## **CALIFORNIA COASTAL COMMISSION**

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Filed:	Oct. 7, 2013
180th Day:	Apr. 5, 2014
Staff:	F. Sy-LB
Staff Report:	Feb. 20, 2014
Hearing Date:	Mar. 12-14, 2014

# **STAFF REPORT: CONSENT CALENDAR**

Application No.:	5-13-0402
Applicant:	Luis Armona
Agent:	Sorin Done
Location:	28-A Surfside, City of Seal Beach (County of Orange)
Project Description:	Significant remodel and addition to an existing 1,921 square foot, two-story beach fronting single-family residence over a 411 square foot two-car garage. The project consists of a new 332 square foot semi-subterranean basement, a new 638 square foot 3 <sup>rd</sup> floor with a landside and beach front deck and new floors and tinted glass guardrails for the existing 1 <sup>st</sup> and 2 <sup>nd</sup> floor beach front decks. Grading will consist of approximately 60 cubic yards of export. Post project, the beach fronting single-family residence will be three-stories (35-feet high from finished grade) and consist of 2,891 square feet over a 411 square foot two-car garage.
Staff Recommendation:	Approval 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 <u>YES</u> vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution:** 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. 5-13-0402 including, but not limited to, the residence, foundations, decks, 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, foundations, and decks, 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 February 19, 2014 showing roof drainage and runoff from all impervious areas directed 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 (<u>http://www.CNPS.org/</u>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<u>http://www.cal-ipc.org/</u>), 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. 5-13-0402. 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. 5-13-0402. 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:

### A. PROJECT LOCATION AND DESCRIPTION AND PREVIOUS COMMISSION ACTION ON SUBJECT SITE

#### 1. Project Location and Description

The subject lot is a beach front lot located between the first public road and the sea located at 28-A Surfside Avenue in the private community of Surfside Colony, in the City of Seal Beach, Orange County (Exhibit #1). Surfside Colony is a gated residential community comprised of three (3) rows of homes (one (1) of which is beach front-the "A" row) that parallel the beach and ocean, which are accessed via a private road system. There is an approximately 400-foot wide sandy beach between the subject property and the mean high tide line. The lot size is 1,307 square feet and the City of Seal Beach Zoning Code designates use of the site for Residential Low Density and the proposed project adheres to this designation. The proposed development is in an existing private, gated residential community, located south of the Anaheim Bay east jetty and is consistent with development in the vicinity and prior Commission actions in the area. Due to its beach front location, the project site may be potentially exposed to the hazard of waves, erosion, storm conditions, sea level rise or other natural hazards.

The proposed project is a significant remodel and addition to an existing 1,921 square foot, twostory beach fronting single-family residence over a 411 square foot two-car garage. More specifically, the project consists of the following: 1) a new 332 square foot semi-subterranean basement area with a mat foundation; 2) a new 638 square foot  $3^{rd}$  floor with a new landside and beach front deck; and 3) new floors and tinted glass guardrails for the existing 1<sup>st</sup> and 2<sup>nd</sup> floor beach front decks (Exhibits No. 2-4). The new basement will extend up to 2'-1/2" of the existing seaward extent of the development and not extend any further than the already established seaward development limit. The 3<sup>rd</sup> floor addition will also not extend anymore seaward than the already established seaward development limit. Additionally, the proposed additions will not extend outside of the established footprint. The project also includes new exterior stucco, new windows and doors and a new garage door. Post project, the beach fronting single-family residence will be three-stories (35-feet high from finished grade) and consist of 2,891 square feet over a 411 square foot two-car garage. Grading will consist of approximately 60 cubic yards of export to a location outside of the Coastal Zone. The existing elevated 1<sup>st</sup> floor beach front deck currently (and will remain) extends a maximum 10-feet seaward, beyond the property boundary, into land that is leased by the Surfside Colony to the applicant and the existing  $2^{nd}$  floor beach front deck currently (and will remain) extends 5-feet into the leased area. The new 3<sup>rd</sup> floor beach front deck will extend 5feet into the leased area.

As noted above, the proposed residence is located along a segment of coastline with a wide sandy beach. The applicant's hazard and wave runup study using the best available science has concluded that wave action will not reach the proposed project and no protection devices are recommended. 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. Thus, the Commission imposes **Special Condition No. 2**.

The subject site is a beach front lot located between the first public road and the sea in the private community of Surfside Colony. A pre-Coastal (1966) boundary agreement between Surfside Colony, Ltd. and the California State Lands Commission fixes the boundary between state tide and submerged lands and private uplands in Surfside Colony. As a result of this boundary agreement, Surfside Colony, Ltd. owns a strip of the beach, up to 80-feet in width, adjacent to the homes fronting the ocean. The beach seaward of this area is available for lateral public access. Vertical access to the beach is available at the end of Anderson Street to the east of the Surfside Colony community. In addition, the Commission conditioned permit P-75-6364 to allow public access through the gates at the southeastern end of Surfside Colony during daylight hours.

The proposed project has decks which encroach a maximum 10-feet seaward beyond the subject site's seaward property line onto a ten (10)-foot wide strip of land owned by Surfside Colony, Ltd. (which serves as the homeowners' association). Surfside Colony, Ltd. leases its property to the adjacent homeowners for construction of patios. Enclosed living area is not allowed to encroach past the individual homeowner's seaward property line onto Surfside Colony land. The applicants have obtained a lease from Surfside Colony, Ltd. for the proposed encroachment. The applicants have invited Surfside Colony, Ltd. to join as co-applicant; however, Surfside Colony, Ltd. has not chosen to join.

In past permits, the Commission has consistently allowed the seaward property line of individually owned beachfront lots in Surfside Colony to serve as the enclosed living area stringline. The Commission has also consistently allowed the seaward edge of the 10-foot wide strip of land owned by Surfside Colony, Ltd. to serve as the deck stringline. These stringlines serve to limit encroachment of development onto the beach. The proposed development would conform to these stringlines.

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

Due to the beach front 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 expose 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 tinting the proposed glass railings along the beach-facing decks.

2. Previous Commission Action on Subject Site

On June 3, 1974, the Commission approved Coastal Development Permit No. P-3151-(Graesser) for the construction of a single-family residence. No Special Conditions were imposed.

#### **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

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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 runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

### C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms 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)

Section 30604 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 permit may only be issued if the Commission finds that the proposed development will not prejudice the ability of the local government to prepare a Local Coastal Program, which conforms with the Chapter 3 policies of the Coastal Act.

On July 28, 1983, the Commission denied the City of Seal Beach Land Use Plan (LUP) as submitted and certified it with suggested modifications. The City did not act on the suggested modifications within six (6) months from the date of Commission action. Therefore, pursuant to Section 13537(b) of the California Code of Regulations, the Commission's certification of the Land Use Plan with suggested modifications expired. The LUP has not been resubmitted for certification since that time.

The proposed development is consistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed development would not prejudice the ability of the City to prepare a Certified Local Coastal Program consistent with the Chapter 3 policies of the Coastal Act.

