

CALIFORNIA COASTAL COMMISSION

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



Th 9b

Filed: 6/2/16
180th Day: 11/29/16
Staff: F. Sy-LB
Staff Report: 9/15/16
Hearing Date: 10/6/16

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-16-0243

Applicant: Rudy Mariman

Agent: David R. Olson Architects

Location: 34 Linda Isle, City of Newport Beach (County of Orange)

Project Description: Demolition of an existing 4,700 square foot single-family residence and construction of a new two-story, 4,512 square foot, single-family residence with an attached 644 square foot, three-car garage and a 218 square foot detached guest suite on a bayfronting lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing the demolition of an existing single-family residence and construction of a new single-family residence on a bayfronting lot. The major issues raised by this proposed development concern bayfront development that could be affected by waves, erosion, storm conditions, sea level rise or other natural hazards in the future and water quality.

Due to its oceanfront location, the project site may be potentially exposed to the hazard of waves, erosion, storm conditions, sea level rise or other natural hazards and also during construction could adversely impact water quality. However, conditions have been imposed on the project in order to minimize potential adverse impacts from the development consistent with the Coastal Act and are consistent with previous Commission approvals in the area.

Staff is recommending **approval** of the proposed project with seven (7) Special Conditions regarding: 1) assumption of risk, waiver of liability and indemnity; 2) future development; 3)

storage of construction materials, mechanized equipment, and removal of construction debris; 4) public rights; 5) submittal of a revised landscape plan; 6) dewatering requirements; and 7) 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 Coastal 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 Coastal Land Use Plan may be used for guidance.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....4
II. STANDARD CONDITIONS.....4
III. SPECIAL CONDITIONS.....5
IV. FINDINGS AND DECLARATIONS
 A. PROJECT DESCRIPTION AND LOCATION.....8
 B. HAZARDS.....10
 C. DEVELOPMENT.....10
 D. PUBLIC ACCESS.....11
 E. WATER QUALITY.....11
 F. DEED RESTRICTION.....11
 G. LOCAL COASTAL PROGRAM (LCP).....11
 H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....11

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit No. 1 – Location Map
- Exhibit No. 2 – Site Plan
- Exhibit No. 3 – Floor Plans
- Exhibit No. 4 – Elevation Plans

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 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 or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and

possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 2. Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-16-0243. 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. 5-16-0243. Accordingly, any future improvements to the residences and garage, foundation and patio 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. 5-16-0243 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
- 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; and
- M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

4. Public Rights. The Coastal Commission's approval of this permit shall not constitute a waiver of any public rights that exist or may exist on the property. The permittee shall not use this permit as evidence of a waiver of any public rights that may exist on the property.

5. Revised Landscape Plan.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of revised landscape 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) 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

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,
 - (b) a schedule for installation of plants; and
 - (c) Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall also be considered, such as use of weather based irrigation controllers.
 - B. The permittee 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.
- 6. Dewatering of Groundwater.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant submit, for the review and approval of the Executive Director, a written agreement providing that any required dewatering of the site due to groundwater intrusion, or percolating surface water, during construction or post-construction will require filters to be installed on all dewatering pumps and sump pumps. Such dewatering shall comply with the Regional Water Quality Control Board (RWQCB) or the Sanitary District discharge requirements.
- 7. 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 landowners 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:

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND LOCATION

The applicant proposes to demolish an existing 4,700 square foot single-family residence and construct a new two-story, approximately 25'-9.5" high, 4,512 square foot, single-family residence with an attached 644 square foot, three-car garage and a 218 square foot detached guest suite on a bayfronting lot (**Exhibits No. 2-4**). There is an existing concrete bulkhead at the rear of the project site along the entire width of the bayside property line and bayward of the bulkhead is an existing dock system associated with the residence. No work is proposed to either the dock system or bulkhead. The foundation for the project will consist of slab on grade. In addition, twelve (12) caissons are proposed to be embedded 15-feet into bedrock connected by a grade beam in the rear area of the property in order to deal with potential settlement rising from a potential future seismic event. The proposed caissons will not act as a shoreline protective device. Glass railings are proposed for the 2nd floor bayfronting exterior deck and on top of the bulkhead and they will be etched in order to avoid bird strikes. Grading will consist of 81 cubic yards of import for fill.

