

**CALIFORNIA COASTAL COMMISSION**

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**STAFF REPORT: CONSENT CALENDAR**

**Application No.:** 5-16-1031

**Applicant:** Stephen Rogers

**Agent:** Bradford Smith, Architect

**Location:** 320 and 322 Buena Vista Blvd., Newport Beach,  
Orange County  
(APNs 048-031-16, 048-031-17, and 048-031-18)

**Project Description:** Demolition of a 2,732 sq. ft. three-story single family residence at 322 Buena Vista Blvd., raise the grade on the site to match grade at 320 Buena Vista Blvd., and remodel existing 3,075 sq. ft. two-story single family residence at 320 Buena Vista with a 3,107 sq. ft. addition resulting in a 6,145 sq. ft. three-story, 28 ft. 11 in. tall single family residence, including a new attached 3-car garage, grading, and new hardscape and landscaping proposed.

**Staff Recommendation:** Approval with conditions

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**SUMMARY OF STAFF RECOMMENDATION**

*Procedural Note:* The City of Newport Beach Local Coastal Plan (LCP) was recently certified on January 13, 2017. The project site is located within the permit jurisdiction of the certified LCP. However, the CDP application was submitted to the Commission and deemed complete prior to LCP certification, therefore, the Commission is processing the CDP application instead of the local government. The standard of review for development within the City's LCP jurisdiction is the certified City of Newport Beach 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.

The applicant is proposing to enlarge a single family residence on two legal lots by demolishing the single family residence at 322 Buena Vista and adding on 3,107 sq. ft. to the single family residence at 320 Buena Vista Blvd. resulting in a 6,145 sq. ft., three-story, 29 ft. tall single family residence with one 2-car garage and a new additional 3-car garage, grading, new hardscape and landscaping. 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 certified LCP.

The project site is on Buena Vista Blvd. which runs parallel to the bay in front of the site. Buena Vista Blvd. historically has been public right-of-way with varying width from 30-36 ft. in different areas. However, no street was ever constructed, only a 6-ft. wide sidewalk that provides pedestrian, non-vehicular access along the bay fronting right-of-way. Therefore, vehicular access to the project site is provided by the alley that runs between Buena Vista Blvd. and Lindo Avenue. The remaining 20-26 ft. wide right-of-way in front (bayward) of each of the single family residences along Buena Vista is currently developed by the homeowners with private landscaping and paved patios, including on the properties subject to this application. Installation and maintenance of these private improvements has occurred without a coastal development permit. In 2014, the City of Newport Beach took an action to vacate 20-26 ft. wide sections of the Buena Vista Blvd. right-of-way while maintaining the 6 ft. wide sidewalk as public right-of-way. Property owners along Buena Vista Blvd., including the applicant were granted this vacated right-of-way. Vacation of a public right-of-way is considered development requiring a CDP as it results in a change in the intensity of use, and in this case, it also results in a change of available access to the coast and the reduction in public access. The City did not obtain the required CDP at the time it processed the right-of-way vacation in 2014-2015. Therefore, the existing development consisting of landscaped lawn raised planters, paved patio, built in barbeque and patio furniture seaward of the private property lines at the subject properties of 320 and 322 Buena Vista and the actual vacation of the public right-of-way are both unpermitted development.

This unpermitted development has occurred on property that is not part of the project site subject to this coastal development permit application. The subject permit application does not address the vacation of Buena Vista Blvd. by the City of Newport Beach or acceptance of a portion of the public right-of-way by the applicant. The applicant is not proposing or requesting Commission approval for any development seaward of his private property lines. The applicant is proposing a lot merger of the two legal parcels of 320 and 322 Buena Vista Blvd. under a separate CDP application, #5-16-0427 (Rodgers), also scheduled for Commission action at this, the Commission's March 2017 meeting. However, unpermitted development has occurred on property associated with this proposed enlarged single family residence involving the public right-of-way which may be inconsistent with the public access policies of the Coastal Act and thus resulting in a public access violation. The Commission's enforcement staff will investigate the matter further and may pursue penalties from the property owner(s) under Coastal Act Section 30821.

Staff recommends **approval** of the proposed project with **seven (7)** special conditions. The special conditions are related to: **1) Revised Plans; 2) Conformance with the Grading, Drainage, and Erosion Control Plan; 3) Assumption of Risk, Waiver of Liability and Indemnity; 4) No Future Shoreline Protective Device; 5) Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris; 6) Future Development; and 7) Deed Restriction.**

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## 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 Local Coastal Program conforming to the provisions of Chapter 3, and the public access and recreation policies 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. **Revised Plans.** PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of site and grading and landscaping plans that substantially conform with the project plans by Bradford C. Smith, Architect but shall be revised to remove an existing approximately 1.5 ft. x 30 ft. planter in front of 320 Buena Vista Blvd. wayward of the private property line and adjacent to the Buena Vista Blvd. sidewalk.

The applicant 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.

2. **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 area drains. 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.
3. **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.
4. **No Future Shoreline Protective Device.** 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. 5-16-1031 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.

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.

5. **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.
6. **Future Development.** This permit is only for development described in Coastal Development Permit No. 5-16-1031. 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. 5-16-1031. 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. 5-16-1031 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
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 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 DESCRIPTION

The proposed project is located at 320 and 322 Buena Vista Blvd. in the City of Newport Beach in Orange County. The subject properties are designated as RSD-C Single-Unit Residential Detached in the City's certified LCP. The subject properties are bay front sites facing lower Newport Bay harbor and are located in an existing residential area (**Exhibit 1**). Vertical access to the public bay front is available approximately 250 feet west of the subject site at the intersection of Buena Vista Blvd. and W. Bay Ave. where there is a small public beach with access to the water. The public

beach is also the start of a 6-ft. wide Buena Vista Blvd. pedestrian sidewalk providing public lateral access along the bay front in front of the subject properties.

The applicant is proposing to demolish a 2,732 sq. ft. three-story single family residence at 322 Buena Vista Blvd., raise the grade on the site to match grade next door at 320 Buena Vista Blvd., and remodel the existing 3,075 sq. ft. two-story single family residence at 320 Buena Vista with a 3,107 sq. ft. addition resulting in a 6,145 sq. ft. three-story, 28 ft. 11 in. tall single family residence including a new attached 3-car garage in addition to the existing two-car garage. Grading, new hardscape and landscaping including the use of non-invasive, drought tolerant plants is proposed. The proposed project includes new 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 permeable surfaces or area drains.

The height limit, as set forth in the certified LCP, is 24 feet for flat-roofed structures, and 29 ft. for structures with sloped roofs. The proposed structure is designed with a sloped roof that is 28 ft. 11 in. high above NAVD88, consistent with the height requirement of the City's certified LCP. Furthermore, the parking requirement for detached single-unit dwellings 4,000 sq. ft. or greater is 3 per unit in a garage. The proposed new residence totals 6,145 sq. ft. including an existing 2-car garage and the proposed additional new 3-car garage, providing a total of five (5) parking spaces in an enclosed garage; thus, exceeding the parking requirement per the certified LCP. Project plans are provided as **Exhibit 3** of this staff report.

Additionally, the applicant proposes to remove an existing planter in front of 320 Buena Vista Blvd. which encroaches approximately 1.5 ft. onto the Buena Vista Blvd. public sidewalk/right-of-way. The existing planter is depicted on the landscaping plan (**Exhibit #3, page 7**) and the grading plan (**Exhibit #3, page 8**). **Special Condition #1** requires revised plans indicating this removal. Both sites have privacy low garden walls along the sidewalk to about elevation +10.5 ft. NAVD88, the proposed project involves the retention of these garden walls and the side property line walls. The applicant is requesting CDP approval for the underlying lot merger of the two legal parcels of 320 and 322 Buena Vista Blvd. under a separate CDP application, #5-16-0427 (Rodgers) which is also scheduled for Commission action at this, the Commission's March 2017 meeting.

