

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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# Th8c

Filed: December 17, 2013  
180th Day: June 15, 2014  
Staff: J. Rabin - LB  
Staff Report: January 23, 2014  
Hearing Date: February 13, 2014

**STAFF REPORT: CONSENT CALENDAR**

**Application No.:** 5-13-0956

**Applicant:** Danette and Al Fenstermacher

**Agent:** Mark Becker, Inc.

**Location:** 1730 East Ocean Front, Newport Beach (Orange County)  
(APN: 048-212-20)

**Project Description:** Demolish an existing one-story, single-family beachfront home and attached garage. Construct a three-story, 29-foot tall, single-family residence with 2,957 square feet of living area; two separate, one-car attached garages totaling 604 square feet; a half-level, 238 square foot storage basement; and 134 square feet of decks. Grading consists of 38 cubic yards of cut.

**Staff Recommendation:** Approve with conditions.

## 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 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. 5-13-0956 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, 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 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 and landowner further agree, 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, 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. 5-13-0956. 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. 5-13-0956. 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. 5-13-0956 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
4. **Recommendations of the Geotechnical Report.** All final design and construction plans shall be consistent with all recommendations contained in the Geotechnical Engineering Investigation of Proposed New Residence at 1730 E. Ocean Front, Newport Beach, California dated November 18, 2013 prepared by Coast Geotechnical, Inc. of Fullerton, California for Mr. and Mrs. Al Fenstermacher. 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. **Conformance with the Submitted Grading, Drainage and Erosion Control Plan.** The applicant shall conform to the Grading, Drainage and Erosion Control Plan received December 12, 2013, showing roof drainage and runoff from all impervious areas directed to gutters, downspouts, drop-inlets, an underground conveyance system, and three trench drains. Erosion control measures consist of sandbags around the front and back of the property during the construction phase. 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. **Drought Tolerant Landscaping, Non Invasive Plants.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, applicant shall submit a detailed landscape plan that meets the requirements for non-invasive, native or non-native drought tolerant plants with low or very low water consumption. 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 for South Coastal Region 3. (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).

**7. 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.

**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 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 a residential lot located at 1730 East Ocean Front (APN: 048-212-20) in the City of Newport Beach, Orange County (**Exhibit 1**). The rectangular parcel is approximately 40 feet wide and 80 feet deep. The lot size is slightly less than 3,200 square feet. The city's certified Land Use Plan (LUP) designates the lot as Single-Unit Residential and the proposed single-family residence adheres to this designation. The oceanfront site is located in an existing urban residential area near the eastern end of the Balboa Peninsula. Public access to the beach is available via concrete sidewalks, which extend on to the sand at the end of I and L Streets, approximately 280 feet and 200 feet respectively from the site (**Exhibit 2**).

As noted above, the site consists of a single lot located between the first public road and the sea. There is a wide sandy beach (approximately 350 feet wide) between the subject property and the Pacific Ocean. Due to its oceanfront location, the project site may be exposed to the hazard of wave run-up during a severe storm event.

The applicants are proposing to demolish a single-story, single family residence on the site (**Exhibit 3**) and construct a new three-story, 29-foot tall single family residence with 2,957 square feet of living space; two separate, one-car attached garages totaling 604 square feet; a half-level, 238 square foot storage basement; and 134 square feet of decks off the master bedroom suite. The City of Newport Beach issued an Approval in Concept (No. 2013067) for the proposed project on October 23, 2013. The proposed project is consistent with the City's required 10-foot setback for primary structures from the seaward property line. Encroachment of landscaping or development is not permitted on the sandy beach beyond the seaward property line and none is proposed (**Exhibit 4**). The beach immediately adjacent to the property is owned by the City of Newport Beach. However, there are instances of encroachment on the sandy beach in the vicinity of the subject site, including placement of unpermitted landscaping, hardscape, and structures, which are the subject of an on-going enforcement action by Commission staff.

