the rent is automatically adjusted every three years based on the consumer price index. Revenue from the lease is deposited in the County tidelands fund, which assists in development, repair, or improvement of public access and recreational facilities in the Newport area.

The applicant is not requesting authorization for the existing improvement nor are they proposing any changes to the existing development within the leased area. It is not known when the existing improvements were constructed. The current applicant purchased the property in 2009. There is no coastal development permit history for the site. City of Newport Beach records indicate that the existing residence (proposed for demolition) was constructed in 1969, so it is possible the development pre-dates the Coastal Act. Coastal Records Project photos (www.californiacoastline.org) do not provide the level of detail for this site necessary to determine whether the subject development was present in 1972. As noted in Special Condition No. 3, this action does not authorize any of the existing development within the leased area.

Special Condition No. 4 clarifies that future development, including but not limited to any changes to development in the encroachment area, require review by the Commission. In addition, Special Condition No. 5 clarifies that nothing in this permit action affects the County's right to revoke their authorization of the development within the filled public tidelands. Special Condition No. 6 affirms that approval of the proposed single family residence and related development on the private lot does not constitute a waiver of any public rights that exist or may exist at the site.

Section 30604(c) of the Coastal Act requires that every coastal development permit issued for any development between the nearest public road and the sea include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3. The proposed project is located within an existing locked gate community located seaward of the first public road paralleling the sea. Public pedestrian or vehicular access from the mainland onto this island does not currently exist. The proposed development, replacement of a single family residence on an existing residential lot, will not affect existing public access conditions. It is the gating at the entry to the community, not the proposed home, that precludes access from the mainland to the island. The Commission is not authorizing any development on the filled tidelands that would obstruct public use of or access to those tidelands. As conditioned, the proposed development will not have any new adverse impacts on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with the public access and recreation policies of the Coastal Act including Section 30210.

D. Water Quality

Section 30230 of the Coastal Act states that:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30230 of the Coastal Act requires that marine resources be maintained, enhanced, and where feasible, restored. In addition, Section 30230 requires that uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for, among other purposes, long-term scientific and educational purposes.

Section 30231 of the Coastal Act requires that the quality of coastal waters and streams be protected and, where feasible, restored. The quality of the coastal waters, including Newport Harbor, is required by Section 30231 to be, at a minimum, maintained.

The applicant is proposing water quality improvements as part of the proposed project. Drainage from a small area at the southerly portion of the property will drain toward the street. Prior to leaving the site, drainage from this area will be intercepted and pre-treated by a bottomless trench drain placed across the entire width of the new driveway. All other site drainage will be collected, treated and discharged into the harbor waters. Specifically, a sub-drain system will collect and direct roof and surface storm water to a drain insert type BMP (Catch Basin inlet with Kristar flogard inserts) at the easterly end of the property. Prior to leaving the site, drainage will be treated via infiltration using a perforated drain trench system and with an outlet point located above the existing wooden retaining wall. Also proposed are planter strips/landscape buffers to allow for retention and infiltration of site drainage.

The proposed water quality drainage elements are reflected on the Precise Grading Plan

prepared by Adams Streeter Civil Engineers, dated July 15, 2009. The types of vegetation to be planted have not been identified. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. Special condition No. 7 requires that the proposed water quality drainage plan be carried out as proposed on the Precise Grading Plan. Special Condition No. 8 requires that landscaping be native or non-native, drought tolerant plants which are non-invasive. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30230 and 30231 of the Coastal Act which requires that water quality and marine resources be protected.

E. 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 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.

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

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

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.



