## CALIFORNIA COASTAL COMMISSION

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# **STAFF REPORT: REGULAR CALENDAR**

Application No.:	5-13-043
Applicants:	Jerrod Blandino & Jeremy Johnson
Agent:	EBTA Architects, Terry Chang
Project Location:	103 Shorecliff Road, Newport Beach, Orange County
Project Description:	Demolition of an existing single-family residence and construction of a 12,364 square foot, two-level single- family residence with a semi-subterranean basement; a 2,621 square foot subterranean garage; and a 501 square foot detached guest house on a coastal bluff top lot. In addition, the project consists of grading consisting of 3,260 cubic yards of cut, 190 cubic yards of fill and 3,070 cubic yards of export, and also removal of boulders located at the base of the coastal bluff.
Staff Recommendation:	Approval with conditions.

## SUMMARY OF STAFF RECOMMENDATION:

Commission Staff is recommending <u>APPROVAL</u> of the demolition and construction of a new single-family residence located between the first public road and the sea on a coastal bluff top lot overlooking the Pacific Ocean subject to wave erosion. Located at the base of the bluff are a revetment covered by vegetation that is associated with a section of repaired bluff, adjacent downcoast boulders located at the base of the natural bluff, a sandy and rocky beach that consists of tidepools, that have been visited frequently by the public; and then the Pacific Ocean. To the adjacent upcoast is the popular sandy public beach, Little Corona Beach. The level beach area

below the bluff is private beach to the mean high tide line (MHTL) that has historically been used by the public to access the ocean and beach. The part of the beach seaward of the mean high tide line, which would change depending on the tide, is public. Both, the private beach area located at the base of the bluff and the adjacent upcoast Little Corona Beach are popular areas used by the public to access the beach and ocean.

The revetment located at the base of the bluff, and on the applicants' property, was approved by the Coastal Commission pursuant to Coastal Development Permit No. A-81-7730, but the permit was never issued because a "*prior to issuance*" special condition, that required recordation of an offer to dedicate (OTD) a lateral public access easement, was never recorded. Nevertheless, the bluff repair work was done, including the bluff repair and installation of the revetment. The applicants are not seeking authorization for this existing unpermitted development through this application and approval of the proposed development does not authorize the bluff repair, including the revetment. Thus, this unpermitted development will be addressed separately by the Commission's Enforcement Division. In order to clarify that the approval of the proposed project does not authorize this unpermitted development, the Commission imposes **Special Condition No. 2**, which requires the applicants to submit final project plans that show and state that the existing unpermitted revetment located at the base of the coastal bluff is not permitted by any coastal development permit.

For development located on bluff top lots, the Commission has typically required that they conform to a minimum 25-foot setback from the bluff edge for primary structures (e.g. the enclosed living area of residential structures) and minimum 10 foot setback for secondary structures (e.g., patios, decks, garden walls) or requires conformance with the stringline setbacks, which are setback policies that are included in the City's certified Land Use Plan (last updated in 2009) to protect visual resources and also to ensure that hazards associated with the development are minimized and that new development does not rely on future shoreline or bluff protective devices. The proposed project is consistent with the 25-foot and 10-foot setbacks and the bulk of the proposed residence is actually setback further landward than the existing development. In addition, grading has been minimized to the least amount necessary and it does not encroach closer than 10-feet from the bluff edge and results in minimization of landform alteration. Therefore, the proposed project has been designed to minimize adverse impacts to visual resources and minimize landform alteration by designing a project that is located further inland than the existing residence and is consistent with the pattern of development of the surrounding area. As stated above, the project does adhere to the 25-foot and 10-foot setbacks and the site has been determined to be grossly stable and not reliant upon the revetment for stability. Therefore, hazards associated with the proposed project have been minimized and the project does not rely on future shoreline or bluff protective devices.

At the base of the natural bluff are stacked and strewn and based on information, the boulders have been placed on the beach years ago. The beach located at the base of the bluff where these boulders are located is private to the mean high tide line (MHTL), but has traditionally been used by the public to access the ocean and beach. In order to enhance public access, the applicants have proposed to remove the boulders located at the base of the natural bluff on their private property. In order to make sure that public access is not adversely impacted by the removal of

these boulders, the Commission imposes **Special Condition No. 8**, which prohibits construction on the beach during the "*peak use*" beach season, defined as the period starting the day before the Memorial Day weekend (end of May) and ending the day after the Labor Day weekend (Beginning of September) of any year. In order to remove the boulders, the applicants need an encroachment permit for the City of Newport Beach, but they have only provided preliminary approval form the City for this activity. Thus, the Commission imposes **Special Condition No. 8**, which requires the applicant to provide an encroachment permit from the City prior to removal of the boulders. Lastly, in order to verify that the boulders located at the base of the natural bluff are removed, the Commission has imposed **Special Condition No. 8**, which requires that the boulders be removed within ninety (90) after issuance of the coastal development permit.

Section 30600(c) 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 (LCP). The City of Seal Beach does not have a certified Local Coastal Program. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act.

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## APPENDICES

Appendix 1 – Substantive File Documents

## EXHIBITS

- Exhibit #1 Location Maps
- Exhibit #2 Existing & Proposed Site Plans
- Exhibit #3 Floor Plans
- Exhibit #4 Elevation/Section Plans

## I. MOTION AND RESOLUTION

## Motion:

I move that the Commission **approve** Coastal Development Permit No. 5-13-043 pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

## **Resolution**:

The Commission hereby approves Coastal Development Permit 5-13-043 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 will 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 permittees 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 permittees to bind all future owners and possessors of the subject property to the terms and conditions.

# **III. SPECIAL CONDITIONS**

1. **Conformance with Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the Executive Director's review and approval, along with two (2) full size sets of plans, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans including foundation and grading/drainage plans and certified that each of those final plans is consistent with all the recommendations contained in the geologic engineering investigations.

All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the geologic engineering investigation: *Geotechnical and Geologic Investigation of Proposed New Residence at 103 Shorecliff Road, Newport Beach, CA (W.O. 453713-01)* prepared by Coast Geotechnical, Inc. dated May 1, 2013. The proposed foundation system is slab on grade. If at any time, it is determined that a foundation system consisting of deepened foundation elements (e.g. caissons) is needed to support any of the proposed development (e.g. the residence), an amendment to this permit or a new permit shall be required in order to implement such recommendations. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the submitted investigations approved by the Executive Director.

The applicants shall undertake development in accordance with the approved 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 unless the Executive Director determines that no amendment is legally required.

