

**CALIFORNIA COASTAL COMMISSION**

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# F15h

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180th Day:	2/25/14
Staff:	L. Roman-LB
Staff Report:	10/24/13
Hearing Date:	11/15/13

## STAFF REPORT: CONSENT CALENDAR

<b>Application No.:</b>	<b>5-13-0679</b>
<b>Applicant:</b>	<b>1420 Ocean Front Surf L.P.</b>
<b>Agent:</b>	Brandon Architects, Inc.
<b>Location:</b>	1420 W. Ocean Front, Newport Beach, Orange County (APN 047-212-18)
<b>Project Description:</b>	Demolition of an existing 8-unit apartment building and construction of a new three-story, 29' tall, 8,173 sq. ft. duplex including an enclosed garage and carport space for each unit, a roof top deck with pool and spa, hardscape improvements and minimal landscaping on an oceanfront lot.
<b>Staff Recommendation:</b>	Approval with conditions

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### SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing demolition of an 8-unit apartment building and construction of a duplex on a 6,000 sq. ft. ocean front lot. The major issues of this staff report concerns beachfront development that could be affected by wave up rush and flooding during strong storm events. Staff is recommending APPROVAL of the proposed project with seven (7) special conditions regarding: 1) assumption of risk; 2) no future shoreline protective device; 3) future development; 4) landscaping; 5) conformance with the submitted drainage plan; 6) construction best management practices; and 7) 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 for the relevant area. The City of Newport Beach does not have a certified LCP. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act.

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## APPENDICES

Appendix A - Substantive File Documents

## EXHIBITS

Exhibit 1 - Vicinity Map and Aerial Photograph

Exhibit 2 – Project Plans

## 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. 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 of 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.** 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. 5-13-0679 including, but not limited to, the residence, garage, foundations, and patio, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, sea-level rise 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.

By acceptance of this permit, the applicants further agree, on behalf of itself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the residence, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-13-0679. 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. 5-13-0679. 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. 5-13-0679 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. **Landscaping – Drought Tolerant, Non-Invasive Plants.** Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See:<http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
  
5. **Drainage Plan.** The applicant shall conform to the site drainage details depicted in the drainage plan received in the Commission's office on August 29, 2013 indicating use of roof downspouts directed to permeable surfaces and a bottomless trench drain along the driveway to the property for on-site percolation of runoff. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
  
6. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittee shall comply with the following construction-related requirements:
  - (a) No construction materials, debris, or waste shall be placed or stored where it may enter the storm drain system leading to the Pacific Ocean;
  - (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
  - (c) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into the storm drain system and a pre-construction meeting to review procedural and BMP guidelines;
  - (d) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed of outside the coastal zone, as proposed by the applicant.

7. **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:**

##### **A. PROJECT LOCATION & DESCRIPTION**

The subject site is located at 1420 West Ocean Front in the City of Newport Beach, Orange County (Exhibit 1). The lot size is 6,000 square feet. The City of Newport Beach Land Use Plan (LUP) designates the site as R-2 Two-Unit Residential; the proposed project is the demolition of an existing 8-unit apartment structure (non-conforming as to density) and construction of a duplex, which is an allowable use under this designation. The project is located on a beachfront lot between the first public road and the sea, within an existing urban residential area between the Newport Pier and Balboa Pier. There is a wide sandy beach (approximately 500 feet wide) between the subject property and the Pacific Ocean. The project site is located among the ocean-fronting properties bordered by the City's paved beachfront public lateral access way (boardwalk). 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 construct a new ocean-fronting, 7,280 square foot, three-story, 29' tall residential duplex with an attached two-car garage and two-car carport, 616 sq. ft. roof deck with rooftop pool and spa (Exhibit 3). Total size will be 8,173 sq.ft. including the garages and covered carports. Proposed hardscape improvements include new concrete side yard walkways. Minimal planter landscaping is proposed at the alley facing side of the lot as the side yards and front patio will be paved. To address water quality concerns, the applicant is proposing directing roof downspouts toward planters and site drainage and runoff from impervious patio areas toward perforated trench drains for greater onsite infiltration before reaching the City's storm drain at the alley.

The Commission has found through previous permit actions in this area that the City's setback for residential structures in this area is acceptable for maintaining public access and addressing visual impacts. The proposed residence is consistent with the City's 8-foot required setback from the seaward property line. Vertical public access to the public beach is available immediately adjacent to the site at the 15<sup>th</sup> St. street-end. Lateral public beach access is available immediately seaward of

the site along the City maintained Oceanfront boardwalk/walkway/bikeway public right-of-way along the central part of the Balboa Peninsula and along the wide sandy beach seaward of the boardwalk. The proposed project will not have an adverse effect on public access.

