

**CALIFORNIA COASTAL COMMISSION**

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

# Th 7a



Filed: July 11, 2013  
180th Day: January 7, 2014  
Staff: F. Sy-LB  
Staff Report: Nov. 21, 2013  
Hearing Date: Dec. 11-12, 2013

## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 5-12-336

**Applicant:** Jason Laks

**Agent:** David York

**Location:** 3403 Seashore Drive, City of Newport Beach (County of Orange)

**Project Description:** Demolition of an existing duplex and construction of a new 29-foot above finished grade, three-story duplex (Unit 1: 1,677 square feet & Unit 2: 1,640 square feet) with a 389 square foot two (2)-car garage and a two (2) car carport on a beach fronting lot. Grading will consist of 150 cubic yards of recompaction, which will balance on site. Additionally, conversion of the proposed duplex into two (2) condominium units is proposed.

**Staff Recommendation:** Approval with conditions.

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## **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 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 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.

## II. 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 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. 5-12-336 including, but not limited to, the residence and 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, flooding, sea level rise 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 landowners shall remove the development authorized by this permit, including the residence and garage, foundations, and patio, if any government agency has ordered that the structures are 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 landowners 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. **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.
- 4. Conformance with Drainage and Run-Off Control Plan.** The applicant shall conform with the drainage and run-off control plan received on May 10, 2013 showing roof drainage and runoff from all impervious areas directed to infiltration basins, drywells and permeable 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 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 water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
6. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-12-336. 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. 5-12-336. Accordingly, any future improvements to the duplex and garage, foundations, and patio 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. 5-12-336 from the Commission or shall require an additional Coastal Development Permit from the Commission or from the applicable certified local government.
7. **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 landowners 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:

##### **PROJECT DESCRIPTION AND PREVIOUS COMMISSION ACTION ON SUBJECT SITE**

###### **Project Description**

The subject site is an ocean front lot located at 3403 Seashore within the City of Newport Beach, Orange County (Exhibit No. 1). The lot size is 2,574 square feet and the City of Newport Beach Coastal Land Use Plan (CLUP) designates the site Two-Unit Residential and the proposed project adheres to this designation. The project is located within an existing urban residential area, located generally northwest of the Newport Pier.

The site is a beachfront lot located between the first public road and the sea. There is a wide sandy beach (approximately 250-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 waves, erosion, storm conditions, sea level rise or other natural hazards.

The applicant proposes to demolish an existing duplex and construct a new 29-foot above finished grade, three-story duplex (Unit 1: 1,677 square feet & Unit 2: 1,640 square feet) with a 389 square foot two (2)-car garage and a two (2) car carport on a beach fronting lot (Exhibits No. 2-3). The foundation system will be a matt foundation. Hardscape work is proposed. Currently, no landscape work is proposed. Grading will consist of 150 cubic yards of recompaction, which will balance on site. Additionally, conversion of the proposed duplex into two (2) condominium units is proposed (Exhibit No. 4).

The proposed project will not have an adverse effect on public access. The project site is located adjacent to the City's paved 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 15-foot required setback from the seaward property line. Vertical public access to this beach is available at the end of 34<sup>th</sup> Street, approximately 25-feet south of the project site (downcoast). Lateral public access is available along the boardwalk and wide sandy beach seaward of the subject site. There are no existing or proposed encroachments.

The applicant is proposing water quality improvements as part of the proposed project, consisting of rooftop and surface drainage directed to infiltration basins, drywells and permeable areas.

Due to the oceanfront location of the proposed development, 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 applicant has proposed to address this issue by frosting the glass railings along the ocean-facing decks.

