## CALIFORNIA COASTAL COMMISSION

South Coast Area Office 200 Oceangate, Suite 1000 Long Beach, CA 90802-4302 (562) 590-5071

## Item W4a

Filed: January 27, 2010
49th Day: March 17, 2010
180th Day: July 26, 2010
Staff: Liliana Roman-LB
Staff Report: March 24, 2010
Hearing Date: April 14-16, 2010
Commission Action:



## STAFF REPORT: CONSENT CALENDAR

**APPLICATION NUMBER: 5-09-245** 

**APPLICANT:** Kirk Huffman

PROJECT LOCATION: 316 Via Lido Nord, Lido Island, Newport Beach, County of Orange

PROJECT DESCRIPTION: Remodel of an existing ocean front 2,707 sq. ft. two-storey single-

family residence including the demolition and re-construction of the entire bayward portion of the structure except for the attached two-car garage and addition of a new 875 sq. ft. second storey resulting in a 3,527 sq. ft. two-story, 24' tall residence, drainage improvements

and no landscaping is proposed.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-In-Concept (No. 1907-2009)

dated December 16, 2009

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach certified Land Use Plan, *Hazards Analysis, WSA Job # 6465* prepared by William Simpson & Associates, Inc. dated January 26, 2010.

#### **SUMMARY OF STAFF RECOMMENDATION:**

The applicant is proposing substantial demolition and reconstruction including a larger second storey addition to an existing bay front single-family residence on a non-bulkhead lot with sandy beach located on Newport Bay. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events.

Staff is recommending <u>APPROVAL</u> 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 and run-off control plan; 4) storage of construction materials, mechanized equipment and removal of construction debris; 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 hasn't been imposed because the applicant is proposing a system of dry wells to collect surface runoff in lieu of landscaping as the site is comprised of all concrete slab and does not contain impervious landscaped areas.

The proposed development amounts to major improvements to an existing residential structure that will not result in any bayward encroachment of the principal structure beyond the existing onsite development that is proposed-to-be retained (retaining block wall at bayward property line).

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The proposed new expansion area constitutes new development for the purposes of Sections 30235 and 30253. Because the proposed project includes new development, it can only be found consistent with Section 30253 of the Coastal Act if a shoreline protective device is not expected to be needed in the future. The proposed development appears to be safe from flood hazards on the basis of available information provided by the applicant and is therefore consistent with Coastal Act section 30253(a). Nonetheless, the development would be located on a bayfront beach and changed circumstances in the future regarding sea level rise, shoreline sand supply, erosion, seismic activity, and storm intensity could result in threats to the structure. Future shoreline protection to address such threats could conflict with Coastal Act requirements regarding public access and recreation, shoreline sand supply, and protection of views to and along the shoreline. Thus, the Commission imposes a special condition requiring No Future Shoreline Protective Device and a deed restriction providing notice to future owners.

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
- 4. Aerial site photograph

#### **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 **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

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to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

#### II. STANDARD CONDITIONS

- 1. <u>Notice of Receipt and Acknowledgment.</u> The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. <u>Expiration.</u> If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 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, sea level rise, erosion 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 himself 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. 5-09-245 including, but not limited to, the residence, garage,

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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, patio and retaining wall 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 Runoff Plan</u>

The applicant shall conform to drainage plans received in the Commission's office on January 12, 2010 indicating use of dry wells for on-site percolation of water runoff from all impervious areas. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

# 4. <u>Storage of Construction Materials, Mechanized Equipment and Removal of</u> 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.

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#### 5. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-09-245. 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. 5-09-245. 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. 5-09-245 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

#### 6. 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 316 Via Lido Nord on Lido Island within the City of Newport Beach, Orange County (Exhibits 1 and 2). The lot size is 2,700 square feet. The City of Newport Beach Land Use Plan (LUP) designates the site as Multi-Unit Residential (RM-E); the proposed project is a single-family residence allowable under this designation. The project is located within an existing urban residential area, located on Lido Island in Newport Bay.

The site is a non-bulkhead beachfront lot located between the first public road and the sea on Lido Island. There is a narrow sandy beach (approximately 25 feet wide) between the subject property and Newport Bay. Due to its bayfront location, the project site may be potentially exposed to damage or destruction from waves, erosion, storm conditions, sea level rise or other natural coastal hazards in the future.