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SITE

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VICINITY MAP

PACIFIC

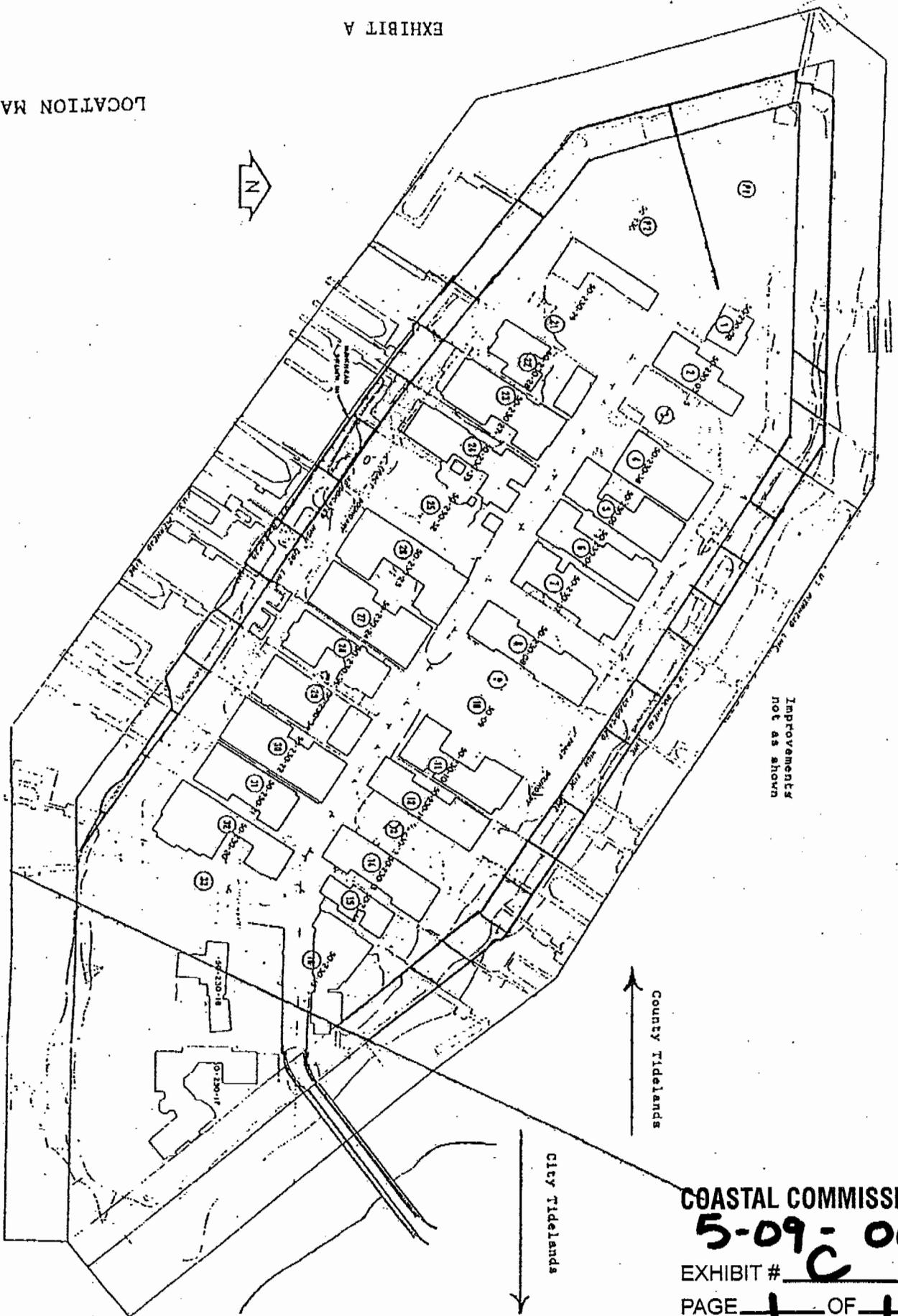
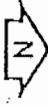
COASTAL COMMISSION
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EXHIBIT # A
PAGE 1 OF 1

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EXHIBIT A

LOCATION MAP



Improvements
not as shown

County Tidelands

City Tidelands

HA55D-26

Lower Newport Bay

Harbor Island

COASTAL COMMISSION

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EXHIBIT # C

PAGE 1 OF 1

1 HA55D-26-2
2 Lower Newport Bay
(Tidelands)

4 LEASE

5 THIS LEASE, hereinafter referred to as "Lease", is made by and between COUNTY OF
6 ORANGE, hereinafter referred to as "LESSOR," and Thayer S. Crispin and
7 Elizabeth G. Crispin, husband and wife
hereinafter referred to as "TENANT," without regard to number and gender.

8 1. DEFINITIONS (MA2.1 S)

9 The following words in this Lease have the significance attached to them in this
10 clause unless otherwise apparent from context:

11 "Board of Supervisors" means the Board of Supervisors of the County of Orange, a
political subdivision of the State of California.

12 "Director" means the Director of Harbors, Beaches and Parks, Environmental
13 Management Agency of the County of Orange, or his designee, or upon written notice
to TENANT, such other person or entity as shall be designated by the Board of
14 Supervisors.

15 "Real Estate Director" means the Director, Real Estate, General Services Agency, of
the County of Orange, or his designee, or upon written notice to TENANT, such other
16 person or entity as shall be designated by the Board of Supervisors.

17 "Auditor-Controller" means the Auditor-Controller, County of Orange, or his
designee, or upon written notice to TENANT, such other person or entity as shall be
18 designated by the Board of Supervisors.