The applicant submitted a Coastal Hazard and Sea Level Rise Analysis, prepared by GeoSoils, Inc. dated October 28, 2016 for 320 and 322 Buena Vista Blvd. which concludes that it is very unlikely that any type of wave/wave will reach the site even after considering a 4.5 ft. sea level rise and that the proposed project is reasonably safe from shoreline erosion due to a lack of wave or wakes that can erode sand from the beach. Overall, the analysis concludes that the proposed project will be safe from flooding hazards for the next 75 years. As proposed, the remodeled residence (on the 320 Buena Vista Blvd. lot) will be retrofitted with water proofing at a minimum of 6 inches above the existing finished first floor of +9.9 feet NAVD88, and the new 3,107 sq. ft. addition to the residence (on the 322 Buena Vista Blvd. lot) will match the finished floor at +9.9 feet NAVD88. In addition, the entire first floor perimeter of the addition will be built with a concrete footing that extends a minimum of 6 inches above the finished floor, effectively making a curb that will waterproof the development to at least elevation +10.4 feet NAVD88. The waterproofed finished floor up to elevation +10.4 feet NAVD88 is above the bay water elevation during the highest historical tide until 2075 under the highest anticipated sea level rise rate. Furthermore, the proposed project would be safe from flooding beyond the year 2100 using a low anticipated sea level rise rate.



There currently is no existing bulkhead at these bay front locations. **Special Condition #3** acknowledges that building near the coast is inherently hazardous and that the applicant is aware of the risks. **Special Condition #6** prevents future improvements to the project site without a new permit or permit amendment and **Special Condition #7** requires a deed restriction. **Special Condition #5** requires construction responsibility and **Special Condition #2** requires adherence to proper drainage plans for the protection of the marine environment.

The City of Newport Beach issued an Approval-in-Concept (No. AIC 2016-084) on November 17, 2016 for the proposed development. The proposed project adheres to the RSD-C Single-Unit Residential Detached designation and as conditioned, is consistent with the policies and requirements of the City's certified Local Coastal Program (LCP).

The subject properties addresses are on Buena Vista Blvd. which runs parallel to the shore of the bay in front of the site. Buena Vista Blvd. historically has been public right-of-way with varying width from 30-36 ft. in different areas (**Exhibit 3**). However, no street was ever constructed along this right-of-way, only a 6-ft. wide sidewalk that provides pedestrian, non-vehicular access along the bay front. Therefore, vehicular access to the subject properties is from the alley that runs between Buena Vista Blvd. and Lindo Avenue. The remaining 20-26 ft. wide right-of-way in front (bayward) of each of the single family residences along Buena Vista is currently developed by the homeowners with private landscaping and paved patio encroachments, including on the two subject properties. Installation and maintenance of these private improvements has occurred without a CDP. In 2014, the City of Newport Beach took an action to vacate 20-26 ft. wide sections of Buena Vista Blvd. and maintain the 6-ft. wide sidewalk as a public right-of-way. Property owners along Buena Vista Blvd., including the applicant, were granted portions of this vacated public right-of-way. Vacation of a public right-of-way is considered development requiring a CDP as it results in a change in the intensity of use, and in this case, it also results in a change of available access to the coast and the reduction in public access. The City did not obtain the required CDP at the time it processed the right-of-way vacation in 2014-2015. Therefore, the existing development consisting of landscaped lawn raised planters, paved patio, built in barbeque and patio furniture seaward of the private property lines at the subject sites of 320 and 322 Buena Vista and the actual vacation of the public right-of-way are both unpermitted development. The topographic survey of the two subject sites included as **Exhibit 2** depicts the unpermitted development seaward of the private property line.

This unpermitted development has occurred on off-site property. This CDP application does not address the vacation of Buena Vista Blvd. by the City of Newport Beach, acceptance of the vacated right-of-way by the applicant, or existing unpermitted structures/development on the vacated portions of Buena Vista Blvd. The applicant is not proposing or requesting Commission approval for any development seaward of his private property lines. Moreover, the applicant is proposing to remove an existing small planter in front of 320 Buena Vista Blvd. which encroaches approximately 1.5 ft. onto the Buena Vista Blvd. public sidewalk/right-of-way and **Special Condition #1** requires revised plans indicating this removal. However, unpermitted development has occurred on property associated with this proposed development involving the privatization of a public right-of-way which may be inconsistent with the public access policies of the Coastal Act and thus resulting in a public access violation. The Commission's enforcement staff will investigate the matter further and may pursue penalties from the property owners under Coastal Act Section 30821.

## **B. HAZARDS**

Development adjacent to the ocean or bay 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 the City of Newport Beach LCP 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 #6** must be imposed. As conditioned the development conforms to the City of Newport Beach LCP and the public access and recreation 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 the City of Newport Beach certified LCP policies and requirements regarding public access and the public access and recreation policies 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. As conditioned, the Commission finds that the development conforms to the water quality control policies and requirements of the City of Newport Beach certified LCP 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 #7** 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. UNPERMITTED DEVELOPMENT**

Unpermitted development has occurred on the public right-of-way that is immediately adjacent to the properties subject to this Coastal Development Permit application. The unpermitted development includes installation and maintenance of a landscaped lawn areas, trees, brick walkways, brick paved patios, raised planters, and a built-in barbeque that extends onto the Buena Vista public right-of-way. This development has occurred without a coastal development permit. This vegetation and patio area is clearly maintained by the owner of the subject properties, although located on the adjacent public land.

In addition, in 2014, the City of Newport Beach took an action to vacate 20-26 ft. wide sections of right-of-way. Property owners along Buena Vista Blvd., including the applicant were granted this vacated right-of-way. Vacation of a public right-of-way is considered development requiring a coastal development permit as it results in a change in the intensity of use, and in this case, it also results in a change of available access to the coast and the reduction in public access. The City did not obtain the required coastal development permit at the time it processed the right-of-way vacation in 2014. As noted above, the property owner has placed private development within the vacated right-of-way, and, thus, has actively maintained the right-of-way as private property.

The existing development within the vacated right-of-way and the actual vacation of the public right-of-way and continued privatization of the right-of-way all constitute unpermitted development. This unpermitted development has occurred on property that is not part of the project site subject to this coastal development permit application, however, it has occurred on property associated with the subject site that the applicant has developed with private development. Any non-exempt development activity (which is the case here) conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act. No coastal development permit has been applied for nor obtained for this development. The subject permit application does not address the private development within the vacated right-of-way nor the continued privatization of the vacated right-of-way by the applicant.

Private development on a public right-of-way, such as the development at issue here, and the vacation of property that is open for public use, privatize public property and reduce the amount of area adjacent to the bay front available to the general public - thereby decreasing areas available for coastal recreation, in direct conflict with public access protection policies of the LCP and Coastal Act, including Sections 30210, 30211, 30220 and 30221 of the Coastal Act. Since the applicant is not proposing removal of the development within the vacated right-of-way, nor restoration of public right of access to the vacated right-of-way, the violations remain unaddressed, and enforcement action to address violations of the Coastal Act will be considered, including but not necessarily limited to action pursuant to Coastal Act Section 30821, which authorizes the Commission to

impose civil penalties on anyone who violates the Coastal Act's public access provisions, with certain exceptions.

Although unpermitted development occurred prior to the submission of this permit application, consideration of this application by the Commission has been based solely upon the certified LCP and Chapter 3 policies of the Coastal Act pertaining to public access. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged off-site unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the public right-of-way immediately adjacent to the subject sites without a coastal development permit.

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

On January 13, 2017, the City of Newport Beach LCP was effectively certified. The proposed development is located within the City's jurisdiction and consequently, the standard of review is the City's certified Local Coastal Plan (LCP) and the public access and recreation policies of the Coastal Act. As conditioned, the proposed development is consistent with the City's certified LCP and the public access and recreation policies of the Coastal Act.