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The applicant is proposing to demolish the bay front portion of an existing two-level 2,707 sq. ft. single-family residence (the bay front portion of the residence is one-storey, the street front section is two-storey) and re-construct the bay front portion of the residence with a 875 sq. ft. second storey and a second storey balcony deck resulting in a 3,527 sq. ft., 24' tall, two-story single-family residence including drainage improvements, and no landscaping (Exhibit 3). Minimal grading for site preparation is proposed such as removal and re-compaction of existing soft surficial soils (fill) to provide adequate support for the proposed new slab-on-grade foundation for new two-storey portion of the residence. To address water quality concerns, the applicant is proposing directing site drainage and runoff from all impervious areas to two dry wells along the paved side yards. No landscaping is proposed as the side yards and front patio is paved concrete slab.

The applicant submitted a Hazards Analysis letter report by William Simpson & Associates dated January 26, 2010 in conclusion the report states, "Based on the visual observation, documents reviewed and study of the new research regarding ocean rise, we believe that no additional protective device at the proposed development will be required, during the economical life of the associated structure, to protect it from any existing or anticipated future hazards." The finish floor of the house (existing and proposed) is at an approximate elevation of +12.5 feet MLLW. 1989 FEMA Flood Maps show the whole of Lido Island to be within the 100 year flood plane. The current flood elevation in Newport Bay is +9 feet NAVD or +9.2 feet MLLW and the proposed new structure would continue to be at an approximate elevation of +12.5 feet MLLW. However, were there to be a 3 foot rise in sea level as some scientists anticipate over the next 100 years, the bay level during flood conditions could approach the finish floor elevation of +12.5 feet MLLW. Furthermore, the development would be located on a bayfront beach and changed circumstances in the future regarding sea level rise, shoreline sand supply, erosion, seismic activity, and storm intensity could result in threats to the structure. Future shoreline protection to address such threats could conflict with Coastal Act requirements regarding public access and recreation, shoreline sand supply, and protection of views to and along the shoreline. Therefore, to ensure that the proposed new development minimizes risks to life and property in areas of high flood/coastal hazards, the Commission imposes Special Condition 2 requiring the applicant to agree, 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 this CDP, 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.

The proposed project will not have an adverse effect on public access. The project site is located along a portion of Lido Island bordered by a paved public access walkway along a section of public beach parcel. The Commission has found through previous permit actions that the City's setback in this area is acceptable for maintaining public access. The proposed project is consistent with the City's 4-foot required setback from the seaward property line. Vertical public access to this beach is available at the end of Via Genoa at a public beach, 300 feet east of the site. Lateral public access is available along the paved walkway and sandy public beach seaward of the subject site. The property line extends up to the City's paved public access walkway. There are no existing or proposed encroachments onto City public property.

#### 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

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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

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 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, the appropriate management of equipment and construction materials 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. <u>DEED RESTRICTION</u>

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.

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#### 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

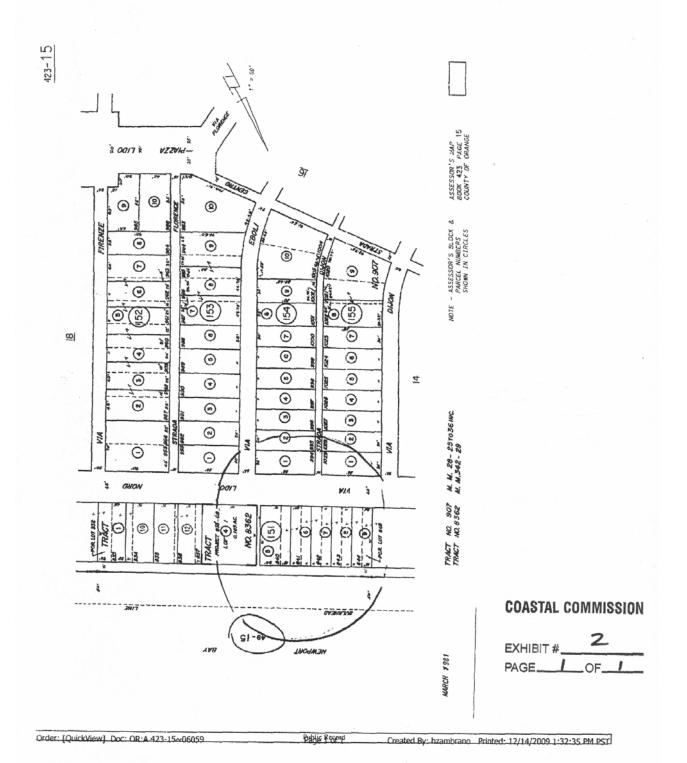
As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the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

