

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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W10c

Filed:	4/9/2014
180th Day:	10/6/2014
Staff:	M.Stone-LB
Staff Report:	4/24/2014
Hearing Date:	5/14/2014

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-14-0425

Applicant: Newport Beach Partnership, LLC

Agent: Craig S. Hampton

Location: 1115 East Balboa Blvd., Newport Beach, Orange County
(APN: 048-152-30)

Project Description: Demolition of an existing two-story, single-family beachfront home with attached two-car garage. Construct a two-story, 28-foot high, single-family residence with 2,562 square feet of living space; attached 465 square foot two-car garage; and 519 square foot roof deck. Grading consists of 20 cubic yards of cut and 30 cubic yards of fill.

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. 5-14-0425 including, but not limited to, the residence, garage, foundations, 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, and foundations, 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. 5-14-0425. 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. 5-14-0425. 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. 5-14-0425 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 1115 East Balboa Blvd., Newport Beach, California dated December 17, 2013 prepared by Coast Geotechnical, Inc. of Fullerton, California. 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 February 25, 2014, showing roof drainage and runoff from all impervious areas directed to gutters, downspouts, and drains at the front end of the house (alley side). Erosion control measures consist of sandbags around the perimeter 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.** 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 primarily 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. Bird Strike Prevention

- a) Ocean front deck railing systems, fences, screen walls and gates subject to this permit shall use materials designed to minimize bird-strikes with the deck railing, fence, or gate. Such materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless appliques (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Any appliques used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one applique for every 3 foot by 3 foot area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clean glass or Plexiglas and appliques. All materials and appliques shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit final revised plans showing the location, design, height and materials of fences, screen walls and gates for the review and approval of the Executive Director. Said plans shall reflect the requirements of this special condition.

- b) The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

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.
 - (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.
9. **City's Right to Revoke Encroachment Permit.** Approval of this coastal development permit shall not restrict the City's right and ability to revoke, without cause, the approved City encroachment permit in order to construct public access and recreation improvements within the public right-of-way.

10. **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 1115 East Balboa Boulevard (APN: 048-152-30) in the City of Newport Beach, Orange County (**Exhibit 1**). The rectangular parcel is approximately 30 feet wide and 80 feet deep. The subject lot is a 2,400 square foot oceanfront lot designated as Two-Unit Residential in the City's certified Land Use Plan, and the proposed single-family residence adheres to this designation. The project is located within an existing urban residential area between the first public road and the sea. Public access to the beach is available vertically via concrete sidewalks, which extend onto the sand at the end of C Street, approximately 150 feet west of the site. There is also an approximately 500 foot wide sandy beach between the subject property and the Pacific Ocean (**Exhibit 2**).

The applicant is proposing to demolish an existing two-story, single-family beachfront home with attached two-car garage, and construct a two-story, 28-foot high, single-family home with 2,562 square feet of living space; attached 465 square foot two-car garage; and 519 square foot roof deck (**Exhibit 3**). The applicant also proposes to replace the concrete in the patio encroachment area and add a new three-foot high wall. The deck railing system will consist of etched glass, which will help reduce the potential for bird strikes. Landscaping is proposed utilizing native plants or non-native drought-tolerant plants. Grading consists of 20 cubic yards of cut and 30 cubic yards of fill.

The City of Newport Beach issued an Approval-in-Concept (No. 2014005) for the proposed project on February 7, 2014. The proposed project is consistent with the City's required 8-foot setback for primary structures from the seaward property line.

Due to its oceanfront location, the project site may be exposed to coastal hazards including sea-level rise and wave run-up during a severe storm event. The applicant has submitted a Coastal Hazard and Wave Runup Study prepared by Geosoils, Inc., dated February 21, 2014. According to the study, there is a wide sandy beach (approximately 570 feet wide) between the subject property and the Pacific Ocean. In addition, the study concluded that wave runup and overtopping will not significantly impact this site over the life of the proposed improvements, and did not recommend any measures to address wave runup protection.

The subject site has existing development which currently encroaches into the approximately 10 foot unimproved public right-of-way at the rear (beach front) of the property. The approximately 7 foot encroachment contains a concrete patio and wall. The beach immediately adjacent to the property is owned by the City of Newport Beach. Encroachment consisting of landscaping or

development is not permitted on the sandy beach beyond the unimproved public right-of-way. However, there are instances of encroachment on the sandy beach in the vicinity of the subject site including placement of unpermitted landscaping, hardscape, and other structures, which are the subject of an on-going enforcement action by Commission staff. As stated above, the City has approved the plans in concept, including the encroachments. The encroachments are under the building permit, which will be reviewed by the City's Public Works Department and are subject to review and approval by that department.