**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 set-back 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 improvements special condition be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

**D. PUBLIC ACCESS**

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

**E. WATER QUALITY**

The proposed development has a potential for a discharge of polluted 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, the use of non-invasive drought tolerant vegetation to reduce and treat the run-off discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

**F. DEED RESTRICTION**

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

and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

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

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Coastal Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

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

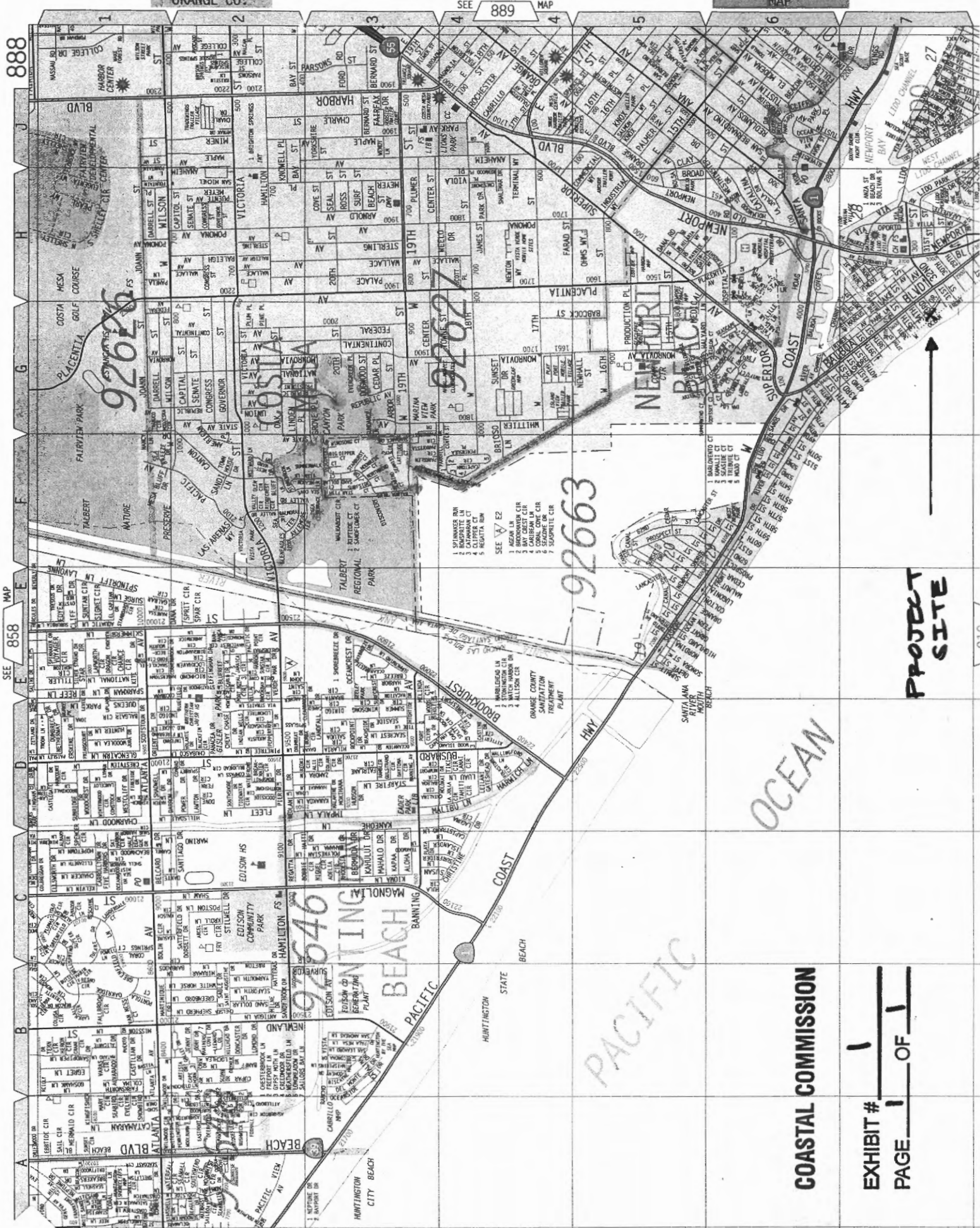
The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is ministerial or categorically exempt. Section 13096(a) of the Commission's administrative 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).