The project meets the Commission's typical parking requirement (2 spaces per residential unit). The proposed new duplex structure will utilize the existing driveway off of 15<sup>th</sup> Street currently used to access the existing multi-family building, hence, no new curb cuts are proposed as part of the site's redevelopment and the existing on-street parking spaces on 15<sup>th</sup> Street will remain unchanged. Therefore, as proposed, the project meets Newport Beach CLUP Policy 2.9.3-10 stating, "Require new development to minimize curb cuts to protect on-street parking spaces. Close curb cuts to create new public parking wherever feasible."

The proposed project has been designed to be compatible with the character of the surrounding development. The proposed duplex is consistent with the City's 10-foot required setback from the seaward property line. Furthermore, the Commission has found through previous permit actions in this area that the City's setback is acceptable for maintaining public access and addressing visual impacts. To ensure that no encroachments occur without an approved amendment to this coastal development permit or approval of a new coastal development permit, **Special Condition 3** is imposed requiring future improvements return to the Commission for review. This would allow the Commission to evaluate future encroachment deviations for adverse public access and recreation impacts.

To address water quality concerns, the applicant is proposing site drainage improvements as part of the proposed project, such as roof downspouts and concrete swales to direct roof and on-site runoff from all of the site's impervious areas to permeable or landscaped areas and toward a bottomless trench drain along the length of the carports/garage for greater on-site infiltration of water runoff before ultimately reaching the municipal storm drains. The drainage system is designed to retain concentrated and surface sheet flow water within the site. Minimal landscaping is proposed as the side yards and front patio will be paved. Proposed planter beds will contain drought tolerant, non-invasive plants such as succulents, rosemary and bougainvillea. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)) in their publications. Furthermore, as proposed, the landscape plan contains drought tolerant plants to minimize the use of water on the site. The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.owue.water.ca.gov/landscape/pubs/pubs.cfm>. A special condition has been imposed requiring the applicant to comply with the above requirements.

## **B. HAZARDS**

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development

has been conditioned for one or more of the following: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

### **C. DEVELOPMENT**

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. Section 30610 of the Coastal Act provides that certain improvements to existing structures do not require a coastal development permit. Section 13253 of the Commission's regulations lists certain improvements to structures that require a coastal development permit, including those improvements to a structure that is located on a beach. The Commission finds that section 30610 does not apply to the proposed structure because it is located on a beach. Thus, to assure that future improvements are consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that it is necessary to impose a special condition prohibiting the construction of future improvements to the proposed structure without first obtaining a coastal development permit. Therefore, 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, one or more of the following: the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

### **F. DEED RESTRICTION**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special



Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus 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. Therefore, the Commission finds that the proposed development, as conditioned, conforms to the Coastal Act by ensuring that any successors-in-interest have proper actual notice, recorded against the subject parcel, of the proposed development's required mitigation measures that mitigate the development's impacts on coastal resources.

#### **G. LOCAL COASTAL PROGRAM (LCP)**

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 2009. 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.