The project includes a drainage system to manage runoff, including gutters and downspouts, drop inlets, an underground drain system, and onsite bottomless catch basins. All surface water runoff is directed away from the ocean and to the alley (Balboa Blvd. side) of the property.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future can not 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.

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 must 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 make use of, the coast and nearby recreational facilities. Therefore, as proposed the development 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 runoff from the project site into coastal waters. Furthermore, uncontrolled runoff from the project site and the percolation of

water could also affect the structural stability of bluffs and hillsides. To address these concerns, the development, as proposed and as conditioned, incorporates design features to minimize the infiltration of water and 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, the use of non-invasive drought tolerant vegetation, 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 a Special 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. 2014005, dated February 7, 2014; Coastal Development Permit

5-14-0425 (Newport Beach Partnership, LLC)

Application File No. 5-14-0425; Geotechnical Opinion Report for 1115 East Balboa Blvd., Newport Beach, California dated December 17, 2013 prepared by Coast Geotechnical, Inc. of Fullerton, California; Coastal Hazards and Wave Run-up Study, 1115 East Balboa, Newport Beach dated February 21 , 2014 by GeoSoils, Inc. of Carlsbad, California; Coastal Development Permit Number **P-80-7252** and Coastal Development Waiver number **5-94-129**.

EXHIBIT# 1

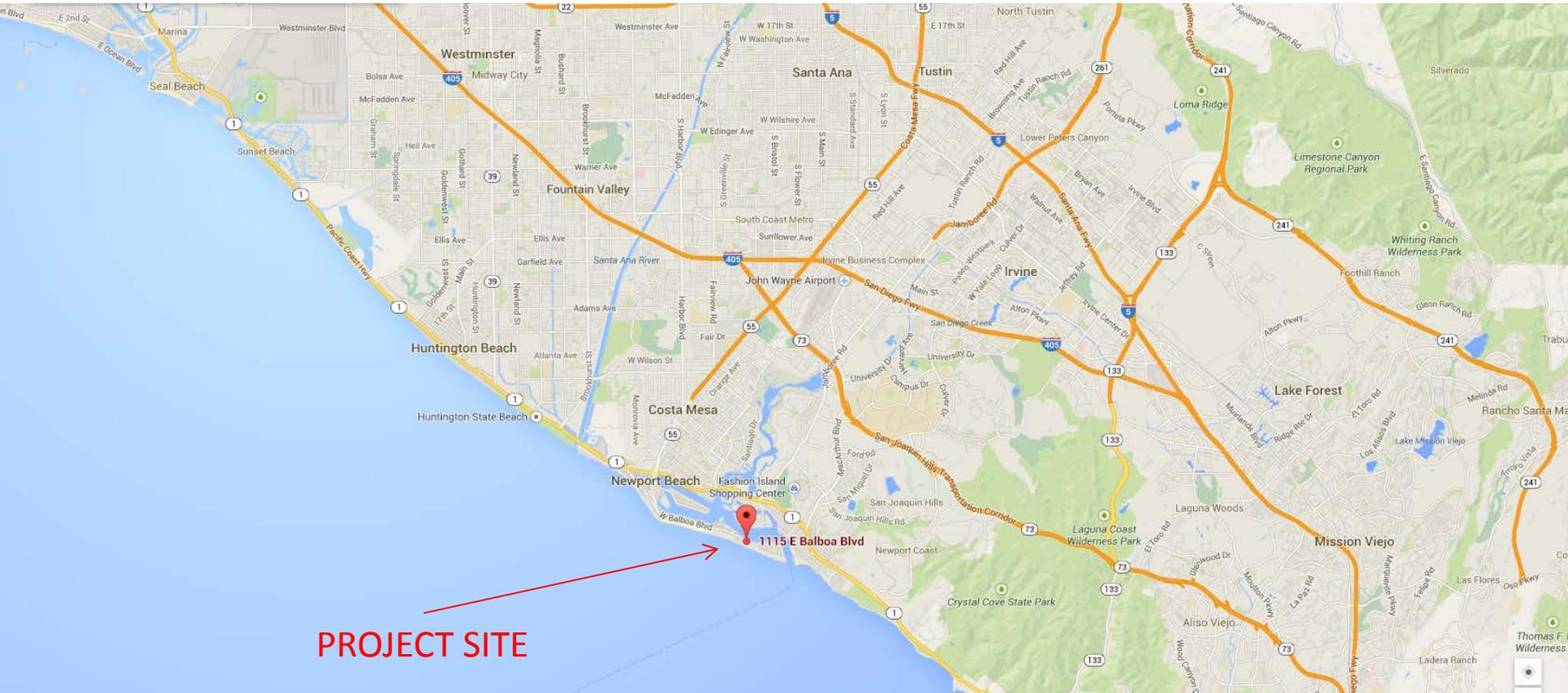
Vicinity Map
1 of 1

Application Number:

5 - 1 4 - 0 4 2 5



California Coastal
Commission



PROJECT SITE

EXHIBIT# 2
Aerial Photograph
1 of 1
Application Number:
5 - 1 4 - 0 4 2 5
California Coastal
Commission



EXHIBIT NO. 5

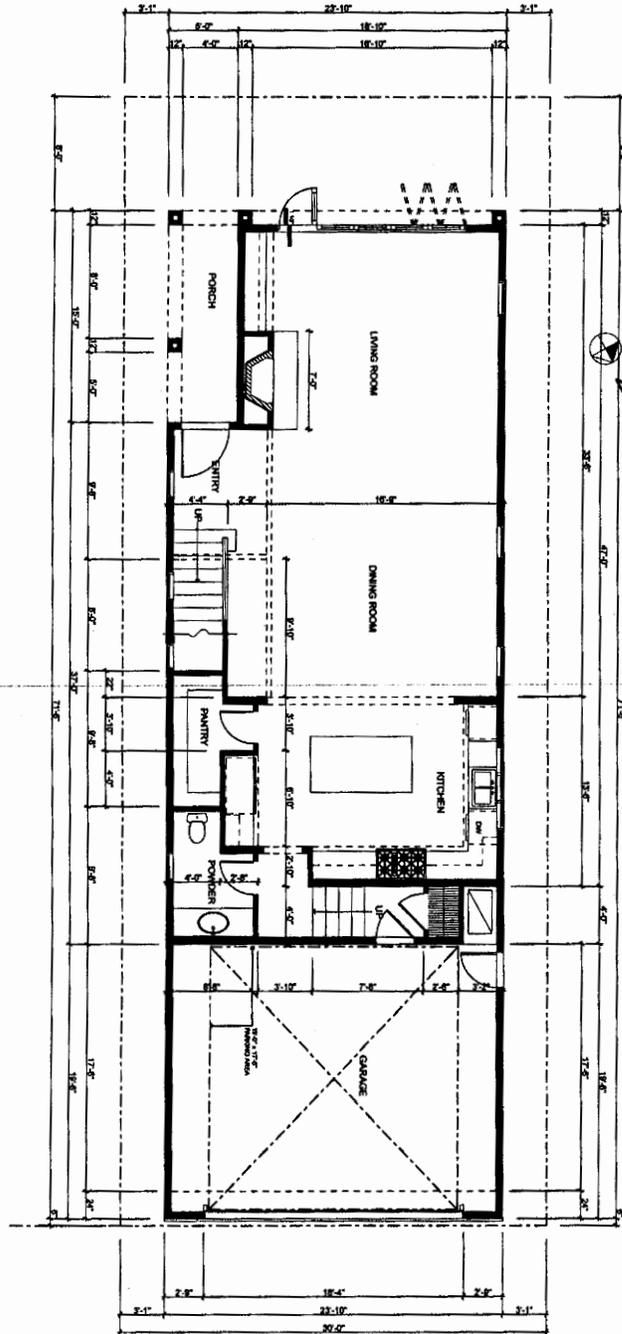
APPLICATION NO.

5-14-0425

FLOOR PLAN-LOWER LEVEL
1 OF 1 LEVEL



California Coastal Commission



LOWER LEVEL FLOOR PLAN

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

LOWER LEVEL FLOOR PLAN

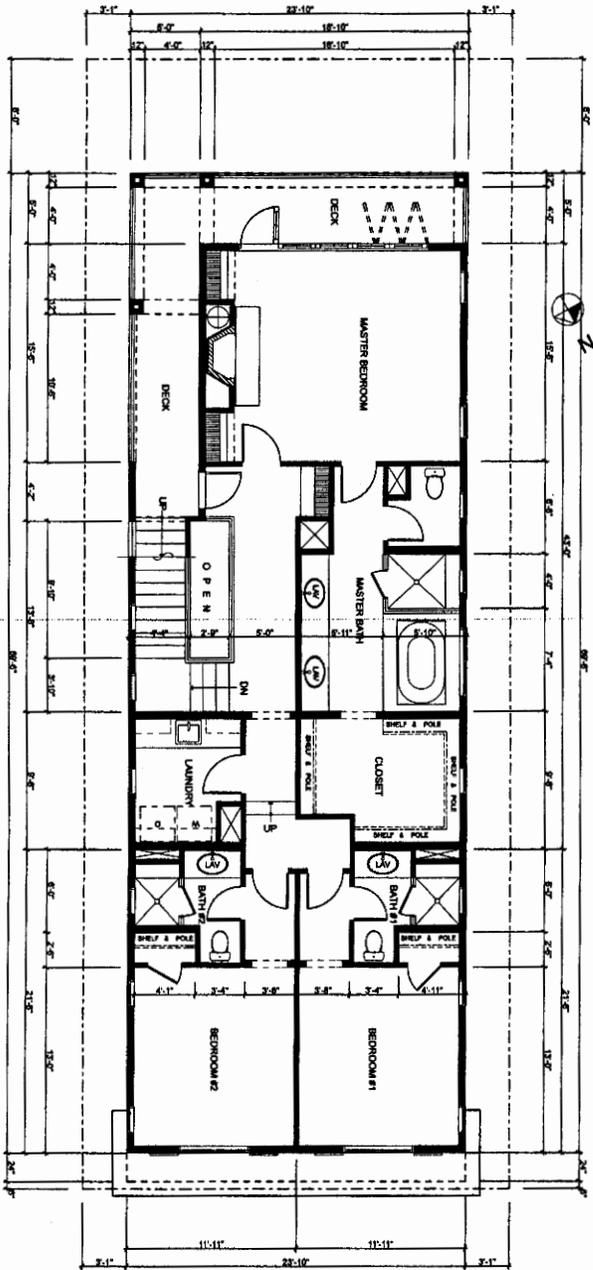
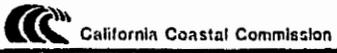
1115 EAST BALBOA, NEWPORT BEACH, CALIFORNIA
CUSTOM RESIDENCE FOR
NEWPORT BEACH PARTNERSHIP, LLC
3419 VIA LIDO #455
NEWPORT BEACH, CA 92661

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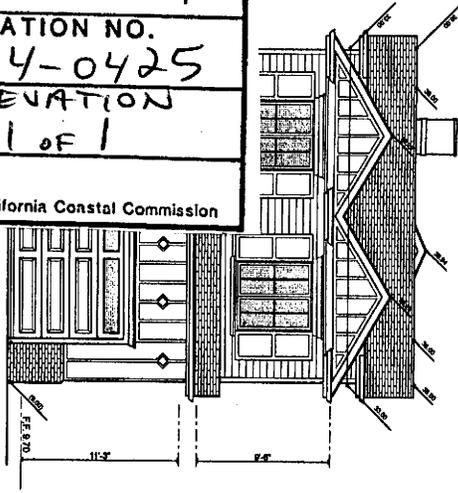
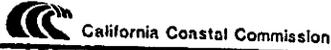
EXHIBIT NO. 6
APPLICATION NO.
5-14-0425
FLOOR PLAN - UPPER LEVEL
1 OF 1



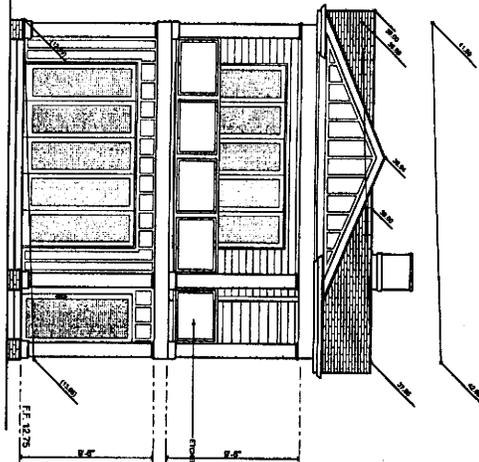
UPPER LEVEL FLOOR PLAN
 SCALE: 1/8" = 1'-0"

