

CALIFORNIA COASTAL COMMISSION

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Filed: December 3, 2012
180th Day: June 1, 2013
Staff: J. Rabin - LB
Staff Report: December 18, 2012
Hearing Date: January 9-11, 2013

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-12-140

Applicant: Donna Cambon

Agent: Steve Eide

Location: 1812 West Oceanfront, Newport Beach, Orange County
(APN 047-173-28)

Project Description: Substantial demolition of an existing 2-story duplex and construction of a new three-story, 33-foot high duplex with a total of 4,012 square feet of living area; an attached two-car, 447 square foot garage; a two-car, 432 square foot covered carport, and a total of 892 square feet of ground floor, second floor and third floor decks.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing substantial demolition of an existing duplex and construction of a new beach fronting duplex. The major issues of this staff report concern water quality management and waterfront development that could be affected by flooding during strong storm events.

Staff is recommending **approval** of the proposed project with **eight (8) Special Conditions** regarding: **1)** assumption of risk; **2)** no future shoreline protective device; **3)** future development; **4)** conformance with the submitted drainage and run-off control plan; **5)** drought tolerant non-invasive landscaping; **6)** storage of construction materials, mechanized equipment, and removal of construction debris; **7)** bird strike prevention; and **8)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

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APPENDICES

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EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – Assessor’s Parcel Map

Exhibit 3 – Site Plan

Exhibit 4 – Floor Plans

Exhibit 5 – Elevations

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

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

Resolution:

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 of the Coastal Act. 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

This permit is granted subject to the following 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 on which the Commission voted on the application. 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

This permit is granted subject to the following 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 waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (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 and landowner agrees, on behalf of herself 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. 5-12-140 including, but not limited to, the duplex, 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, liquefaction, flooding, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicant and landowner hereby waives, on behalf of herself 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 and landowner further agree, on behalf of herself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the duplex, 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. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-12-140. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by Coastal Development Permit No. 5-12-140. Accordingly, any future improvements to the duplex 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. 5-12-140 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
4. **Conformance with the submitted drainage and run-off control plan.** The proposed development shall conform to the Site Drainage Plan received on December 3, 2012 showing roof drainage and runoff from all impervious areas directed to deck drains, drywells, a bottomless trench drain and permeable pavers or permeable surfaces wherever possible. 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.
5. **Landscaping - Drought Tolerant, Non Invasive Plants.** Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low or very low water plants as identified by California Department of Water Resources. (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
6. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittee shall comply with the following construction-related requirements:
 - (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
 - (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
 - (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
 - (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.

- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

7. Bird Strike Prevention.

A. Ocean front deck railing systems, fences, screen walls and gates subject to this permit shall use materials designed to minimize bird-strikes with the deck railing, fence, or gate. Such 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 unless appliques (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Any appliques used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one applique for every 3 foot by 3 foot area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas and appliques. All materials and appliques 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 permittee shall submit final revised plans showing the location, design, height and materials of ocean front deck railings, fences, screen walls and gates for the review and approval of the Executive

Director. Said plans shall reflect the requirements of this special condition.

B. The permittee shall undertake development in accordance with the approved 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.

8. **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

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 1812 West Oceanfront in the City of Newport Beach, Orange County (**Exhibits #1-2**). The lot size is 3,146 square feet. The city's certified Land Use Plan (LUP) designates the site as Multiple-Unit Residential and the proposed project adheres to this designation. The project is located within an existing urban residential area on the Balboa Peninsula, east (downcoast) of the Newport Pier.