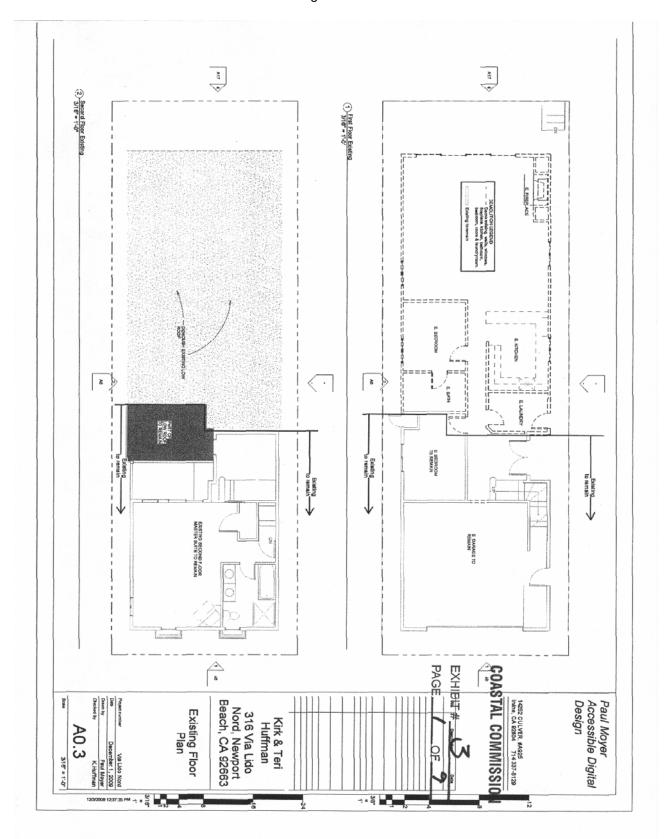
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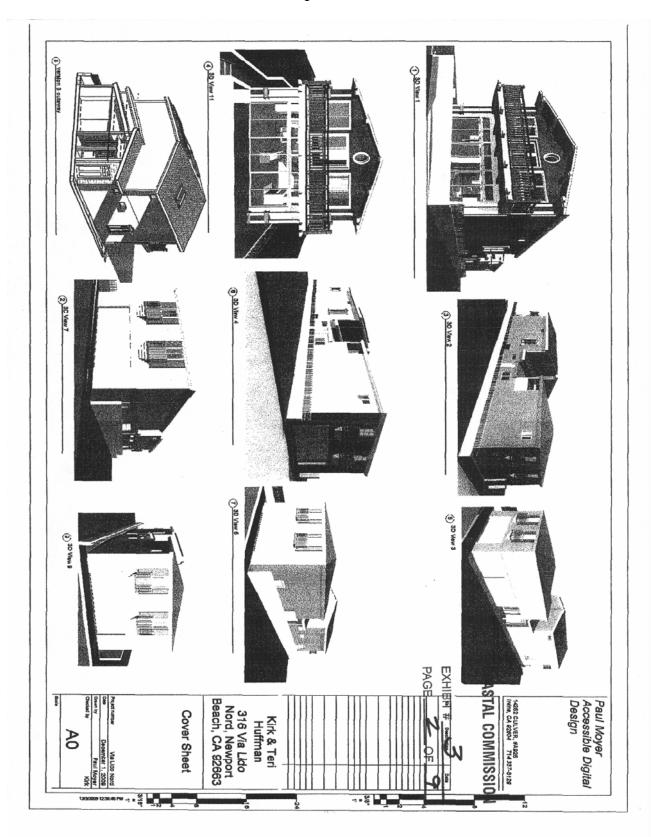
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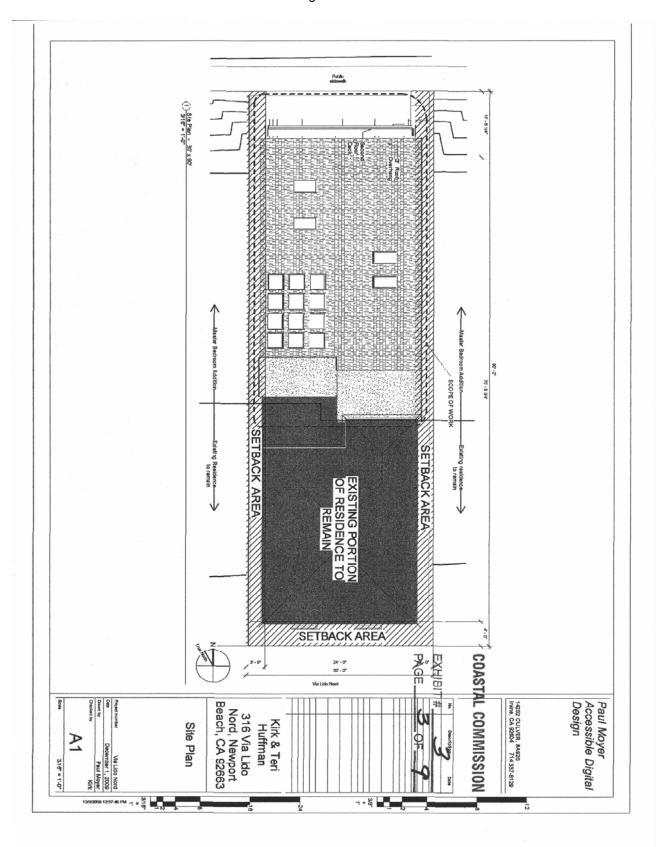
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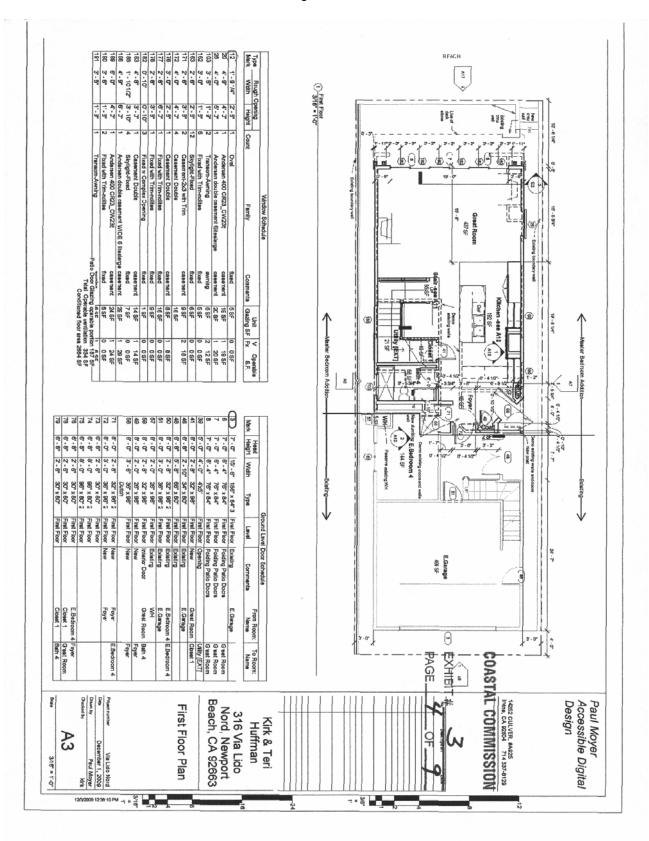