19 2. PREMISES (PMA3.1 N)

20 LESSOR leases to TENANT that certain property hereinafter referred to as
"Premises," shown on "Exhibit A," attached hereto and by reference made a part
21 hereof, and described as those filled tidelands lying between the extension of the
sidelines of Lot 2 of Tract 802 from the adjudicated mean high tide line to the
22 United States bulkhead line, excepting therefrom those lands lying below the
existing mean high tide line. Use of submerged "water covered" tidelands areas is
23 not provided for herein.

24 3. TERMINATION OF PRIOR AGREEMENTS (PMA4.1 S)

25 It is mutually agreed that this Lease shall terminate and supersede any prior lease
agreements between the parties hereto covering all or any portion of the Premises.

27 PB:km:sa
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COASTAL COMMISSION

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EXHIBIT # D

PAGE 1 OF 5

1 4. LIMITATION OF THE LEASEHOLD (PMA5.1 N)

2 This Lease and the rights and privileges granted TENANT in and to the Premises are
3 subject to all covenants, conditions, restrictions, and exceptions of record or
4 apparent, including those which are set out in the Tidelands Grant by the State of
5 California to the County of Orange (Chapter 415, of the Statutes of 1975, State of
6 California). Nothing contained in this Lease or in any document related hereto
7 shall be construed to imply the conveyance to TENANT of rights in the Premises
8 which exceed those owned by LESSOR, or any representation or warranty, either
9 expressed or implied, relating to the nature or condition of the Premises or
10 LESSOR's interest therein. TENANT acknowledges that TENANT has conducted a
11 complete and adequate investigation of the Premises and that TENANT has accepted
12 the Premises in its "as is" condition.

8 5. USE (PMBI.1 N)

- 9 a. TENANT shall have the exclusive, private enjoyment of the Premises for
10 residential yard, landscaping and non-permanent recreational purposes as an
11 adjunct to the residence of those single family residences that adjoin the
12 Premises and can exclude public access during the term of the Lease,
13 consistent with Chapter 715, of the Statutes of 1984, State of California.

12 As used in this Lease, landscaping and non-permanent recreational
13 improvements include the following:

- 14 a. Patios and decks;
15 b. Walks and steps, including dock access walks;
16 c. Planters and garden walls not exceeding 36 inches in height above
17 natural grade;
18 d. Benches;
19 e. Statues;
20 f. Landscaping;
21 g. Sprinkler systems;
22 h. Yard lighting; and
23 i. Any and all improvements existing as of August 1, 1990.

23 TENANT agrees not to use the Premises for any other purpose nor to engage in or
24 permit any other activity within or from the Premises.

- 25 b. Tenant shall obtain prior written consent of Lessor before the placement of
26 any improvements not listed above. Consent of Lessor shall be obtained
27 through its Environmental Management Agency, Harbors, Beaches and Parks,

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1 Post Office Box 4048, Santa Ana, CA 92702-4048 or at any address the
2 Director may hereafter designate.

3 6. TERM (PMB2.1 S)

4 The term of this Lease shall be forty-nine (49) years, commencing on March 22, 1988
5 to coincide with the expiration of the Interim Tidelands Lease Agreement executed
6 on March 22, 1983. TENANT understands and agrees that this Lease is subject to
7 automatic termination as provided in Clause 15 (INSURANCE).

8 7. RETROACTIVE RENT

9 TENANT agrees to pay the sum of \$13,695.75 as payment in full of all rent for the
10 Premises during the period from January 1, 1981 through March 21, 1988 under the
11 provisions of the Interim Tidelands Lease Agreement executed March 22, 1983.

12 In addition, TENANT agrees to pay the sum of \$8,702.12 as payment in full of all
13 rent for the premises during the period from March 22, 1988 through March 21, 1992.

14 Payment of both sums shall be made to the County of Orange, concurrently with the
15 execution of this lease, pursuant to the provisions of Clause 11, (RENT PAYMENT
16 PROCEDURE) of this Lease.

17 8. RENT (PMCI.1 S)

18 Commencing March 22, 1992 and continuing until adjusted pursuant to Clause 9 or 10
19 of this Lease, TENANT agrees to pay as rent for the Premises the sum of \$2,414.07
20 per year, payable on or before March 22, 1992 and on or before each anniversary of
21 the effective date of this Lease thereafter, so long as tenancy continues. In the
22 event the obligation to pay rent terminates on some date other than the anniversary
23 of the effective date of this Lease, the rent shall be prorated to reflect the
24 actual period of tenancy.

25 9. REVISION OF RENT (PMC4.2 N)

26 Every three years the rent specified in Clause 8 (RENT) shall be subject to
27 automatic adjustments in proportion to change in the Consumer Price Index for Los
28 Angeles-- Anaheim--Riverside, CA (All Urban Consumers--All Items 1982-84=100)
promulgated by the Bureau of Labor Statistics of the U. S. Department of Labor
(INDEX).