The site is a beachfront lot located between the first public road and the sea. There is public walkway/bike path and a wide sandy beach (approximately 400 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 substantially demolish an existing 2-story duplex and construct a new three-story, 33-foot high duplex with a total of 4,012 square feet of living area; an attached two-car, 447 square foot garage; a two-car, 432 square foot covered carport, and 892 square feet of ground floor, second floor and third floor decks. (**Exhibits #3-5**). The smaller of the two duplex units will consist of 750 square feet of living area located entirely on the first floor of the structure. The larger of the two duplex units occupies space on the first, second, and third floors of the structure. In addition, the project consists of 400 square feet of raised outdoor decks on the front and right side of the structure and a total of 492 square feet of decks on the second and third floors. As noted on the

project plans, the parking spaces in the garage and carport are assigned in tandem fashion to the rental unit and the primary residence. The provision of four parking spaces (2 per residential unit) is consistent with the Commission's typical parking requirements for two residential units, and the requirements in the City's certified Coastal Land Use Plan.

The proposed project will not have an adverse effect on public access. The project site is located along the portion of Oceanfront bordered by the City's paved beachfront public lateral access way (boardwalk). The Commission has found through previous permit actions in this area that the City's setback in this area is acceptable for maintaining public access. The proposed project is consistent with the City's 7-foot required setback from the seaward property line. Vertical public access to this beach is available at the end of 18th Street, approximately 200 feet east of the site, and at the end of 19th Street, approximately 240 feet west of the site. Lateral public access is available along the boardwalk and the wide sandy beach seaward of the subject site.

The applicant is proposing water quality improvements as part of the project, including directing runoff to a drainage system that empties into a 20-foot-long bottomless trench drain at the rear of the property adjacent to the alley. There will also be 398 square feet of gravel beneath the front and right side yard decks to allow on-site infiltration of runoff. In addition, there will be three drywells on the left side yard of the property. The covered carport will have permeable pavers set in sand to allow infiltration of runoff. The Commission imposes **Special Condition 4** to ensure that the applicant complies with the submitted drainage and run-off control plan to minimize the effects of the development on biological productivity and water quality. Although no landscaping is proposed as part of this project, it does involve substantial redevelopment of the site and any future landscaping must comply with current standards. Therefore, the Commission requires that any vegetated landscaped areas located on site shall consist only of native plants or non-native drought tolerant, low or very low water plants, which are non-invasive. **Special Condition 5** specifies these requirements.

The placement of vegetation that is considered to be invasive could supplant native vegetation and should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org) in their publications.

Furthermore, any plants used as landscaping should be drought tolerant to minimize the use of water. The term drought tolerant is equivalent to the terms 'low water use' and 'very low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at: www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf

Due to the oceanfront location of the proposed glass railings on the second and third floor decks, there is a substantial risk of bird strikes. Clear 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. 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.) The project includes glass railings along the ocean-facing second and third-floor decks. **Special Condition 7** requires the applicant to provide final plans for bird strike prevention prior to issuance of the Coastal Development Permit.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate setback from the water; require a drainage and run-off 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 development **Special Condition 3** 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 run-off from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing run-off through the use of permeable surfaces, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms

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

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that 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 (CEQA)

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.

APPENDIX A

Substantive File Documents: City of Newport Beach Approval-in-Concept No. 2012-009, dated March 6, 2012; Preliminary Geotechnical Investigation for the Existing Residential Development Located at 1812 W. Oceanfront, Newport Beach, California (Project No. G12-1047-10) Prepared for Donna Cambon, dated August 19, 2012, by LGC Geo-Environmental, Inc.; Water Quality Plan for 1812 W. Ocean Front, Newport Beach, Prepared for Donna Cambon, dated August 2012, by Sake Engineers, Inc.; Coastal Hazards and Wave Run-up Study, 1812 West Oceanfront, Newport Beach, Prepared for Donna Cambon, dated August 7, 2012, by GeoSoils, Inc.; City of Newport Beach Certified Land Use Plan.