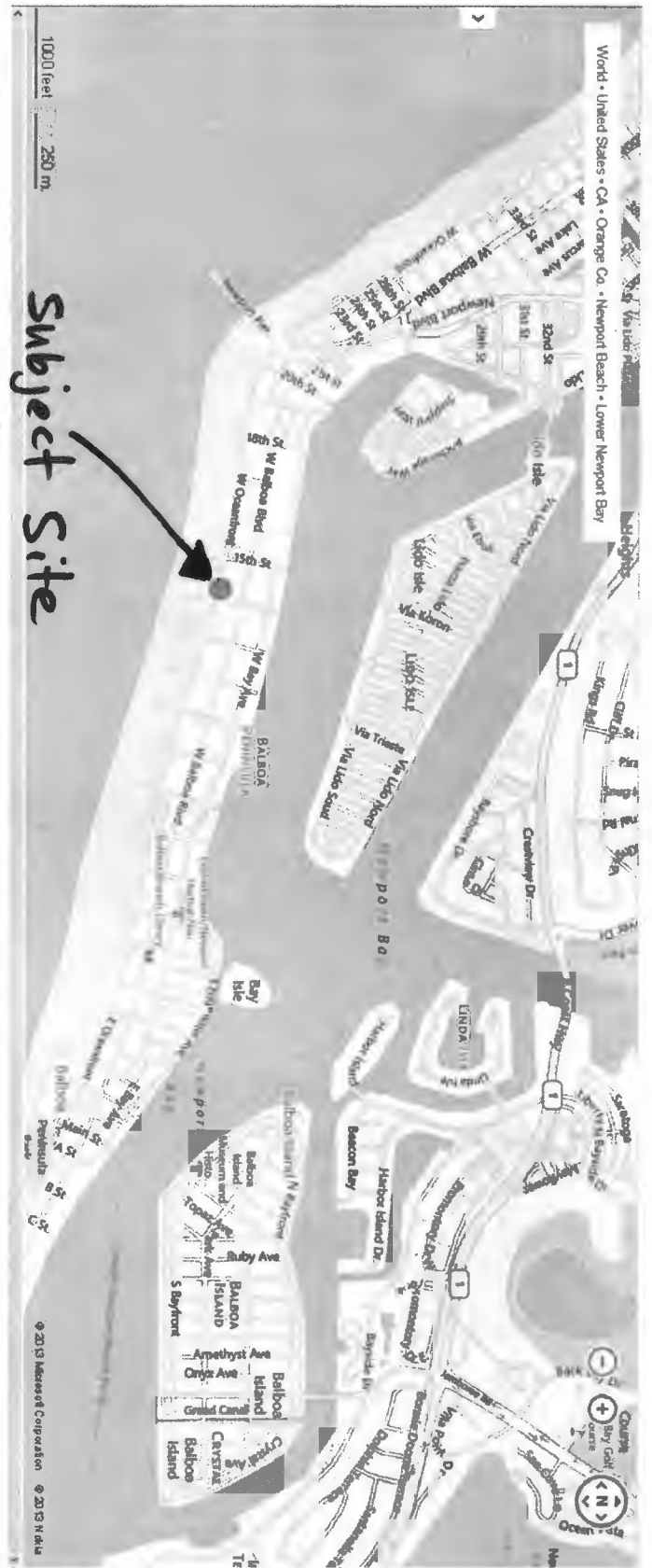
#### **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

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**

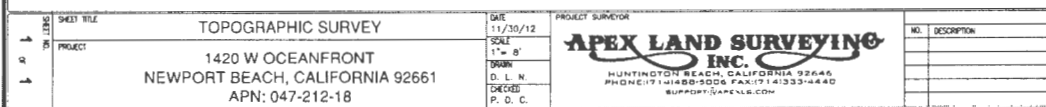
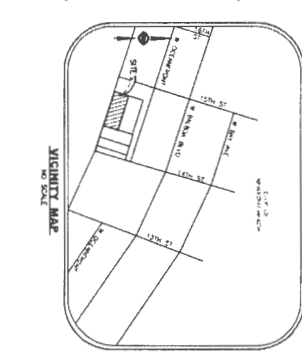
### **SUBSTANTIVE FILE DOCUMENTS**

- 1) City of Newport Beach certified Land Use Plan
- 2) City of Newport Beach, Planning Dept., Approval in Concept #2013-047 issued August 23, 2013
- 3) Coast Geotechnical Inc., August 14, 2013, "Geotechnical Engineering Investigation of Proposed New Duplex at 1420 West Oceanfront, Newport Beach, California"