#### **I. 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**

*Coastal Hazard and Sea Level Rise Discussion for an Addition and Remodel, 320 and 322 Buena Vista Boulevard, Newport Beach, Orange County, California* prepared by GeoSoils, Inc. dated October 28, 2016

City of Newport Beach City Council Staff Report Agenda Item No. 14: Notice of Vacation of a Portion of Buena Vista Boulevard Street Right-of-Way dated October 14, 2014

City of Newport Beach Resolution No. 2014-89, *A Resolution of the City Council of the City of Newport Beach Ordering the Vacation and Abandonment of a Portion of Street Right-of-Way (Buena Vista Boulevard) Adjacent to and contiguous with 304 to 350 Buena Vista Boulevard; and Directing the City Clerk to Record Same with the County Recorder's Office*

City of Newport Beach LCP

CDP Application File #5-16-1115(Rogers)

# COASTAL COMMISSION

EXHIBIT # 1  
PAGE 1 OF 2



*Subject site*





COASTAL COMMISSION

EXHIBIT # 1

PAGE 2 OF 2



BUENA VISTA BOULEVARD  
AREA MAP

CITY OF NEWPORT BEACH  
PUBLIC WORKS DEPARTMENT

EXHIBIT #

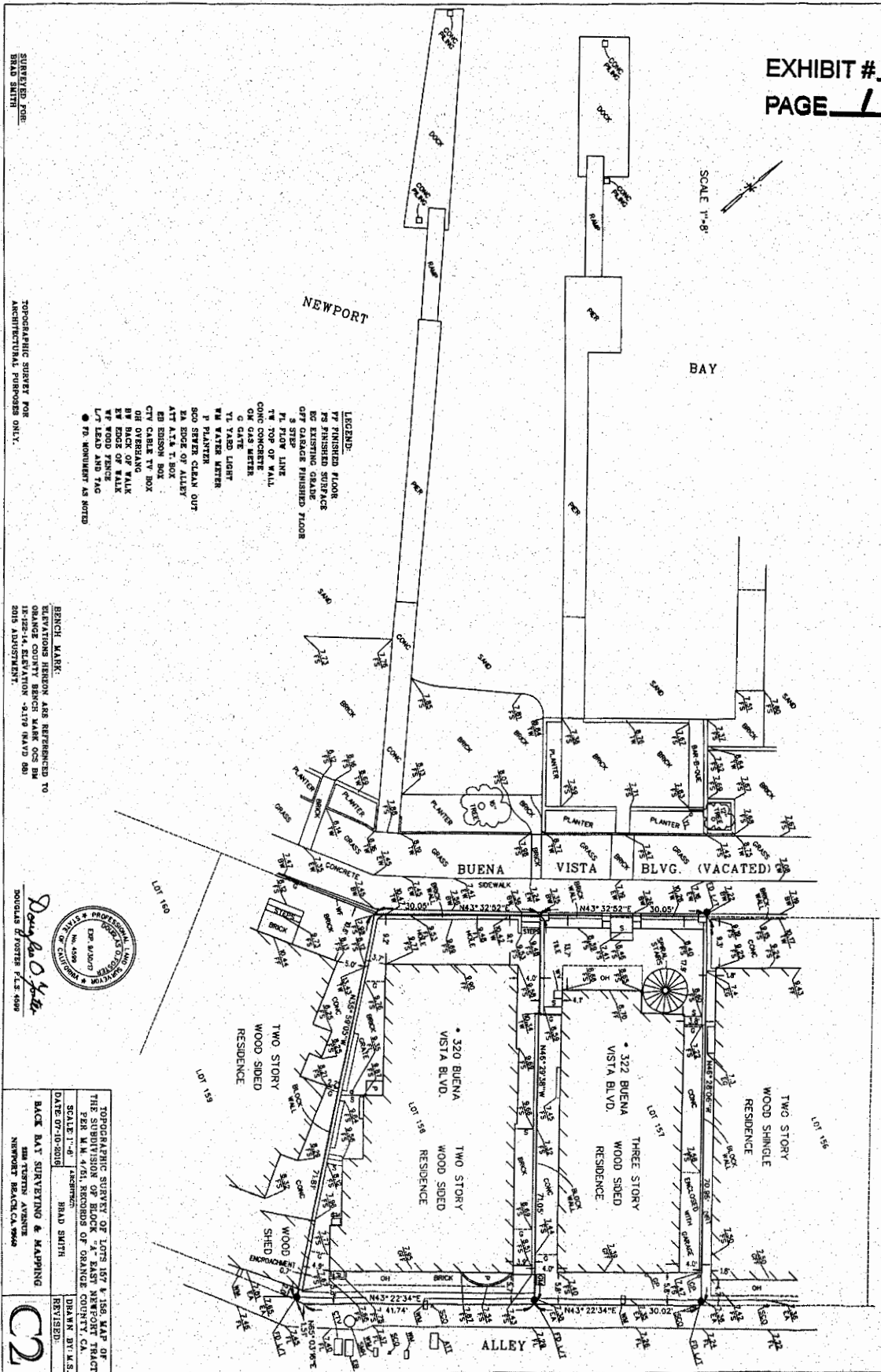
2

PAGE

1

OF

1



SURVEYED FOR:  
BRAD SMITH

TOPOGRAPHIC SURVEY FOR  
ARCHITECTURAL PURPOSES ONLY.

BENCHMARK:  
ELEVATIONS HEREON ARE REFERENCED TO  
ORANGE COUNTY BENCH MARK OCS BM  
18-122-14 ELEVATION - 2179 (NAVD 83)  
2015 ADJUSTMENT.

DANIEL O. SMITH  
REGISTERED PROFESSIONAL LAND SURVEYOR  
NO. 45807  
STATE OF CALIFORNIA

**BACK BAY SURVEYING & MAPPING**  
330 TERRY AVENUE  
NEWPORT BEACH, CA 92660

**DATE:** 07-10-2016  
**SCALE:** 1"=40'  
**DRAWN BY:** M.S.  
**REVIEWED:**

C2



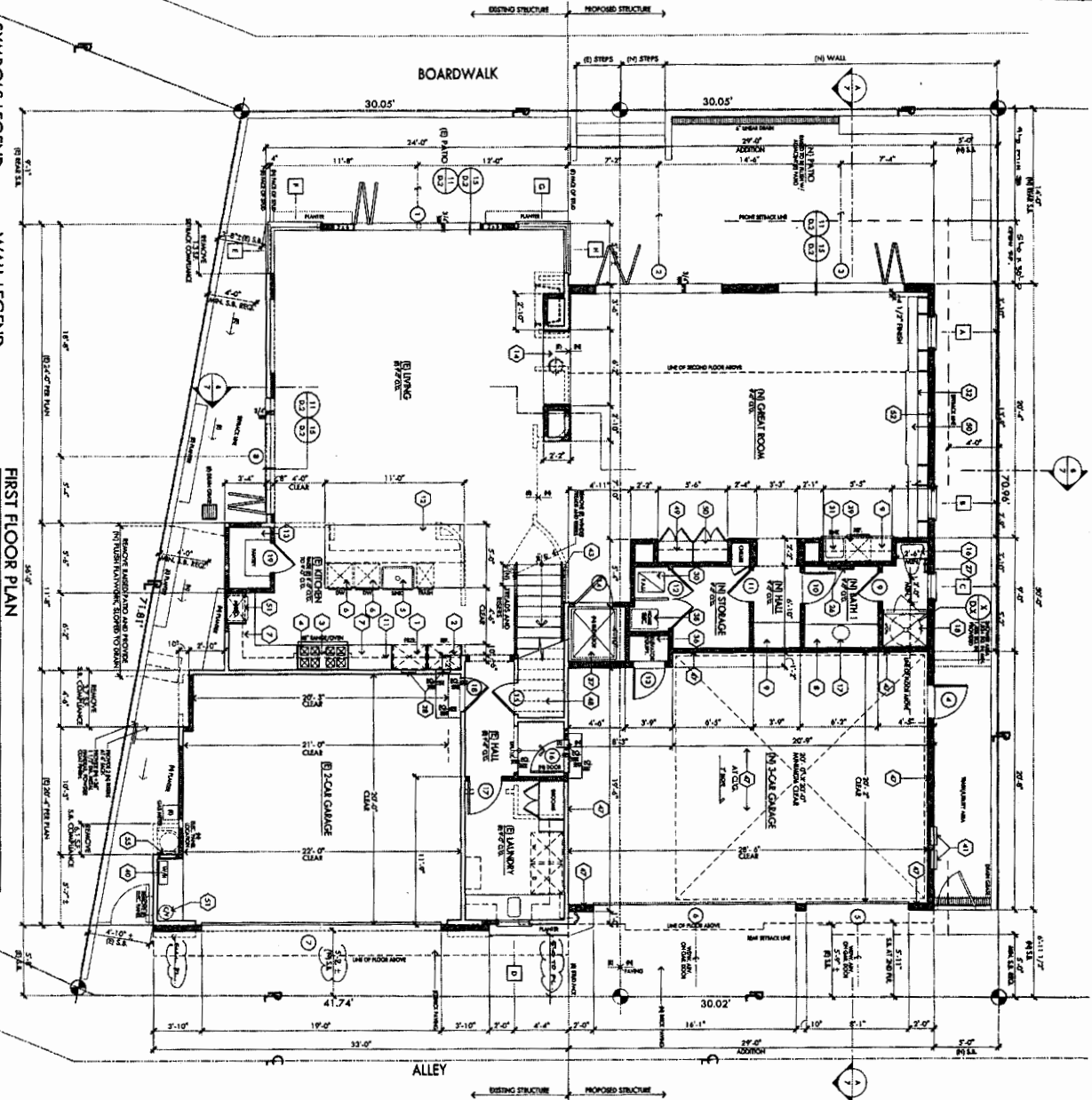


- SYMBOLS LEGEND:**
- 1 WINDOW (SEE SCHEDULE SHEET #4)
  - 2 DOOR (SEE SCHEDULE SHEET #4)
  - 3 REFERENCE NOTES (SEE SHEET #3)

- WALL LEGEND**
- EXISTING WALL TO REMAIN
  - WALL TO BE REMOVED
  - NEW WALL

## FIRST FLOOR PLAN

SCALE 1/4" = 1'-0"



### FLOOR PLAN NOTES:

1. 30' REVISIONS IN CORNER, SECTION BY OWNER.
2. 30' REVISIONS IN CORNER, SECTION BY OWNER.
3. 30' REVISIONS IN CORNER, SECTION BY OWNER.
4. 30' REVISIONS IN CORNER, SECTION BY OWNER.
5. 30' REVISIONS IN CORNER, SECTION BY OWNER.
6. 30' REVISIONS IN CORNER, SECTION BY OWNER.
7. 30' REVISIONS IN CORNER, SECTION BY OWNER.
8. 30' REVISIONS IN CORNER, SECTION BY OWNER.
9. 30' REVISIONS IN CORNER, SECTION BY OWNER.
10. 30' REVISIONS IN CORNER, SECTION BY OWNER.
11. 30' REVISIONS IN CORNER, SECTION BY OWNER.
12. 30' REVISIONS IN CORNER, SECTION BY OWNER.
13. 30' REVISIONS IN CORNER, SECTION BY OWNER.
14. 30' REVISIONS IN CORNER, SECTION BY OWNER.
15. 30' REVISIONS IN CORNER, SECTION BY OWNER.
16. 30' REVISIONS IN CORNER, SECTION BY OWNER.
17. 30' REVISIONS IN CORNER, SECTION BY OWNER.
18. 30' REVISIONS IN CORNER, SECTION BY OWNER.
19. 30' REVISIONS IN CORNER, SECTION BY OWNER.
20. 30' REVISIONS IN CORNER, SECTION BY OWNER.
21. 30' REVISIONS IN CORNER, SECTION BY OWNER.
22. 30' REVISIONS IN CORNER, SECTION BY OWNER.
23. 30' REVISIONS IN CORNER, SECTION BY OWNER.
24. 30' REVISIONS IN CORNER, SECTION BY OWNER.
25. 30' REVISIONS IN CORNER, SECTION BY OWNER.
26. 30' REVISIONS IN CORNER, SECTION BY OWNER.
27. 30' REVISIONS IN CORNER, SECTION BY OWNER.
28. 30' REVISIONS IN CORNER, SECTION BY OWNER.
29. 30' REVISIONS IN CORNER, SECTION BY OWNER.
30. 30' REVISIONS IN CORNER, SECTION BY OWNER.
31. 30' REVISIONS IN CORNER, SECTION BY OWNER.
32. 30' REVISIONS IN CORNER, SECTION BY OWNER.
33. 30' REVISIONS IN CORNER, SECTION BY OWNER.
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39. 30' REVISIONS IN CORNER, SECTION BY OWNER.
40. 30' REVISIONS IN CORNER, SECTION BY OWNER.
41. 30' REVISIONS IN CORNER, SECTION BY OWNER.
42. 30' REVISIONS IN CORNER, SECTION BY OWNER.
43. 30' REVISIONS IN CORNER, SECTION BY OWNER.
44. 30' REVISIONS IN CORNER, SECTION BY OWNER.
45. 30' REVISIONS IN CORNER, SECTION BY OWNER.
46. 30' REVISIONS IN CORNER, SECTION BY OWNER.
47. 30' REVISIONS IN CORNER, SECTION BY OWNER.
48. 30' REVISIONS IN CORNER, SECTION BY OWNER.
49. 30' REVISIONS IN CORNER, SECTION BY OWNER.
50. 30' REVISIONS IN CORNER, SECTION BY OWNER.
51. 30' REVISIONS IN CORNER, SECTION BY OWNER.
52. 30' REVISIONS IN CORNER, SECTION BY OWNER.
53. 30' REVISIONS IN CORNER, SECTION BY OWNER.
54. 30' REVISIONS IN CORNER, SECTION BY OWNER.
55. 30' REVISIONS IN CORNER, SECTION BY OWNER.

**SYMBOLS LEGEND:**

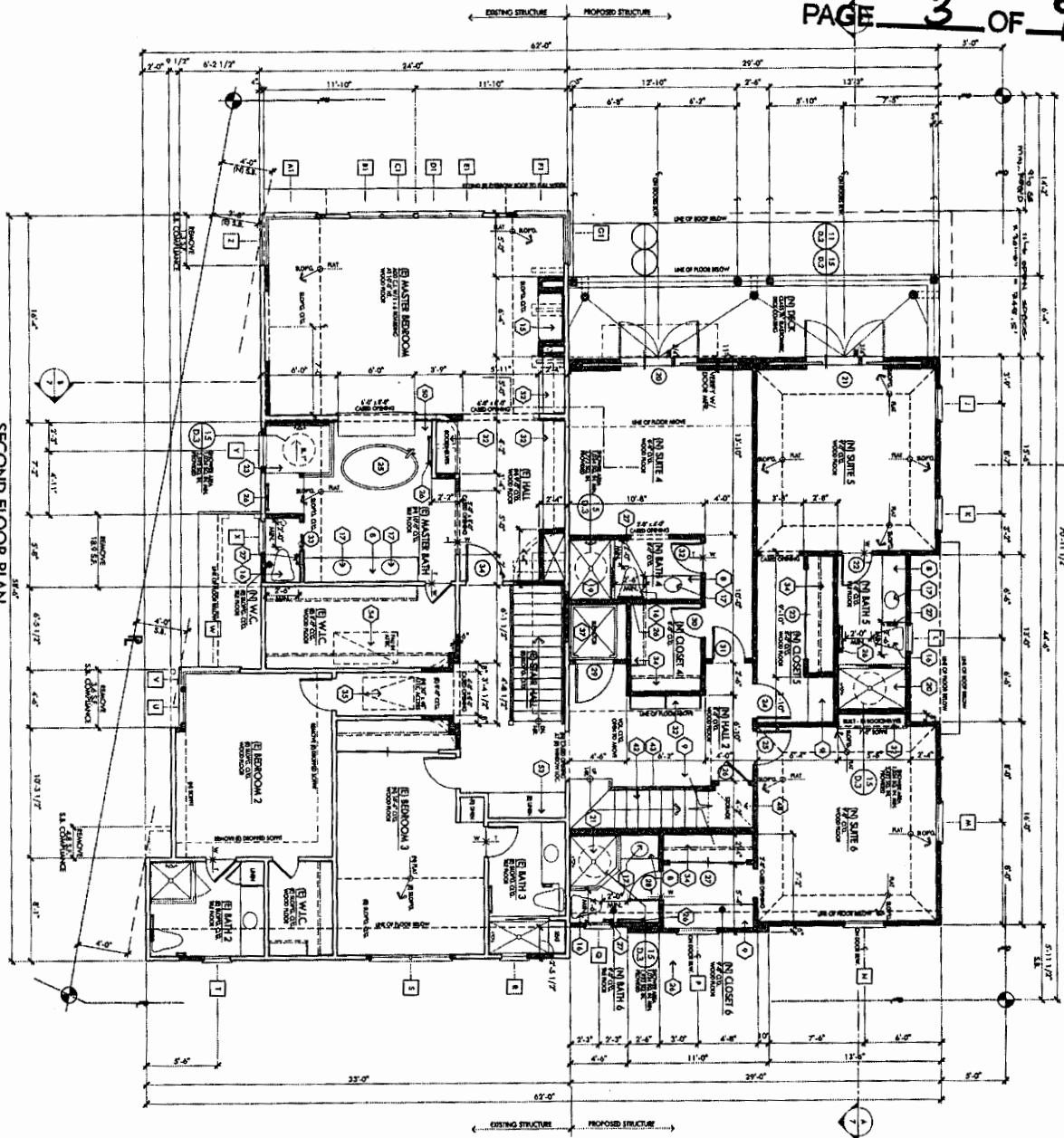
- 1 WINDOW (SEE SCHEDULE SHEET # 4)
- 2 DOOR (SEE SCHEDULE SHEET # 4)
- 3 REFERENCE NOTES (SEE SHEET # 2)

**WALL LEGEND**

- EXISTING WALL TO REMAIN
- WALL TO BE REMOVED
- NEW WALL

**SECOND FLOOR PLAN**

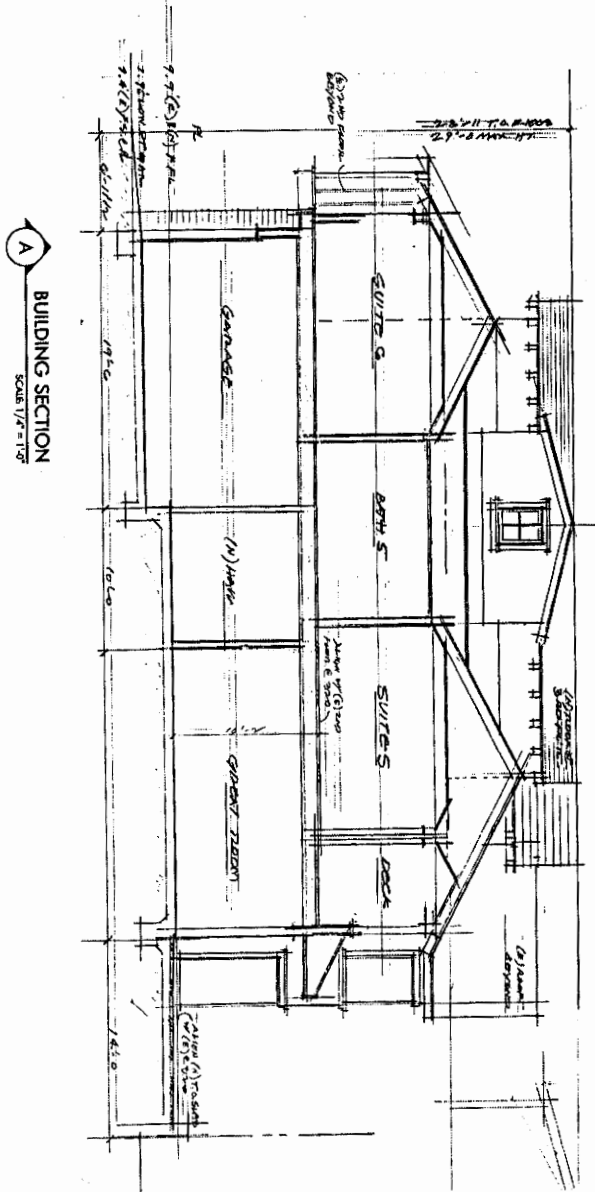
SCALE: 1/4" = 1'-0"



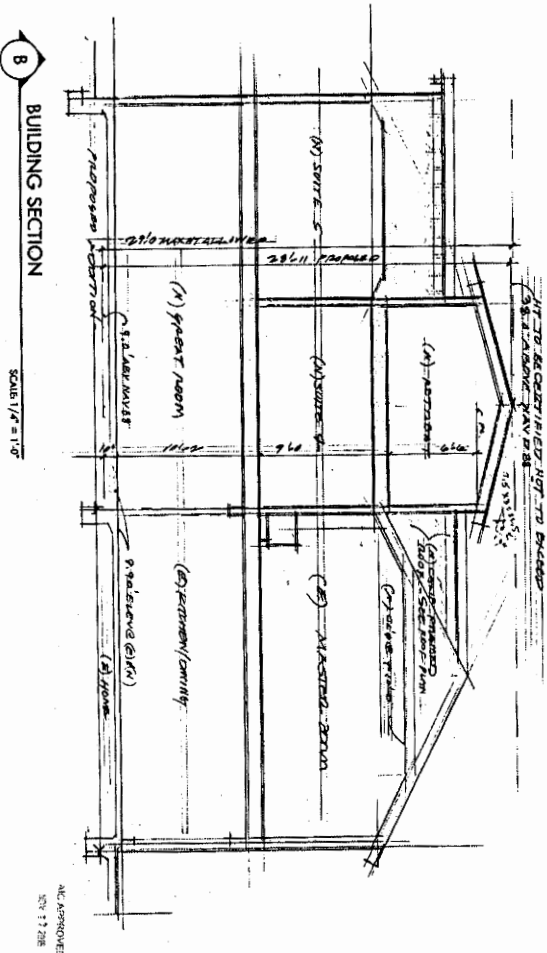
FLOOR PLAN NOTES:

# COASTAL COMMISSION

EXHIBIT # 3  
PAGE 4 OF 9



BUILDING SECTION NOTES:



NOT TO BE REPRODUCED WITHOUT WRITTEN PERMISSION OF THE ARCHITECT

DATE APPROVED  
SEP 11 2008

## LEGEND

INDICATES EXISTING  
CONDITIONS AND MODIFICATIONS

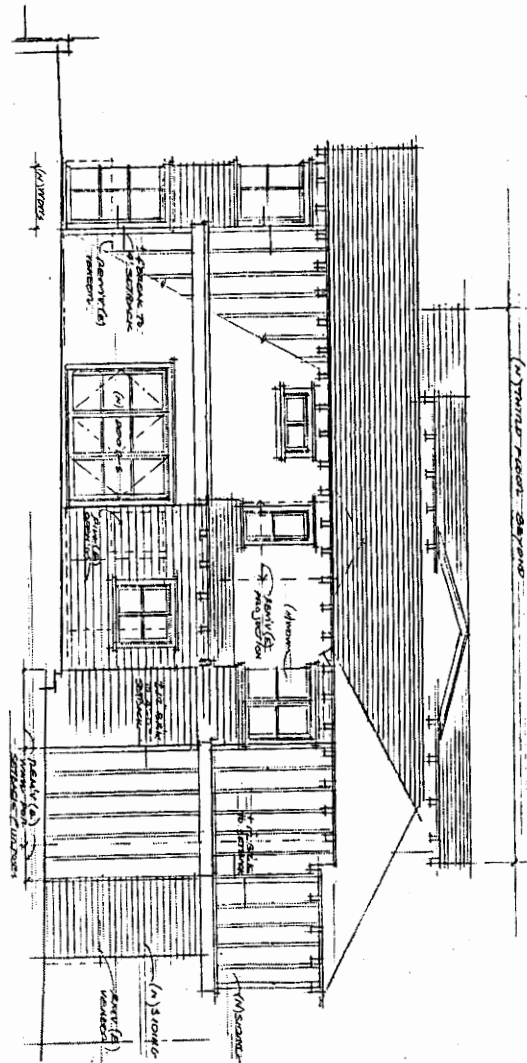
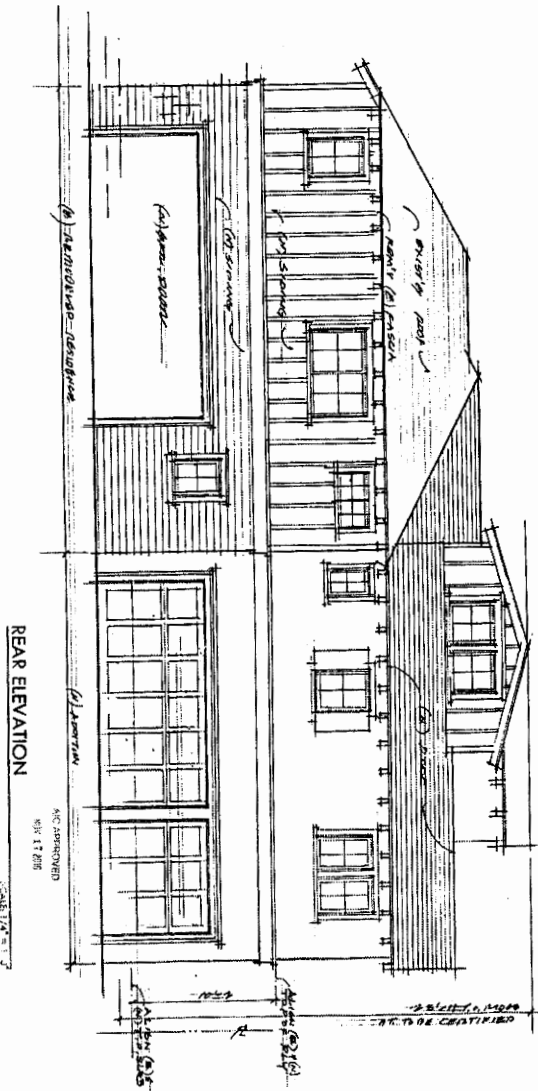
EXHIBIT # 3  
PAGE 5 OF 9

EXHIBIT # 3  
PAGE 5 OF 9



# COASTAL COMMISSION

EXHIBIT # 3  
PAGE 6 OF 9



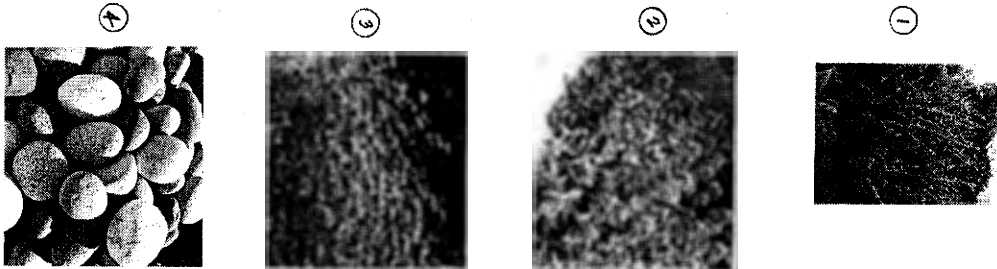
08-18-2006

AN ADDITION AND REMODEL OF THE:  
**ROGERS RESIDENCE**  
320 & 322 BUENA VISTA BOULEVARD  
NEWPORT BEACH, CALIFORNIA 92663

EXTERIOR ELEVATIONS

**BRADFORD C. SMITH, ARCHITECT**  
425 30TH STREET, SUITE 22  
NEWPORT BEACH, CALIFORNIA 92663  
(949) 631-3682  
e: bradsmitharchitect@gmail.com

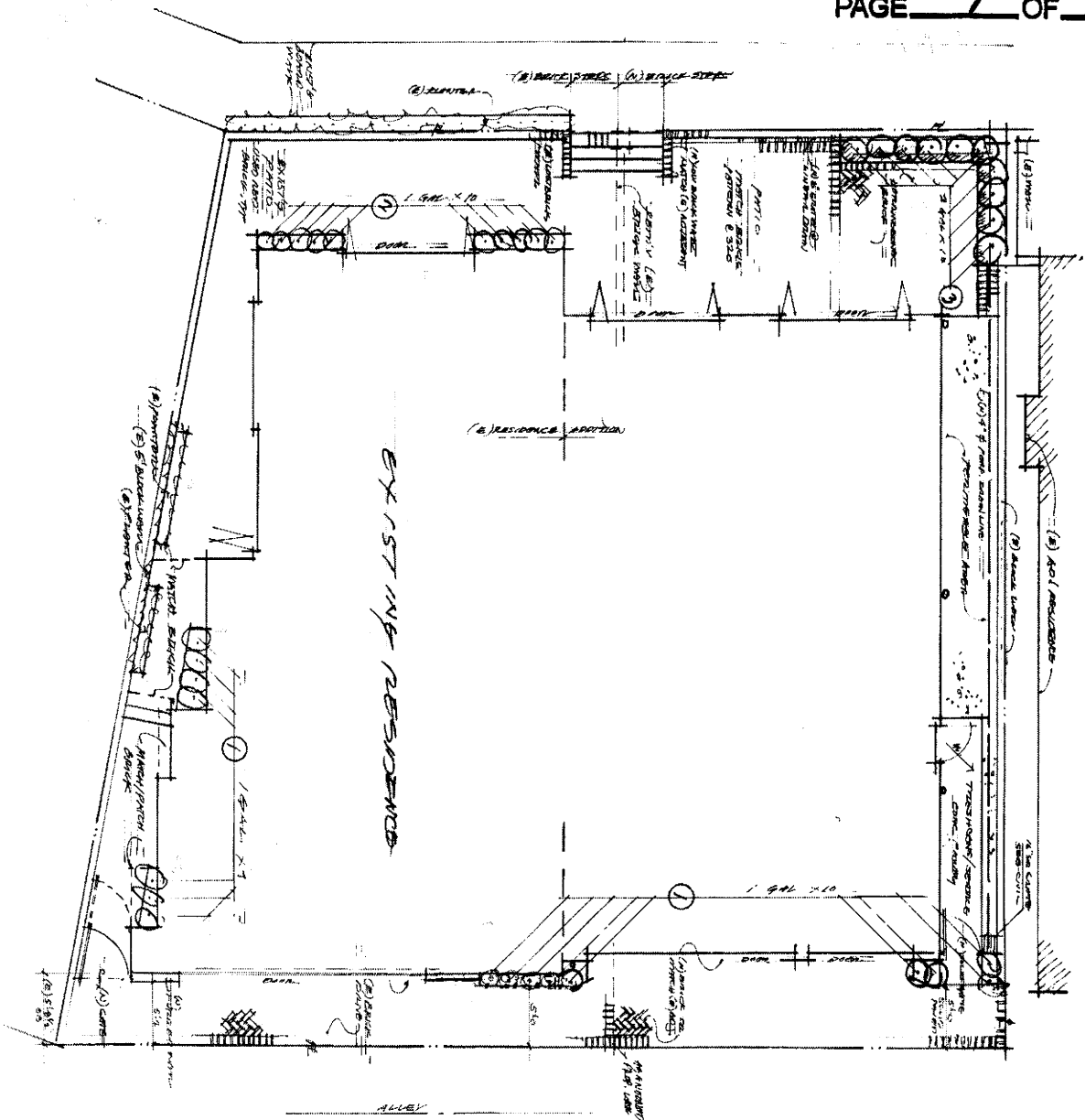




- PLANTING/LANDSCAPE LEGEND
- 1. MEXICAN SAGE
  - 2. JUPITER'S BEARD
  - 3. LAVENDER CALAMINT
  - 4. MEXICAN BEACH HIBISCUS - 1" DIA

## COASTAL COMMISSION

EXHIBIT # 3  
PAGE 7 OF 9



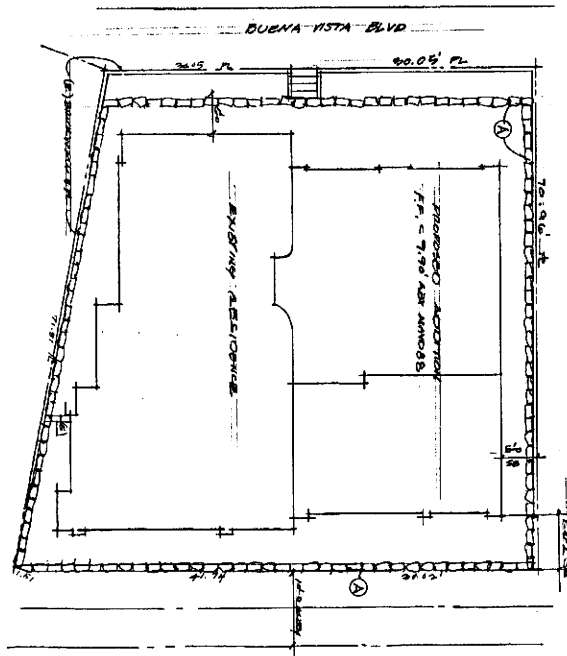
LANDSCAPE PLAN

SCALE: 1/8" = 1'-0"





EXHIBIT # 3  
PAGE 9 OF 9



## EROSION CONTROL PLAN

**EROSION CONTROL CONSTRUCTION NOTES**

⑦ INSTALL SAND FOR GRAVELLY BAG BARBER PER CUSQA SE-8 AND SE-6

SCALE IN FEET  
1 inch = 8 ft.