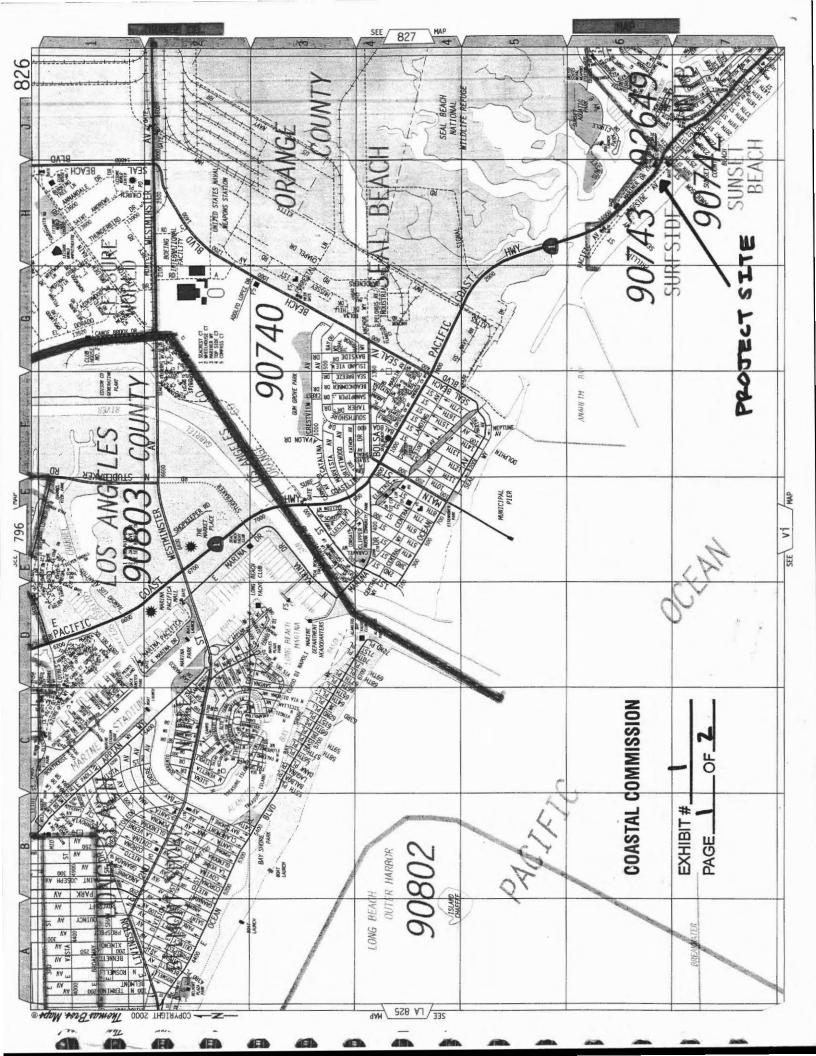
### H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

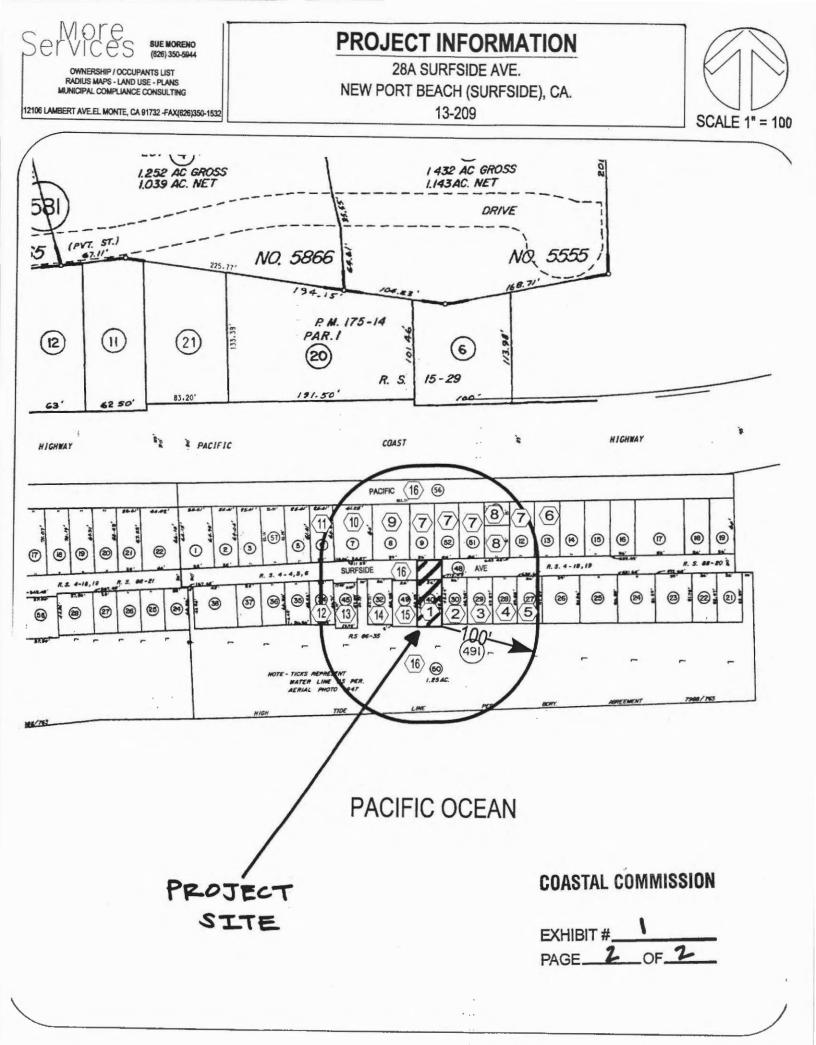
Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

