

CALIFORNIA COASTAL COMMISSION

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Th6b

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180th Day:	08/06/2015
Staff:	M. Revell-LB
Staff Report:	06/18/2015
Hearing Date:	07/09/2015

STAFF REPORT: CONSENT CALENDAR

Application No.:	5-15-0268
Applicant:	John and June Grothe
Agent:	Andrew Goetz
Location:	1009 E. Balboa Blvd., Newport Beach (Orange County) (APN 048-144-05)
Project Description:	Major remodel of a 4,950 square foot, three-story triplex, resulting in a 4,907 square foot, three-story, 29 foot high, single family residence with an attached 511 square foot garage on a beachfront lot.
Staff Recommendation:	Approval with conditions

SUMMARY OF STAFF RECOMMENDATION:

The applicants are proposing a major remodel of a 4,950 square foot triplex, resulting in a 4,907 square foot single family residence. No work is proposed within the City of Newport Beach Oceanfront Encroachment Area. The proposed project raises issues regarding hazards concerning beachfront development, compatibility with the existing character of the area, impact to public access, and water quality. The proposed project is consistent with the character of the neighborhood, which consists primarily of two and three-story homes. The project includes development in the city's oceanfront public right-of-way. Private improvements are allowed in the right-of-way under an Oceanfront Encroachment Policy and mitigation program approved by the Commission in June 1991 and incorporated into the City's Certified Coastal Land Use Plan. No work is proposed to the patio encroachment on the beachfront side of the residence. As conditioned, the proposed development conforms to the requirements of the program outlined in the City's Coastal Land Use Plan.

Staff is recommending **APPROVAL** of the proposed coastal development permit with **eight (8) Special Conditions**. The special conditions include: **1)** assumption of risk; **2)** no future shoreline protective device; **3)** future development; **4)** storage of construction materials, mechanized equipment and removal of construction debris; **5)** conformance with the submitted drainage and run-off control plan; **6)** deviation from approved encroachments; **7)** City's right to revoke encroachment permit; **8)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

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. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b) or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

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APPENDICES

Appendix A - Substantive File Documents

EXHIBITS

- Exhibit 1 – Vicinity Map
- Exhibit 2 – Aerial View
- Exhibit 3 – Parcel Map
- Exhibit 4 – Floor Plans
- Exhibit 5 – 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(s) 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(s) 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(s) 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. 5-15-0268 including, but not limited to, the residence, garage, foundations, and patio, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards in the future. By acceptance of this permit, the applicant(s) and landowner(s) 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(s) further agrees, on behalf of himself and all successors and assigns that the landowners shall remove the development authorized by this permit, including the residence, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
3. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-15-0268. 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. 5-15-0268. Accordingly, any future improvements to the single-family house authorized by this Coastal Development Permit No. 5-15-0268, 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. 5-15-0268 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. 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(s) 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.

5. Conformance with the submitted Site and Drainage Plan. The applicant(s) shall conform to the drainage and run-off control plan received on March 17, 2015 to the South Coast Region office showing planters and swales designed to drain into concrete swales that will surround the building. 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 required.

6. Deviation from Approved Encroachments

- A. The only encroachment into the 7-8 ft. deep encroachment area within the City of Newport Beach Oceanfront Boardwalk allowed by this Coastal Development Permit No. 5-15-0268 is the existing 2.5 ft. patio wall around the perimeter of concrete patio, two planters, barbeque pit, and patio furniture. Any development in the public right of way, including improvements, repairs, and maintenance, cannot occur without an amendment to this coastal development permit or a new coastal development permit from the Coastal Commission, unless the Executive Director determines through written confirmation that no amendment or new permit is legally required.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant(s) shall submit evidence, for the review and approval of the Executive Director, that the applicant(s) has enrolled in the City's public access impact mitigation program (i.e. annual payment to City for encroachment). Evidence that the initial payment has occurred shall also be submitted. The applicant(s) and all other successors and assigns must remain enrolled in the City's public access impact mitigation program (i.e. annual payment to City for encroachment) and make the recurring annual payment so long as the encroachment remains in place.