2. **Final Project Plans.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the Executive Director's review and approval, two (2) full size sets of a final project plans, including floor, elevation, grading, drainage, shoring, foundation, etc. The final project plans shall be in substantial conformance with the plans received by South Coast District staff on May 24, 2013, except they shall be modified according to the following:

The revised project plans shall identify the unpermitted coastal bluff repair, including the revetment that was installed as part of the coastal bluff repair, and will label these items with the following: "*These elements are not part of coastal development permit no. 5-13-043.*"

The applicants shall undertake development in accordance with the approved 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 unless the Executive Director determines that no amendment is legally required.

## 3. Revised Final Landscape/Irrigation Plans

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of revised final landscape/irrigation plans prepared by an appropriately licensed professional which demonstrates the following:
  - (1) The plans shall demonstrate that:
    - (a) All planting shall provide 90 percent coverage within ninety (90) days and shall be repeated if necessary to provide such coverage;
    - (b) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
    - (c) Landscaped areas not occupied by hardscape shall be planted and maintained for slope stability and erosion control. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent or nearby native plant areas, all landscaping shall consist of native drought tolerant on-invasive plant species native to coastal Orange County and appropriate to the habitat type. No plant species listed as problematic and/or invasive by the California Native Plant Society (http://www.CNPS.org/), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (http://www.cal-ipc.org/), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf); and
    - (d) No permanent irrigation system shall be allowed on the coastal bluff. Any existing in-ground irrigation systems on the coastal bluff shall be disconnected and capped. Temporary above ground irrigation to allow the establishment of the plantings is allowed.

The landscaping plan shall show all the existing vegetation and any existing irrigation system.

- (2) The plan shall include, at a minimum, the following components:
  - (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and
  - (b) a schedule for installation of plants.
- **B.** The applicants shall undertake development in accordance with the approved 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.
- 4. Assumption of Risk, Waiver of Liability and Indemnity. By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion; (ii) to assume the risks to the applicants 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.
- 5. No Future Bluff or Shoreline Protective Devices. By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-13-043 including, but not limited to, the residence, foundations, decks, balconies, patios, hardscape and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future. By acceptance of this permit, the applicants/landowners hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

By acceptance of this permit, the applicants/landowners further agree, on behalf of themselves and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the residence, foundations, decks, balconies, patios, hardscape and any other future improvements 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 landowner 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.

In the event the edge of the bluff recedes to within five (5)-feet of the principal residence but no government agency has ordered that the structures are not to be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the applicants, that addresses whether any portions of the residence are threatened by bluff and slope instability, erosion, landslides, sea level rise or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without bluff or shore protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittees shall, within ninety (90) days of submitting the report, apply for a coastal development permit amendment to remedy the hazard which shall include removal of the threatened portion of the structure.

- 6. Future Improvements. This permit is only for the development described in Coastal Development Permit No. 5-13-043. 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 this development governed by the Coastal Development Permit No. 5-13-043. Accordingly, any future improvements to the structures 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 Coastal Development Permit No. 5-13-043 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- 7. **Construction Best Management Practices.** The permittees shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:
  - **A.** No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
  - **B.** Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
  - **C.** Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;

- D. Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction.
  BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- **E.** All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- A. The applicants shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These 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. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- **B.** The applicants shall develop and implement spill prevention and control measures;
- C. The applicants shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a stormdrain, open ditch or surface water; and
- **D.** The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.
- 8. Boulder Removal. By acceptance of this permit, the applicants agree to the following:
  A. Remove all boulders located along the base of the bluff below the natural bluff and the applicants' western property line (generally depicted in Exhibit #2, page 1 of 1) within ninety (90) days after of issuance of the coastal development permit. Any additional time to comply with removal of these boulders may be granted by the Executive Director.
  - **B.** No construction shall occur during the "peak use" coastal recreation season, defined as the period starting the day before the Memorial Day weekend (end of May) and ending the day after the Labor Day weekend (Beginning of September) of any year; and

**C.** Prior to removal of the boulders located at the base of the natural bluff, the applicants shall submit an encroachment permit from the City of Newport Beach that allows the applicants to access City property in order to remove the boulders.

## 9. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT

PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) 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 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 AND PREVIOUS COMMISSION ACTION ON SUBJECT SITE

#### 1. Project Location and Description

The proposed project site is located at 103 Shorecliff Road, in the Shorecliff area of Newport Beach (Corona Del Mar). The subject site is between the first public roadway and the sea on a coastal bluff top lot overlooking the Pacific Ocean subject to wave erosion (Exhibit #1). The site is a 25,852 square foot lot designated Low Density Residential by the City of Newport Beach Land Use Plan (LUP) and the proposed project adheres to this designation. The project is located within an existing developed urban residential area. The site is surrounded by single-family residential development to the north, south and east. To the west of the project site is an approximately 40-45-foot high coastal bluff. At the base of the bluff are a revetment covered by vegetation that is associated with a section of repaired bluff (to be discussed further in this staff report), adjacent downcoast boulders located at the base of the natural bluff, a sandy and rocky beach that consists of tidepools, that have been visited frequently by the public; and then the Pacific Ocean (Exhibit #2, page 1 of 1). To the adjacent upcoast is the popular sandy public beach. Little Corona Beach. The revetment at the base of the bluff, and on the applicants' property, was approved by the Coastal Commission pursuant to Coastal Development Permit No. A-81-7730, but the permit was never issued because a "prior to issuance" special condition that required recordation of an offer to dedicate (OTD) a lateral public access easement was never recorded. Thus, the bluff repair, including the installation of the revetment, is unpermitted development and will be handled separately by the Commission's Enforcement Division (to be discussed further in this staff report).

The subject site is located between the first public roadway and the sea. Adequate access and public recreation opportunities exist nearby at Little Corona Beach, a sandy public beach located to the adjacent upcoast of the site. In addition, at the base of the bluff is also an easily accessible beach area that consists of tidepools that have been frequently visited by the public, such as school children.

The proposed project consists of demolition of an existing 3,530 square foot single-family residence and the construction of a new 12,364 square foot (3,153 square foot semi-subterranean basement, 4.710 square foot 1<sup>st</sup> floor and 4.500 square foot 2<sup>nd</sup> floor) single-family residence. approximately 26'-6" above finished grade, with a 2,621 square foot subterranean five (5) car garage on a coastal bluff top lot (Exhibits #2-4). A 501 square foot detached guest house located on the inland portion of the property near the street is also proposed. The project also includes hardscape; landscaping; an internal driveway to the subterranean garage; an internal courtyard; and side yard property line walls. Hardscape and landscape work will take place in the rear yard along the bluff top, but will be setback 10-feet from the bluff edge. Grading will consist of approximately 3,260 cubic yards of cut, 190 cubic yards of fill and 3,070 cubic yards of export to a location outside of the Coastal Zone. The grading limit line is 10-feet from the bluff edge. The applicants have stated that the preliminary foundation system for the residence and rear vard hardscape improvements will consist of a conventional slab-on-grade system. The proposed development conforms to both the 25-foot bluff edge setback for primary structures and the 10foot setback for secondary structures. The proposed semi-subterranean basement daylights to a west facing basement level courtyard facing the western (seaward-facing) property line. The subterranean garage accommodate a total of five (5) cars for the development; exceeding the Commission's typical parking standard of two (2) parking spaces per dwelling unit.

The applicants have stated that shoring walls along the sideyards that includes piles are also proposed. The shoring system will be setback more than or at least 25-feet from the bluff edge setback.

The applicants have stated that all onsite runoff will be collected through a series of drain inlets and drainage pipes. Once collected, all runoff will be directed to a catch basin at the northeast corner of the project site, fitted with a treatment filter. After being treated, all runoff will be directed to the street via a sump pump. No runoff will be allowed to drain over the bluff.

Since submittal of the application, elements of the projects have been revised such as removal of development (i.e. overflow pipe) that was once located within 10-feet of the bluff edge and the inclusion of a sump pump. Additionally, while the applicants stated that shoring is proposed and that it will not be located within the 25-foot setback, the applicants have only submitted reduced size plans. In addition, the applicants have only submitted a preliminary foundation plan for the proposed slab on grade foundation system. A final plan is necessary. Therefore, the Commission imposes **Special Condition No. 2**, which requires the applicants to submit final project plans.

2. Previous Commission Action on Subject Site

On April 13, 1981, the Commission approved Coastal Development Permit No. A-81-7730-(Hurtt) for the repair of a coastal bluff that was damaged by erosion. The bluff repair included grading and re-contouring the slope, planting of an appropriate ground cover, construction of a large, vertical "V" channel and placement of a rock revetment at the base of the bluff. One (1) special condition was imposed, which required the applicant at that time to execute and record a document irrevocably offering to dedicate to a public agency or private association approved by the Executive Director, an easement for public access and passive recreational use along the shoreline. Such easement would have included all lands seaward of the base of the bluff (as determined by the Executive Director) to the Mean High Tide line. While the project was approved by the Commission, the coastal development permit was never issued since the easement was never recorded. However, the project was constructed without issuance of a coastal development permit for the development.

#### **B. SCENIC RESOURCES**

Section 30251 of the Coastal Act pertains to visual resources. It states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas...

Section 30251 of the Coastal Act requires that scenic and visual qualities of coastal areas be protected. The project is located on a coastal bluff top lot overlooking the Pacific Ocean. The site is visible from public vantage points, including the ocean, the beach area below the bluff and the nearby Little Corona Beach. Because the new residence will potentially affect views from public vantage points any adverse impacts must be minimized. Consequently, it is necessary to ensure that the development will be sited to protect views to and along the ocean and minimize the alteration of existing landforms.

The Commission has typically required new development located on bluff top lots to conform to a minimum 25-foot setback from the bluff edge for primary structures (e.g. the enclosed living area of residential structures) and minimum 10 foot setback for secondary structures (e.g., patios, decks, garden walls) or requires conformance with the stringline setbacks, which are setback policies that are included in the City's certified Land Use Plan (last updated in 2009) to protect visual resources. The existing and proposed developments do not adhere to the stringline setbacks with adjacent structures. Due to the irregular orientation of the lot, consistency with the stringline is difficult. Additionally, while the proposed hardscape (secondary structures) does encroach seaward, the bulk of the proposed residence is actually setback further inland than the existing residence. Thus, the proposed project has been designed to minimize adverse impacts by designing the residence to be located further landward than the existing residence. While the project does not adhere to the stringline, the proposed development enhances visual resources and results in a project that is consistent with the pattern of development in the surrounding area. 5-13-043-(Blandino & Johnson) Regular Calendar

No public views of the ocean area are available from the project site, but public views of the coastal bluff are available from the ocean, the beach area below the bluff, and the nearby Little Corona Beach located upcoast. The view of the coastal bluff has been enhanced and landform alteration of the coastal bluff has been minimized by designing a project that does not encroach any further seaward than the existing residence. Additionally, grading has been minimized to the least amount necessary and it does not encroach closer than 10-feet from the bluff edge and therefore resulting in minimization of landform alteration. Therefore, the proposed project does not result in adverse impacts to visual resources and is consistent with the pattern of development in the surrounding area.

#### Conclusion

The Commission finds that, as proposed, the project will not obstruct significant coastal views from public vantage points and is consistent with the visual resource protection policies of Section 30251 of the Coastal Act.

## C. HAZARDS

Section 30253 of the Coastal Act states, in pertinent part:

*New development shall:* 

- (*l*) *Minimize risks to life and property in areas of high geologic, flood, and fire hazard.* 
  - (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30253 of the Coastal Act requires that new development assures stability and structural integrity and does not create or contribute to significant erosion, geologic stability of destruction of the area in any way that necessitate the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The subject site is a coastal bluff top lot where the base of the bluff is periodically subject to direct wave attack. Development on a bluff is inherently risky due to the potential for bluff erosion and collapse. Bluff development poses potential adverse impacts to the geologic stability of bluffs and the stability of residential structures. In general, bluff instability is caused by environmental factors and impacts caused by humans. Environmental factors include seismicity, wave attack, wetting and drying of soils, wind erosion, salt spray erosion, rodent burrowing, percolation of rain water, poorly structured bedding, and soils conducive to erosion. Factors attributed to humans that may be relevant to this site include irrigation, over-watering, building too close to the bluff edge, improper site drainage, use of impermeable surfaces that increase runoff, use of water-dependent vegetation, and breaks in water or sewage lines.

The geologic stability and coastal hazards study was conducted by Coast Geotechnical, Inc. in a report titled "*Geotechnical and Geologic Investigation of Proposed New Residence at 103* Shorecliff Road, Newport Beach, CA (W.O. 453713-01) dated May 1, 2013. The dominant earth

materials found onsite are terrace deposits and bedrock. There was a previous landslide onsite along the bluff face years ago and the property owner at that time applied for a coastal development permit to rectify the situation. On April 13, 1981, the Coastal Commission approved Coastal Development Permit No. A-81-7730-(Hurtt) for repair of the coastal bluff. The repair included grading and re-contouring the slope, planting of an appropriate ground cover, construction of a large, concrete, vertical "V" channel and placement of a revetment at the base of the bluff. Coastal Development Permit No. A-81-7730 required a prior to issuance condition, requiring recordation of an offer to dedicate lateral public access easement along the base of the bluff at the shoreline. However, the required OTD was never recorded and Coastal Development Permit No. A-81-7730 was never issued. However, the bluff repair and revetment were installed nevertheless. Thus, the bluff repair work, including installation of the revetment is unpermitted development. The applicants are not seeking authorization for this existing unpermitted development through this application and approval of the proposed development does not authorize the bluff repair and revetment. Therefore, this unpermitted development will be addressed through a separate enforcement procedure. Therefore, in order to clarify that the approval of the proposed project does not authorize this unpermitted development, the Commission imposes Special Condition No. 2, which requires the applicants to submit final project plans that show and state that the existing unpermitted revetment located at the base of the coastal bluff is not permitted by any coastal development permit.

The submitted geotechnical report indicates that the slope is stable and that the revetment is not necessary for the stability of the residence. However, that does not preclude the possibility that a surficial failure could occur at areas of steepened slope wash and or steepened weathered bedrock due to poor irrigation practices, heavy prolonged rain, poor site drainage or other factors. Regarding wave erosion, review of aerial photos did not show evidence of wave action along the base of bluff and that observation at high tide found wave runup to just reach the base of the bluff and to lack significant energy to erode the base, thus resulting in significant undercutting or slope stability. The geotechnical investigation concludes that the project is geotechnically feasible and that: "...the proposed residence will not be subject to erosion or stability hazard over the course of its design life [75 years] and that no additional seawall, revetment, jetty, groin, retaining wall, or other shoreline protective device will be needed to protect the development over the course of its design life, normally assigned to a residence, provided recommendations of this report are incorporated into the project design." Recommendations relate to site preparation and grading, general foundation design and drainage; and etc. The Commission imposes Special Condition No. 1 requiring the applicants to submit final plans certified by a licensed geotechnical professional consistent with the recommendations specified in the geotechnical report.

On bluff top lots in Newport Beach subject to Commission review, the Commission has typically required new development to conform to a minimum 25-foot setback from the bluff edge for primary structures (e.g. the enclosed living area of residential structures) and minimum 10 foot setback for secondary structures (e.g., patios, decks, garden walls) or requires conformance with the stringline setbacks. These setback policies are included in the City's certified Land Use Plan (last updated in 2009). The bluff edge setback is imposed in order to ensure that the development conforms to Section 30253 of the Coastal Act which requires that hazards be minimized and that new development will not have to rely on future shoreline or bluff protection

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devices. Although the site has currently been found to be grossly stable from a geotechnical perspective, bluffs are subject to forces that cause instability and geologic predictions of site stability over the life of the proposed development cannot be made with certainty. Thus, the Commission requires a bluff edge setback that would provide the most protection from coastal hazards for new development without having to rely on future bluff protection devices given the inherent uncertainty in predicting geologic processes in the future, and to allow for potential changes in bluff edge setback for primary structures and the 10-foot setback for secondary structures. As discussed previously, the existing and proposed developments do not adhere to the stringline setbacks with adjacent structures due to the irregular orientation of the lot. Additionally, while the proposed hardscape (secondary structures) does encroach seaward, the bulk of the proposed residence is actually setback further inland than the existing residence.

Additionally, all new improvements further seaward of the proposed residence including hardscape and a concrete patio also conform to the certified LUP 10-foot bluff edge setback requirement for non-structural, at-grade accessory structures on bluff top lots. The proposed project is consistent with the pattern of development in the surrounding area. In addition, no grading or landscaping is proposed within the 10-foot bluff edge setback.

To minimize the project's potential future impact on shoreline processes, the Commission imposes Special Condition No. 5, which prohibits construction of any future bluff or shoreline protective device(s) to protect the development approved pursuant to Coastal Development Permit No. 5-13-043 including, but not limited to residence, foundations, decks, balconies, patios, hardscape and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future. Pursuant to **Special** Condition No. 5, the applicants agree to waive any right to construct any future bluff or shoreline protective devices such as revetments, seawalls, caissons, cliff retaining walls, shotcrete walls, and other such construction that armors or otherwise substantially alters the bluff. Additionally, Special Condition No. 5 does not preclude the applicants from applying for future coastal development permits for maintenance of existing development or future improvements to the site (other than bluff top or shoreline protective devices) including landscaping and drainage improvements aimed to prevent slope and bluff instability. The Commission would determine the consistency of such proposals with the Coastal Act in its review of such applications.

Development on coastal bluff sites is inherently dangerous; therefore, the Commission imposes **Special Condition No. 4**, which requires the applicants to assume the risk of development. By this means, the applicants are notified that the proposed development is built in an area that is potentially subject to bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion that can damage the applicants' property. The applicants are also notified that the Commission is not liable for such damage as a result of approving the permit for development. Finally, the condition requires the applicants to waive claims against the Commission and indemnify the Commission for third-party claims.

The proposed 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 at the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that development on the site does not occur which could potentially adversely impact the geologic stability concerns expressed in this staff report, the Commission imposes **Special Condition No. 6**, which informs the applicants that future development at the site requires an amendment to Coastal Development Permit No. 5-13-043 or a new coastal development permit. Future development includes, but is not limited to, structural additions, landscaping, hardscape and fencing.

During construction, there is potential for adverse impacts to water quality and marine resources. During construction, the applicants will be required to implement best management practices (BMPs) designed to minimize erosion and prevent debris from entering the storm drain system and the ocean. In order to minimize adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition No. 7**, which provides construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. These best management practices (BMP) are designed to minimize erosion and prevent debris from being dispersed down the coastal bluff or the storm drain system leading to the ocean.

Regarding onsite drainage, the applicants have stated that all onsite runoff will be collected through a series of drain inlets and drainage pipes. No runoff will be allowed to drain over the bluff. A swale will be constructed on the inland side of the 10-foot bluff edge setback that will collect all runoff just above the bluff and direct it into the drainage system. Once collected, all runoff will be directed to a catch basin fitted with a treatment filter located at the northeast corner of the project site. After being treated, all runoff will be directed to the street via a sump pump.

