

CALIFORNIA COASTAL COMMISSION

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**F8d**

Filed: 11/22/16
180th Day: 5/21/17
Staff: F. Sy-LB
Staff Report: 4/20/17
Hearing Date: 5/12/17

STAFF REPORT: CONSENT CALENDAR

Application No.: 5-16-0711

Applicant: Valley Family Trust; Attention Kent R. Valley

Agent: Brandon Architects, Inc.

Location: 1401 East Bay Avenue, City of Newport Beach (County of Orange)

Project Description: Demolition of a two-story single-family residence and construction of a new 2,736 square foot, three-story, single-family residence with an attached 527 square foot two-car garage 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.

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, 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 the City's certified LCP and the public access and recreation policies of the Coastal Act.

Staff is recommending **approval** of the proposed project with six (6) Special Conditions regarding: 1) no future shoreline protective device; 2) assumption of risk, waiver of liability and indemnity; 3) future development; 4) storage of construction materials, mechanized equipment, and removal of construction debris; 5) conformance with the drainage and run-off control plan; 6) landscape

controls; 7) public rights; and 8) 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 City's 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.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....4

II. STANDARD CONDITIONS4

III. SPECIAL CONDITIONS5

IV. FINDINGS AND DECLARATIONS.....8

A. PROJECT DESCRIPTION 8

B. HAZARDS 11

C. DEVELOPMENT 11

D. PUBLIC ACCESS..... 11

E. WATER QUALITY 11

F. DEED RESTRICTION 12

G. LOCAL COASTAL PROGRAM (LCP)..... 12

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) 12

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS13

EXHIBITS

- [Exhibit No. 1 – Location Map](#)
- [Exhibit No. 2 – Site Plan](#)
- [Exhibit No. 3 – Floor Plans](#)
- [Exhibit No. 4 – Elevation Plans](#)
- [Exhibit No. 5 – Topographic Survey](#)

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 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 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, including but not limited to waves, storms, flooding, erosion, and earth movement, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee 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 Bayward Extension of the Shoreline Protective Device.**
 - A. By acceptance of this Permit, the applicant agrees, 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. 5-16-0711, 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 applicant waives, 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. 5-16-0711, as generally described above and shown on **Exhibit No. 5** attached to this staff report, showing the footprint and the elevation of the device referenced to NGVD (National American Vertical Datum).

- 3. Future Development.** This permit is only for the development described in coastal development permit (CDP) 5-16-0711. Pursuant to Title 14 California Code of Regulations (CCR) Section 13250(b)(6), the exemptions that would otherwise be provided in Public Resources Code (PRC) Section 30610(a) shall not apply to the development governed by CDP 5-16-0711. Accordingly, any future improvements to this structure authorized by this permit shall require an amendment to CDP 5-16-0711 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government. In addition thereto, an amendment to CDP 5-16-0711 from the Commission or an additional CDP from the

Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit pursuant to PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b).

4. Storage of Construction Materials, Mechanized Equipment and Removal of Construction

Debris. The permittee shall comply with the following construction-related requirements:

- A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
- B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
- D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- F. The applicant 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.

- 5. Conformance with Drainage and Run-Off Control Plan.** The applicant shall conform with the drainage and run-off control plan dated July 28, 2016 showing roof drainage and runoff from all impervious areas directed to trench drains. 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 drought tolerant non-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>). Use of reclaimed water for irrigation is encouraged. If potable water is used for irrigation only drip or micro spray irrigation systems may be used. Other water conservation measures shall also be considered, such as use of weather based irrigation controllers.
- 7. 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.
- 8. 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

A. PROJECT DESCRIPTION

The applicant proposes to demolish a two-story single-family residence and construct a new, 29-foot high, three-story, 2,763 square foot, single-family residence with an attached 527 square foot two-car garage on a bayfronting lot ([Exhibits No. 2-4](#)). Grading will consist of 2 cubic yards of cut and 31 cubic yards of fill. The foundation will consist of footings and mat slabs. The proposed residence has been pulled back approximately 5 feet landward from the location of the existing residence. Thus, the project does not encroach further towards the bay. No work is proposed to the existing timber seawall/bulkhead, nor the existing pier and dock.

The subject site is located at 1401 East Bay Avenue on the Balboa Peninsula in Newport Bay in the City of Newport Beach, Orange County ([Exhibit No. 1](#)). Currently, an existing approximately 2,300 square foot single-family residence with an attached 400 square foot two-car garage occupies the project site. The lot size is 5,724 square feet and is designated as R-1, Single-Unit Residential by the certified City of Newport Beach LCP 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 29 feet in height and is consistent with the height requirement of the City's certified LCP. Two parking spaces are provided in the garage, accessed from East Bay Avenue. Thus, the proposed development would provide adequate parking consistent with the City's certified LCP. To the north of the project site is Newport Bay, while south of the project is East Bay Avenue. To the east of the project site is the "F" Street, street end and west of the project site is an existing single-family residence.

The project site is located in a residential area where the residences fronting Newport Bay are located on lots with existing seawalls/bulkheads. Site conditions on the bayward side of the site include an existing timber seawall/bulkhead, pier and dock. Presently, there is an approximately 30-foot long timber seawall/bulkhead on the bayfront side of the subject property at elevation 7.31 feet NAVD88, which was visually inspected and determined to be in good condition based upon the "*Coastal Hazard Analysis, 1401 East Bay Avenue, Newport Beach, Orange County California*" dated July 15, 2016 prepared by Geosoils, Inc. submitted by the applicant. The coastal hazards report establishes that an existing seawall/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.