7. **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.
8. **Deed Restriction PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant(s) 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 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 DESCRIPTION & LOCATION

The applicants propose a major remodel (demolition of more than 50% of the exterior walls) to an existing 4,950 square foot, three story triplex, resulting in a new 4,907 square foot, three story single-family residence with an attached 511 square foot garage, and 380 square feet of decks and balconies. (**Exhibits 4 and 5**). No landscaping is proposed.

To address water quality concerns, the applicants propose to direct site drainage and runoff from roof drains and internal piping to concrete swales that surround the building. At the street elevation and in front of the garage, a substantial area of grasscrete is being provided. The hardscape located at the side property lines will be controlled by a drainage swale that flows to the grasscrete area. Regarding water conservation, the applicant intends to comply with the applicable water efficiency and conservation measures of the Governor's Executive Order B-29-15 concerning efficient fixtures and appliances and with the statewide and local regulations pertaining to plumbing fixtures and low flow rates.

The subject site is located at 1009 East Balboa Blvd. within the City of Newport Beach, Orange County (**Exhibits 1, 2, and 3**). The lot area is 3,487 sq. ft. The proposed project is located on a lot with an R-2 (Two-unit residential) zoning designation, which is consistent with the RT (Two-unit residential) designation allowed under the City of Newport Beach Land Use Plan (LUP). The proposed project is allowable under this designation. The project is on a beachfront lot located within an existing urban residential area, between the Balboa Pier, and the Newport Harbor entrance jetties, and between the first public road (East Balboa Blvd.) and the sea (**Exhibits 1, 2, and 3**). There is an approximately 570 foot wide sandy beach between the subject property and the Pacific Ocean.

Given that the applicant has chosen to implement the project on a beachfront lot despite risks from liquefaction, wave attack, erosion, sea level rise, and storm flooding, the applicant must assume the risks and agree to no future shoreline protective devices. Therefore, the Commission imposes **Special Conditions 1 and 2** which would require for an assumption of risk and no future shoreline protective devices. Any future improvements to the single-family house authorized by this Coastal Development Permit No. 5-15-0268, including but not limited to repair and maintenance identified as requiring a permit, will require an amendment to Permit No. 5-15-0268 from the Commission as imposed by **Special Condition 3**. In addition, because the project site is on a beachfront lot and in proximity to coastal waters, the Commission recommends construction-related requirements and best management practices under **Special Condition 4**, and to address water quality, recommends **Special Condition 5** to prevent pollution of the coast.

The proposed project will not have an adverse effect on public access. The Commission has found through previous permit actions that the City's structural setback in this area is acceptable for maintaining public access. The proposed project is consistent with the City's required 5 ft. setback for primary structures from the seaward property line. Vertical public access to the beach is available nearby approximately 150 ft. to the west of the subject site at the B Street seaward terminus, which is Peninsula Park. Lateral public beach access is available along the 570 ft. wide sandy beach of this area, seaward of the subject site.

Limited patio encroachments onto the City of Newport Beach Oceanfront public right-of-way on the seaward side of the home are allowed. The City holds the public right-of-way for street/walkway/bikeway purposes. The public right-of-way is shown on the assessor's parcel maps as Oceanfront Street (**Exhibit 3**). Portions of Oceanfront Street near the City's two municipal piers are developed with a public walkway/bikeway.

In 1991, the Commission certified an amendment to the City of Newport Beach Land Use Plan (LUP). The LUP encroachment policies allow encroachment onto the Oceanfront right-of-way in the area of the subject site, which is between 36th Street and E Street. Properties between 36th Street and E Street can encroach into the beach 7 to 8 feet oceanward of the rear property line. The LUP policies allow encroachments only if they do not interfere with access to the beach or ocean, when a building permit is not required, and subject to payment of a mitigation fee. The City of Newport Beach reserves the right to use the encroachment area right-of-way for public projects in the future. **Special Condition 7** addresses this requirement.