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D3

1 The first automatic adjustment shall be effective on March 22, 1991 and subsequent
2 adjustments shall be effective on the March 22 anniversary date every third year
3 thereafter (1994, 1997 etc.). Adjusted rent shall be calculated by means of the
4 following formula:

$$A = \$ \frac{*}{C} \times B$$

4 A = Adjusted Rent

5 B = INDEX for the fourth month prior to the month in which each rental rate
6 adjustment is to become effective.

7 For calculating 1991, 1994, and 1997 adjustments,

8 C = Monthly Index for March 1988 = 120.6

9 For calculating subsequent adjustments, C shall equal the Monthly Index for
10 the most recent effective date of reappraised rent as set forth in Clause
11 10 (REAPPRAISAL OF RENT) (March 1998, March 2008, March 2018 and March
12 2028).

11 For calculating 1991, 1994 and 1997 adjustments, * = Base rent established for
12 March 1988.

13 For calculating subsequent adjustment, * shall equal the rent established for
14 the most recent effective date of reappraised rent as set forth in Clause 10
15 (REAPPRAISAL OF RENT) (March 22, 1998, March 22, 2008, March 22, 2018, and
16 March 22, 2028).

15 Notwithstanding the foregoing, in no event shall the annual rent be reduced by
16 reason of such adjustment.

16 In the event that the INDEX is not issued or published for the period for which
17 such annual rent is to be adjusted and computed hereunder, or that the Bureau of
18 Labor Statistics of the United States Department of Labor should cease to publish
19 said index figures, then any similar index published by any other branch or
20 department of the United States Government shall be used and if none is so
21 published, then another index generally recognized and authoritative shall be
22 substituted by LESSOR.

20 10. REAPPRAISAL OF RENT (N)

21 LESSOR and TENANT agree that rent payable pursuant to Clause 8 (RENT) and as
22 adjusted by Clause 9 (REVISION OF RENT) of this Lease, shall be subject to periodic
23 adjustment by reappraisal every ten (10) years to be effective on the following
24 dates:

24 March 22, 1998,
25 March 22, 2008,
26 March 22, 2018,
27 March 22, 2028,

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D4

1 It is the intent of LESSOR and TENANT that rent payable pursuant to Clause 8 (RENT)
2 of this Lease, shall be calculated by the following formula:

3
$$\text{Rent} = \text{reappraised value of the Premises} \times .375 \text{ (thirty-seven and one-half percent)} \times .09 \text{ (nine percent)}$$

4 Note: (.375 is based upon 62.5% discount for land utilization i.e.,
5 $1.0 - .625 = .375$; .09 is based upon rate of return.)

6 LESSOR and TENANT shall begin the appraisal process to determine rent adjustment
7 six months prior to the effective date of said rent adjustment and shall use the following procedure:

8 (1) LESSOR and TENANT shall, no less than 180 days prior to the next scheduled
9 rent adjustment, each employ a qualified real estate appraiser. LESSOR shall
10 use its reasonable efforts to provide TENANT written notice of its obligation
11 to employ an appraiser thirty (30) days prior to the date by which the
12 appraiser must be employed. LESSOR's failure to provide such notice shall not
13 relieve TENANT of obligation to employ an appraiser as set forth in this
14 Lease. The term "qualified real estate appraiser," as used herein shall mean
15 and refer to a real estate appraiser designated as a "senior" member or
16 equivalent by a nationally recognized appraisal organization, hereinafter
17 referred to as "appraiser," and who has at least five years experience
18 appraising this type of property.

14 a. In the event TENANT fails to employ an appraiser prior to this 180-day
15 period and provide written notice to LESSOR of said employment, then the
16 appraiser employed by the LESSOR shall be the sole appraiser responsible
17 for determining the value of the Premises and his opinion shall be binding
18 upon LESSOR and TENANT.

17 b. LESSOR and TENANT shall be individually responsible for the fee of the
18 appraiser which it employs.

18 (2) After selection of the appraiser(s), the Real Estate Director shall
19 immediately fix a time and place for a pre-appraisal meeting with the Real
20 Estate Director, TENANT, and the appraiser(s).

20 a. At or before the pre-appraisal meeting, the Real Estate Director shall
21 provide the appraiser(s) with a "Scope of Work."

22 b. The appraiser(s) shall, within 120 days after the pre-appraisal
23 meeting, prepare and deliver to LESSOR and TENANT two copies of a fully
24 documented written report, prepared in accordance with the Scope of Work,
25 containing the appraiser's independent opinion of the value of the
26 Premises.

25 (3) The rent adjustment shall be determined as follows: