

**CALIFORNIA COASTAL COMMISSION**

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**W7c**

Filed: 10/14/2016  
180th Day: 4/12/2017  
Staff: M. Revell-LB  
Staff Report: 2/24/2017  
Hearing Date: 3/08/2017

**STAFF REPORT: CONSENT CALENDAR**

**Application No.:** 5-16-0769

**Applicants:** Russ Fluter and Jim Collins

**Agent:** Craig S. Hampton

**Location:** 658 Via Lido Nord, Newport Beach, Orange County (APN 423-231-15)

**Project Description:** Demolition of an approximately 1,696 square foot, two-story, single-family residence with attached two-car garage and construction of a 2,922 square foot, 24-foot high, two-story single-family residence with an attached 430 square foot, two-car garage. The proposed project includes the installation of new tie back supports, and a new concrete deadman to reinforce the existing seawall.

**Staff Recommendation:** Approval with conditions

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**SUMMARY OF STAFF RECOMMENDATION**

The applicants are proposing the demolition of an existing single-family residence and construction of a new single-family residence on a bay-fronting lot. Due to its bay-front location, the project site may be potentially exposed to the hazard of waves, erosion, 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 consistent with Coastal Act.

Staff is recommending **approval** of the proposed project with Seven Special Conditions regarding: 1) assumption of risk, waiver of liability and indemnity; 2) no future seaward extension of shoreline protective devices; 3) future development; 4) conformance with the drainage and run-off control plans; 5) storage of construction materials, mechanized equipment, and removal of construction

debris; 6) landscaping; and 7) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

An LCP for the City of Newport Beach was effectively certified on January 13, 2017. The landward side of the development is now within the City's LCP jurisdiction; however, since the subject coastal development permit application was submitted to the Commission prior to effective certification of the City's LCP, the Commission continues to act as the permitting authority for the coastal development permit application. The standard of review for the proposed development is the certified LCP. In addition, since the proposed project is located between the sea and the first public road, the development must also conform to the public access and recreation policies of the Coastal Act.

## 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 certified Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent 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 applicants acknowledge and agree (i) that the site may be subject to hazards from waves, erosion, storm conditions, liquefaction, flooding, and sea level rise; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
2. **No Future Seaward Extension of Shoreline Protective Device**
  - A. By acceptance of this Permit, the applicants agree, on behalf of itself (or himself or herself or themselves, as applicable) and all successors and assigns, that no future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device that is the subject of Coastal Development Permit No. 5-16-0769, as described and depicted on an Exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this permit, shall be undertaken if such activity extends the footprint seaward of the subject shoreline protective device. By acceptance of this Permit, the applicants waive, on behalf of itself (or himself or herself or themselves, as applicable) and all successors and assigns, any rights to such activity that may exist under Public Resources Code Section 30235.
  - B. Prior to the issuance by the Executive Director of the **NOI FOR THIS PERMIT**, the applicant shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the shoreline protective device that is the subject of Coastal Development Permit No. 5-16-0769, as generally described above and shown on **Exhibit 2** attached to this staff report, showing the footprint and the elevation of the device referenced to NGVD (National Geodetic Vertical Datum).
3. **Future Development.** This permit is only for the development described in Coastal Development Permit No. 5-16-0769. 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. 5-16-0769. Accordingly, any future improvements to the residence and garage, foundations, 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. 5-16-0769 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 permittees 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.

- 5. Conformance with Drainage and Run-Off Control Plan.** The applicants shall conform with the drainage and run-off control plan received on August 26, 2016 showing roof drainage and runoff from all impervious areas directed to trench drains and percolation pits. 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. **Landscaping-Drought Tolerant, Non-Invasive Plants.** Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).
7. **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 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

### A. PROJECT LOCATION & DESCRIPTION

The applicants propose to demolish a 1,696 square foot, two-story, single-family residence with an attached two-car garage and construct a new two-story, approximately 2,922 square foot single-family home with an attached 430 square foot two-car garage (**Exhibit 2**). The project also proposes to install a new concrete dead man under the newly constructed residence, and new tie back supports to reinforce the existing seawall. No work is proposed for the existing dock or pier.

