

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-14-1609

Applicant: Douglas Rastello

Location: 308 Buena Vista Blvd., Newport Beach, Orange County
(APN 048-031-03)

Project Description: Construction of a new 3 story, 2,259 sq. ft., 29 ft. high single family residence on a vacant bay-front lot.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to construct a new single family residence on a vacant bay-front lot. Due to its bay-front location, the project site may be exposed to the hazards of waves, storm conditions, sea level rise or other natural hazards. However, the project is consistent with previous Commission approvals in the area and conditions have been imposed in order to minimize potential adverse impacts from the development and be consistent with the Coastal Act.

A public right of way, Buena Vista Blvd., runs parallel to the bayfront and through the subject property as well as all the bayfront lots between E. Bay Avenue and Lindo Avenue. Recently, the City of Newport Beach commenced right-of-way vacation proceedings that would result in giving part of the right of way to the property owners along Buena Vista. That vacation requires a coastal development permit, which hasn't yet been sought from or approved by the Commission. This staff report does not address the vacation of Buena Vista Blvd. Furthermore, nothing in this applicant's proposal involves any development in the area the City is planning to vacate. No lot line adjustments are approved through this CDP.

Staff recommends **APPROVAL** of the proposed project with six (6) special conditions related to: development in hazardous locations with Assumption of Risk and the prevention of Future Shoreline Protective Devices and Commission review of future improvements, construction responsibilities and conformance with the Drainage and Erosion Control Plans for protection of the marine environment, and a Deed Restriction.

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APPENDICES

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EXHIBITS

Exhibit 1 – Location Maps and property boundaries

Exhibit 2 – Site Plan

Exhibit 3 – Floor Plans and Elevations

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. 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 of 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 from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
2. **No Future Shoreline Protective Device.**
 - A. By acceptance of this permit, the applicant agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-14-1609 including, but not limited to, the residence, garage, patio, 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. The existing brick wall seaward of the patio near the bay shall not be maintained or repaired without a new coastal development permit. By acceptance of this permit, the applicant hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
 - B. By acceptance of this permit, the applicant further agrees, on behalf of himself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including, but not limited to, the residence, garage, patio 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. **Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.** The permittee shall comply with the following construction-related requirements:
 - A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.

- B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
 - C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
 - D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
 - E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
 - F. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
 - G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
 - H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
 - I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
 - J. The discharge of any hazardous materials into any receiving waters shall be prohibited.
 - K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
 - L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
 - M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
4. **Future Development.** This permit is only for development described in Coastal Development Permit No. 5-14-1609. 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. 5-14-1609. 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. 5-14-1609 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5. **Conformance with the Submitted Drainage and Erosion Control Plan.** By acceptance of this permit the applicant agrees to conform to the Drainage and Erosion Control Plan on file showing roof drainage and runoff from all impervious areas directed to gutters, downspouts, and drains at the front end of the house (away from the Bay). 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. **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 applicant has 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 the 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 & DESCRIPTION

The applicant is proposing to construct a new three-story, approximately 29-foot high single-family residence with 2,259 square feet and a 2 car attached garage, with a 606 square foot deck with glass guardrails. The glass deck railing systems will consist of bird safe glass (Ornilux or similar) which will help reduce the potential for bird strikes. Landscape work is also proposed, including the use of non-invasive, drought-tolerant plants.

The project includes an on-site drainage system to minimize runoff from the site. The drainage system includes surface drains, subsurface drainage pipes, gutters, and downspouts, which will direct runoff towards drains at the alley. The City of Newport Beach issued an Approval-in-Concept (No. AIC2013-082) for the proposed project on September 8, 2014. The proposed project is consistent with the City's requirements and consistent with the Coastal Land Use Plan (CLUP).

The CLUP designates the lot as Single-Unit Residential and the proposed single-family residence adheres to this designation. The bay-front site is located in an existing residential area (**Exhibit 1**). Vertical access to the public bay front is available approximately 50 feet west of the subject site at the intersection of Buena Vista Blvd. and W. Bay Ave. There is a small public beach with access to the water. As described further below, there is also lateral public access along the bay front provided by a sidewalk.