The total structure will be 3,769 square feet (**Exhibits 5-10**). In addition, the project includes an extensive drainage system to capture, treat, and infiltrate stormwater runoff. The drainage system includes two trench drains at the alley end of the side yards, a 16 foot long trench drain in the side yard on the east side of the house, gutters, deck drains, and downspouts which will direct runoff to drop inlets and an underground conveyance system. Stepping stones and gravel will be used in the east side yard to enhance infiltration of stormwater runoff. Plans call for installation of four small planters for drought-tolerant plants in the courtyard of the house. The deck railing system will consist of open railings with no glass or plexiglass. Grading consists of 38 cubic yards of cut for site preparation.

## **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 by **Special Conditions 1, 2, 4 and 5** which require that the landowner and any successor-in-interest assume the risk of undertaking the development; prohibit construction of shoreline protective devices (such as a seawall) in the future; require that all final design and construction plans be consistent with recommendations contained in the geotechnical report; and require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite. 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 must 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, the proposed 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, 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, 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 in connection with the authorized development, 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 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.



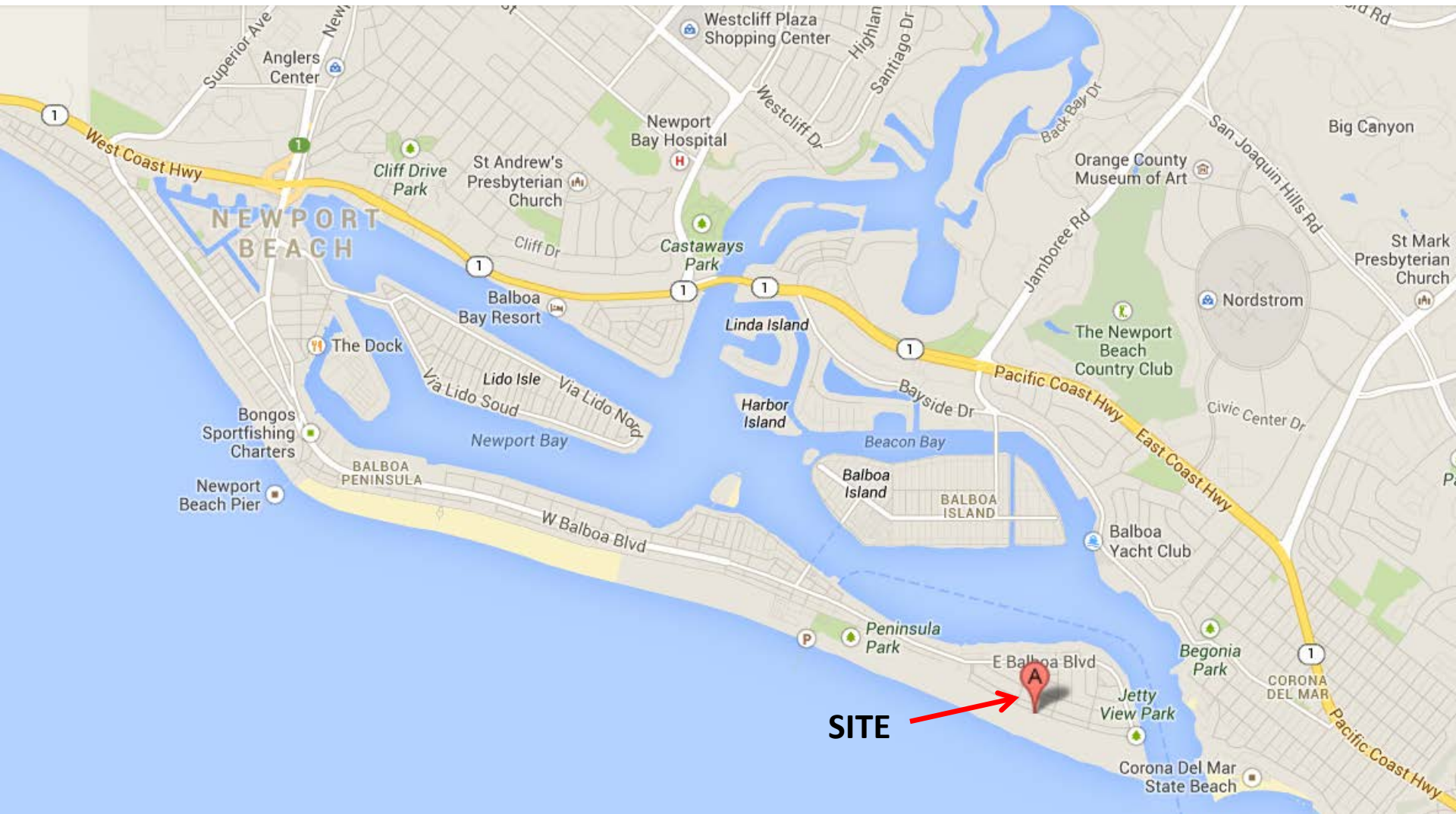