Text the word "GMAPS" to 466453

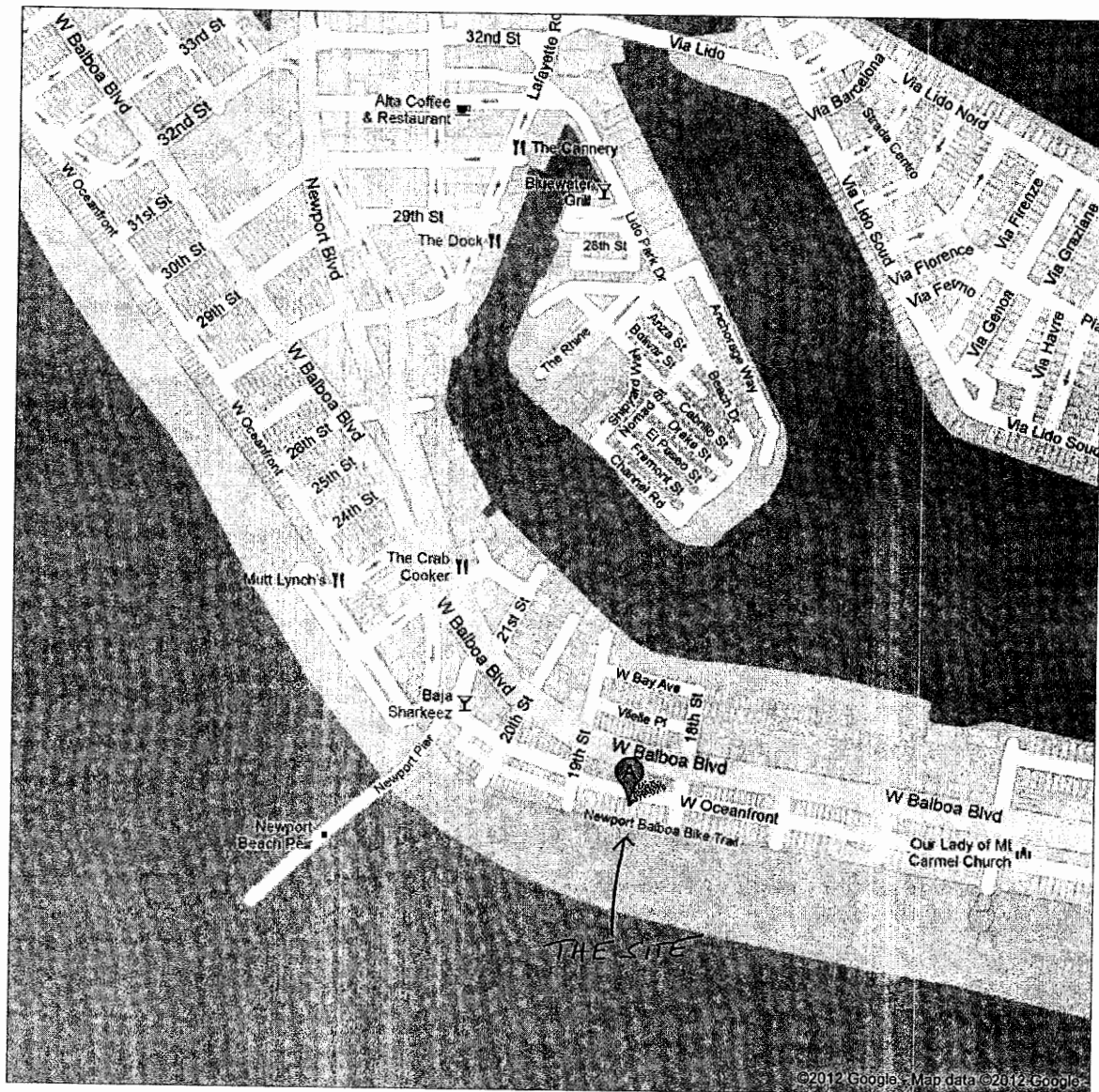


EXHIBIT No. 1

Application Number:

5-12-140



California Coastal
Commission

More
Services

SUE MORENO
(626) 350-5944

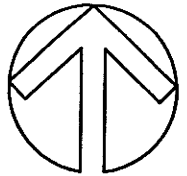
OWNERSHIP / OCCUPANTS LIST
RADIUS MAPS - LAND USE - PLANS
MUNICIPAL COMPLIANCE CONSULTING