The project site a bayfront lot located at 34 Linda Isle in the locked gate community of Linda Isle in the City of Newport Beach, Orange County (**Exhibit No. 1**). Currently, an existing two-story, 4,700 square foot, single-family residence with an attached two-car garage occupies the project site. The lot size is 6,394 square feet and the City of Newport Beach Coastal Land Use Plan (CLUP) designates the site as Single-Unit Residential Detached (RSD) and the proposed project adheres to this designation. No public access currently exists through the site. However, the project will have no impacts on existing coastal access. Public access to the harbor exists in the area across the channel from the Linda Isle community along the public walkways on Lido Island and Balboa Island.

The State of California supported the preparation of the 2012 National Research Council's (NRC) Report, *Sea-Level Rise for the Coasts of California, Oregon and Washington: Past, Present, and Future*, which is currently considered the best available science on sea level rise for California. That report estimates that sea levels may rise between 1.4-feet to 5.5-feet by the year 2100. If there were to be a 5.5-foot rise, an extreme high tide still water level of 12.7-feet (7.8-feet, the maximum historical water elevation for the Newport Bay + 5.5-feet = 13.3-feet MLLW) could result in Newport Bay. Such a rise would exceed the proposed finished first floor elevation of 10.80-feet, resulting in water up to 2.50-feet higher than the proposed finished floor. Therefore, the proposed development may be impacted by future flooding hazards if sea level rise approaches the upper range of the NRC projections. Thus, since the project is located in an area that is susceptible to coastal hazards, the Commission imposes **Special Condition No. 1**, which requires the applicant to accept responsibility for all hazards associated with coastal development.

In an attempt to minimize risks to life and property from sea level rise-related flood hazards, the applicant has proposed adaptation measures for use in the future to deal with flooding and sea level rise, such as installing sand bags and raising the height of the existing bulkhead, currently at elevation 8.25-feet, to provide flooding protection.

Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the bay could adversely affect future shoreline conditions if not properly evaluated and 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 result in adverse impacts to coastal processes, the Commission imposes **Special Condition No. 2**, which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-16-0243 or a new coastal development permit.

With new development there is potential for adverse impacts to water quality during construction and there is an opportunity to improve water quality. To minimize erosion and prevent debris from being dispersed down the storm drain system leading to the ocean during construction, the Commission imposes **Special Condition No. 3**, which provides construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. To minimize any impacts to water quality the proposed project may have after construction, the applicant has submitted a Drainage and Run-Off Control Plan that shows rooftop and surface drainage directed to bio-retention planters. The applicant has also stated that they shall also comply with the applicable water efficiency and conservation measures of the City's adopted CALGreen standards concerning irrigation systems, and efficient fixtures and appliances

The proposed project does not involve any development on Public Trust Tidelands and all development will be landward of the existing bulkhead. Therefore, the proposed development will not impact current public access resources to or along the Public Trust Tidelands. In order to preserve and maintain access to the Public Trust Tidelands, **Special Condition No. 4** is imposed stating that the approval of a coastal development permit for the project does not waive any public rights or interest that exist or may exist on the property.

The applicant has stated that landscaping is proposed and plans have been submitted. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. 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) in their publications. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). The term drought tolerant is equivalent to the terms 'low water use' and 'ultra low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>.

Commission staff has reviewed the submitted landscape plan and determined that it does not contain any invasive plants. However, it does contain a non-drought tolerant plant: *Juncus Patens* 'Common Rush' and *Carex Tumulicola* 'Berkeley Sedge'. Therefore in order to minimize the use of water and the spread of invasive vegetation, the Commission imposes **Special Condition No. 5**, which requires the applicant to submit revised landscaping plans, which consists of native plants or non-native drought tolerant plants, which are non-invasive and that use of reclaimed water for

irrigation is encouraged, but if potable water is used that only drip or microspray irrigation systems may be used.

Due to the installation of caissons, dewatering may be necessary and could potentially impact water quality. If groundwater is to be pumped during construction, a National Pollution Discharge Elimination System (NPDES) permit or a sanitary sewer discharge permit will be obtained from the Regional Water Quality Control Board (RWQCB) or the Sanitary District. However, to ensure that the dewatering does not adversely impact water quality by introducing sediments or other contaminants into coastal waters, via the storm drain, a special condition is necessary requiring the applicant to provide the installation of filters on all dewatering pumps and sump pumps. Therefore, the Commission imposes **Special Condition No. 6** which requires the applicant to install filters on the pumps and that dewatering practices shall comply with RWQCB or Sanitary District discharge requirements.

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 No. 7**, which requires 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.