## **APPENDIX A**

**Substantive File Documents:** City of Newport Beach Certified Land Use Plan; City of Newport Beach Approval-in-Concept No. 2013067, dated October 23, 2013; Coastal Development Permit Application File No. 5-13-0956; Geotechnical Engineering Investigation of Proposed New Residence at 1730 E. Ocean Front, Newport Beach, California dated November 18, 2013 prepared by Coast Geotechnical, Inc. of Fullerton, California for Mr. and Mrs. Al Fenstermacher; Coastal Hazards and Wave Run-up Study, 1730 East Oceanfront, Newport Beach; prepared for Mr. and Mrs. Fenstermacher, December 6, 2013 by GeoSoils, Inc. of Carlsbad, California.

**1730 East Ocean Front, Newport Beach**

**CDP 5-13-0956**

**Exhibit 1**











**1730 E. Ocean Front, Newport Beach**

**CDP 5-13-0956**

**Exhibit 4**



1. IF ANY OF THE EXISTING PUBLIC IMPROVEMENTS SURROUNDING THE SITE ARE DAMAGED BY THE PRIVATE WORK, NEW CONCRETE SIDEWALK, CURB AND GUTTER, ALLEY/STREET PAVEMENT AND OTHER IMPROVEMENTS WILL BE REQUIRED BY THE CITY AT THE TIME OF PRIVATE CONSTRUCTION COMPLETION. SAID DETERMINATION AND THE EXTENT OF THE REPAIR WORK SHALL BE MADE AT THE DISCRETION OF THE PUBLIC WORKS INSPECTOR.
2. EXISTING SEWER LATERAL SHALL BE CHANGED AND A CLEAN-OUT INSTALLED AT THE PROPERTY LINE TO COMPLY WITH CITY STANDARD STD. 406-L. SEE DETAIL 7 ON SHEET C4.