No portion of the applicants' development area contains resources that rise to the level of ESHA. Nevertheless, preservation and enhancement of the City's coastal bluffs is a goal supported by both the environmental protection policies of the Coastal Act, and the certified Land Use Plan (LUP). Encroachment onto the bluff by development increases the potential for the introduction of non-native plant species, and predation of native species by domestic animals, and destabilization of the coastal bluff from excess irrigation.

Furthermore, due to the fragile nature of coastal bluffs and their susceptibility to erosion, the Commission requires a special condition regarding the types of vegetation to be planted. The use of non-native vegetation that is invasive can have an adverse impact on native vegetation. Invasive plants are generally those identified by the California Invasive Plant Council (http://www.cal-ipc.org/) and California Native Plant Society (www.CNPS.org). No plant species listed as problematic and/or invasive by the California Native Plant Society or the California Invasive Plant Council 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 shall be utilized within the property.

The applicants have submitted a landscape/irrigation plan. Commission staff has reviewed the plan and determined that it contains a mixture of plants that are invasive and not drought tolerant. The following plants were found to be invasive: *Vinca Minor* and *Hedera Helix*. The following plants are not drought tolerant: *Buxus Sempervirens, Pittosporum Crassifolium 'Karo', Festuca Ruba 'Red Fescue', Iris Douglasiana, Convallaria Majalis, Scilla Peruviana, Tradescantia, Buxus Sempervirens, Wisteria, Acanthus Mollis, Magnolia Grandiflora, Clytostoma Callistegioides, Rosa, Hydrangea Quercifolia, Pathenocissus Tricuspidata, Trachelospernum Jasminiodes, Ficus Benjamin, Matteuccia Struthiopteris, Galium Odoratum, Carax Divusa, Dierama Pulcherrimum, Zephyrantes 'Rain Lily', Allium Cerenium, and Aqyulegia Caerulea. Therefore, the landscape/irrigation plan must be revised to remove the plants listed above that were determined not to be drought tolerant or non-invasive in order to minimize excess water on the property that could lead to instability and to reduce impacts to native plants. Therefore, the Commission imposes Special Condition No. 3, which requires the applicants revise the proposed landscape /irrigation plans so it only includes native drought tolerant non-invasive plant species native to coastal Orange County and appropriate to the habitat type* 

Initially, permanent in-ground irrigation was proposed in the rear yard on the bluff. The applicants have since indicated that the permanent in-ground irrigation will be removed. However, revised landscape/irrigation plans identifying this have not yet been submitted. Therefore, the Commission imposes **Special Condition No. 3**, which requires the applicants to submit revised landscape/irrigation plans

### **Conclusion**

The Commission has required **Seven (7) special conditions**, which are intended to bring the proposed development into conformance with Section 30253 of the Coastal Act. These special conditions include: 1) evidence of conformance with geotechnical recommendations; 2) submittal of final project plans; 3) submittal of final landscaping/irrigation plans; 4) assumption of risk; 5) no future bluff or shoreline protective devices; 6) additional approvals for any future development; and 7) construction best management practices. Only as conditioned to comply with the provisions of these special conditions does the Commission find that the proposed development conforms with Section 30253 of the Coastal Act.

## **D. PUBLIC ACCESS**

Section 30240(b) of the Coastal Act states:

Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The project site is a coastal bluff top lot situated on the seaward side of Shorecliff Road, which is the first public road immediately inland of the beach. At the base of the bluff is an easily accessible beach area that consists of tidepools that have been frequently visited by the public, such as school children. Also, to the adjacent upcoast is Little Corona Beach, which is a popular

sandy public beach. The level beach area of this lot that is located at the base of the bluff is private beach to the mean high tide line (MHTL) that has historically been used by the public to access the ocean and beach. The part of the beach seaward of the mean high tide line, which would change depending on the tide, is public. Both, the private beach area located at the base of the bluff and the adjacent upcoast Little Corona Beach are popular areas used by the public to access the beach and ocean. The public accessway to Little Corona Beach and this traditionally publicly used beach area is located at the east end of Ocean Boulevard, approximately 700-feet to the northwest of the subject site. Development at the project site, if approved, must be sited and designed to be compatible with Section 30240(b) of the Coastal Act. Section 30240(b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts that would significantly degrade those areas. It is necessary to ensure that new development be sited and designed to prevent seaward encroachment of development that would impact public access to coastal resources. The proposed development would not result in significant new development encroaching seaward and impacting public access. While the proposed development does not adhere to the stringline setbacks with adjacent structures due to the irregular orientation of the lot, the bulk of the proposed residence is actually setback further inland than the existing residence. Thus, the proposed development does not result in adverse impacts public access. The site is currently developed with a single-family residence and upon completion of the project the development will remain as a single-family residence. In addition, the proposed development would provide more than adequate parking based on the Commission's regularly used parking standard of two (2) parking spaces per individual dwelling unit.

At the base of the bluff is a revetment covered by vegetation that is associated with a section of repaired bluff, adjacent downcoast boulders located at the base of the natural bluff, sandy and rocky beach (Little Corona Beach), and then the Pacific Ocean (Exhibit #2, page 1 of 1). Based on information, the boulders have been placed on the beach years ago. They are stacked and strewn along the beach area. The beach located at the base of the bluff is private to the mean high tide line (MHTL), but has traditionally been used by the public to access the ocean and beach. In order to enhance public access, the applicants have proposed to remove the boulders located at the base of the natural bluff on their private property. However, construction activities during the "peak beach use" (as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year) to remove these boulders may adversely impact public recreational opportunities. Thus, Commission imposes Special **Condition No. 8**, which prohibits construction on the beach during the "*peak use*" beach season, defined as the period starting the day before the Memorial Day weekend (end of May) and ending the day after the Labor Day weekend (Beginning of September) of any year. In order to access the site for removal of those boulders, the applicant must encroach onto City property that would require an encroachment permit from the City of Newport Beach. The applicant has provided preliminary approval from the city for this activity. The City has stated that they would not allow work to occur until after Labor Day due to concerns of work activity taking place during the "peak beach use" and impacting public access, similar to Coastal Commission concerns. Thus, the Commission imposes **Special Condition No. 8**, which requires the applicant to provide an encroachment permit from the City prior to removal of the boulders. In order to verify that the boulders located at the base of the natural bluff are removed, the Commission has imposed

**Special Condition No. 8**, which requires that the boulders be removed within ninety (90) after issuance of the coastal development permit.