The applicants provided a copy of the Annual Oceanfront Encroachment Permit issued April 22, 1992, and proof of payment of the annual fee. In this case, the Commission finds that the proposed encroachment is consistent with the certified LUP encroachment policies and the Chapter 3 public access policies of the Coastal Act. The findings for which are found in the Newport Beach LUP Amendment 90-1 approved by the Commission on April 22, 1992 and which are incorporated here by reference.

The Commission imposes **Special Condition 8** requiring the applicant to record a Deed Restriction acknowledging that, pursuant to this permit (CDP # 5-15-0268), 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.

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 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 use the coast and nearby recreational facilities. Therefore, as proposed the 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, one or more of the following: the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces such as grasscrete, installation of concrete swales and an internal piping drainage system to direct storm water runoff to sideyard drainage swales. Post-construction best management practices should minimize the project's potential adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

G. LOCAL COASTAL PROGRAM (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 updated on October 2005. 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.

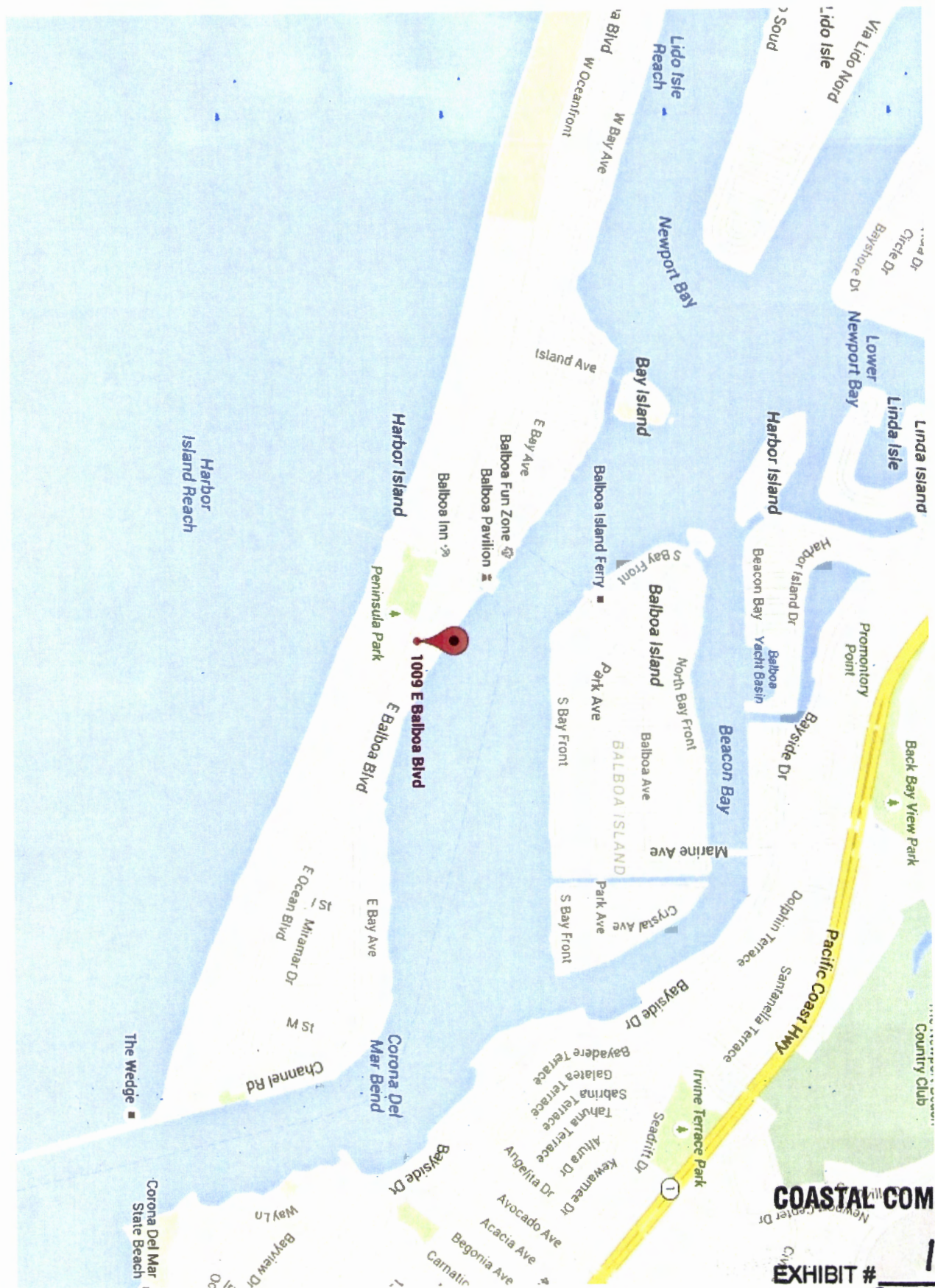
Appendix A - Substantive File Documents

- City of Newport Beach certified Land Use Plan
- *Coastal Hazard and Wave Runup Study, 1009 East Balboa, Newport Beach*, by GeoSoils, Inc. dated 05/11/2015
- City of Newport Beach Approval-in-Concept No. AIC2014083, dated March 16, 2015
- Coastal Development Permit Application No. 5-15-0268



COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 2

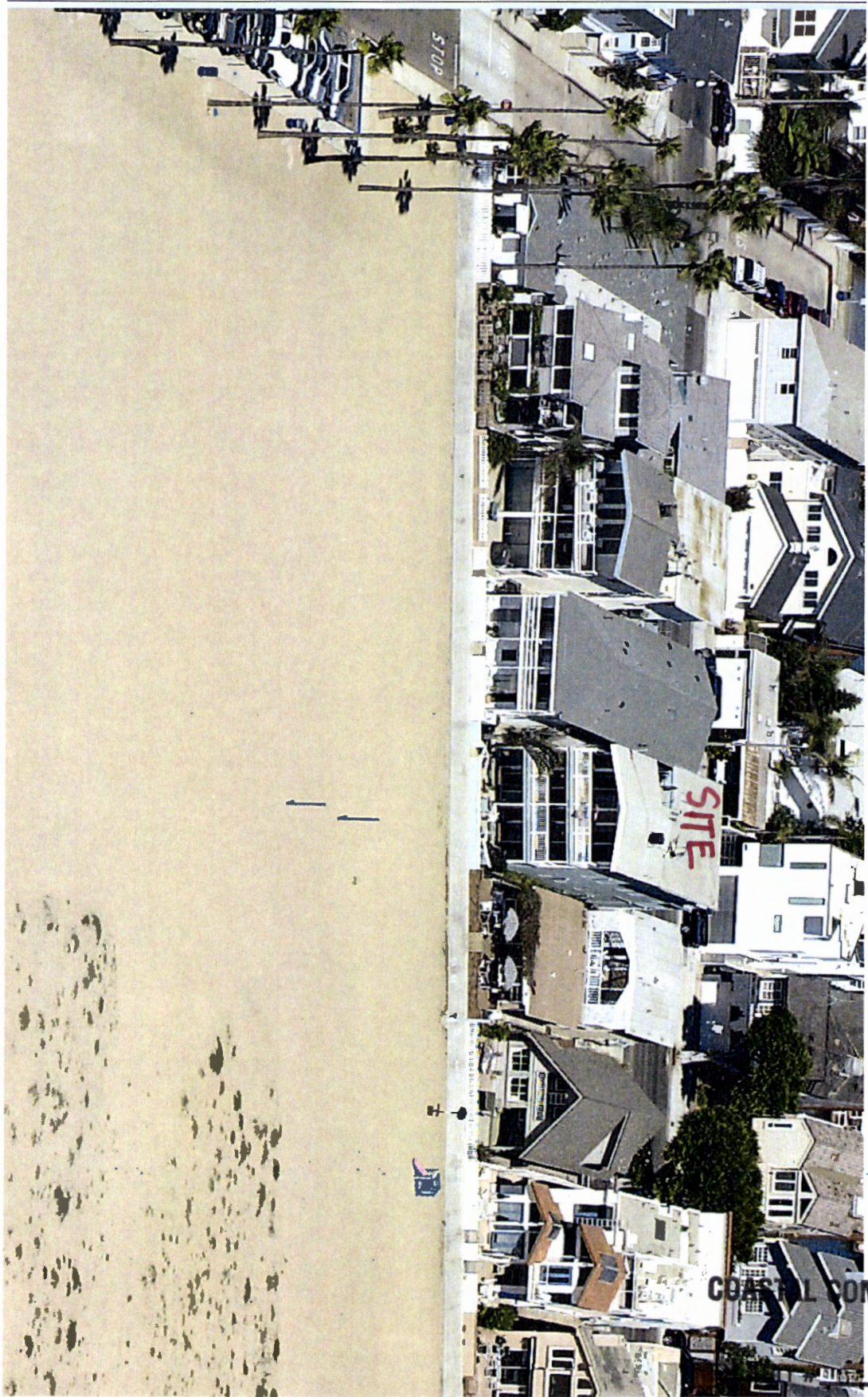


COASTAL COMMISSION

EXHIBIT #

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