The proposed project is located on an approximately 2,880 square foot bayfront lot on Newport Bay at 533 Via Lido Soud in the City of Newport Beach, County of Orange (**Exhibit 1**). The site is designated as R-1, Single-Unit Residential in the City of Newport Beach Land Use Plan (LUP) and the proposed use conforms to this designation. The height limit, as set forth in the certified LCP, is 24 feet for flat-roofed structures, and 29 feet for structures with sloped roofs. The proposed structure is designed with a sloped roof that is 24 feet in height and is consistent with the height requirement of the City’s certified LCP. Additionally, the parking requirement for detached single-unit dwellings less than 4,000 square feet is two spaces per unit in a garage. The proposed 2,922

square foot residence is designed to include a two-car garage, and is therefore also consistent with the parking requirement of the City's Certified LCP.

The project site is located in a residential area where the homes fronting Newport Bay are located on lots with seawall/bulkheads. Site conditions on the bayward side of the site include an existing bulkhead (on the applicants' private property), pier and dock. Presently, there is an approximately 30-foot long seawall/bulkhead on the bayfront side of the subject property, which was inspected and determined to be in good condition based on the *Coastal Hazard and Sea Level Rise Discussion for New Residence, 658 Via Lido Nord, Newport Beach, Orange County California* dated July 8, 2016, conducted by Geosoils, Inc. The coastal hazards report establishes that an existing bulkhead on the site cannot be removed and/or an existing or replacement bulkhead is required to protect existing principal structures and adjacent development or public facilities on the site or in the surrounding areas. However, the existing seawall has outdated "tie back" supports that need to be replaced to meet the City of Newport Beach development standards. Therefore, the applicants are proposing to install three new tierods to the existing seawall/bulkhead and fasten them to the new concrete deadman, which is proposed to be installed beneath the proposed residence approximately 24 feet landward of the seawall/bulkhead (**Exhibit 3**).

Due to its bay-front location, the project site may be potentially exposed to the hazard of waves, erosion, storm conditions, sea level rise or other natural hazards. The plans for the proposed project show that the finished floor elevation of the residence will be at +12.42 feet NAVD88. The project has been designed to be above the maximum highest high tide elevation of 7.2 feet NAVD88 and above the City of Newport Beach design flood height of +9.0 feet NAVD88. In addition, the proposed development has been designed for a 3-foot rise in sea level which is the National Research Council's projection for Los Angeles for the year 2100. A 3-foot rise in sea level would result in still water level of 10.2 feet NAVD88 (7.2 feet NAVD88 + 3 feet = 10.2 feet NAVD88).

However, the proposed finished floor would be below the upper range (maximum) of sea level rise projections by 2100, which based on the 2012 National Research Council Report, is 5.5 feet. If there were to be 5.5 feet of sea level rise, an extreme high tide water level of 12.70 feet (7.2 feet + 5.5 feet + 12.70 feet MLLW) could potentially affect the project site. To ensure the applicants accept the responsibility for all hazards associated with coastal development, the applicants must agree to assume the risks and agree to no future seaward extension of shoreline protective devices. Therefore, the Commission imposes **Special Conditions 1 and 2**. Additionally, any future improvements to the residence and garage will require a permit amendment, or a new coastal development permit, as required by **Special Condition 3**.

Public access to the bay is available approximately 30 feet southwest of the project site at the Via San Remo street end, and approximately 550 feet northwest of the project site at the Via Orvieto street end to the sandy public beach along Lido Island.

The applicants are proposing water quality improvements as part of the proposed project, including the direction of roof and surface runoff to infiltration drains on the property. Because the project site is on a bayfront lot and in close 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.

All plants used in landscaping will be non-invasive and drought tolerant. The placement of vegetation that is considered to be invasive which could supplant native vegetation is not permitted. 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.caleppc.org/>) and the California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)) in their publications. Furthermore, any plants in the landscaping plan should be drought tolerant to minimize the use of water. 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.owue.water.ca.gov/landscape/pubs/pubs.cfm> To ensure that all landscaping will be drought tolerant and non-invasive, the Commission imposes **Special Condition 6**.

Finally, the Commission imposes **Special Condition 7** requiring the applicants to record a Deed Restriction acknowledging that, pursuant to this permit (CDP No. 5-16-0769), 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. WATER QUALITY**

The proposed work will be occurring on, within, or adjacent to coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be discharged into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters. To reduce the potential for post-construction impacts to water quality the Commission requires the continued use and maintenance of post construction BMPs. As conditioned, the Commission finds that the development conforms with the City's Certified LCP and Sections 30230 and 30231 of the Coastal Act.

## **C. PUBLIC ACCESS**

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the Commission finds that the development conforms with the City's Certified LCP and conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act

## **D. LAND/HABITAT**

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the development conforms with the City's Certified LCP and conforms with Section 30240(b) of the Coastal Act.

## **E. DEVELOPMENT**

Development adjacent to the ocean is inherently hazardous. Development which may require the seaward extension of 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



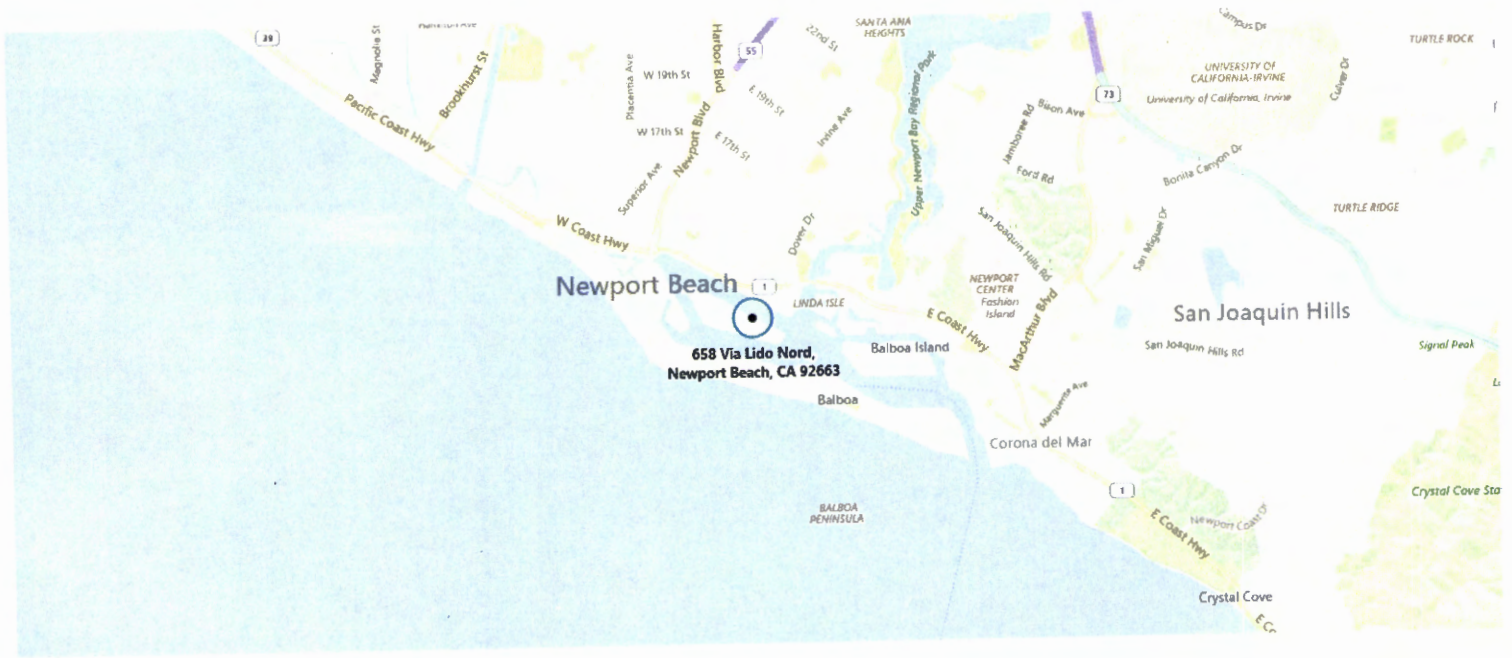
and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit the seaward extension of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms with the City's certified LCP and to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