Although the proposed development is categorically exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements. 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 consistent with the requirements of the Coastal Act and CEQA.



## APPENDIX A

**SUBSTANTIVE FILE DOCUMENTS:** Approval-In-Concept from the City of Newport Beach Planning Department dated November 6, 2012; County Tentative Parcel Map No. 2013-144 (Condominium conversion) from the City of Newport Beach Planning Department dated August 29, 2013; Letter from Commission staff to David York dated January 8, 2013; Letter from David York to Commission staff dated received May 10, 2013; *Geotechnical Investigation Report ,3403 Seashore Drive, Newport Beach, California* prepared by *Global Geo-Engineering, Inc. (Project 5309-04)* dated May 9, 2013; *Coastal Hazard and Wave Runup Study* prepared by *David York* dated May 1, 2013; *Non-Priority Project Water Quality Plan* prepared by *David York* dated April 4, 2013; Letter from Commission staff to David York dated June 7, 2013; *Coastal Hazard and Wave Runup Study* prepared by *Global Geo-Engineering, Inc. (Project 5309-04)* dated May 9, 2013; Letter from David York to Commission staff dated received September 25, 2013; and Letter from David York to Commission staff dated received October 25, 2013



PROJECT SITE

COASTAL COMMISSION

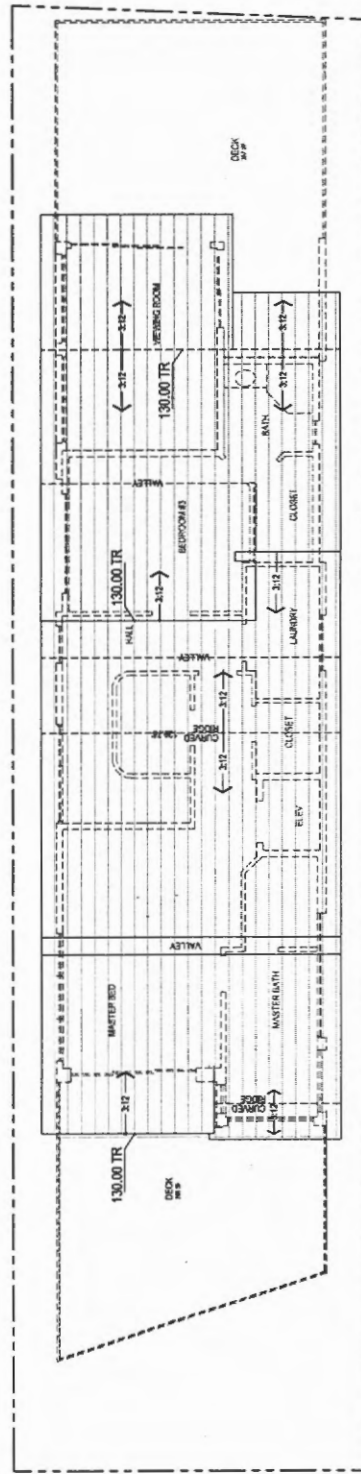
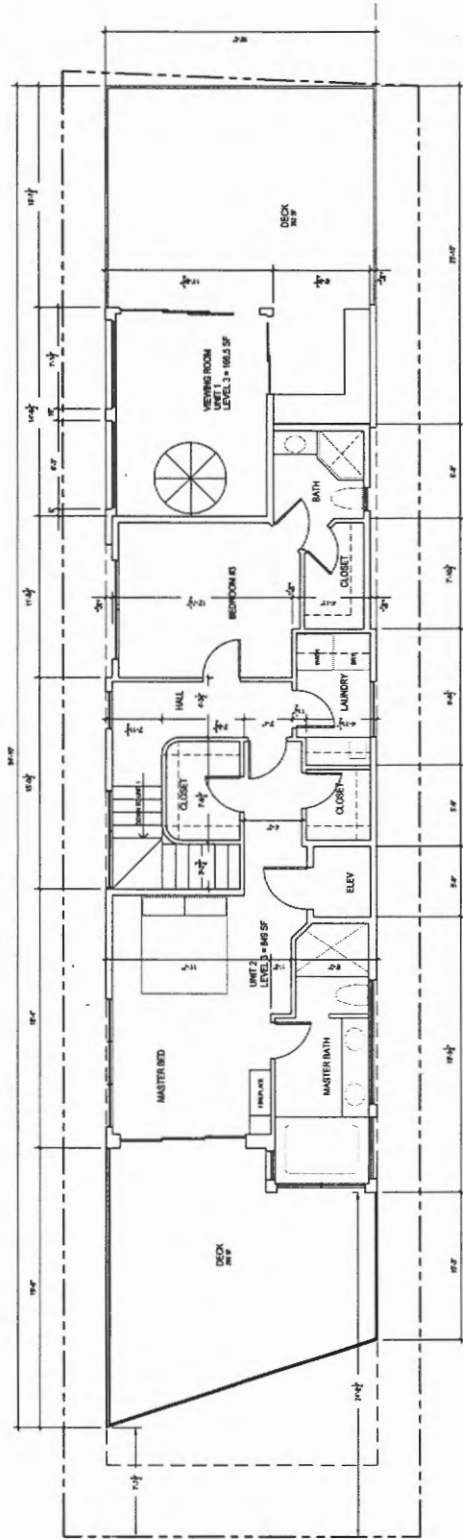
EXHIBIT # 1  
PAGE 1 OF 1