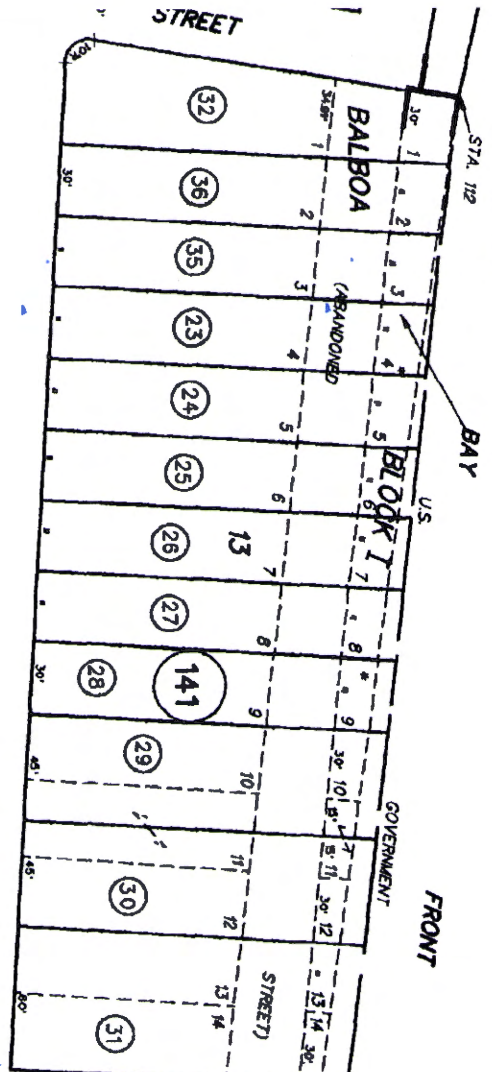
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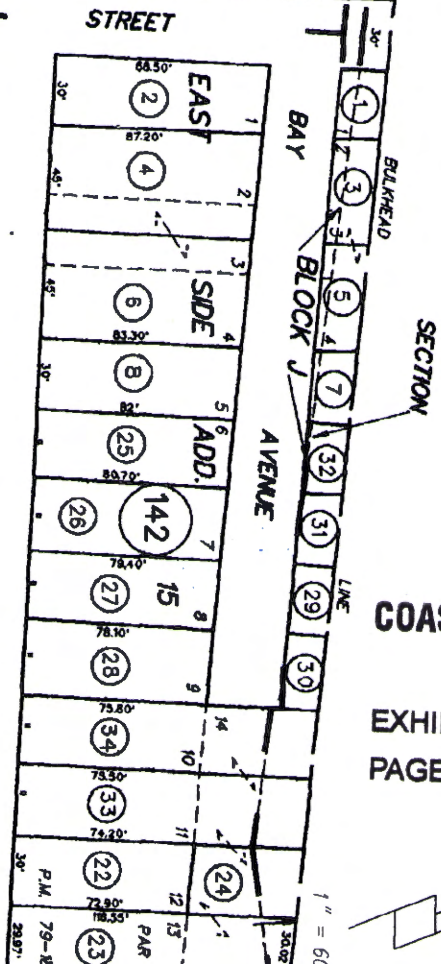
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COASTAL COMMISSION