3. ALL DOORS FROM HOUSE TO POOL YARD MUST BE EQUIPPED WITH ALARM PER UBC APPENDIX 421(L)(5).
4. SWIMMING POOLS TO BE PART OF A SEPARATE REVIEW AND PERMIT.
5. ANY EXISTING CITY STREET TREES WITHIN THE RIGHT-OF-WAY SHALL BE PROTECTED IN PLACE.
6. AN APPROVED ENCROACHMENT PERMIT IS REQUIRED FOR ALL WORK ACTIVITIES WITHIN THE PUBLIC RIGHT-OF-WAY.
7. SURVEYOR SHALL PERMANENTLY MOUNTAIN PROPERTY CORNERS OR OFFSETS BEFORE STARTING GRADING.
8. A SEPARATE PERMIT IS REQUIRED FOR ALL MASONRY AND CONCRETE FENCES OVER 3'-0" AND WOOD FENCES OVER 6 FEET.
9. A SEPARATE PERMIT IS REQUIRED FOR POOLS, SPAS, SHADE STRUCTURES, WALLS, FENCES AND OTHER FREESTANDING STRUCTURES.
10. A CAL-OSHA PERMIT IS REQUIRED FOR EXCAVATIONS DEEPER THAN 5 FEET AND FOR SHORING AND UNDERPINNING. CONTRACTOR TO PROVIDE A COPY OF OSHA PERMIT.
11. ALL LANDSCAPE AND LANDSCAPE AREAS ARE NEW IMPROVEMENTS.
12. WHERE THE EXISTING DRIVEWAY APPROACH IS REMOVED AND WHERE THE NEW DRIVEWAY APPROACH IS CONSTRUCTED, A MINIMUM 12-INCH WIDE X 12-INCH DEEP FULL DEPTH ASPHALT CONCRETE PATCHBACK SHALL BE CONSTRUCTED ALONG THE ENTIRE NEW GUTTER LENGTH. TACK COAT ALL JOINT SURFACES PRIOR TO PATCHBACK PLACEMENT.
13. SANDBAGS SHOWN ON SITEPLAN TO PREVENT RUNOFF SHALL BE LOCATED INSIDE PROPERTY ADJACENT TO PROPERTY LINE.
14. THE WATER METER AND SEWER CLEANOUT SHALL BE INSTALLED WITH A TRAFFIC-GRADE BOX AND COVER. ALL OTHER UTILITY SERVICE CONNECTIONS SEEVING THIS DEVELOPMENT SHALL BE MADE UNDERGROUND.
15. A CITY ENCROACHMENT AGREEMENT IS REQUIRED FOR ALL NON-STANDARD PRIVATE IMPROVEMENTS WITHIN THE PUBLIC RIGHT-OF-WAY.