MAY 10 2013

COASTAL COMMISSION

CALIFORNIA  
COASTAL COMMISSION

EXHIBIT # 2  
PAGE 1 OF 2



1. LIVING ROOMS, 20' X 20' X 10' (10' X 20' X 10')  
2. LIVING ROOMS, 20' X 20' X 10' (10' X 20' X 10')  
3. LIVING ROOMS, 20' X 20' X 10' (10' X 20' X 10')

SCALE 1/4" = 1'-0"

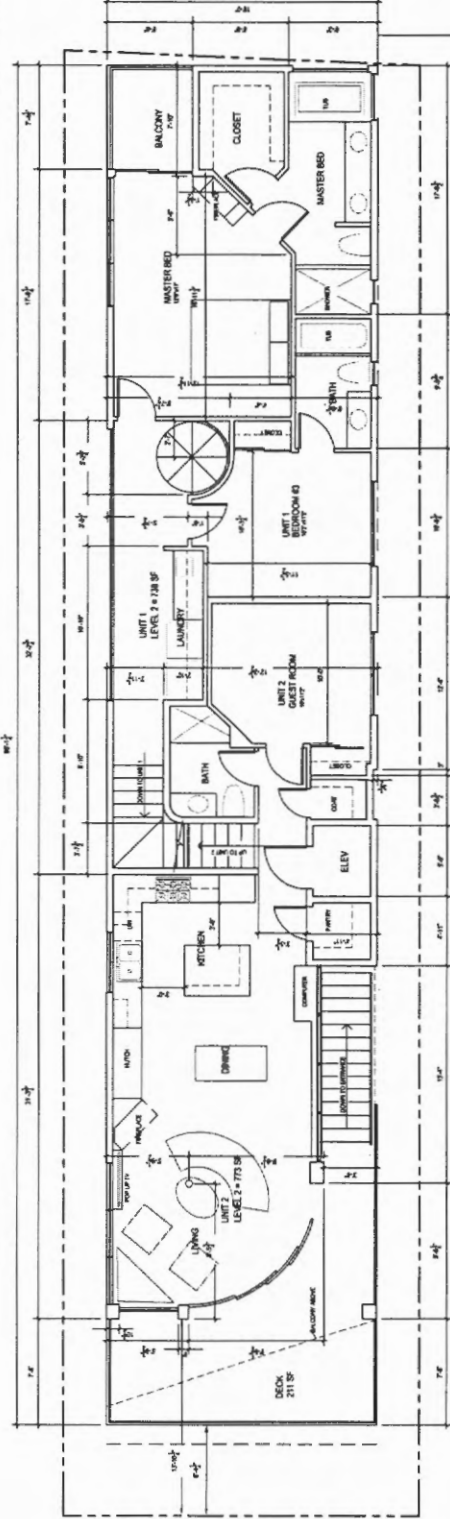
THIRD FLOOR

ROOF

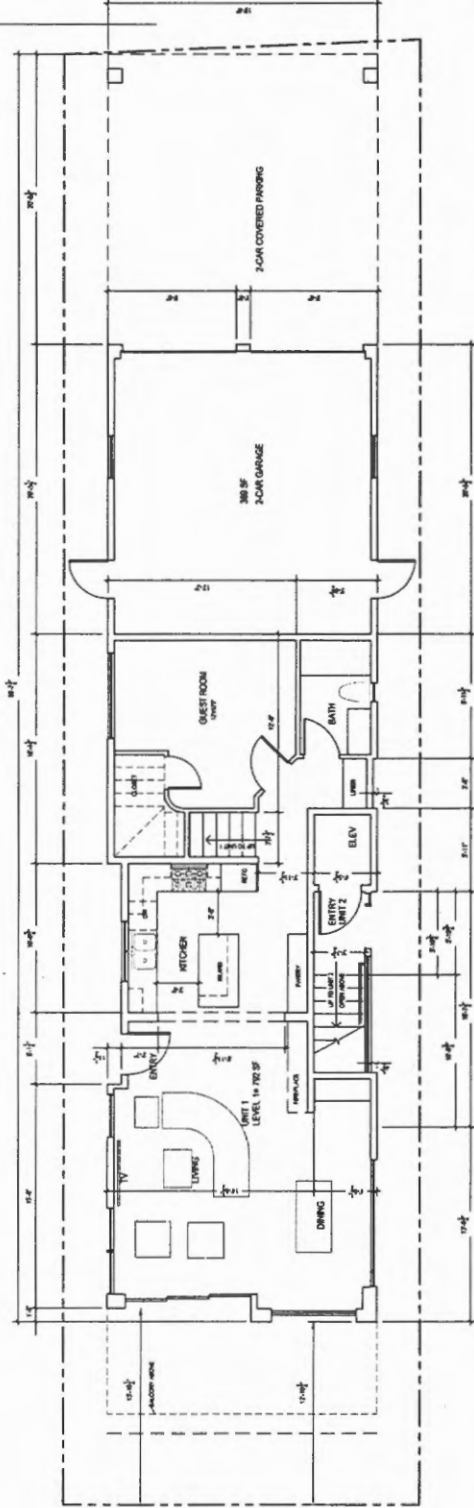
OWNER:  
LAND ENTERPRISES, INC.  
2000 AVENUE 10  
CANAAN, CT 06026  
TEL: 860-262-8837

TWO UNITS  
2000 AVENUE 10  
CANAAN, CT 06026  
APN: 42-330-008

2



SECOND FLOOR



FIRST FLOOR

**BUILDING AREAS**

UNIT 1	LEVEL 1 = 770 SF
UNIT 2	LEVEL 2 = 773 SF
UNIT 3	LEVEL 3 = 773 SF
TOTAL UNIT AREA	2316 SF
TOTAL COMMON AREA	300 SF
GROSS AREA	2616 SF
DECK AREA	270 SF