## **Conclusion**

The Commission has required **Special Condition No. 8**, which is intended to bring the proposed development into conformance with Section 30240(b) of the Coastal Act. This special condition does the following: a) prohibits construction during the "*peak use*" beach season, defined as the period starting the day before the Memorial Day weekend and ending the day after the Labor Day weekend of any year; b) requires the applicant to provide an encroachment permit from the City prior to removal of the boulders; and c) requires that the boulders be removed within ninety (90) after issuance of the coastal development permit. Only as conditioned to comply with the provisions of this special condition does the Commission find that the proposed development conforms with Section 30240(b) of the Coastal Act.

## E. UNPERMITTTED DEVELOPMENT

Development has occurred on the subject property without benefit of the required coastal development permit including, but not limited to, repair of a coastal bluff including installation of revetment at the base of the coastal bluff. Commission Enforcement staff is currently considering options to resolve the unpermitted development.

Although development has occurred prior to submission of this coastal development permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit application does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

## 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 (**Special Condition No. 8**) 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 (LCP)

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 last updated in 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.

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is Categorically Exempt from Provisions of CEQA for the construction. Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of CEQA.

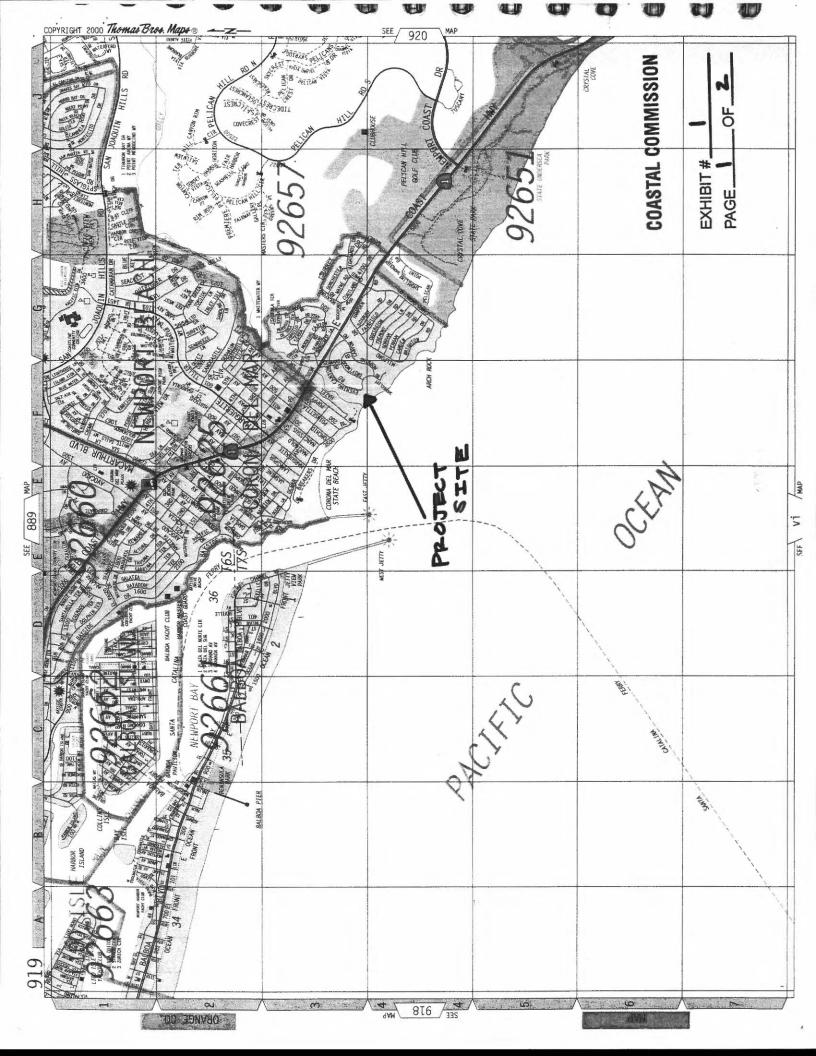
Although the proposed development is categorically exempt from CEQA, the Commission has imposed the following conditions to ensure conformity with Coastal Act requirements, regarding: 1) evidence of conformance with geotechnical recommendations; 2) submittal of final project plans; 3) submittal of final landscaping/irrigation plans; 4) assumption of risk; 5) no future bluff or shoreline protective devices; 6) additional approvals for any future development; and 7) construction best management practices; 8) boulder removal; and 9) a deed restriction against the property, referencing all of the special conditions contained in this staff report.

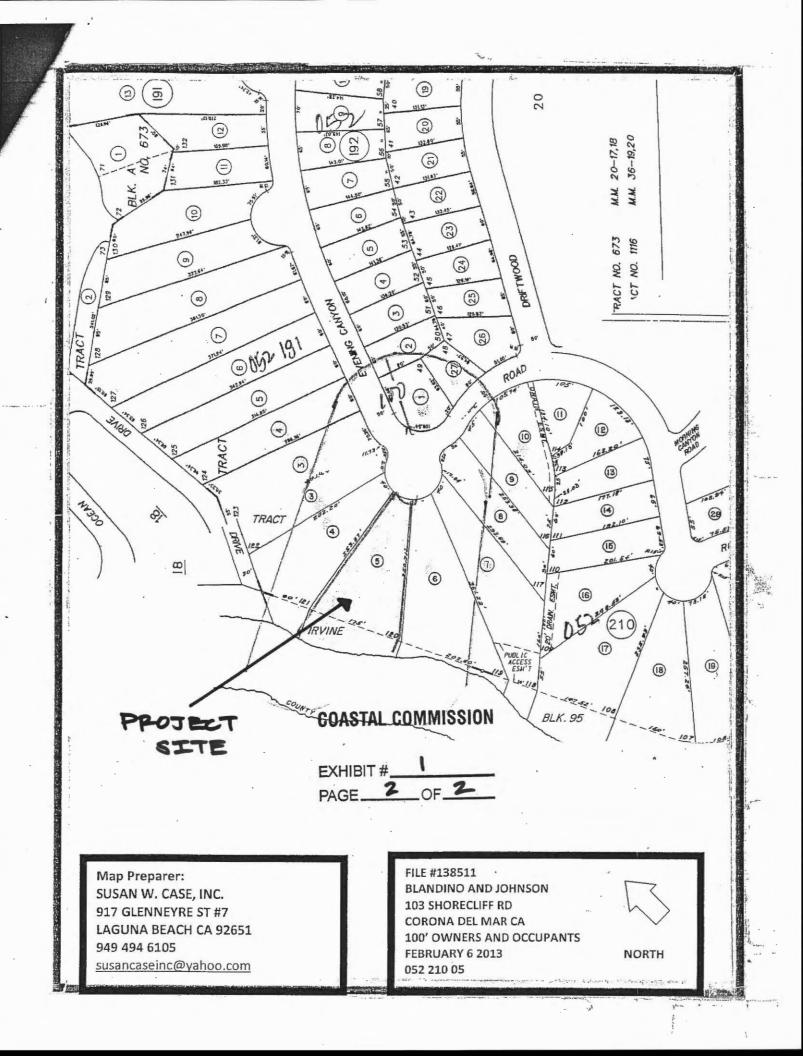
Therefore, as conditioned, the Commission finds that there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and consistent with the requirements of the Coastal Act and CEQA.