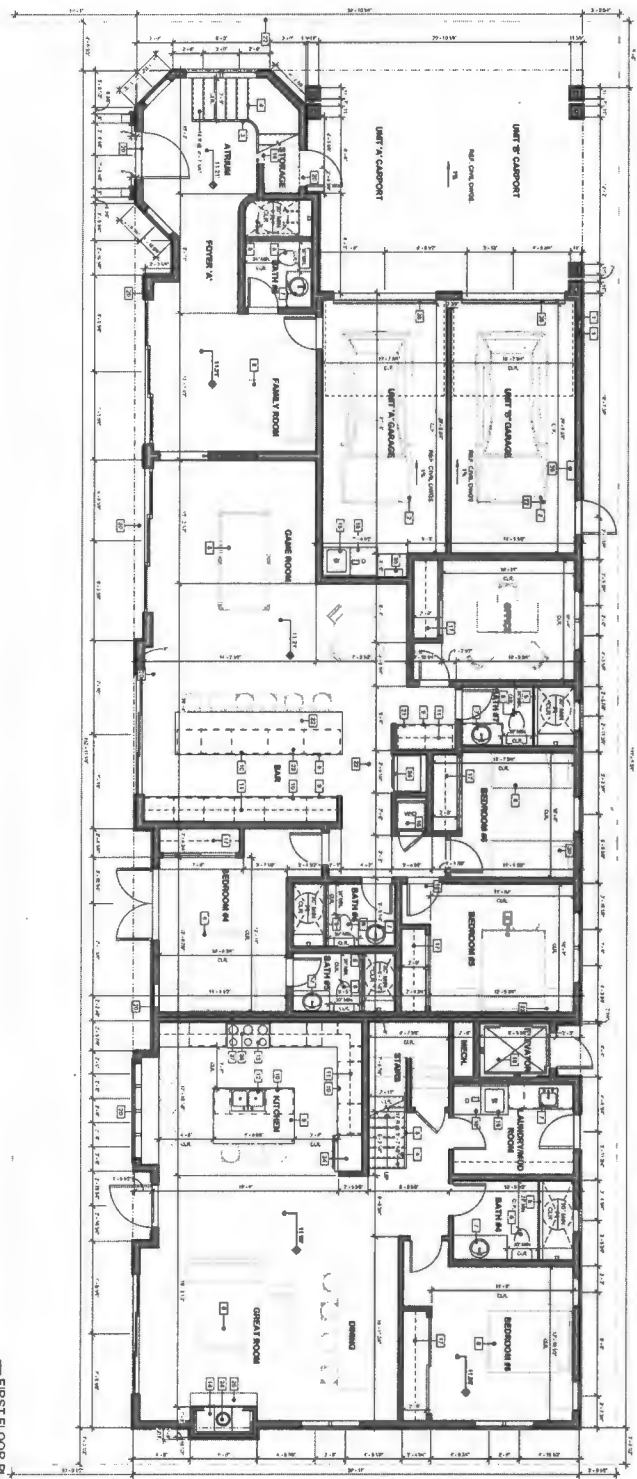
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EXHIBIT # 1  
PAGE 1 OF 1