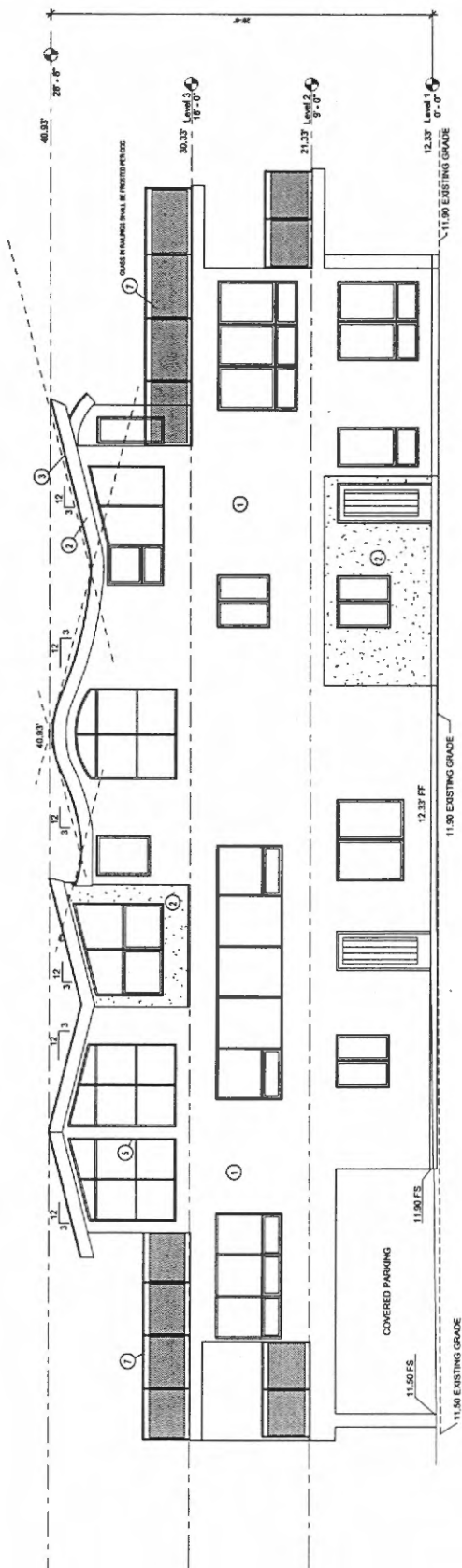
SCALE 1/4"=1'-0"

**FIRST FLOOR**

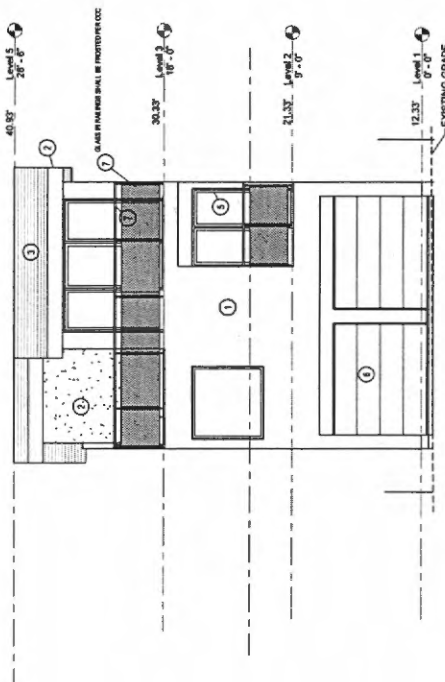
**SECOND**

1

OWNER:  
DAVID YORK, ARCHITECT  
P.O. BOX 100718  
SAN CLEMENTE, CA 92610  
PH: (949) 887-8034  
FAX: (949) 887-8035  
TWO UNITS  
3403 SEASHORE,  
NEWPORT BEACH, CA  
92660-3403



NORTH ELEVATION



EAST ELEVATION

# COASTAL COMMISSION

EXHIBIT # 3  
PAGE 1 OF 2

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South Coast Region

MAY 10 2013

CALIFORNIA  
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SCALE: 1/8"=1'-0"

## ELEVATIONS

OWNER:  
LARS ENTERPRISES, INC.  
P.O. BOX 101  
SAN CLEMENTE, CA 92672  
TEL: 760.402.5637  
TWO UNITS  
3403 SCOTT AVENUE  
SAN CLEMENTE, CA  
APN: 423-334-08