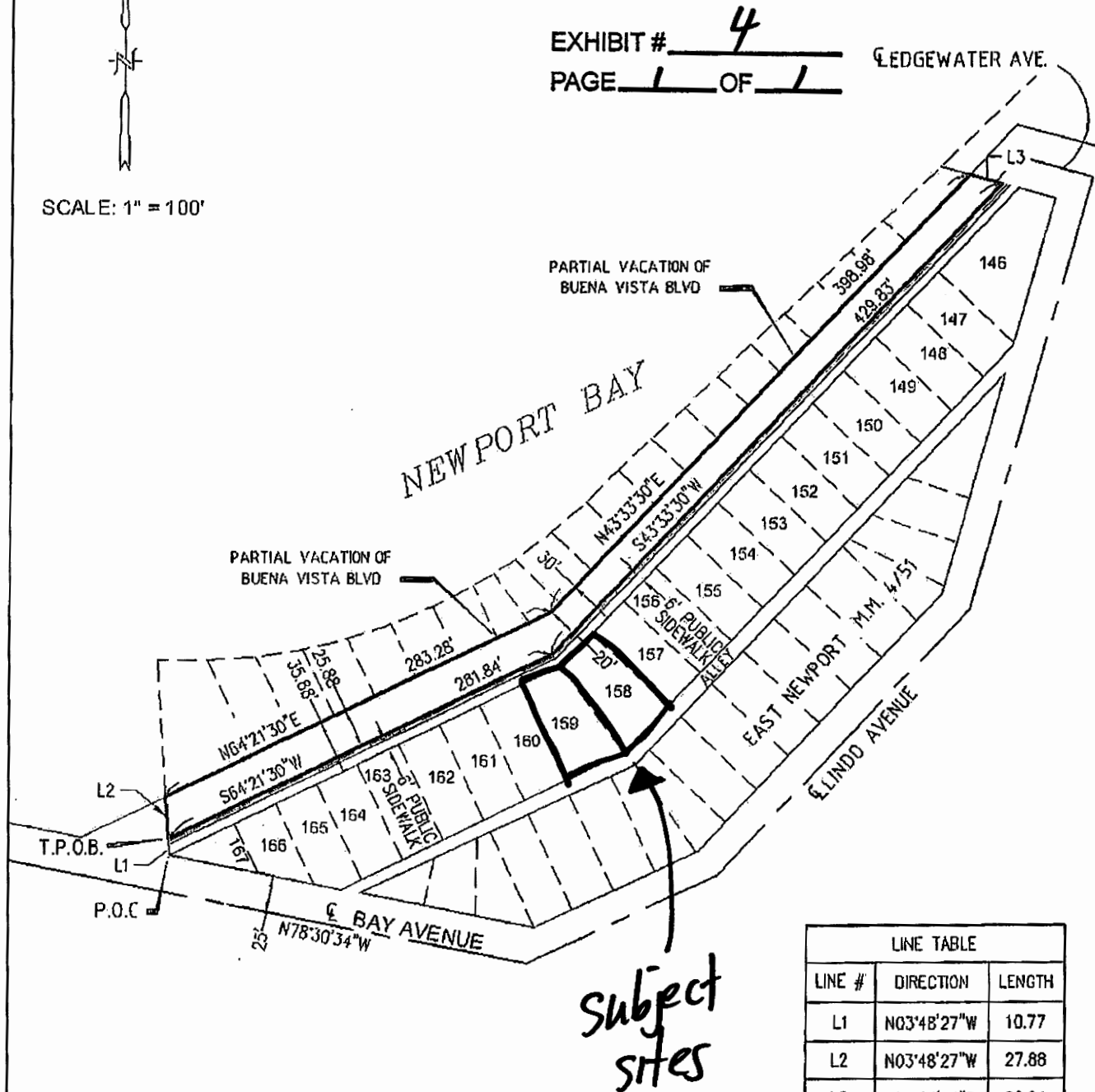
**A** SAND BAG DETAIL  
NO SCALE

## NOTES:

- [illegible]

PAGE 1 OF 1

SCALE: 1" = 100'



LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N03°48'27"W	10.77
L2	N03°48'27"W	27.88
L3	S74°24'00"E	22.64

BUENA VISTA BOULEVARD SHOWN HEREON IS BASED ON THE WIDTH OF 35.88' AS SHOWN ON ASSESSORS PARCEL MAP.  
BUENA VISTA BOULEVARD PER "BLOCK A EAST NEWPORT" AS RECORDED IN BOOK 4, PAGE 51 OF MISCELLANEOUS MAPS.  
SHOWS A WIDTH OF 30.00'

SCALE: 1"=100'