The property contains 2 parcels (APN 048-031-03 and 048-031-04; sold together) that are bisected by the Buena Vista Blvd. public right-of-way (**Exhibit 1**). There is a public sidewalk within the right-of-way that offers lateral access along the bayfront. In this vicinity, the parcels inland of Buena Vista Blvd. and the sidewalk contain structures and houses, while the parcels seaward of Buena Vista Blvd. and the sidewalk are immediately adjacent to Newport Bay and often contain gated areas with landscaping or patios, with access to private docks. The Buena Vista Blvd. right-of-way and sidewalk are the subject of a City proposal to vacate part of the right-of-way. Such vacation will require a coastal development permit from the Commission, which will be handled separately from the subject application. The project that is the subject of this application, 5-14-1609, does not contain any development within the right-of-way and this staff report does not address the vacation of Buena Vista Blvd.

On the project site, the larger parcel of approximately 2,001 square feet inland of Buena Vista Blvd. and the public sidewalk (APN 048-031-03) is currently vacant. This is the only parcel where development is proposed. The second parcel seaward of Buena Vista Blvd. (APN 048-031-04) is currently developed with a small brick fence, a patio and access to a private dock. The dock was constructed in 2002 under CDP No. 5-02-149. No improvements or development is proposed seaward of Buena Vista Blvd.

The Coastal Hazard Analysis, dated December 12, 2014 for this property concludes that there will be no wave impact and no erosion to the proposed house over the next 75 years. Wave run-up would flood a basement, although no basement is proposed here. Minimal flooding of the ground level is possible over the next 75 years.

There is no bulkhead existing at this location. Subject to [Special Condition 2](#), the existing brick wall seaward of the patio near the bay shall not be maintained or repaired without a new coastal development permit and the condition prevents the future construction of a shoreline protective device, while [Special Condition 4](#) prevents future improvements to the legal lot without a new permit or permit amendment. [Special Condition 1](#) acknowledges that building near the coast is inherently hazardous and that the applicant is aware of the risks and [Special Condition 6](#) requires a deed restriction. [Special Condition 3](#) requires construction responsibility and [Special Condition 5](#) requires adherence to proper drainage plans for the protection of the marine environment.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

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 the future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a Future Development **Special Condition 4** must be imposed. As conditioned the development conforms to the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, the proposed development, as conditioned, conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 6** 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 land 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 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 in October 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act 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 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. AIC2013-082, dated September 8, 2014
- Coastal Development Permit Application No. 5-14-1609
- Preliminary Geotechnical Report for New Residence at 308 Buena Vista Blvd., City of Newport Beach, California, dated August 2, 2014, prepared by Borella Geology, Inc.
- Coastal Hazard Analysis, dated December 12, 2014, prepared by Coastal Geotechnical Inc.