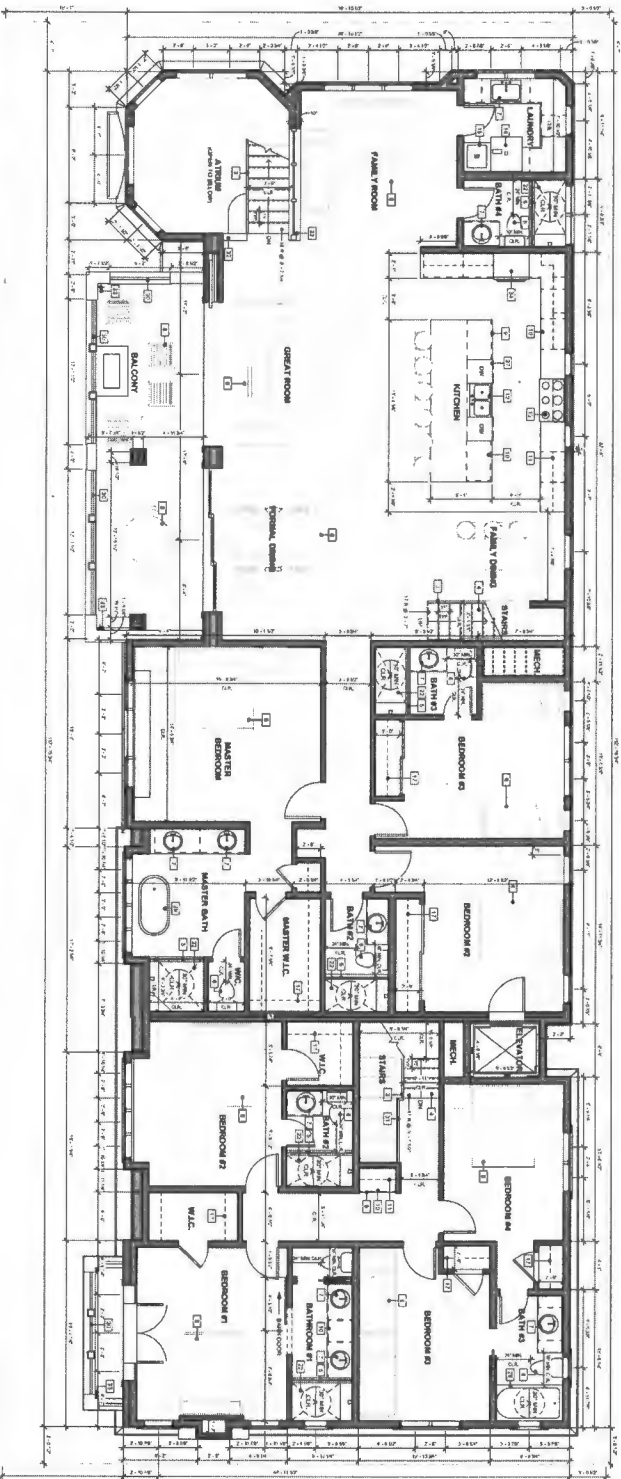


PROJECT NO. 12054





1 FIRST FLOOR PLAN



2 SECOND FLOOR PLAN

COASTAL COMMISSION

EXHIBIT # 2  
PAGE 3 OF 9

**PLAN LEGEND**

[Symbol]	POOR RATED CEILING ASBESTOS (REF. DTL. 2ND-1)
[Symbol]	FIRE RATED PLASTER (REF. DTL. 2ND-1)
[Symbol]	NEW WALL, 2-1/2" STUD @ 16" O.C.
[Symbol]	NEW WALL, 2-1/2" STUD @ 16" O.C.
[Symbol]	WALL, 1/2" STONE VENEER, 2-1/2" STUD @ 16" O.C.
[Symbol]	CONCRETE RETAINING WALL, REF. STRUCTURAL
[Symbol]	CONCRETE BALCONY WALL, REF. CIVIL
[Symbol]	DOOR & WALL CONSTRUCTION, 2-1/2" BR. STUD @ 16" O.C.
[Symbol]	WINDOW, REFERENCE SCHEDULE (PAGE 1-4)
[Symbol]	CABINET, BUILT IN COUNTER
[Symbol]	COUNTERTOP, WOOD, REF. STRUCTURAL Dwg.
[Symbol]	FURNITURE, FOR PRESENTATION PURPOSES ONLY
[Symbol]	FURNITURE, REF. AS SHOWN IN PLAN
[Symbol]	PLUMBING FIXTURE, SINK (AS SELECTED)
[Symbol]	PLUMBING FIXTURE, TOILET (AS SELECTED)
[Symbol]	PLUMBING FIXTURE, REFERENCE ELECTRICAL PLANS

**NOTES**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODES AND ALL APPLICABLE ORDINANCES.
2. THE OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INSURANCE COVERAGE.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY SCHEDULING INFORMATION FROM THE OWNER.
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**MECHANICAL VENTILATION NOTE**

1. ALL MECHANICAL VENTILATION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODES AND ALL APPLICABLE ORDINANCES.

2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INSURANCE COVERAGE.

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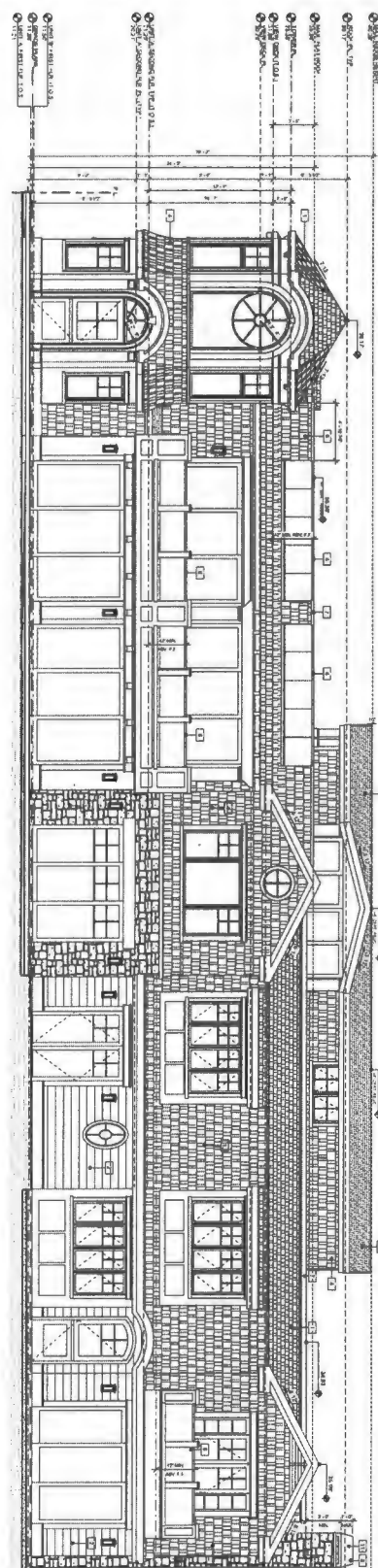
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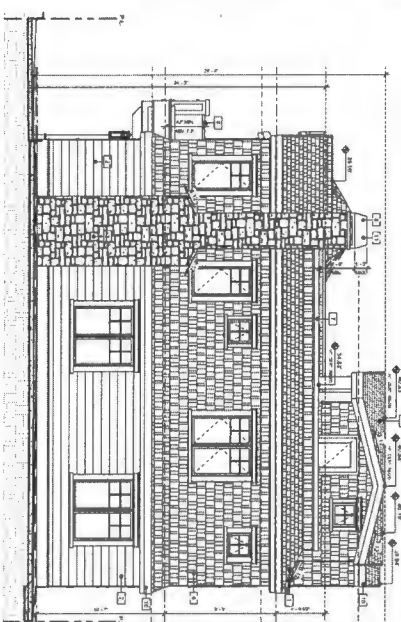