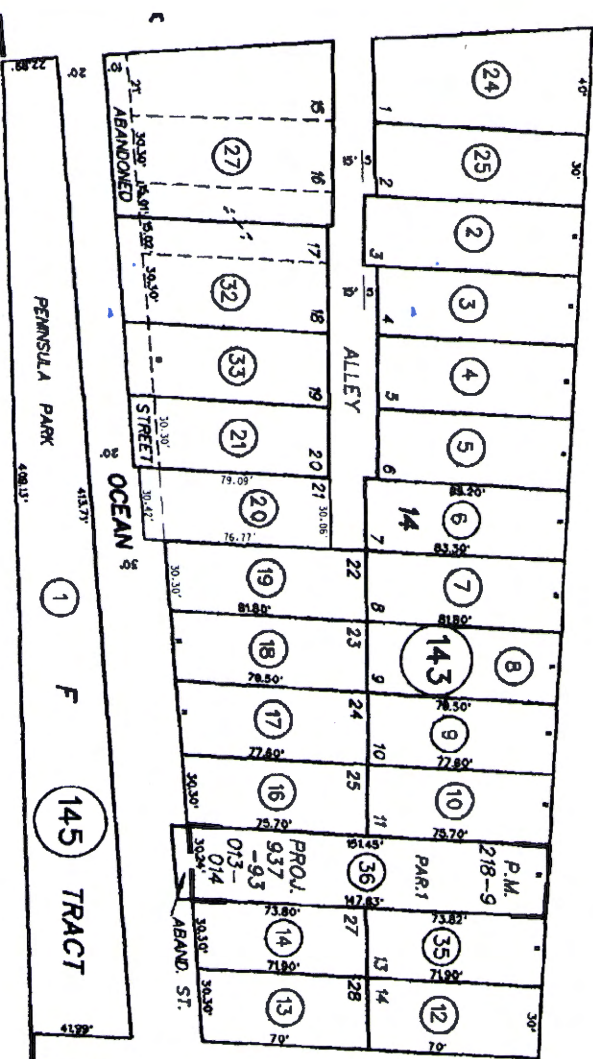
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BALBOA