12108 LAMBERT AVE. EL MONTE, CA 91732 - FAX (626) 350-1532

PROJECT INFORMATION

1812 W. OCEAN FRONT
NEWPORT BEACH, CA.

12-124



SCALE 1" = 100'

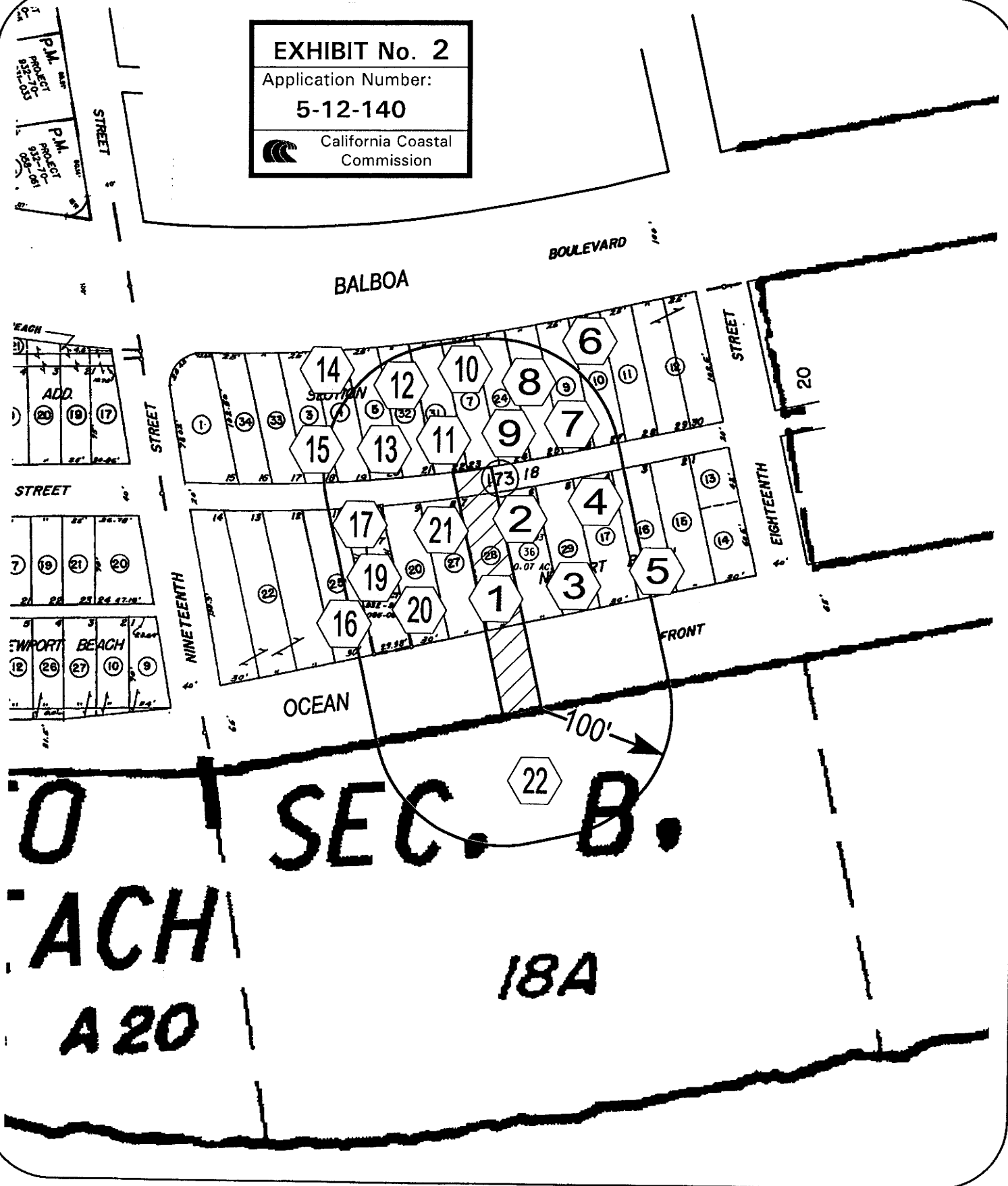
EXHIBIT No. 2

Application Number:

5-12-140



California Coastal
Commission



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158 WEST ORANGE STREET, COVINA, CA 91723-2011

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STEVE EIDE

PROJECT:

ADDITION AND REMODEL

1812 W. OCEAN FRONT

NEWPORT BEACH, CA

(949) 673-6271

PROPOSED FOR:

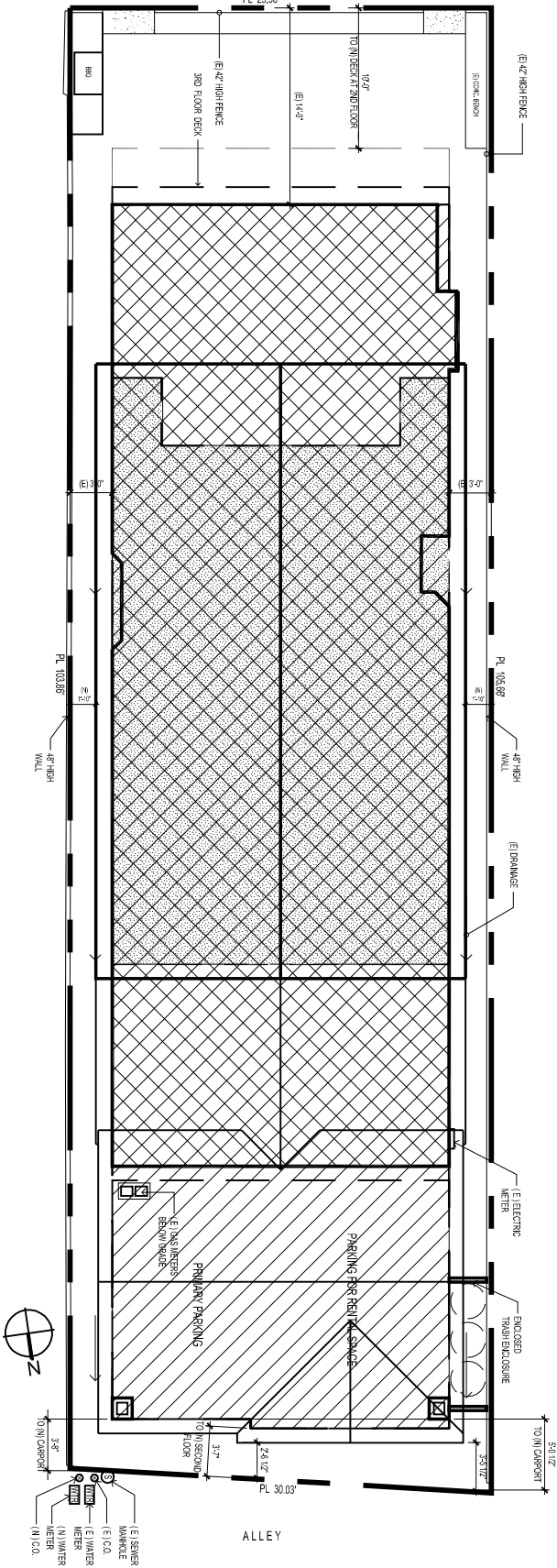
DONNA CAMBON

13936 WESTWOOD WAY

RANCHO CUCAMONGA 91739

(909) 803-0813

SITE PLAN



SITE PLAN LEGEND:

— FIRST FLOOR LINE

SECOND FLOOR LINE

— — THIRD FLOOR LINE

 FIRST FLOOR

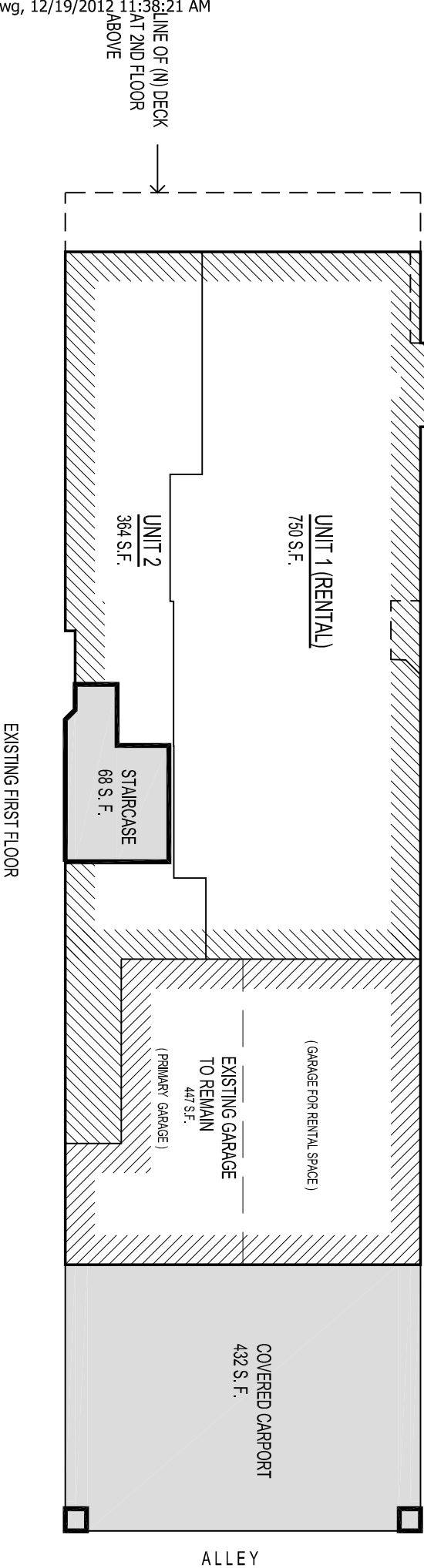
SECOND FLOOR

THIRD FLOOR

PROPERTY LINE

DECK LINE @ SECOND FLOOR

— — DECK LINE @ THIRD FLOOR



5-12-140
Exhibit No. 3
2 of 4

ALLEY

DRAFTING & Design, Ltd.

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STEVE EIDE

PROJECT:

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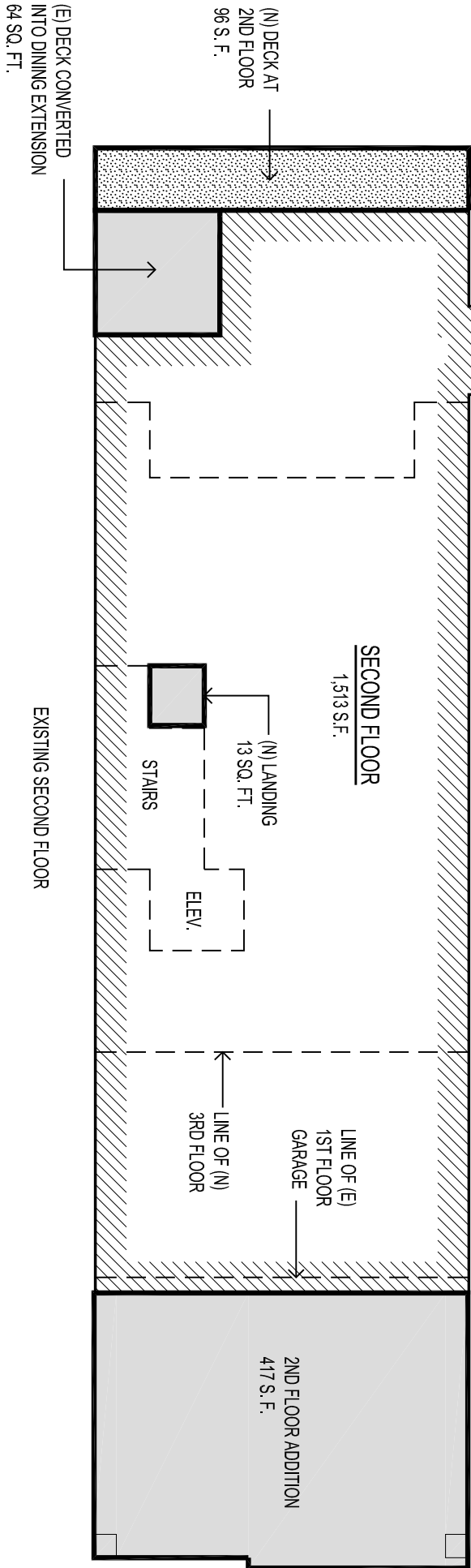
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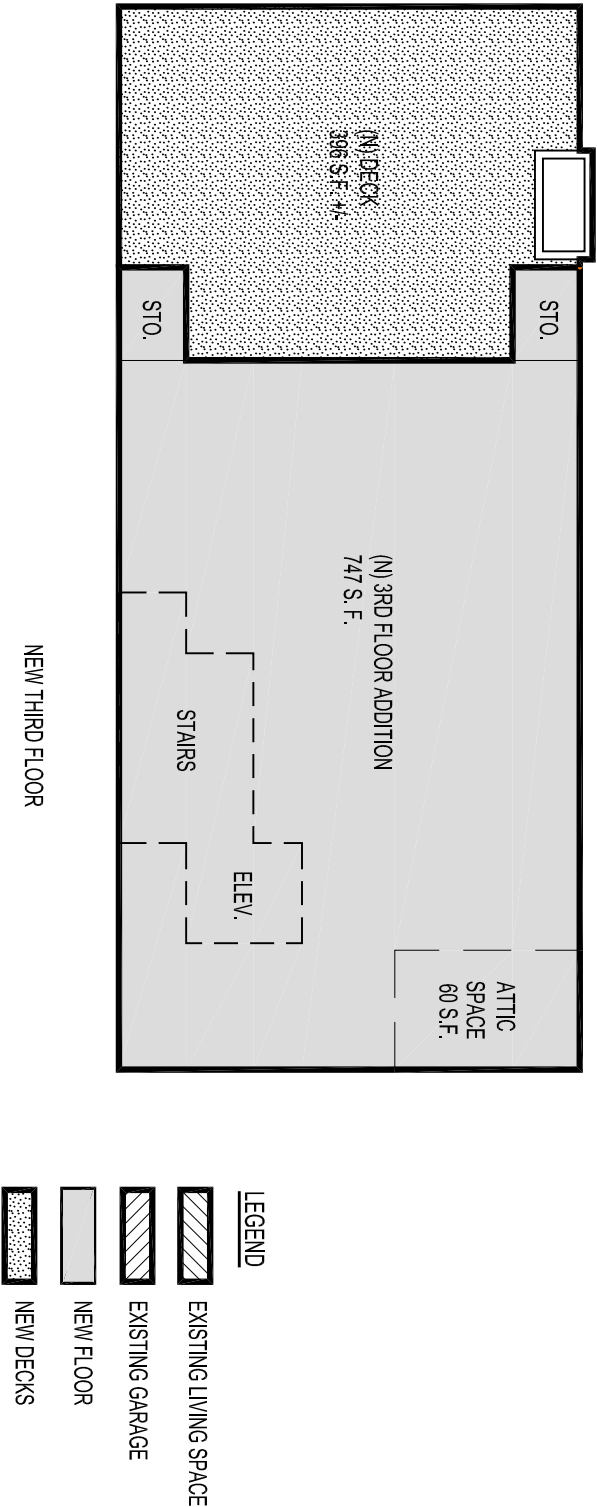
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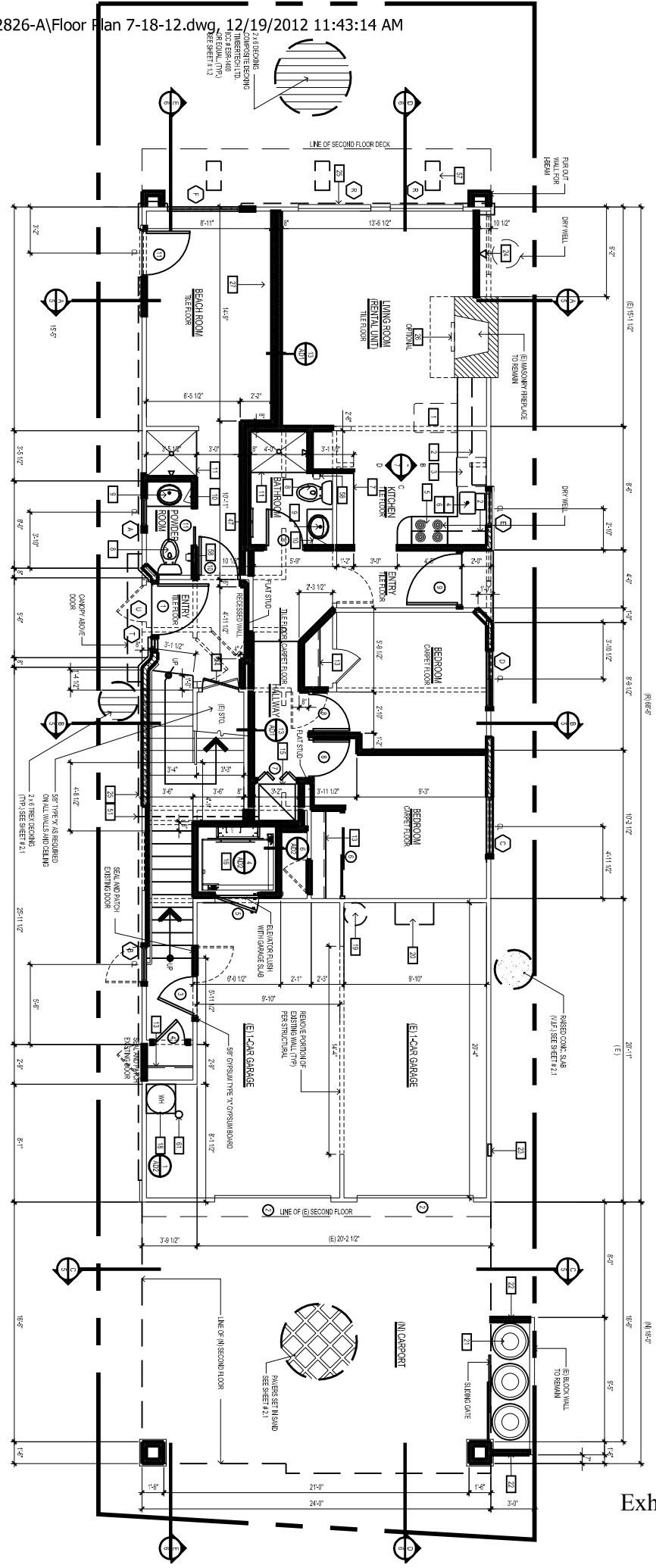
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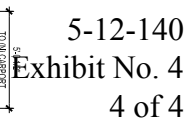
PROJECT:
ADDITION AND REMODEL
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NEWPORT BEACH, CA
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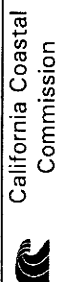
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PN 2826 - A

REMODEL FIRST FLOOR PLAN







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STEVE EIDE

California Coastal
Commission

SCALE	ELEVATION / SECTIONS
1" = 10'	

SECTION 2