#### **F. LOCAL COASTAL PROGRAM (LCP)**

An LCP for the City of Newport Beach was effectively certified on January 13, 2017. As conditioned, the proposed development is consistent with the Certified Local Coastal Program, and the public access and recreation policies of Chapter 3 of the Coastal Act.

#### **G. 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.



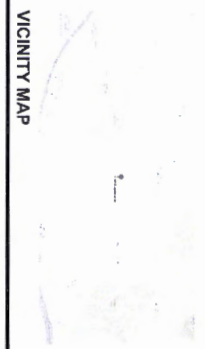
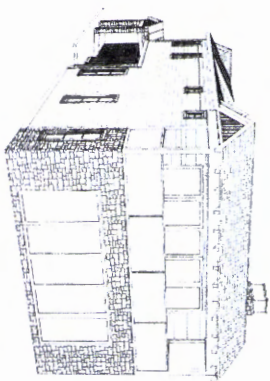
COASTAL COMMISSION

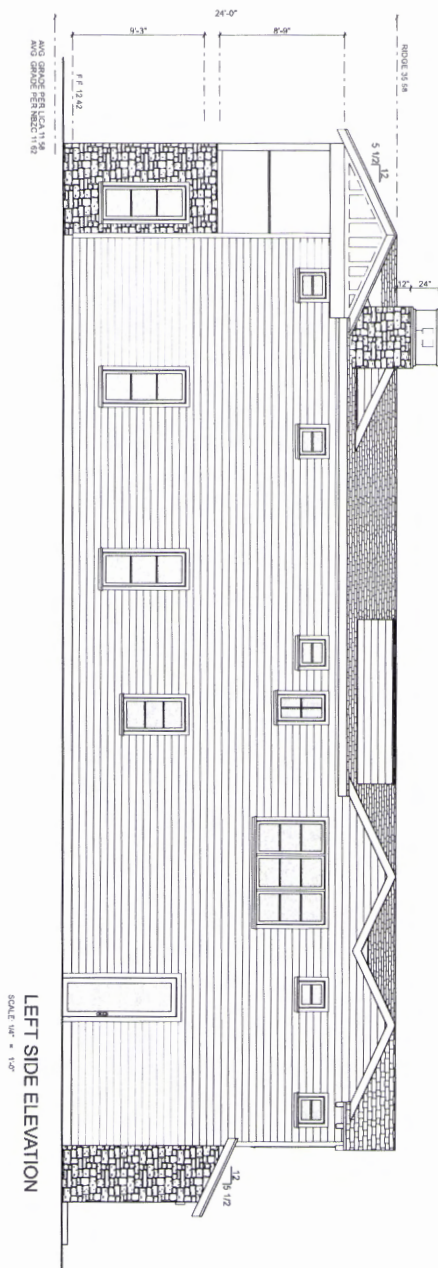
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PAGE 1 OF 1