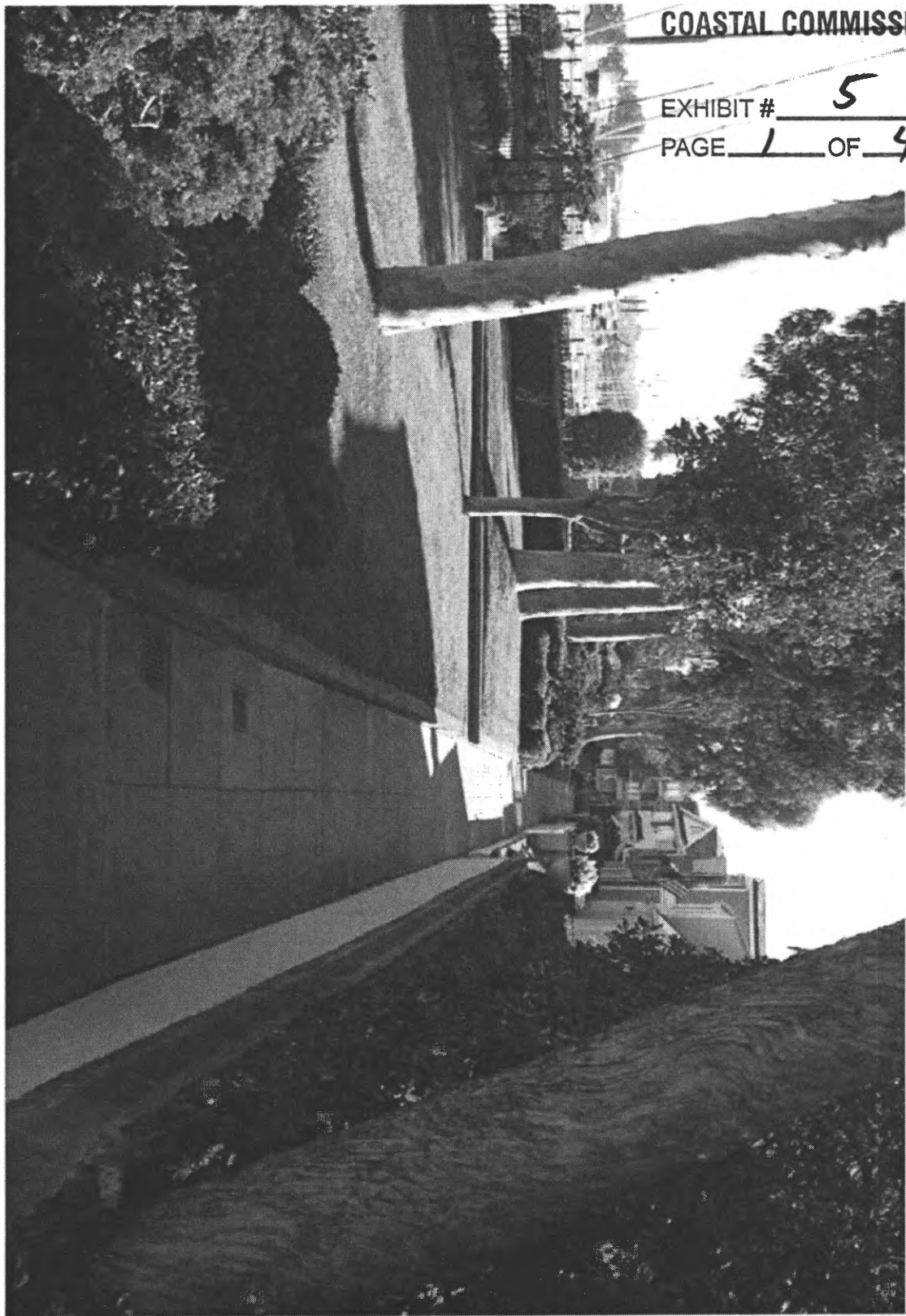
**CONSULTING, INC.**  
**CIVIL ENGINEERING**  
**LAND PLANNING & SURVEYING**

27156 BURBANK  
FOOTHILL RANCH,  
CA, 92510  
T. 949.916.3800  
F. 949.916.3805  
WWW.CVC-INC.NET

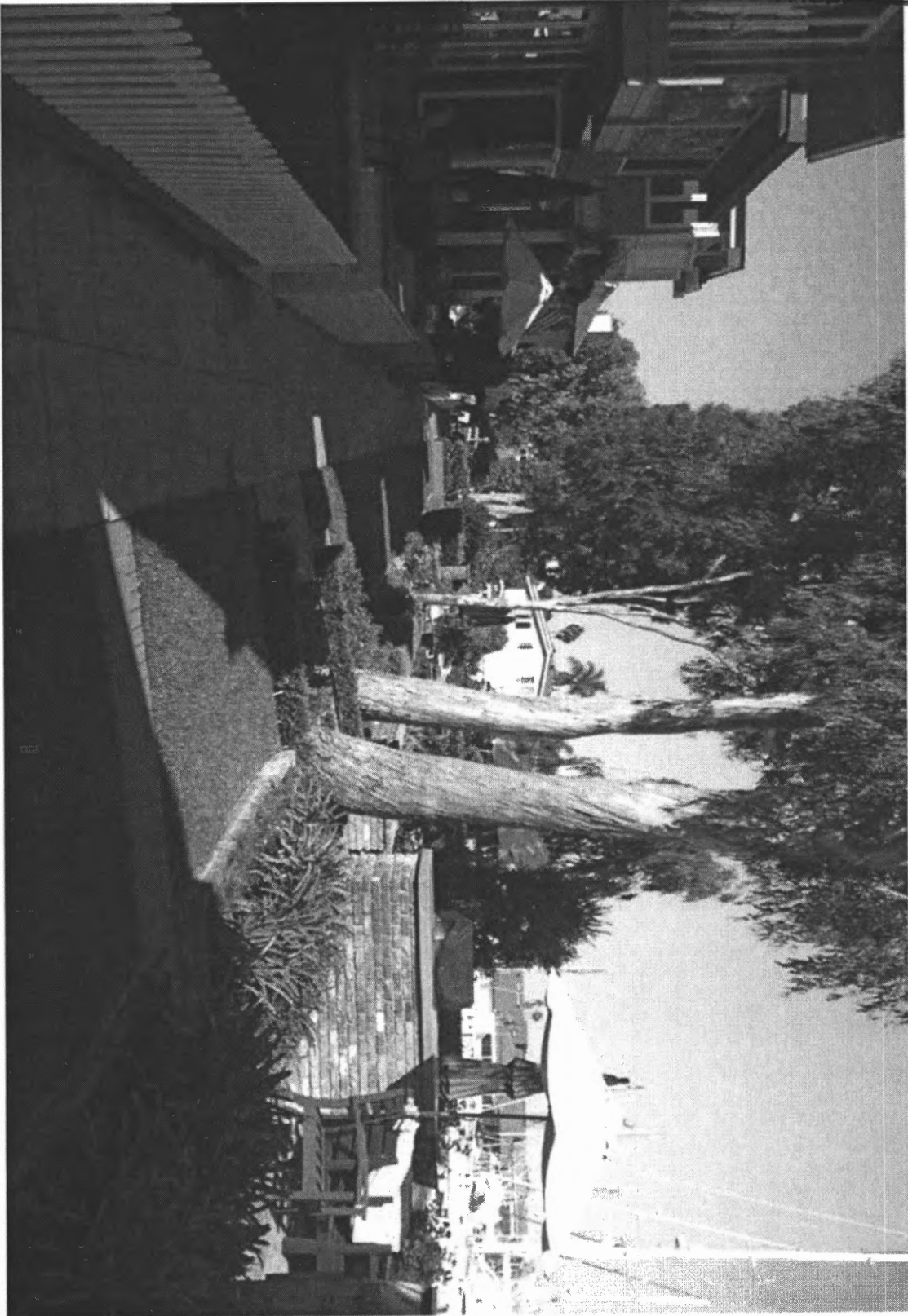
## PARTIAL VACATION OF BUENA VISTA BLVD

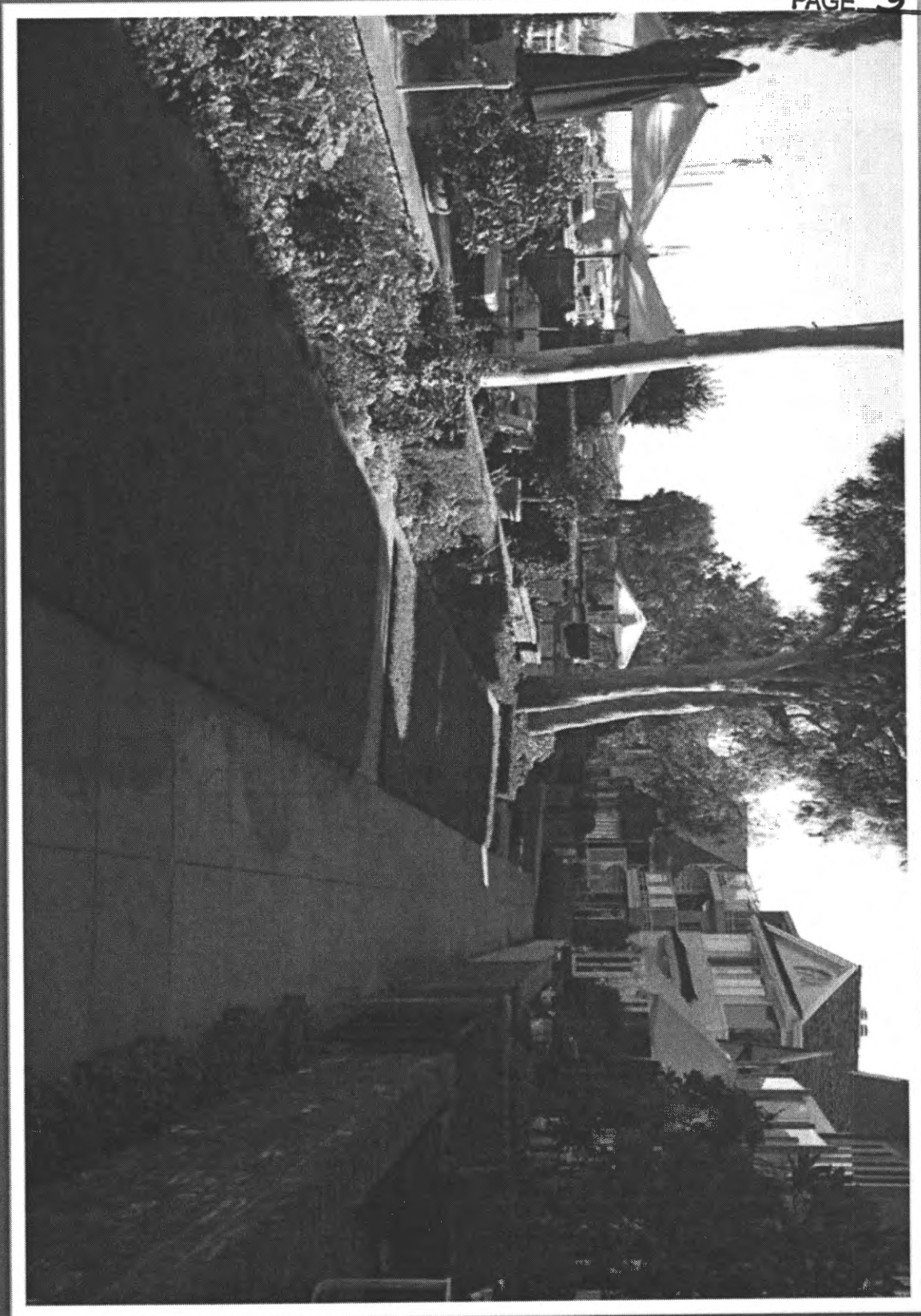
COASTAL COMMISSION

EXHIBIT # 5  
PAGE 1 OF 4











COASTAL COMMISSION

EXHIBIT # 5  
PAGE 4 OF 4