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 run-off 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 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 with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted run-off 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 run-off through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the run-off 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 with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes 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, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land 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)

The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Coastal Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

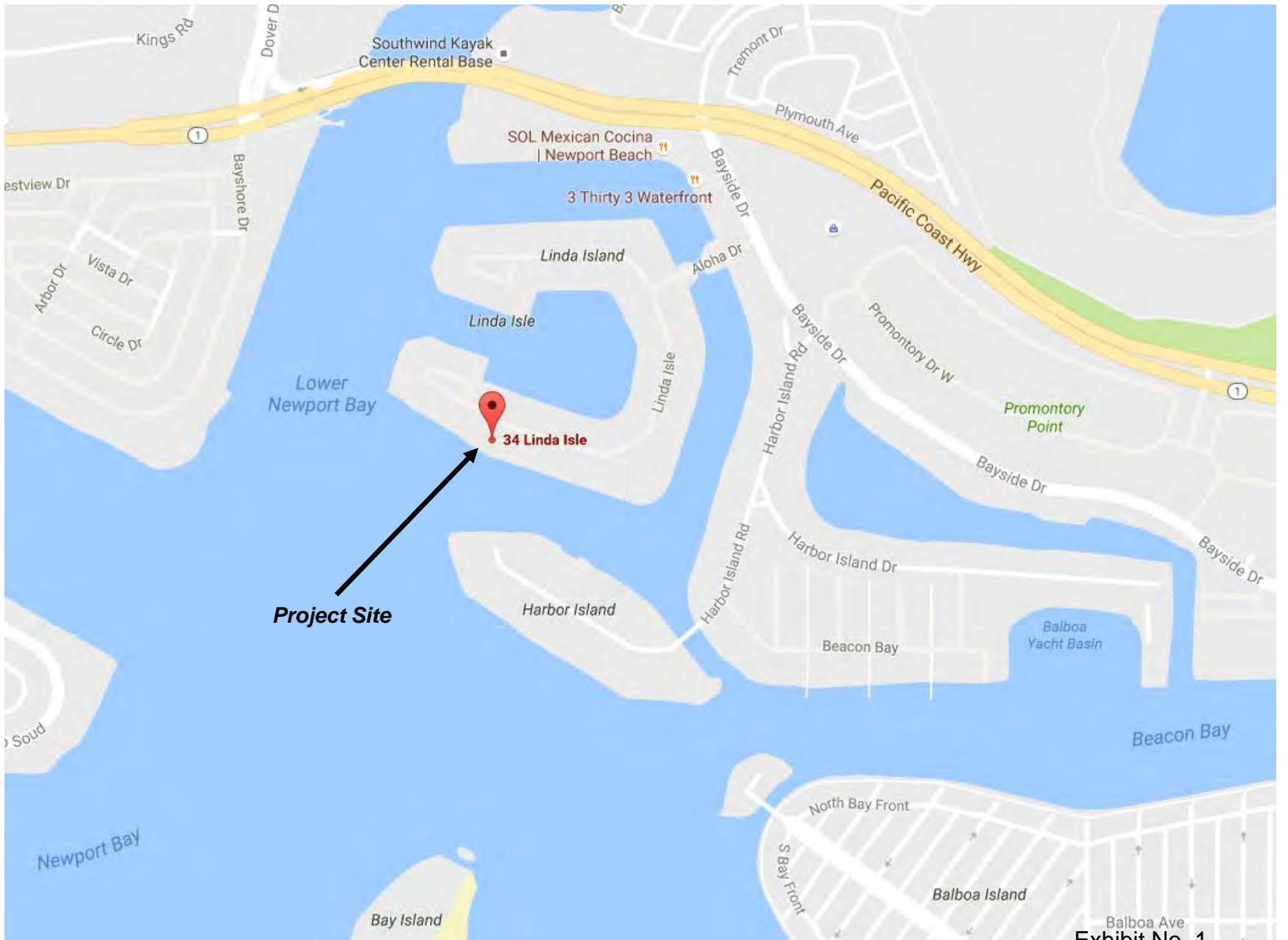
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

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 ministerial or categorically exempt. 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 the California Environmental Quality Act (CEQA).