PROJECT LOCATION

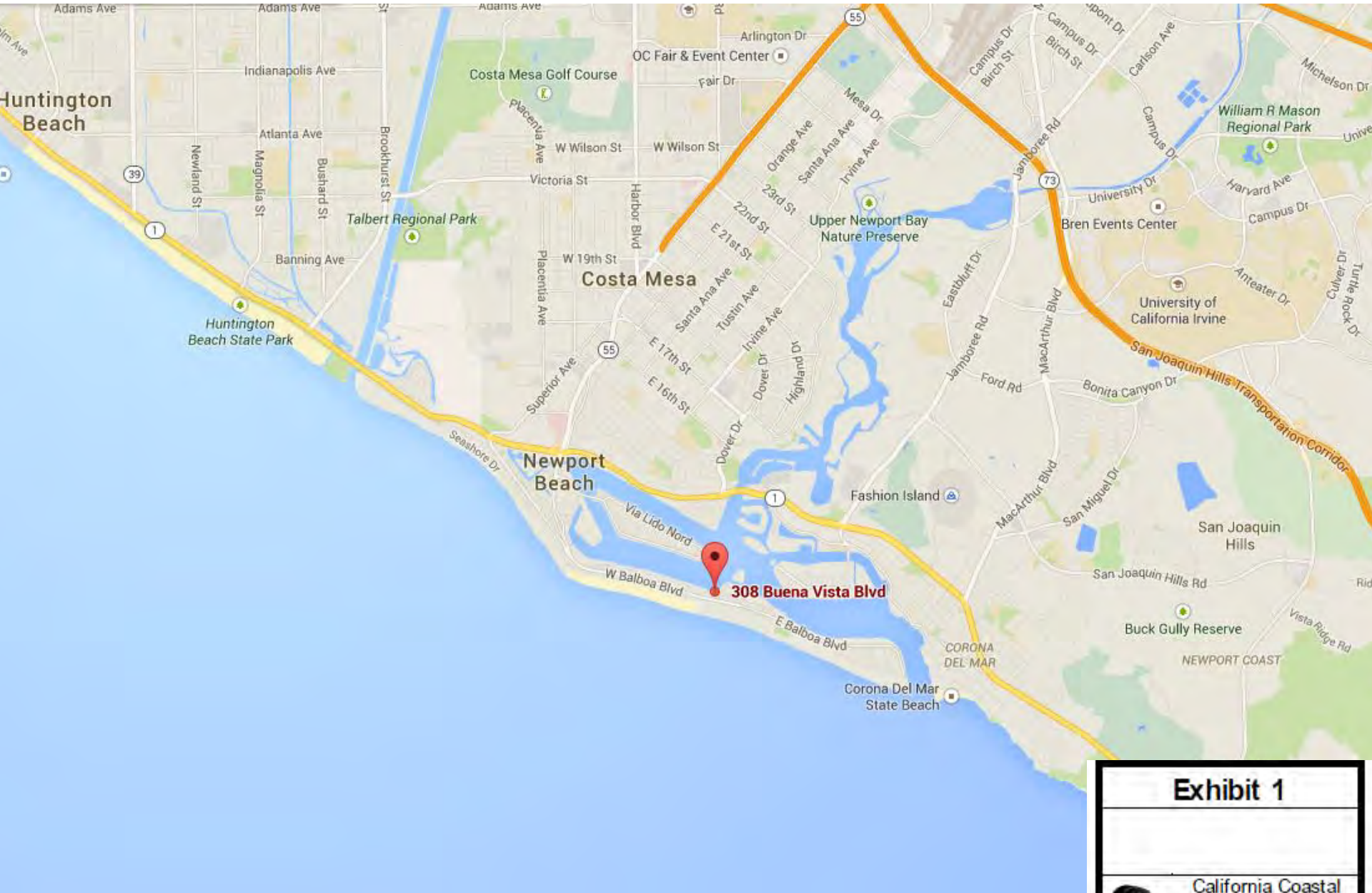


Exhibit 1



California Coastal Commission

PROJECT SITE



Exhibit 1



California Coastal
Commission

308 Buena Vista Blvd. PROPERTY



Property lines are approximate

Exhibit 1



California Coastal