EAST OCEAN FRONT



## GRADING NOTES

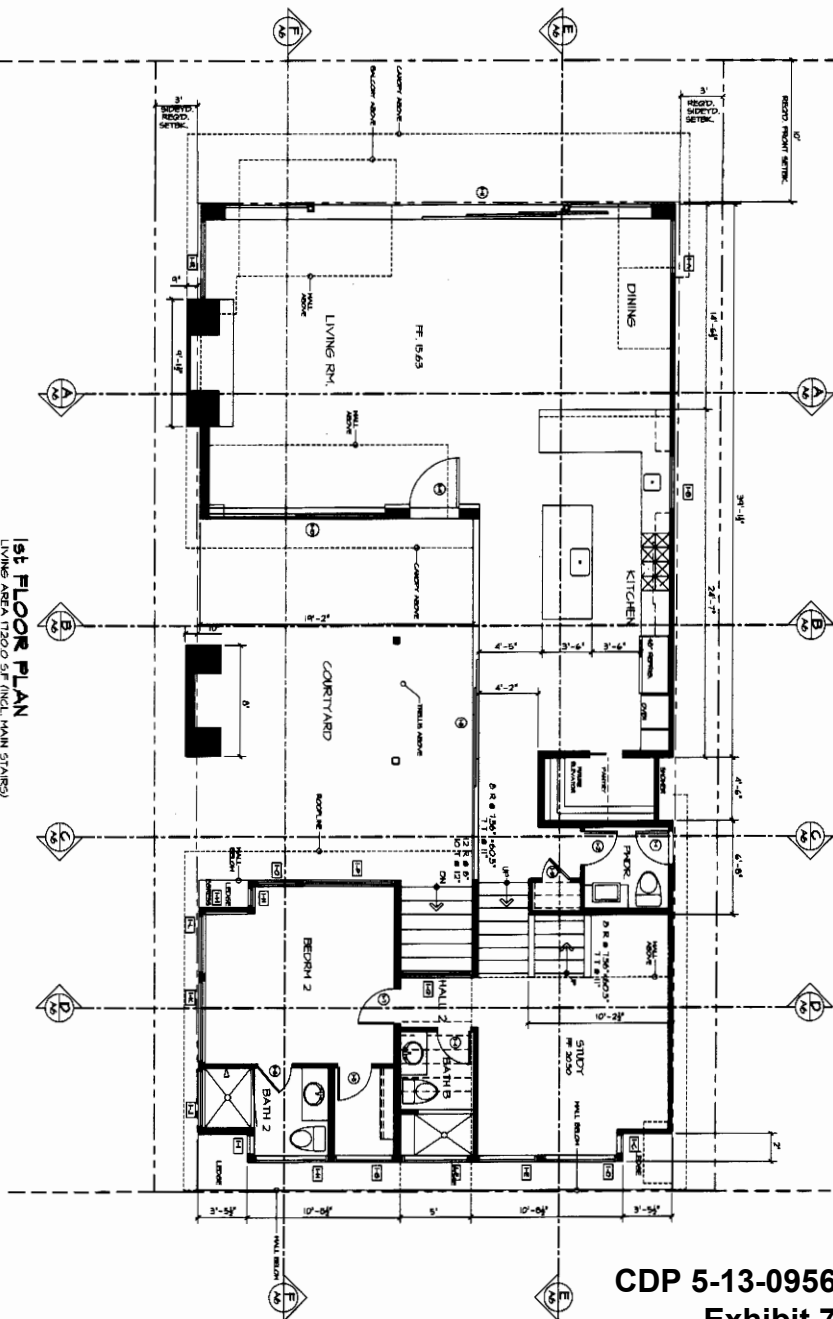
### 1. MINIMUM GRADIENTS FOR DRAINAGE

## GRADING NOTES

### 1. MINIMUM GRADIENTS FOR DRAINAGE



**1st