4

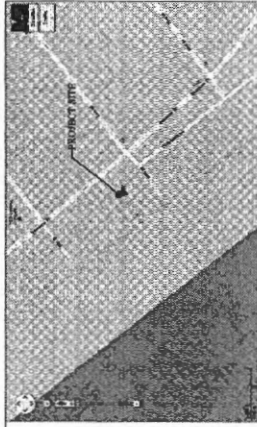
4/8/2013





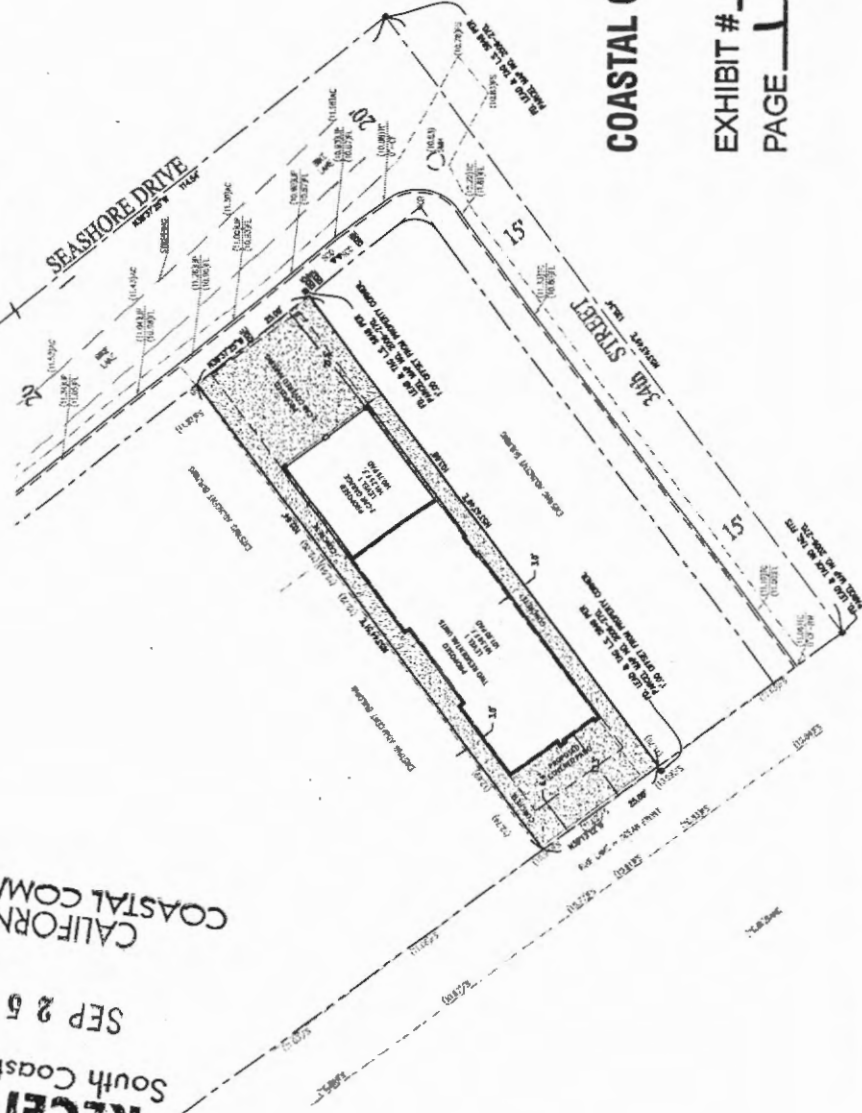
# TENTATIVE PARCEL MAP 2013-144

3403 SEASHORE DRIVE  
AKA: 3402 OCEAN FRONT  
NEWPORT BEACH, CA 92663  
FOR PARCEL MAP PURPOSES  
SURVEY DATE: 07-01-2011



VICINITY MAP  
N.T.S.