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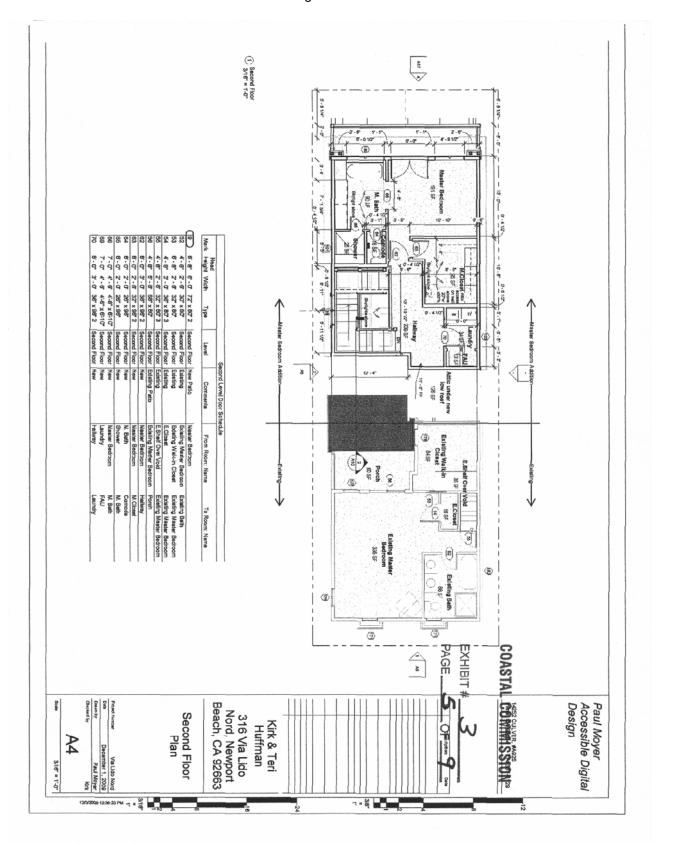