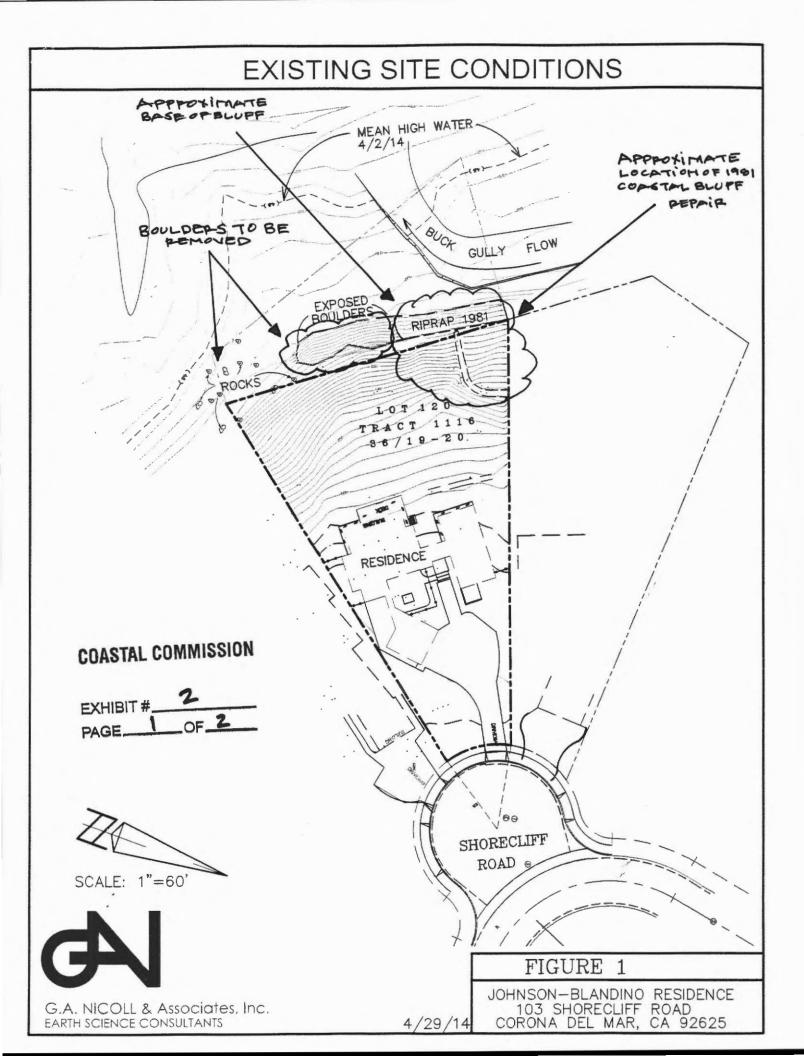
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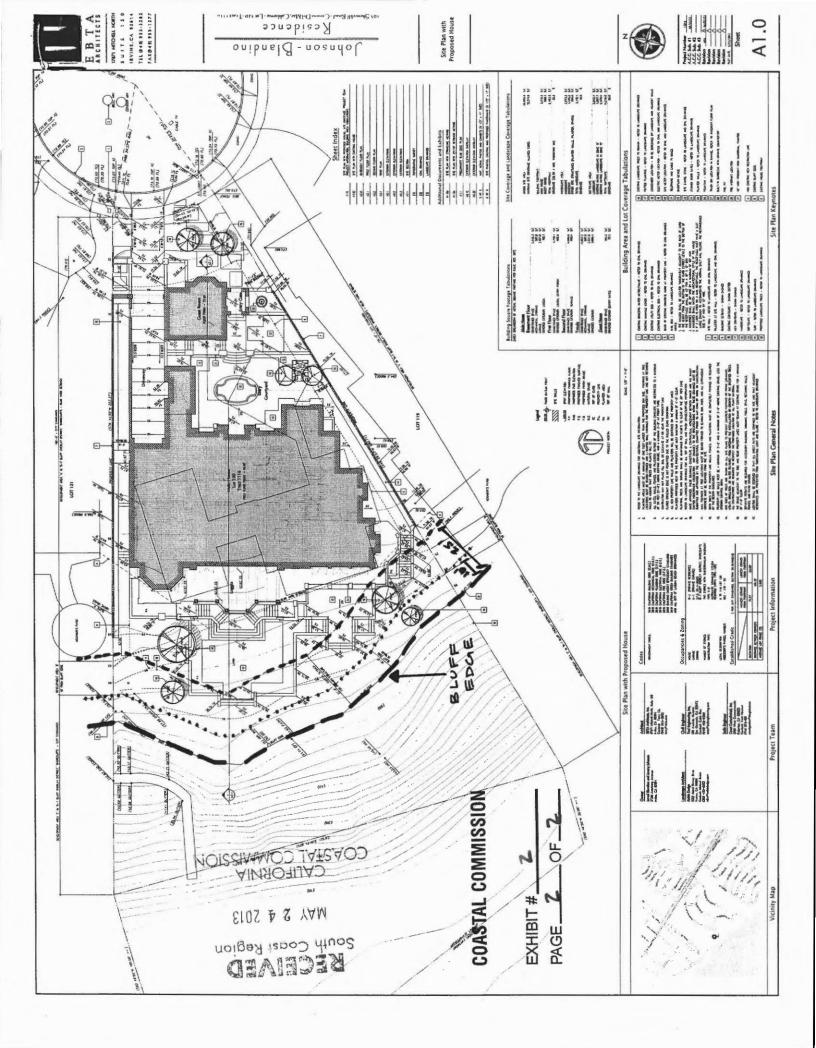
# **APPENDIX** A