FLOOR PLAN**  
LIVING AREA 1700 S.F. (INCL. MAIN STAIRS)



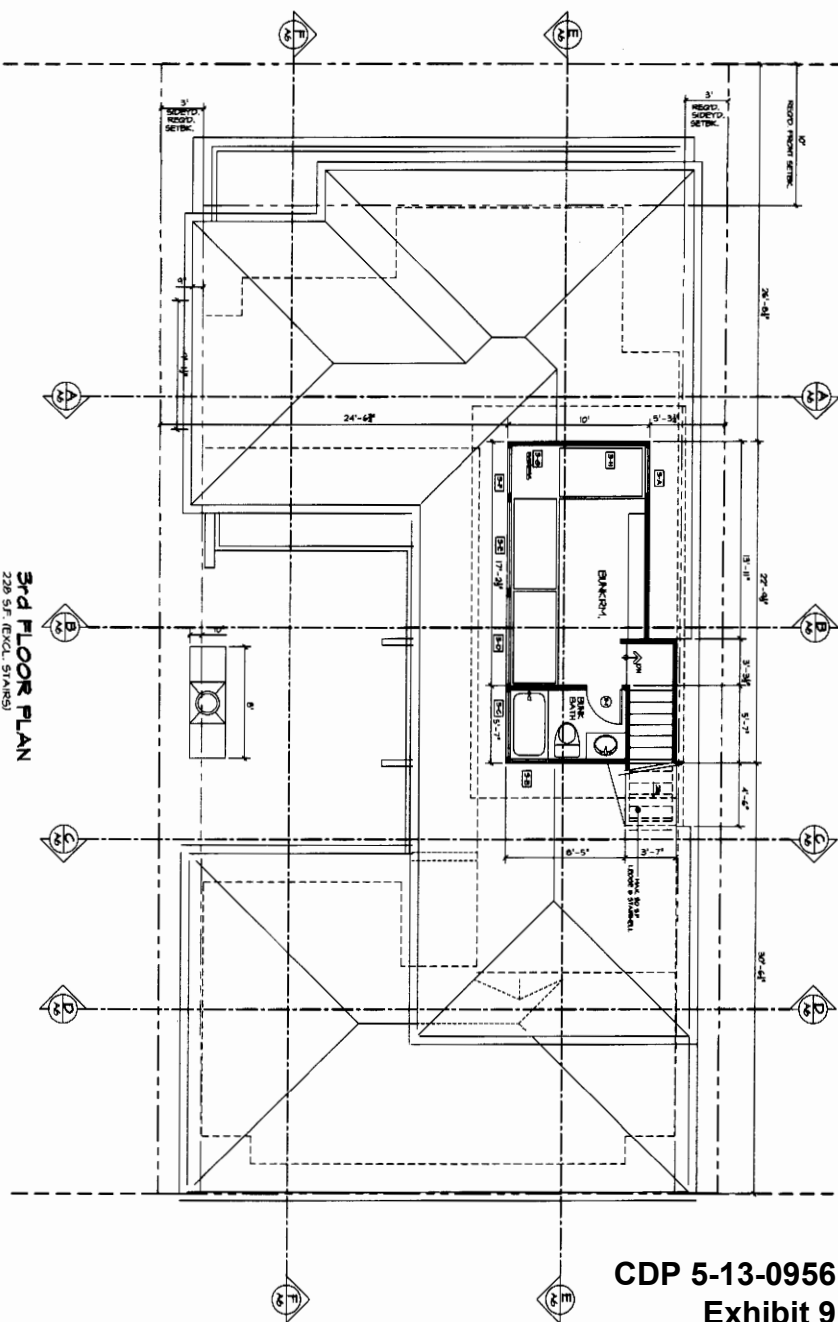


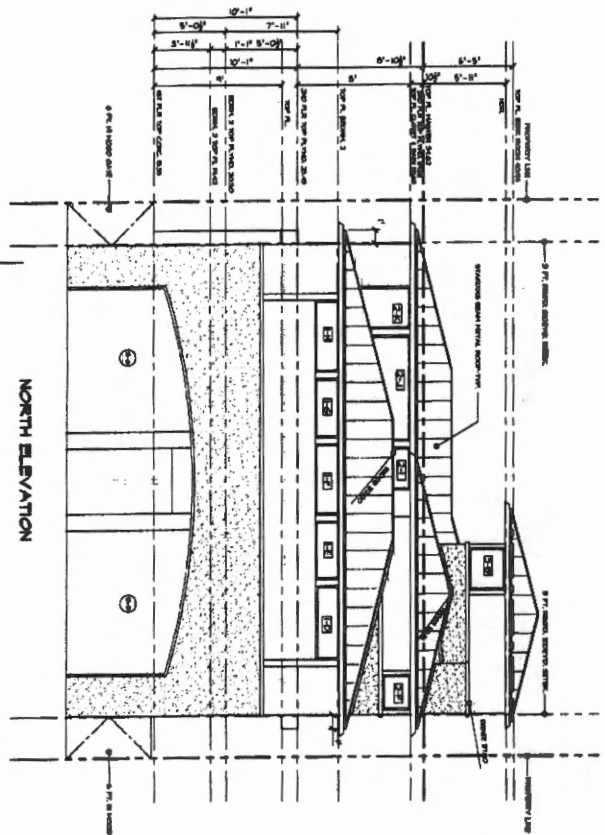
950.0 S.F. (INCL. STAIRS TO 3RD FLR.)