Commission

SITE PLAN

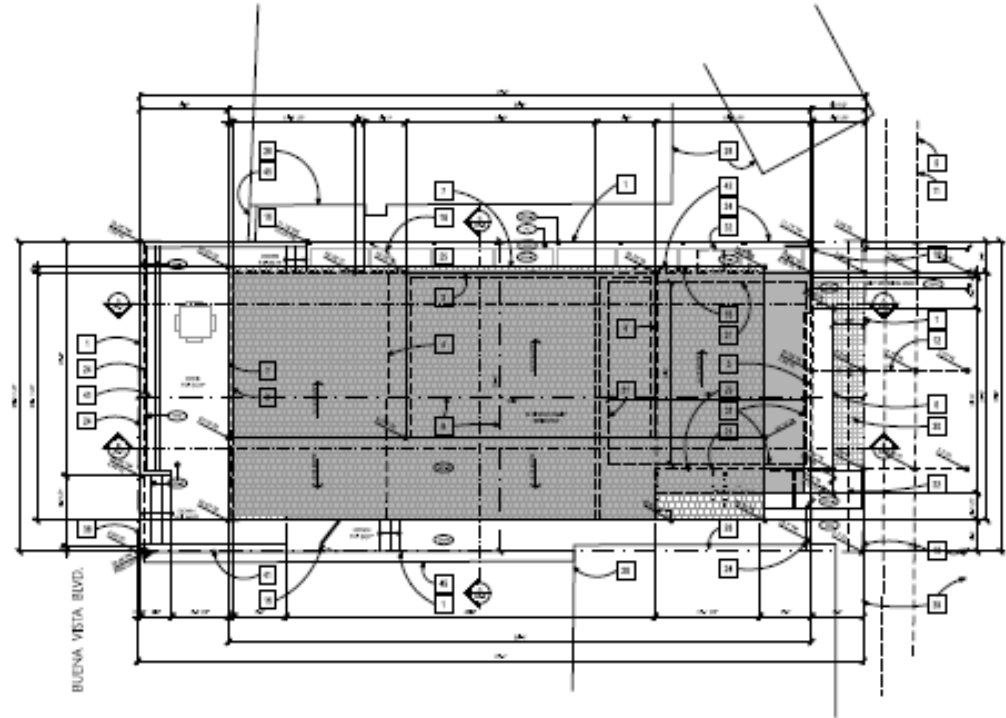


Exhibit 2

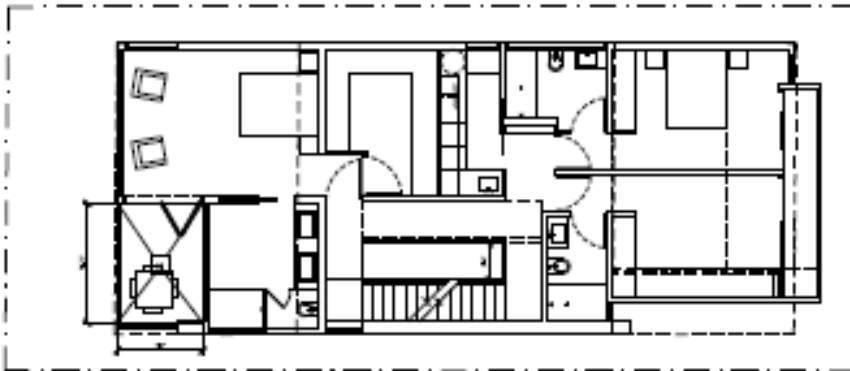


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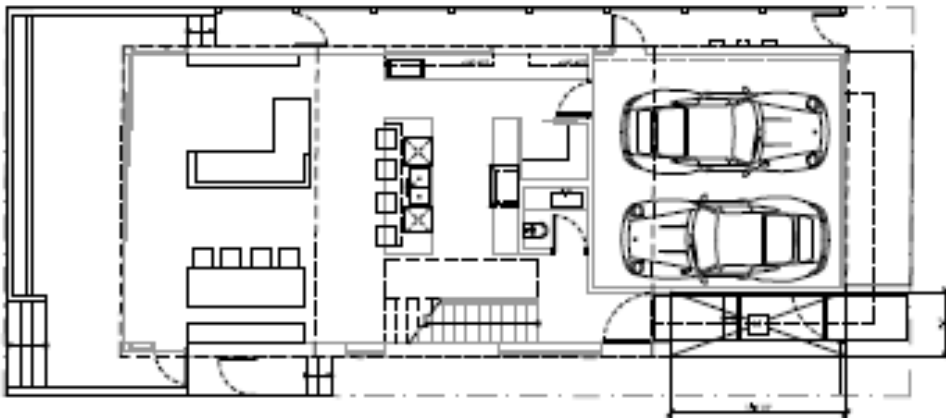
FLOOR PLANS



Level 3



Level 2



Level 1