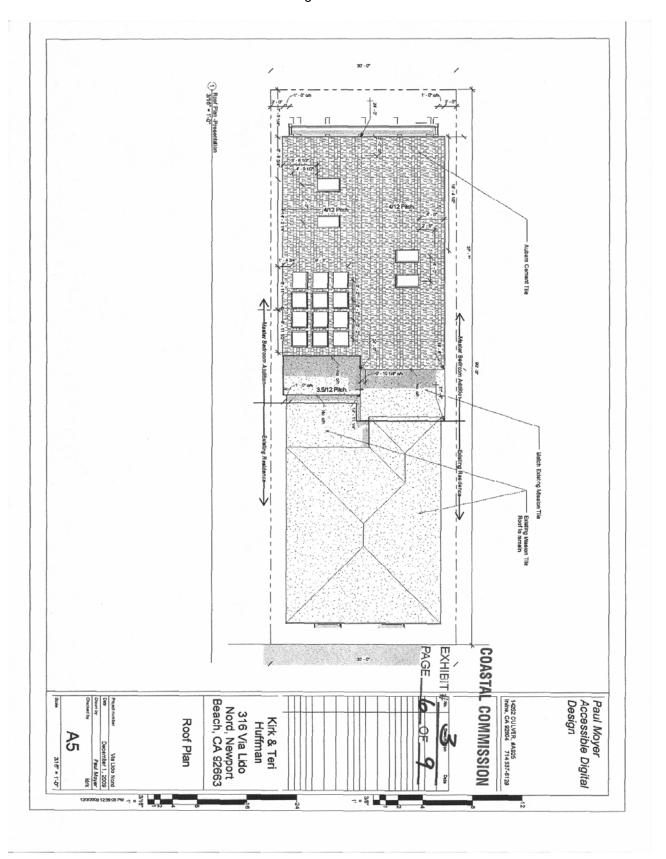


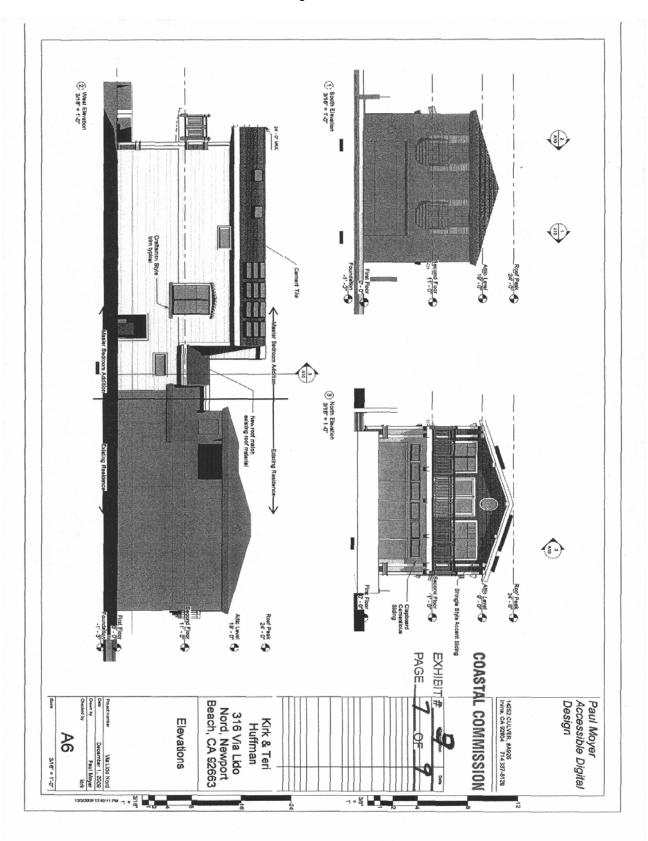
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