As discussed in the analysis, based on sea level rise projections from the National Research Council (NRC) 2012 report, sea levels may rise between 1.25-feet to 4.5-feet by the year 2092 (75 years). The plans for the proposed project show that the finished floor elevation of the residence will be at +9.00 feet NAVD88. The project has been designed to be above the maximum highest high tide elevation of 7.2 feet NAVD88 and at the City of Newport Beach design flood height of +9.0 feet NAVD88. If there were to be a 4.5 foot rise (the upper range of the NRC projections for southern California), an extreme high tide still water level of +11.70 feet NAVD88 (+7.20 feet MLLW + 4.5 feet = +11.70 feet NAVD88) could result. Such a rise would exceed the proposed finished first

floor elevation of +9.0 feet NAVD88, resulting in water up to 2.70 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. In addition, the existing seawall/bulkhead, which no work is being proposed to, is at an elevation of 7.31 feet NAVD88, which would be exceeded under either the lower or upper range of the NRC projections. To ensure the applicants accept the responsibility for all hazards associated with coastal development, the Commission imposes [Special Condition No. 1](#), which requires the applicant to agree to assume the risk that the development is susceptible to hazards and [Special Condition No. 2](#), which requires no future bayward extension of the shoreline protective device.

In an attempt to minimize risks to life and property from sea level rise-related flood hazards, the applicant has proposed adaptation measures to deal with flooding, such as water proofing the foundation and installing a minimum 6-inch waterproofed curb around the building. The applicant also states that the existing timber seawall/bulkhead can be increased in height to +12 feet NAVD88 (which would require a CDP). If other alternate adaptive measures are required, the applicant has stated that they could also install temporary barriers such as sand bags, and, if necessary, converting the lowest building level to non-habitable use.

Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the beach 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, including alteration of the existing seawall/bulkhead, does not occur which could potentially result in adverse impacts to coastal processes, the Commission imposes [Special Condition No. 3](#), which informs the applicant that future development at the site requires an amendment to Coastal Development Permit No. 5-16-0711 or a new coastal development permit.

The proposed project is considered development 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. 4](#), which provides construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris.

The applicant has submitted a drainage and runoff control plan that minimizes impacts to water quality the proposed project may have after construction. On-site drainage will be collected by a system of roof gutters, downspouts and drain inlets and directed to trench drains. In order to ensure that the drainage and runoff control plan is adhered to, the Commission imposes [Special Condition No. 5](#), which requires the applicant to conform with the drainage and run-off control plan and to adequately maintain it throughout the life of the proposed development.

The applicant has submitted a landscape plan, which will consist of a planting palette that 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) 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 No. 6**, which imposes landscape controls that require that all vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive.

The applicant has 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 subject site has an existing pool safety wall at elevation 7.31 feet NAVD88 located adjacent to the sandy beach bayward of the proposed residence that is subject to coastal hazards. The bayside boundary line separates private property from Public Trust Tidelands created through an adjudicated line, established through a 1928 judgment rendered in action No. 23678 in the Superior Court of the State of California in and for the County of Orange.

The public trust lands bayward of the site can be accessed adjacent to the site via the vertical public access point at the end of "F" Street. From every street end along the Balboa Peninsula, the public can access the Public Trust Tidelands area seaward of the subject site by watercraft or by swimming to the site. The proposed project does not involve any development on Public Trust Tidelands. 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. 7** 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.

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. 8**, 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.

On May 6, 1974, the Commission approved P-4-2-74-2958 (English) for the following development on the site: construction of a wooden seawall. No special conditions were imposed.

On June 23, 2011, the Commission approved Administrative Permit No. 5-11-117 (Valley) for the following development on the site: removal of an existing "U" shaped boat dock and pier approach and replacement with a new "finger" shaped boat dock, new 60' pier approach reusing two existing piles, a new 5' x 14' pier platform, and new 38' long "finger" floating dock (the fingertip portion was 4' x 23', widening to 8' x 15') that required three new 14" concrete piles. The following Four (4) Special Conditions were imposed on the proposed project regarding: 1) water quality; 2) pre- and post-construction eelgrass survey; 3) pre-construction *Caulerpa Taxifolia* survey; 4) public rights.

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 the certified City of Newport Beach LCP and 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 Commission finds that the development conforms to the requirements of the certified City of Newport Beach LCP and 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. As conditioned, the Commission finds that the development conforms with the requirements of the certified City of Newport Beach LCP and 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. As conditioned, the Commission finds that the development conforms with the requirements of the certified City of Newport Beach LCP and 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)

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

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A: SUBSTANTIVE FILE DOCUMENTS

Approval-In-Concept from the City of Newport Beach Planning Department dated August 4, 2016; *Geotechnical Engineering Investigation, Proposed New Residence, 1401 East Bay Avenue, Newport Beach, California (W.O. 408810-01)* prepared by Coast Geotechnical, Inc. dated November 2, 2010; Letter from Commission staff to agent dated September 7, 2016; Letter from agent to Commission staff received November 3, 2016; *Coastal Hazard Analysis, 1401 East Bay Avenue, Newport Beach, Orange County California*” dated July 15, 2016 prepared by Geosoils, Inc.; and Letter from Commission staff to agent dated December 2, 2016; Letter from agent to Commission staff received December 8, 2016.