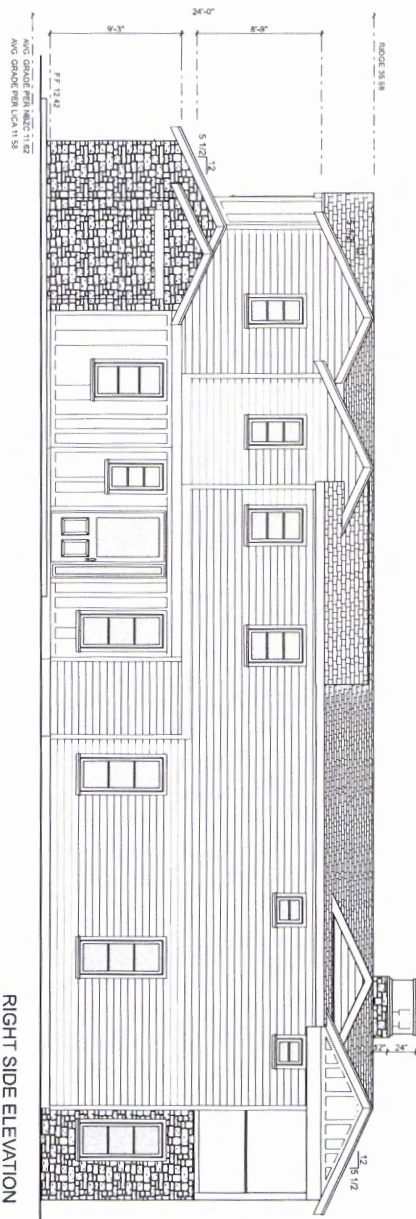
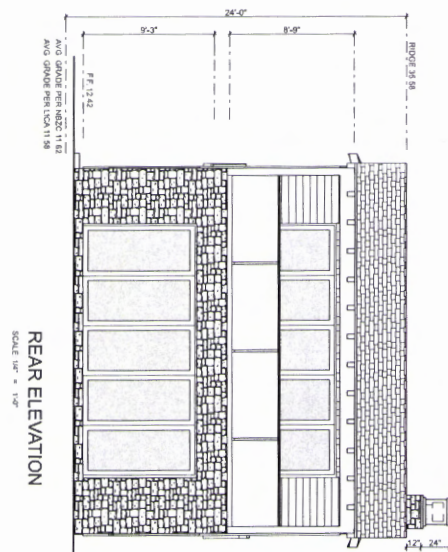
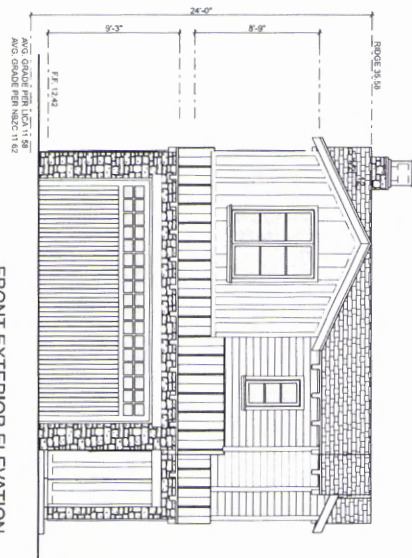
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| 1           | RTT PLAN                              |
| 2           | LOWER LEVEL FLOOR PLAN                |
| 3           | UPPER LEVEL FLOOR PLAN                |
| 4           | ROOF PLAN                             |
| 5           | EXTERIOR ELEVATIONS FRONT REAR & SIDE |
| 6           | EXTERIOR ELEVATION LEFT SIDE          |
| 7           | TOPOGRAPHIC SURVEY                    |
| 8           | AREA CALCULATIONS                     |
| 9           | LANDSCAPE PLAN                        |
| 10          | PREFACE DRAWING PLAN NOTES            |
| 11          | PREFACE DRAWING PLAN                  |
| 12          | DRAINAGE PLAN SECTIONS                |
| 13          | FINISHED CONTROL PLAN                 |





## COASTAL COMMISSION

EXHIBIT # 2  
PAGE 2 OF 3



**COASTAL COMMISSION**

EXHIBIT # 2  
PAGE 3 OF 3



| BULKHEAD ELEVATION |     |
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