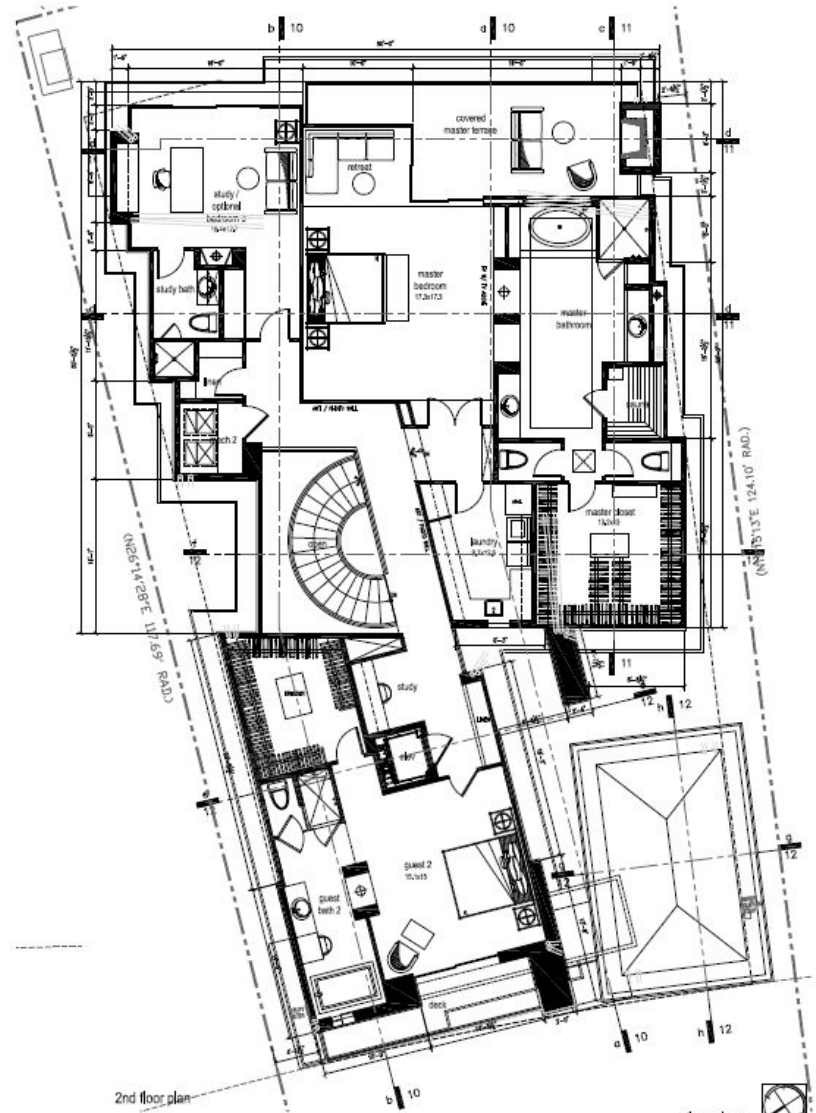
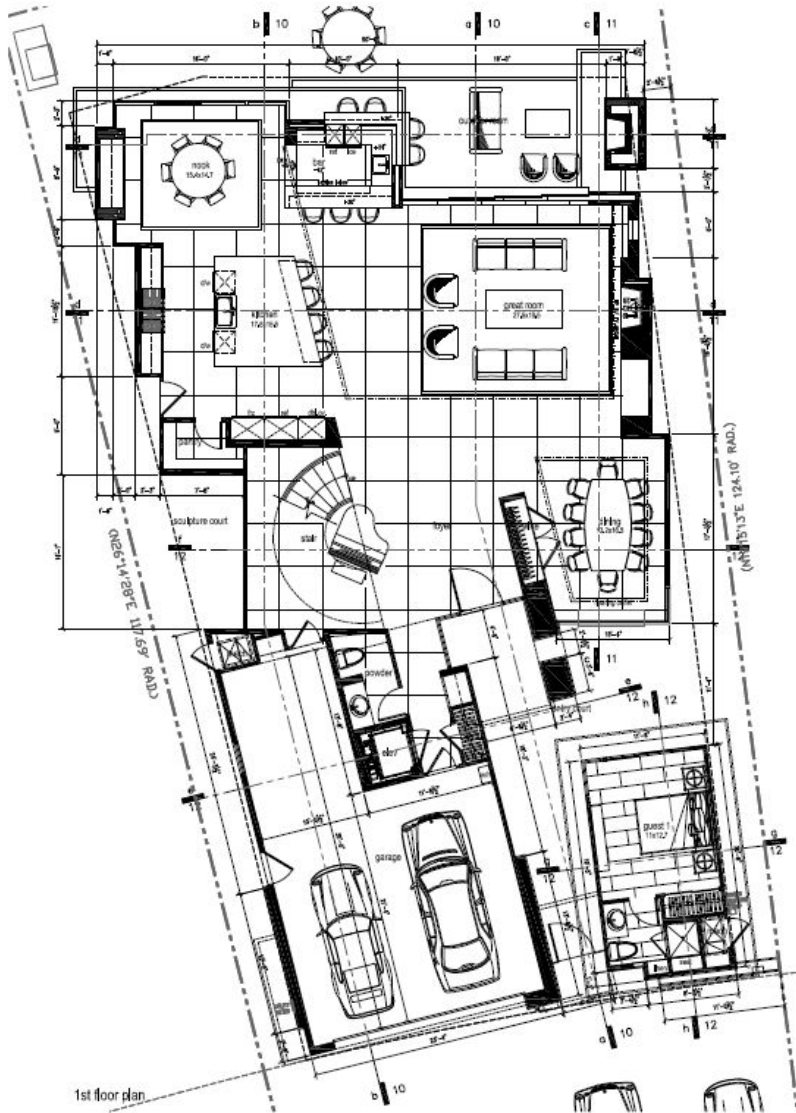
Although the proposed development is categorically exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant 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 consistent with the requirements of the Coastal Act and CEQA.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS: Approval-In-Concept from the City of Newport Beach Planning Department dated March 10, 2016; *Preliminary Geotechnical Investigation, Proposed New Single-Family Residence, 34 Linda Isle, Newport Beach, California (Project No. 72221-00/Report No. 16-7800)* prepared by GeoFirm dated January 14, 2016; Letter from Commission staff to agent dated April 14, 2016; Letter from the agent to Commission staff dated May 16, 2016; Letter from by William Simpson & Associates, Inc. (WSA Job #7045) dated May 23, 2016; *Wave Run-Up Study, Property at 34 Linda Isle, Newport Beach, California (Revision 1)* prepared by Legg Geophysical, Inc. *Geosoils, Inc.* dated April 22, 2016; Letter from the agent to Commission staff dated July 5, 2016; and Letter from the agent to Commission staff dated August 3, 2016.