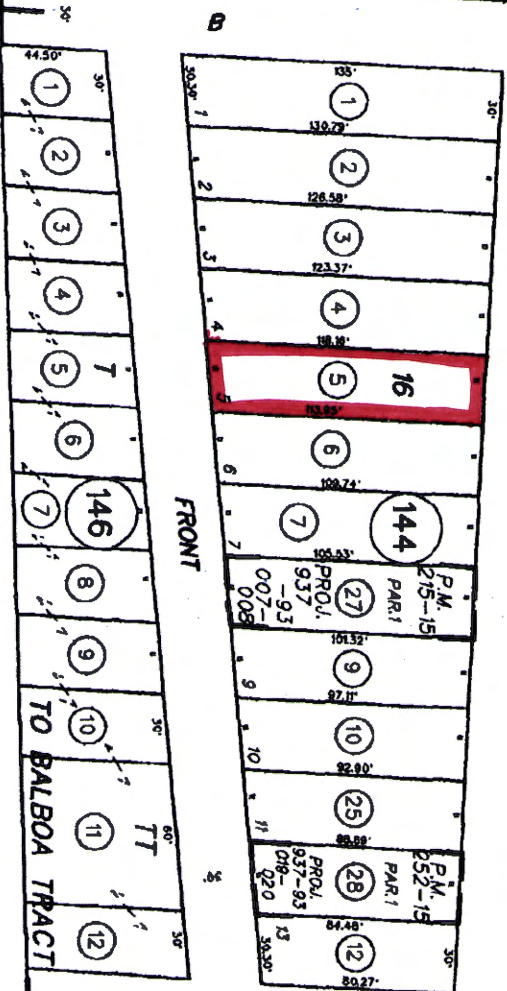


BOULEVARD



PENINSULA PARK

1 F 145 TRACT



32

BALBOA TRACT
 EAST SIDE ADD. TO BALBOA TR.
 BAY FRONT SECTION
 PARCEL MAP
 M.M. 4 - 11
 M.M. 6 - 15
 P.M. 79 - 18, 215 - 26,
 P.M. 218 - 9, 252 - 15

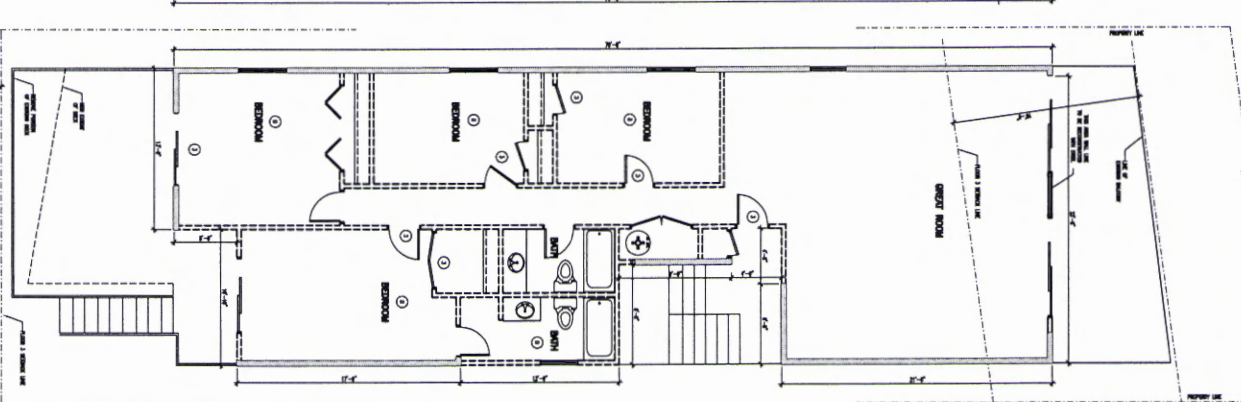
NOTE - ASSESSOR'S BLOCK &
 PARCEL NUMBERS
 SHOWN IN CIRCLES

ASSESSOR'S MAP
 BOOK 048 PAGE 14
 COUNTY OF ORANGE

* WATER LINE AS PER 1947
 AERIAL PHOTO

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7. REMOVE CURB AT SERVICE 8. REMOVE EXISTING SIDEWALK PAVEMENT 9. REMOVE EXISTING DRIVEWAY 10. REMOVE EXISTING WALL, POLE AND SIGN 11. REMOVE EXISTING SIDEWALK AS NEARLY AS POSSIBLE TO EXISTING DRIVEWAY 12. REMOVE EXISTING SIDEWALK AS NEARLY AS POSSIBLE TO EXISTING DRIVEWAY 13. EXISTING SIDEWALK ADJACENT TO DRIVEWAY	D
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