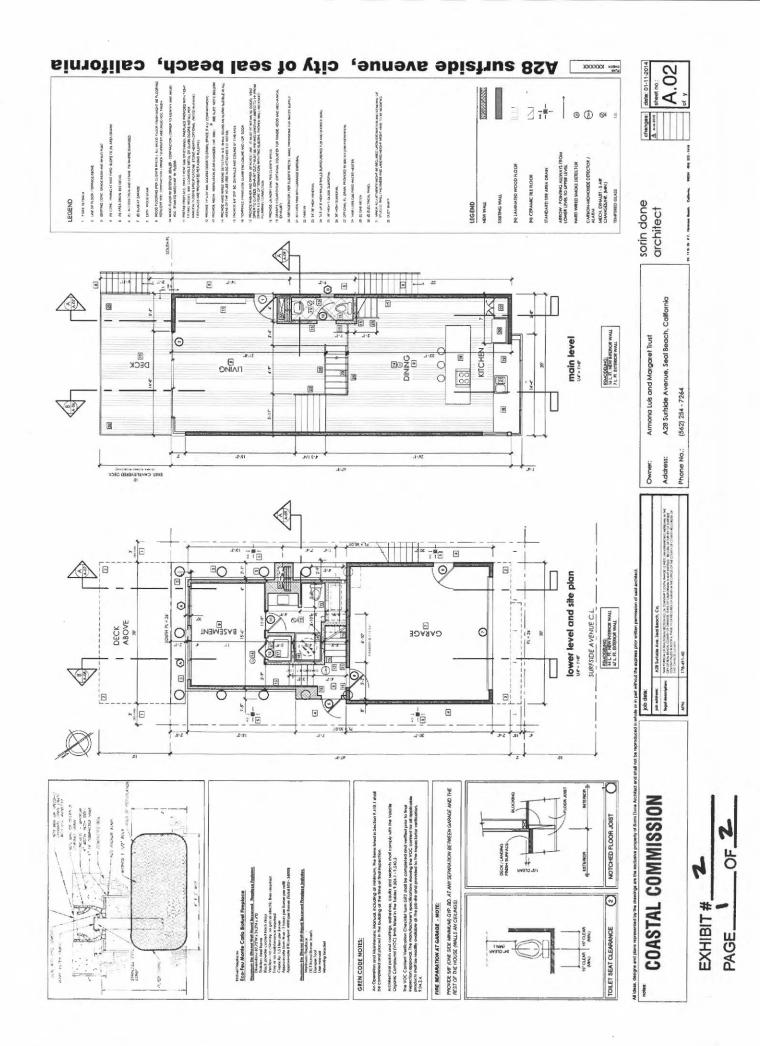
In this case, the City of Seal Beach Planning Department is the lead agency and the Commission is a responsible agency for the purposes of CEQA. The City of Seal Beach Planning Department determined that the proposed development is ministerial or categorically exempt on June 6, 2013. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