EXHIBIT NO. 7

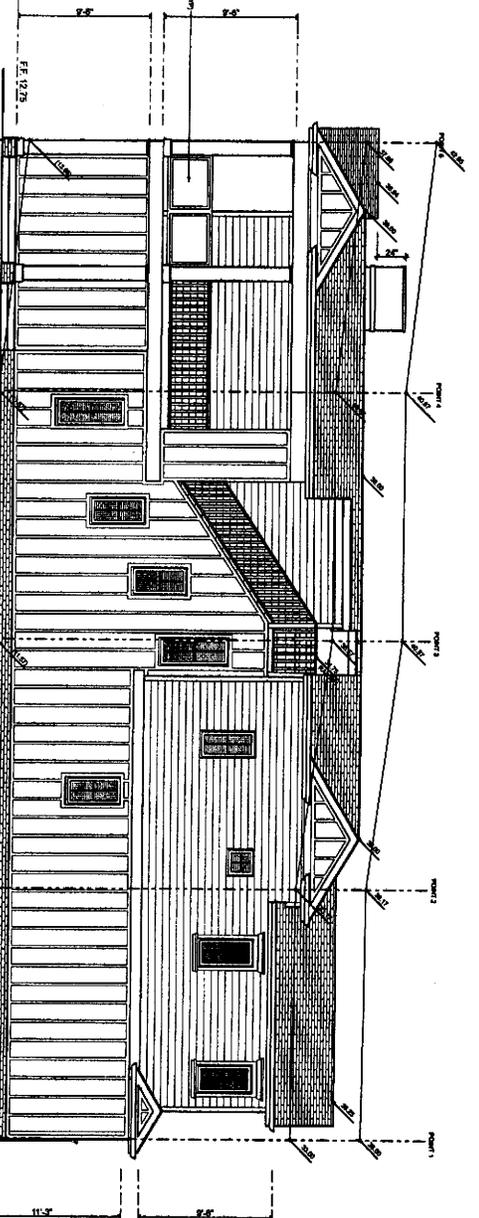
APPLICATION NO.
5-14-0425
ELEVATION
1 of 1



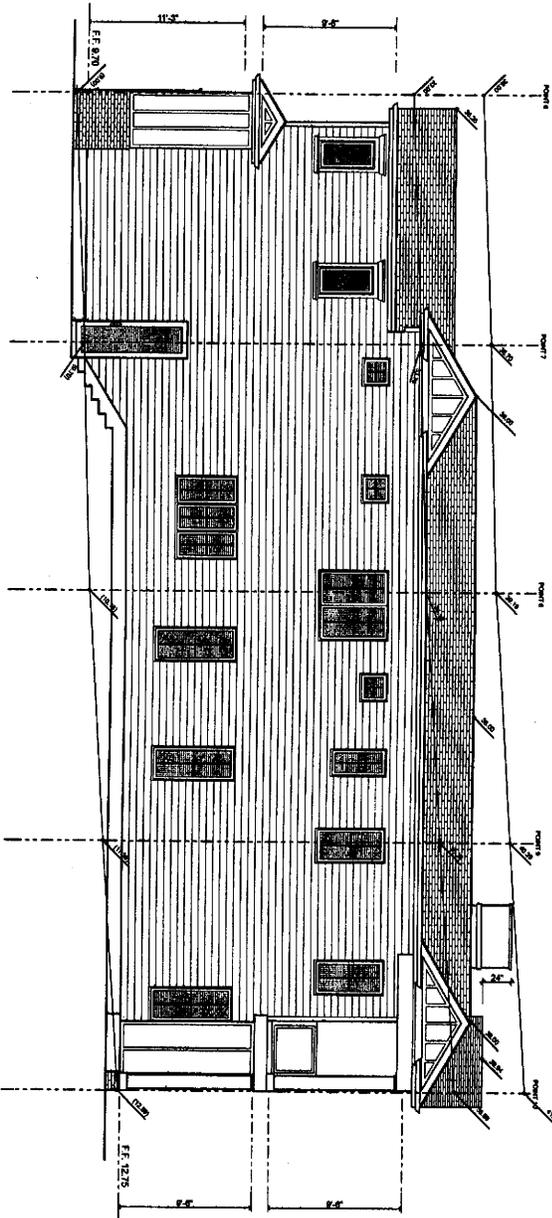
FRONT ELEVATION
SCALE: 1/8" = 1'-0"



RIGHT SIDE ELEVATION
SCALE: 1/8" = 1'-0"



LEFT SIDE ELEVATION
SCALE: 1/8" = 1'-0"



SLOPE CALCULATION (maximum allowable)
13.66 (High Point) less 8.22 (Low Point) equals 4.76
divided by 72 equals 6.61%

EXTERIOR ELEVATIONS

1115 EAST BALBOA, NEWPORT BEACH, CALIFORNIA
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