### 1. BALCONY ENCRoACHMENTS INTO FRONT SETBACK

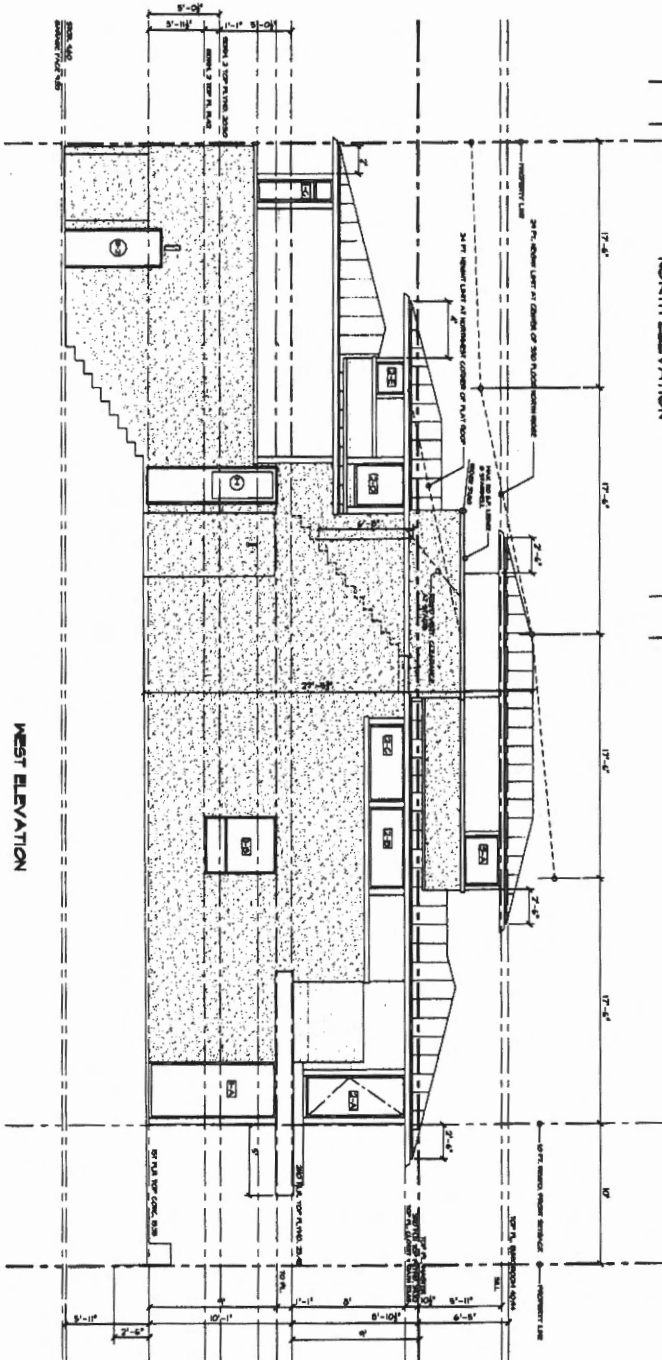
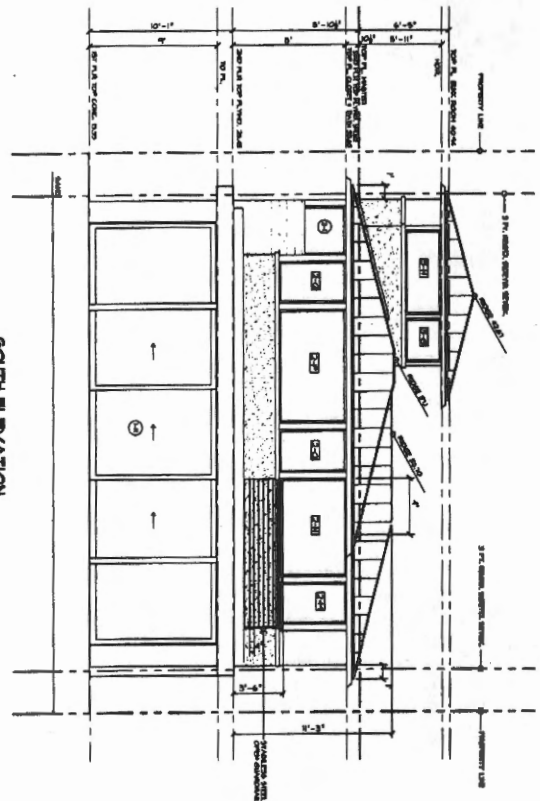
BALLCAST RAILINGS SHALL NOT EXCEED A MAXIMUM HEIGHT OF FORTY-THO (40) INCHES AND SHALL BE CONSTRUCTED OF EITHER TRANSPARENT MATERIAL (EXCEPT FOR SUPPORTS) OR OPAL MATERIAL (E.G. DECORATIVE GRILLWORK, WROUGHT IRON, LATTICE WORK, OR SPHERICAL OPEN MATERIALS) SO THAT AT LEAST 40% OF THE RAILING IS OPEN.

**3rd FLOOR PLAN**  
220 S.F. (EXCL. STAIRS)





NORTH ELEVATION



WEST ELEVATION

CDP 5-13-0956  
Exhibit 10