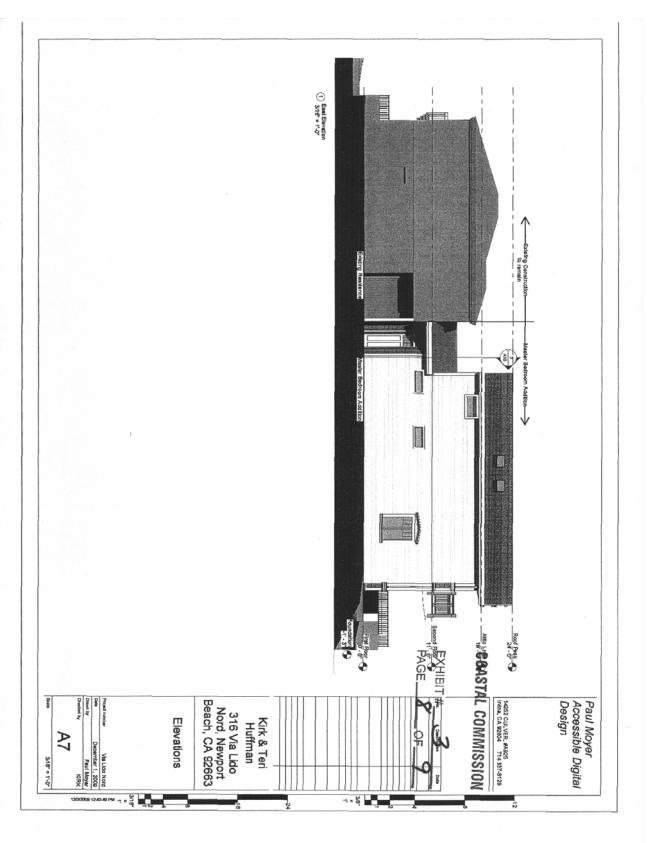


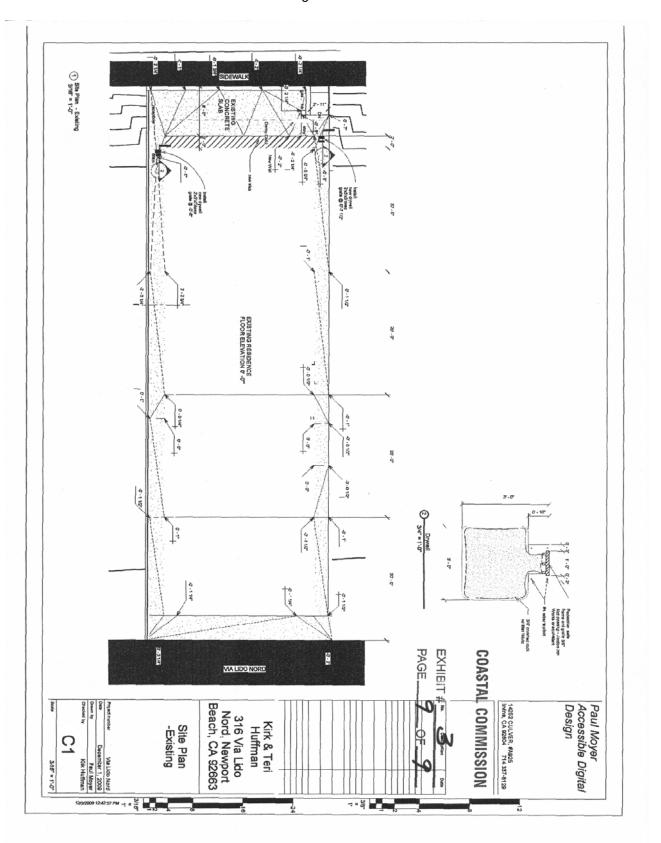
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