#### CALIFORNIA COASTAL COMMISSION

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



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Filed:	February 6, 2014
180th Day:	August 5, 2014
Staff:	J. Rabin - LB
Staff Report:	March 27, 2014
Hearing Date:	April 11, 2014

## STAFF REPORT: CONSENT CALENDAR

Application No.:	5-13-0962
Applicant:	Jeri Kochis
Agent:	Mark Becker, Inc.
Location:	1509 East Bay Avenue, Newport Beach (Orange County) (APN: 048-182-20)
Project Description:	Demolish existing 5,224 square foot single-family home and attached garage located on a 10,980 square foot bayfront property. Approve tentative parcel map to subdivide the property into two separate parcels. Parcel 1 would be 6,498 square feet. Parcel 2 would be 4,482 square feet. Construct a new two-story, 28-foot-tall single family residence on Parcel 1 with 3,182 square feet of living area, an attached three-car, 668 square foot garage, and a 95 square foot covered entry. Total structure would be 3,945 square feet. Grading consists of 414 cubic yards of cut and fill. To date, no new single family residence has been designed for Parcel 2.
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 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. 5-13-0962 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 of Boating Facilities. This permit is only for the development described in Coastal Development Permit No. 5-13-0962. This permit does not authorize any development, including, but not limited to, any repair or maintenance, or demolition, involving the existing boating facility including, but not limited to, the pier, pier platform, gangway, or floating dock. By acceptance of this permit, the applicant understands that approval of the creation of a second lot does not establish a right to a second boating facility. Any development involving the existing or future boating facility shall require an amendment to Coastal Development Permit No. 5-13-0962 or an additional Coastal Development Permit from the California Coastal Commission.
- 4. Future Development. 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. 5-13-0962. 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. 5-13-0962 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- 5. Recommendations of the Geotechnical Report and Sea Level Rise Analysis. All final design and construction plans shall be consistent with all recommendations contained in the Geotechnical Engineering Investigation of Proposed New Residence at 1509 E. Bay Avenue, Newport Beach, California dated November 22, 2013 prepared by Coast Geotechnical, Inc. of Fullerton, California for Jeri Kochis. The finished floor elevation shall be raised to 9.5 feet (NAVD88) to reflect the advice of GeoSoils, Inc. of Carlsbad, California as discussed in a February 6, 2014 letter titled Sea Level Rise Discussion for New Residence, 1509 East Bay Avenue, Newport Beach. 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. Conformance with the Submitted Grading, Drainage and Erosion Control Plan. The applicant shall conform to the Site 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, catch basins, an underground conveyance system, and a 44-foot-long trench drain along the East Bay Avenue side of the house. Erosion control measures would 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.

PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, applicant shall submit a revised plan for a decorative and protective fence and erosion control measures to be installed on Parcel 2. The fence and erosion control measures shall be maintained and kept in place until a separate Coastal Development Permit application is received for construction a new single-family residence on that parcel.

7. 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 (<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 or very low water plants as identified by California Department of Water Resources for South Coastal Region 3. (See: <u>http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf</u>).

# 8. 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.
- (1) 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.
- 9. 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 both parcels 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 bayfront property located at 1509 East Bay Ave. in the City of Newport Beach, Orange County (**Exhibit 1**). The bayfront site consists of four legal lots, portions of two lots, and an abandoned right-of-way. The 10,980 square foot property is currently developed with a 5,224 square foot single-family home. The subject property is located on the north side of the Balboa Peninsula between the first public road and Newport Bay (**Exhibit 2**).

On October 23, 2013, the City of Newport Beach issued an Approval in Concept (No. 2013066) for the proposed project. The applicant applied to the City of Newport Beach for a Tentative Parcel Map to subdivide the property into two separate lots for single-family homes. The same day, Mark Becker, the architect and agent for the applicant, Jeri Kochis, applied to the Commission for a Coastal Development Permit. The application was deemed incomplete, in part, because it lacked any evidence of approval of the proposed subdivision.

On November 27, 2013, the Zoning Administrator for the City of Newport Beach approved a Tentative Parcel Map (No. NP2013-028) to subdivide the 75-foot wide property into two parcels. Parcel 1 would be 45-feet wide and Parcel 2 would be 30-feet wide. The larger Parcel 1 would be 6,498 square feet. The smaller Parcel 2 would be 4,482 square feet (**Exhibit 3**).

A revised application was submitted to the Commission staff on December 12, 2013 seeking a Coastal Development Permit to subdivide the property into two single-family residential lots; demolish the existing single-family house, garage, pool, and hardscape; and construct a new two-story, 28-foot tall single-family residence and attached garage, with concrete side yard walkways, an interior courtyard, driveway, covered bayside patio, and side yard privacy walls. The proposed residence on Parcel 1 would have 3,182 square feet of living area, an attached three-car, 668 square foot garage, and a 95 square foot covered entry. Total structure would be 3,945 square feet. To date, no new single family home has been designed for Parcel 2. Grading consists of 414 cubic yards of cut and 414 cubic yards of fill (Exhibits 4-7).

As noted above, the site currently consists of a single lot located between the first public road and the sea. The subject site at 1509 East Bay Ave. and the property directly to the west at 1501 East Bay Ave. provide one of the last remaining open stretches of sandy beach without a bulkhead on the north side of that area of the Balboa Peninsula. There is a portion of a wooden wall that runs along the western end of the property at 1509 East Bay Avenue. This wood wall initially runs parallel to Newport Bay from the eastern property line beneath the existing pier at 1509 East Bay Ave. and then continues on a diagonal.

A topographical survey prepared by RdM Surveying, Inc. on August 28, 2008 shows that the approximate mean high tide line lies in close proximity to the intersection of the diagonal and parallel sections of wood wall (**Exhibit 8**). The northerly boundary of the subject property lies a short distance bayward of the approximate mean high tide line. At low tide, the public can use the sandy beach below the mean high tide line. Portions of the existing beach between the piers and

boat docks at 1501 and 1509 East Bay Ave. provide an unobstructed view of Newport Bay and the hills and mountains beyond.

Due to its bayfront location, the project site may be exposed to the hazards of sea level rise and wave run-up during an astronomical high tide and severe storm event. (See the February 6, 2014 letter titled Sea Level Rise Discussion for New Residence, 1509 East Bay Avenue, Newport Beach, prepared by GeoSoils, Inc. of Carlsbad, California.) Following the advice of David Skelly of GeoSoils, architect Mark Becker agreed to raise the finished floor elevation of the first floor of the new house to 9.5 feet (NAVD 88), six inches higher than the City of Newport Beach requires for bay and oceanfront properties in Newport Beach.

The project includes an extensive drainage system to capture, treat, and infiltrate stormwater runoff. The drainage system gutters, downspouts, catch basins, drop inlets, and an underground conveyance system to carry stormwater runoff to a 44-foot-long trench drain on the East Bay Avenue side of the property.

On February 24, 2014, the applicant submitted a separate application to demolish the existing boating facility located near the easterly property line and to construct two new boating facilities; one for each of the proposed lots. Staff requested that the new application for the waterside development be combined with the subject upland development and the applicant did so. Staff indicated that while we could recommend approval of the proposed upland development, subject to the special conditions that are typically imposed on similar-type development, we could not recommend that an additional boating facility (where only one currently exists) would be consistent with the public access and visual resources protection policies of the Coastal Act and the certified LUP. Therefore, to expedite the approval of the upland development, the applicant agreed that this permit does not authorize any development, including, but not limited to, any repair or maintenance, or demolition, involving the existing boating facility at 1509 East Bay Ave. including, but not limited to, the pier, pier platform, gangway, or floating dock. By acceptance of this permit, the applicant understands that approval of the creation of a second lot does not establish a right to a second dock. Any development involving the existing dock or a future dock shall require an amendment to Coastal Development Permit No. 5-13-0962 or an additional Coastal Development Permit from the California Coastal Commission.

#### **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 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.

5-13-0962 (Kochis)

#### 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 Future Development special conditions must be imposed. As conditioned, the proposed project 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 landscaping 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.

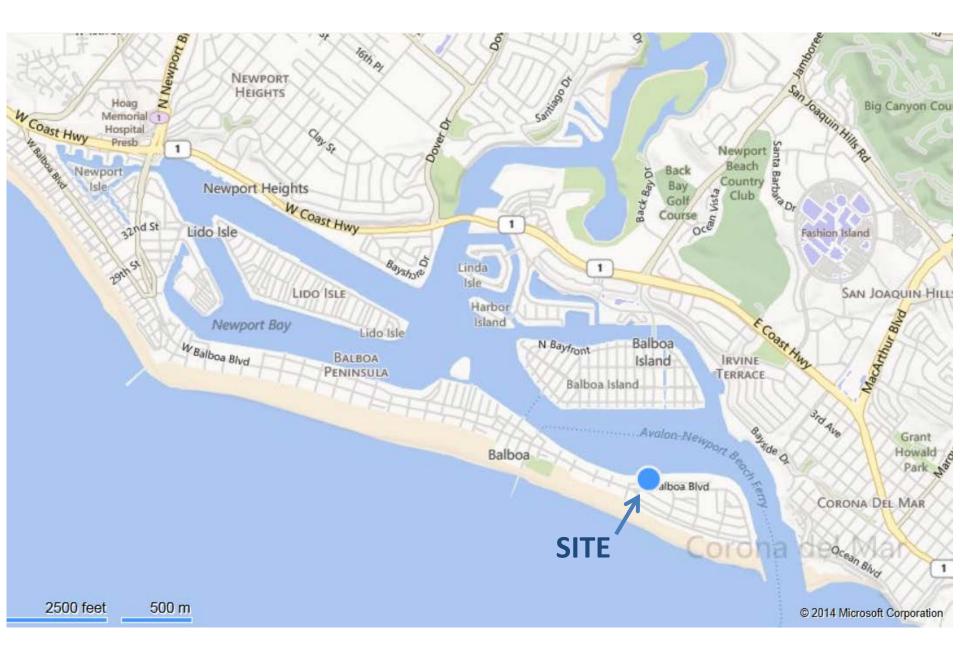
#### H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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**

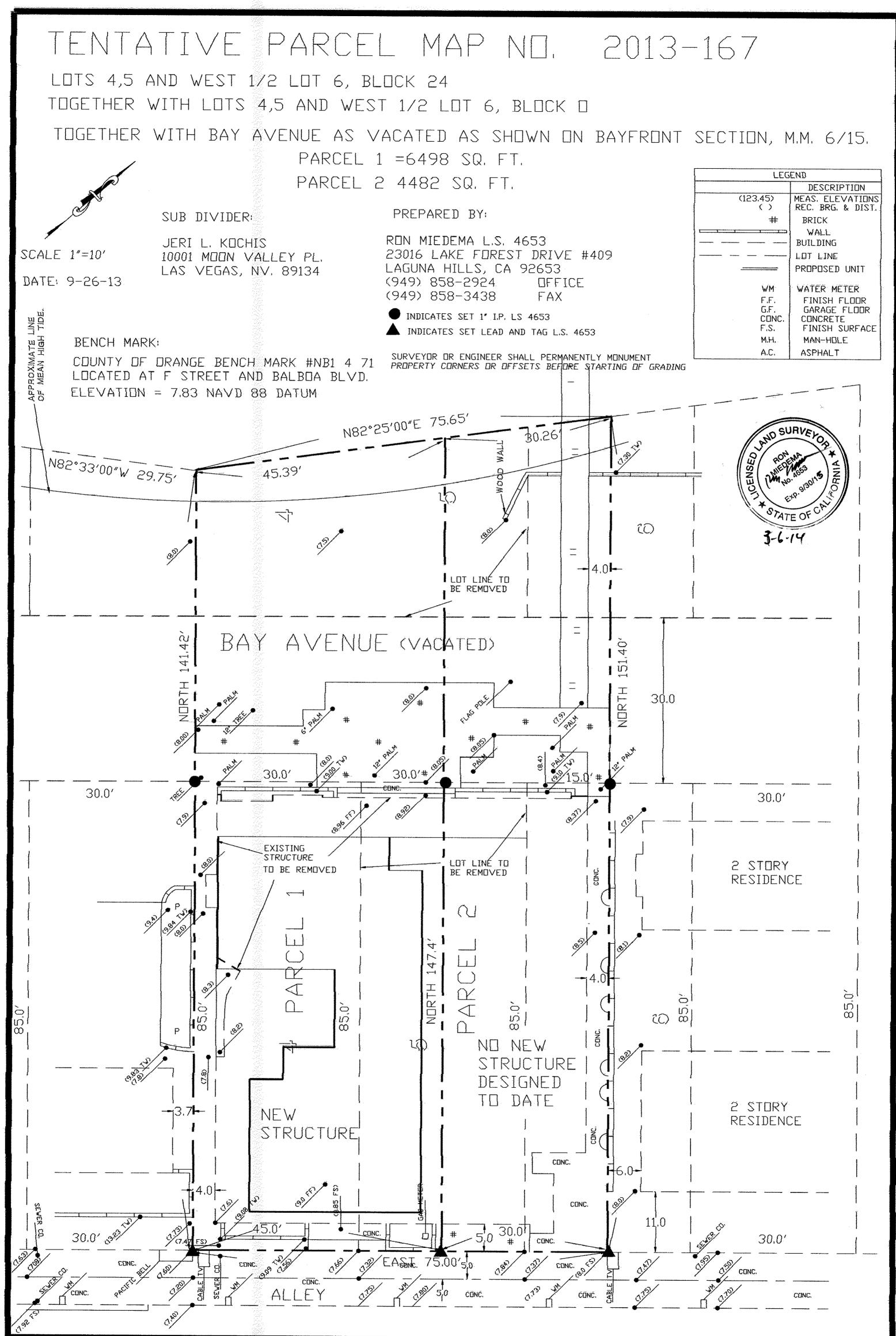
**Substantive File Documents:** City of Newport Beach Certified Land Use Plan; City of Newport Beach Resolution of the Zoning Administrator (No. ZA2013-079) Approving Tentative Parcel Map No. NP2013-028 For A Subdivision Located At 1509 East Bay Avenue (PA2013-208); City of Newport Beach Approval-in-Concept No. 2013066, dated October 23, 2013; Coastal Development Permit Application File No. 5-13-0962; Sea Level Rise Discussion for New Residence, 1509 East Bay Avenue, Newport Beach, contained in a letter dated February 6, 2014, prepared by GeoSoils, Inc. of Carlsbad, California.

## 1509 East Bay Avenue, Newport Beach CDP 5-13- 0962 Exhibit 1

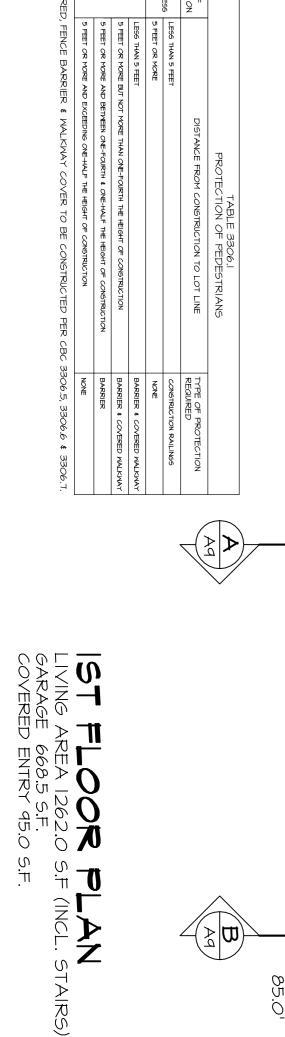


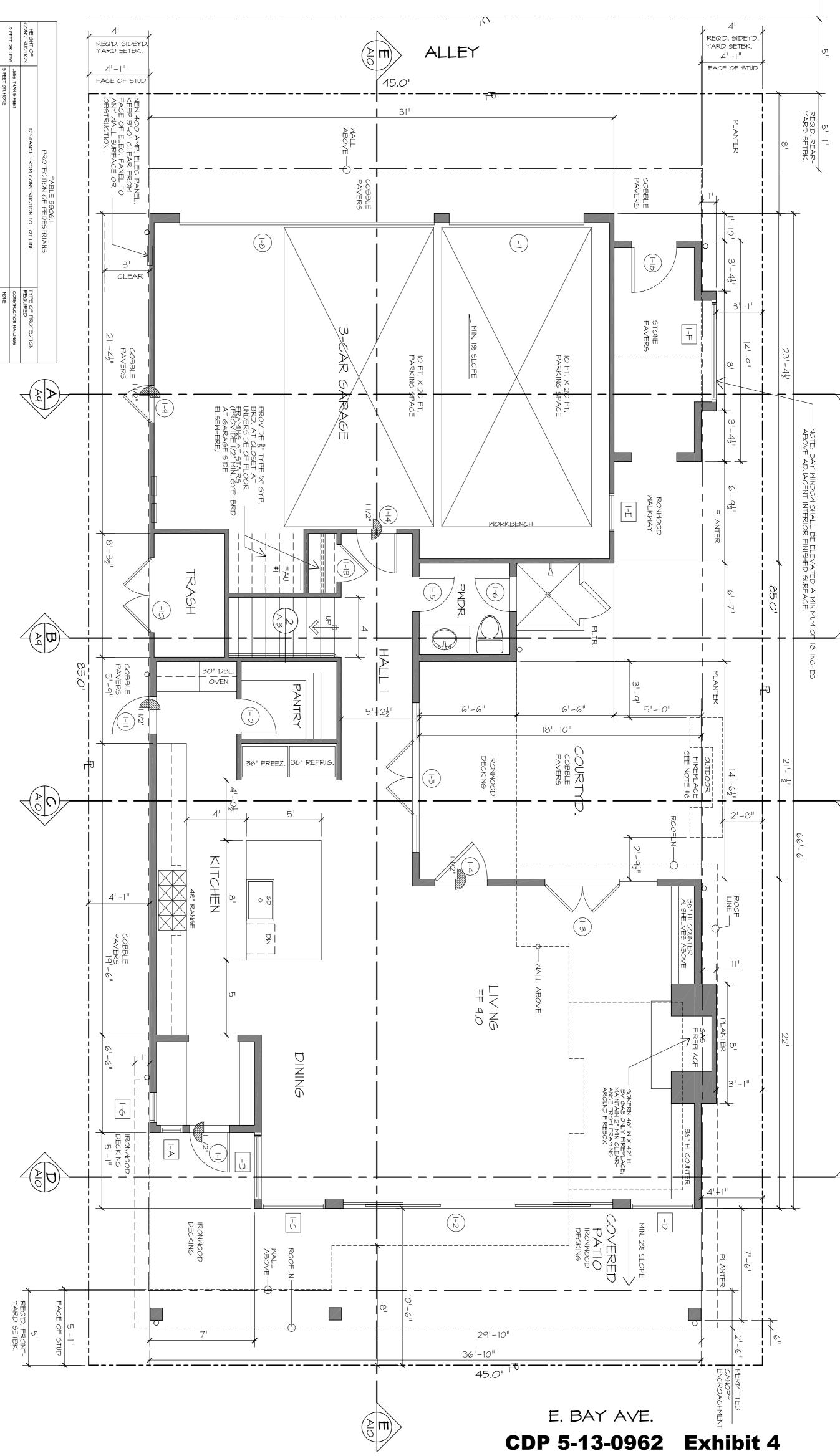
## Existing Development at 1501 & 1509 E. Bay Ave. CDP 5-13-0962 Exhibit 2







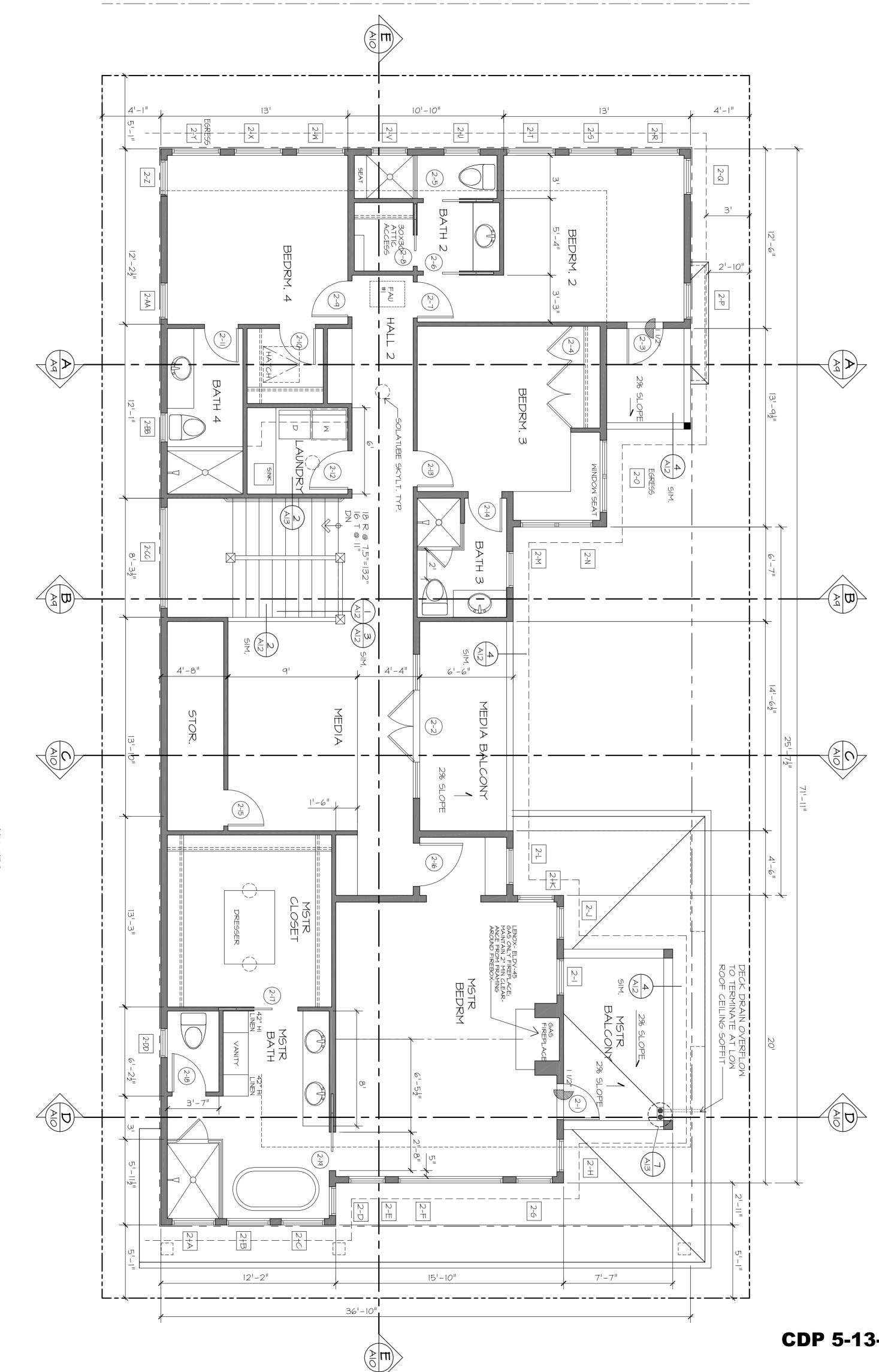




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MORE THAN 8 FEET

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I. PROVIDE DEX-O-TEX WATERPROOF DECKING ICC-ESR#1757, TO BE USED ON ALL DECKS AND BALCONY SECTIONS.

NOTES:

**2ND FLOOR PLAN** 1919.5 S.F. (EXCL. STAIRS)

CDP 5-13-0962 Exhibit 5