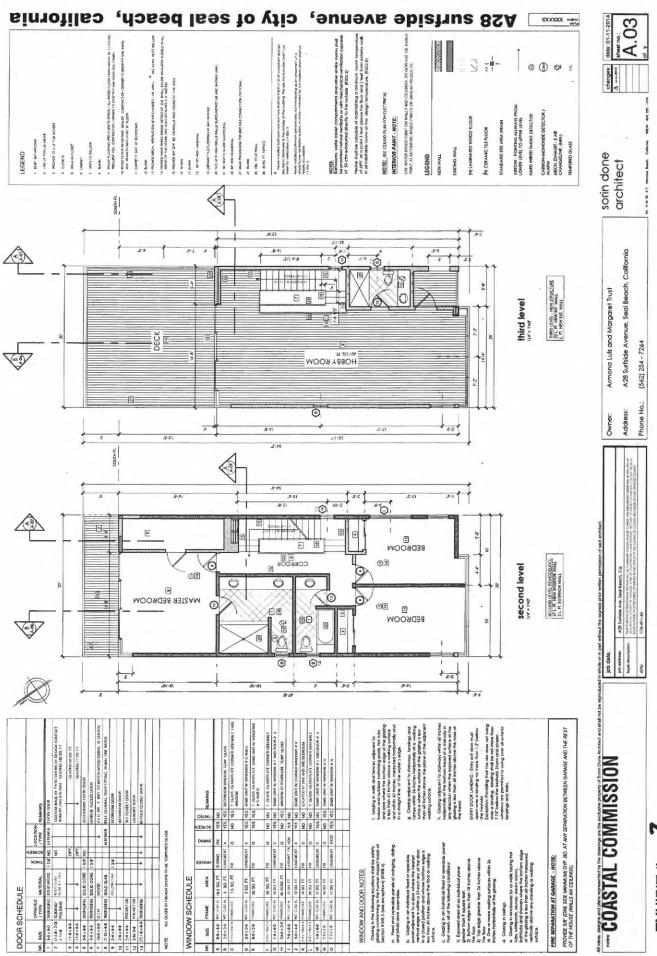
# **APPENDIX A**

**SUBSTANTIVE FILE DOCUMENTS:** Approval-In-Concept from the City of Seal Beach Planning Department dated June 6, 2013; Notice of Application Submittal & Invitation to Join as Co-Applicant letter to Surfside Colony, Ltd from Commission staff dated July 13, 2103; ; Letter from Commission staff to Sorin Done dated July 12, 2013; Letter from Carlos Losada (Project Manager) to Commission staff received October 7, 2013; Coastal Hazard and Wave Runup Study prepared by Global Geo-Engineering, Inc. (Project 5607-04) dated September 30, 2013; Report of Geotechnical Engineering Investigation, Proposed Basement Addition to the Existing Single-Family Residence, A28 Surfside Avenue, Seal Beach, California, EGL Project No.: 13-171-001L; prepared by Environmental Geotechnology Laboratory dated July 22, 2013; and Coastal Hazard and Wave Runup Study prepared by Global Geo-Engineering, Inc. (Project 5607-04) dated February 14, 2014.

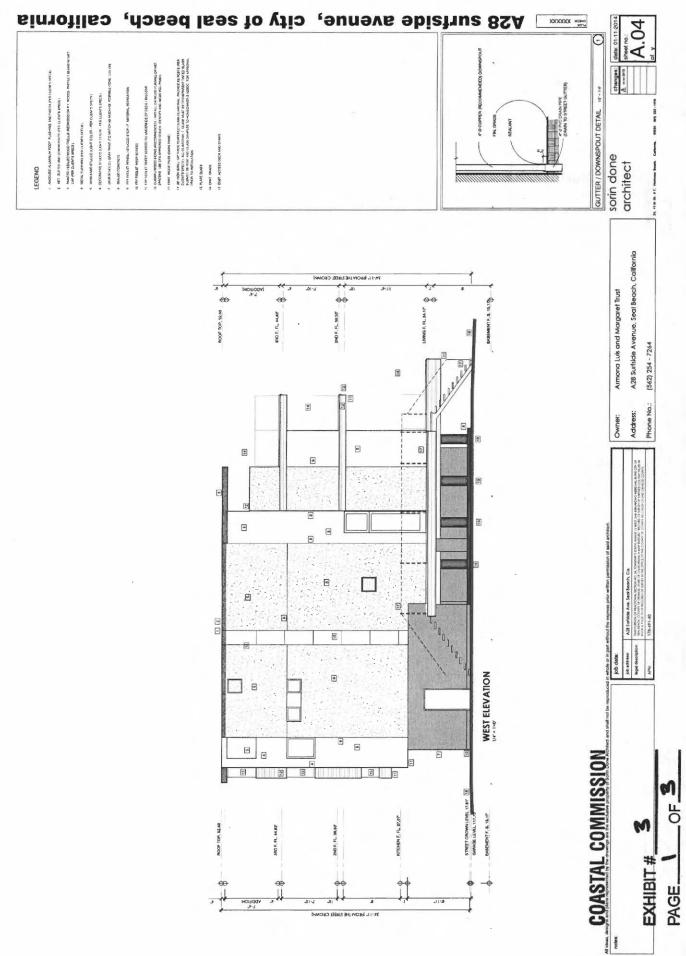








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