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SEP 25 2013  
CALIFORNIA  
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ASSUMED PARCEL NUMBER  
423-334-08

PARCEL LAND AREA  
2,577 SQ  
0.06 ACRES

SEWER AND STORM DRAIN  
LIES INTO EXISTING CITY FACILITIES.

NOTES:  
1. PARCEL MAP IS SHOWN ON TITLE REPORT  
PREPARED BY CHICAGO TITLE COMPANY  
ORDER NO. 138620415, JANUARY 14, 2013.

PROPOSED USE OF LAND  
RESIDENTIAL/CONDOMINIUM

ZONING  
R-2 TWO UNIT RESIDENTIAL

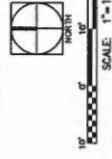
GENERAL PLAN/LAND USE  
RT TWO UNIT RESIDENTIAL

FLOOD ZONE  
ZONE 3X FIRM FIRM MAP NO. 0605020381J  
CITY OF NEWPORT BEACH, NO. 060227.  
DATE: DECEMBER 3, 2008

COASTAL COMMISSION

EXHIBIT # 4  
PAGE 1 OF 1

ABBREVIATIONS	
AC	ASPHALT CONCRETE
GP	GRASS PAVEMENT
UT	UTILITY
FS	FINISHED SURFACE
WM	WATER METER
WV	WATER VALVE
CP	CONTROL POINT
GT	GATE
CF	CURB FACE
TC	TOP OF CURB
FL	FLOW LINE
SOS	SEWER CLEAROUT
SWM	SEWER MANHOLE
HOB	HANDICAP PARK



LINE LEGEND	
---	CENTERLINE
---	PROPERTY LINE
---	RIGHT OF WAY LINE
---	WOOD OR VINYL FENCE
---	PLASTER WALL
---	FINISHED SURFACE LINE

FEATURES LEGEND	
⊙	POSS. SAFETY HAZARD AS NOTED
⊙	UTILITY BOX
---	300'

<b>CRF ENGINEERING</b> 11148 88th • 714.712.1344 • www.crfengineering.com		PREPARED FOR: KALAM YOUNG, ASSOCIATES 12 WEST AVENUE, SAN GABRIEL, CA 91772 PH: 949-887-8034 WWW.KYOUNG.COM	BRANCH NAME: THE COUNTY OF SEASHORE DRIVE BEING 10877232' W 1/4 PARCEL MAP 2008-270 IS, IN THE COUNTY OF ORANGE RECORDERS OFFICE. ELEV: 7142 FEET (HAYDEN-1987)	BASIS OF READING: THE COUNTY OF SEASHORE DRIVE BEING 10877232' W 1/4 PARCEL MAP 2008-270 IS, IN THE COUNTY OF ORANGE RECORDERS OFFICE.	OWNER: KALAM YOUNG, ASSOCIATES P.O. BOX 10070, CARLSBAD CA 92013	LEGAL DESCRIPTION: LOT 2 OF BLOCK 34 OF NEWPORT BEACH TRACT 312, AS RECORDED IN M.A. 2 PAGE 25 IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE STATE OF CALIFORNIA.	APN: 423-334-08 C.D. P.L.B.	SHEET NUMBER <b>2</b> OF 2 SHEETS	
PREPARED BY: KALAM YOUNG, ASSOCIATES 12 WEST AVENUE, SAN GABRIEL, CA 91772 PH: 949-887-8034 WWW.KYOUNG.COM		DESIGN DATE: 07-22-2013		PROJECT NUMBER: 13-004		DESIGNED BY: K.Y.		CHECKED BY: K.Y.	
DESIGN DATE: 07-22-2013		PROJECT NUMBER: 13-004		DESIGNED BY: K.Y.		CHECKED BY: K.Y.		SHEET NUMBER <b>2</b> OF 2 SHEETS	