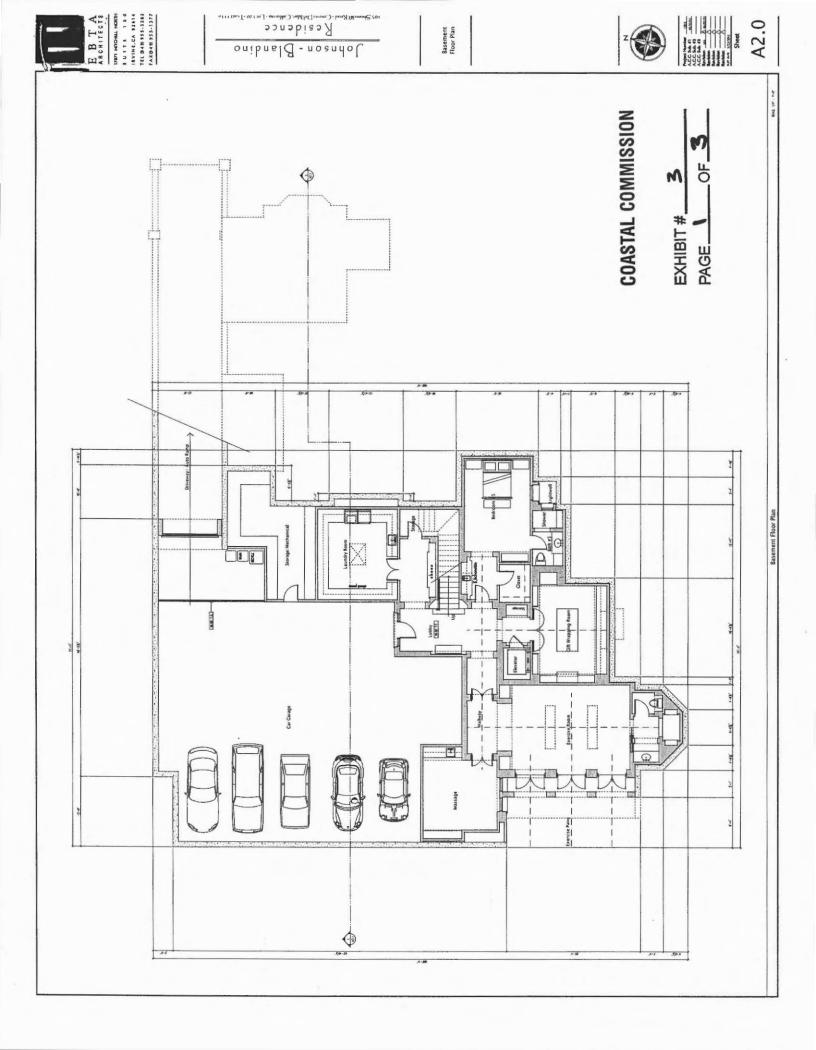
**SUBSTANTIVE FILE DOCUMENTS:** Approval-In-Concept from the City of Newport Beach Community Development Department dated February 7, 2013; Coastal Development Permit No. A-81-7730-(Hurtt); Letter from EBTA Architects to Commission staff received February 14, 2013; Letter from Commission staff to EBTA Architects dated March 15, 2013; Letter from EBTA Architects to Commission staff received May 24, 2013; Letter from TOAL Engineering Dated May 2, 2013; *Geotechnical and Geologic Investigation of Proposed New Residence at 103 Shorecliff Road, Newport Beach, CA (W.O. 453713-01)* prepared by Coast Geotechnical, Inc. dated May 1, 2013; Letter from Commission staff received September 4, 2013; Letter from Coast Geotechnical, Inc. dated August 23, 2013; Letter from G.A. Nicoll and Associates, Inc. dated August 28, 2013; Letter from Corbin Reeves Construction dated August 23, 2013; Letter from Knibb Design dated July 23, 2013; Letter from Commission staff to EBTA Architects dated October 4, 2013; and Letter from EBTA Architects to Commission staff to EBTA Architects dated Permission staff to EBTA Architects dated July 23, 2013; Letter from Commission staff to EBTA Architects dated October 4, 2013; and Letter from EBTA Architects to Commission staff to EBTA Architects dated Permission Staff to EBTA Architects dated February 18, 2014; Letter from G.A. Nicoll and Associates, Inc. dated May 14, 2014.

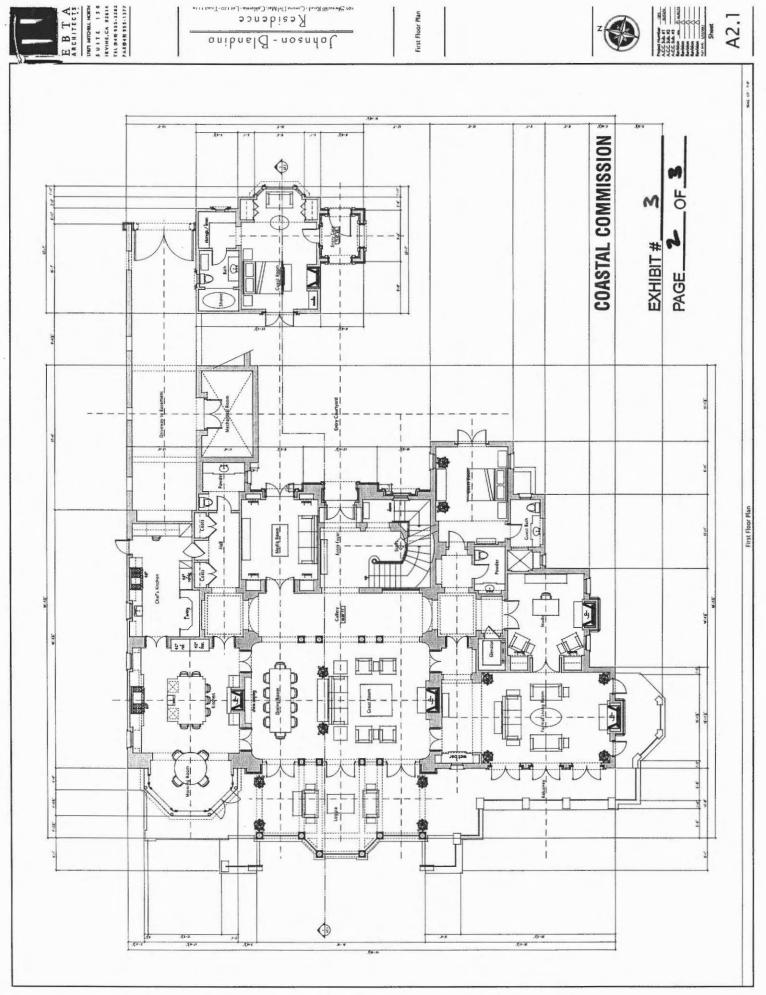












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