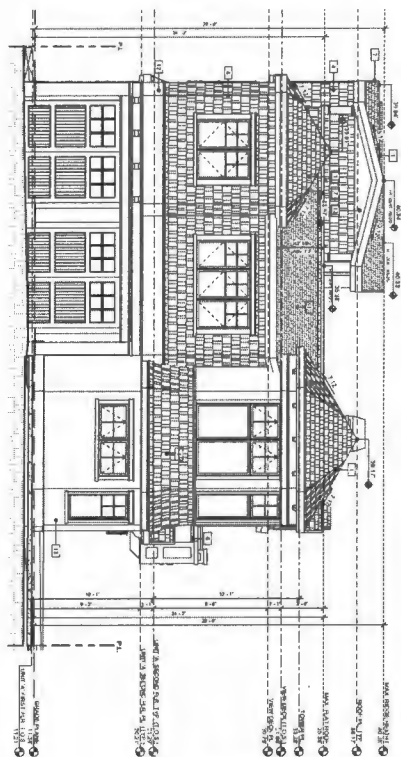




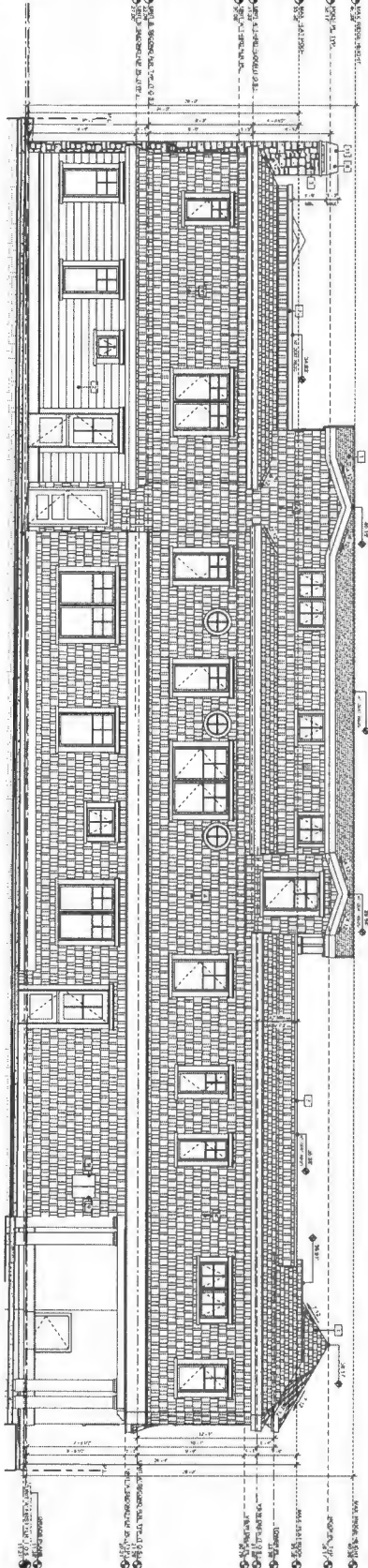
**1 FRONT ELEVATION - SOUTHWEST**  
1/4" = 1'-0"



**2 RIGHT SIDE ELEVATION - SOUTHEAST**



3 LEFT SIDE ELEVATION - NORTHWEST  
1/4" = 1'-0"



REAR ELEVATION - NORTHEAST  
1/4" = 1'-0"

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W. COLLEGE POINT DISTRICT	ARC
STATUS	