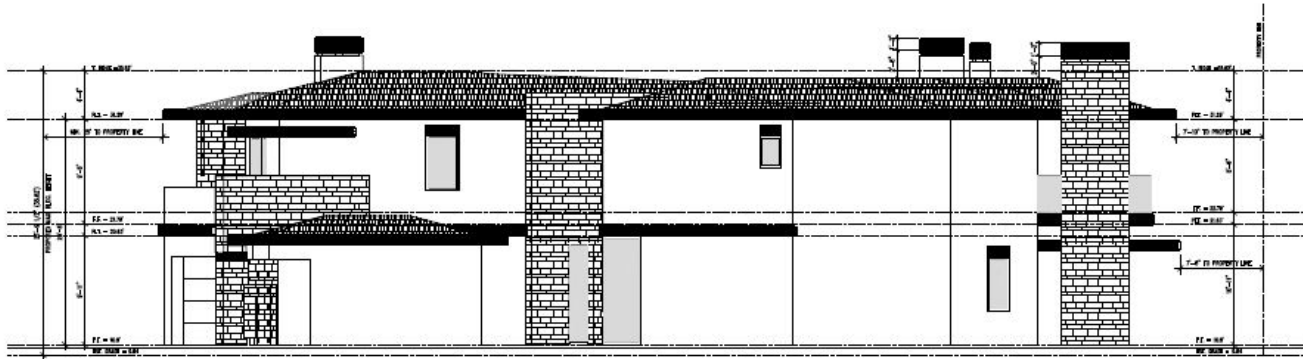
Project Site



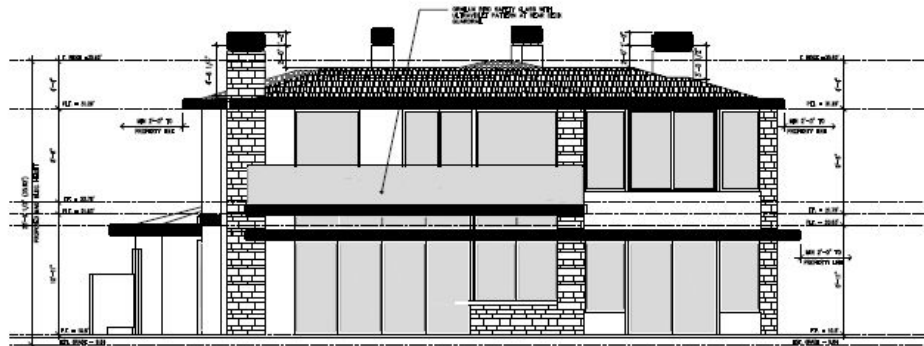
marlman residence

34 linda alsle, newport beach, ca 92660

march 4, 2016



right elevation



rear elevation

elevations



marlman residence

34 Linda aisle, newport beach, ca 92660

march 4, 2016