

CALIFORNIA COASTAL COMMISSION

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49th Day: June 15, 2007
180th Day: October 24, 2007
Staff: Liliana Roman-LB
Staff Report: May 24, 2007
Hearing Date: June 13-15, 2007
Commission Action:



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STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-07-047

APPLICANT: Dr. Hans Pete Wild and Leslie Gunn

AGENT: Todd Schooler & Associates, Inc.

PROJECT LOCATION: 4501 Brighton Road, Corona Del Mar (Orange County)

PROJECT DESCRIPTION: Demolition of an existing one-story 5,356 sq. ft. single-family residence including attached garage and pool/spa and construction of a new one-story, 14 foot high, 10,588 sq. ft. single-family residence with a new subterranean level and attached 3-car garage with new re-constructed pool/spa on a 16,046 sq. ft. coastal bluff top lot. Grading will consist of 2,586 cubic yards of cut for new basement construction.

LOCAL APPROVALS RECEIVED: Approval in Concept (#2665-2006) from the City of Newport Beach Planning Department dated December 8, 2006.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan; Geotechnical Investigation, Proposed Sing-Family Residence, 4501 Brighton Road, Corona Del Mar prepared by Coastal Geotechnical dated January 22, 2007; CDP 5-90-568(Gunn); CDP No. 5-04-013(Primm) and No. 5-04-035(Hoff)

SUMMARY OF STAFF RECOMMENDATION:

The subject site is a coastal bluff top lot located between the first public road and the sea in Corona Del Mar (Newport Beach). The primary issues addressed in this staff report are the conformance of the proposed development with the geologic hazard policies of the Coastal Act.

Staff is recommending **APPROVAL** of the proposed project with **Seven (8) Special Conditions** regarding: **1)** assumption of risk; **2)** no future bluff top protective devices; **3)** additional approvals for any future development ; **4)** submittal of final plans; **5)** Conformance with geotechnical recommendations; and **6)** submittal of a Pool Protection Plan; **7)** submittal of Landscaping Plan;

8) a Deed Restriction against the property, referencing all of the Special Conditions contained in this Staff Report.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Site Plans
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I. STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application:

MOTION: *I move that the Commission approve 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 permits included on the consent calendar. An affirmative vote of a majority of the Commissioners present is needed to pass the motion.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a permit, subject to the conditions below, for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the provisions of Chapter 3 of the California Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a local coastal program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternative that would substantially lessen any significant adverse impacts of the development on the environment.

II. 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 this permit is reported to the Commission. 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

1. Assumption of Risk, Waiver of Liability and Indemnify

By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from erosion and wave uprush; (ii) to assume the risks to the applicants and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

2. No Future Shoreline or Bluff top Protective Device(s)

- A(1). By acceptance of this Permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no shoreline or bluff top protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-07-047 including, but not limited to, the residence, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- A(2). By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the house, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-07-047. 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. 5-07-047. Accordingly, any future improvements to the single family development authorized by this permit, including but not limited to landscape improvements and repair and maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-07-047 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. Final Project Plans

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of revised final project plans. The revised final plans shall demonstrate the following:

That the proposed residence shall be, at minimum, setback 25-feet from the bluff edge (consistent with plans submitted by the applicant on April 27, 2007) and any existing hardscape and appurtenances and any proposed hardscape and appurtenances be setback, at minimum, 10-feet from the bluff edge. The bluff edge approximately follows the 33-foot elevation contour as generally depicted on Exhibit 3 of the staff report.

- B.** The applicants 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 required.

5. Conformance with Geotechnical Recommendations

- A.** All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the geologic engineering investigations (excepting those recommendations pertaining to a pile/caisson foundation system which is not proposed by the applicant nor authorized by this coastal development permit): Geotechnical Investigation, Proposed Sing-Family Residence, 4501 Brighton Road, Corona Del Mar prepared by Coastal Geotechnical dated January 22, 2007.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations (excepting those recommendations

pertaining to a pile/caisson foundation system which is not proposed by the applicant nor authorized by this coastal development permit) specified in the above-referenced geologic engineering report.

- C. The applicants 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 unless the Executive Director determines that no amendment is required.

6. **Pool Protection Plan**

- A. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director two (2) full size sets of pool protection plans prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool and spa. The pool protection plan shall incorporate and identify on the plans the follow measures, at a minimum: 1) installation of a pool leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool which is separate from the water meter for the house to allow for the monitoring of water usage for the pool and spa, and 2) use of materials and pool design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool and spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the pool that conveys any water leakage to an appropriate drainage outlet.
- B. The applicants 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 required.

7. **Landscaping Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the review and approval of the Executive Director, two (2) sets of a landscape plan prepared by an appropriately licensed professional demonstrating the following:
- (1) All areas affected by construction activities not occupied by structural development shall be landscaped for habitat enhancement and erosion control purposes;
 - (2) Landscaped areas in the front yard area shall consist of native or non-native non-invasive, drought tolerant plants.
 - (3) Landscaped areas in the rear yard area not occupied by hardscape or other groundcover shall be planted and maintained for erosion control. To minimize

the need for irrigation and minimize encroachment of non-native plant species into adjacent or nearby native plant areas, all landscaping shall consist of native or non-native non-invasive, drought tolerant plants.

- (4) No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, 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. Any existing landscaping/vegetation affected by construction activities that doesn't meet all of the requirements in this special condition shall be removed;
- (5) No permanent in-ground irrigation systems shall be installed on site. Temporary above ground irrigation is allowed to establish plantings.
- (6) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;

- B.** The applicants shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan 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 required.

8. 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:

The Commission hereby finds and declares:

A. Project Description and Location

The proposed project site is located between the nearest public roadway and the shoreline on a coastal bluff top lot subject to wave erosion in the community of Cameo Shores (Newport Beach) (Exhibits #1-2). The lot size is 17,171 square feet and the City of Newport Beach Land Use Plan (LUP) designates use of the site for Low Density Residential and the proposed project adheres to this designation. The project is located within an existing developed urban residential area. The site is surrounded by single-family residential development to the north, south and east. To the west of the project site is a coastal bluff, rocky beach and the Pacific Ocean. Topographically, a level building pad, an ascending slope and a coastal bluff characterize the site. The coastal bluff along the ocean frontage of the lot is approximately 30-feet in height. Public access and public recreation opportunities exist nearby at Little Corona Beach to the northwest and Crystal Cove State Beach to the southeast

The proposed project consists of demolition of an existing 13-year-old, "U"-shaped, single-story, wood frame, single-family residence with a detached garage and pool/spa within the northwest facing courtyard area and re-construction of a new 10,018 square foot (4,717 square foot ground floor and 5,301 square foot basement), one-story plus basement single-family residence, 14-feet above finished grade with a 570 square foot three (3)-car garage on a coastal bluff top lot. The total size of the structure will be 10,588 sq. ft. The three car garage proposed for the development would provide more than adequate parking based on the Commission's regularly used parking standard of two (2) parking spaces per individual dwelling unit.

The existing pool/spa located within the center courtyard of the residence will be demolished and a new pool/spa located will be constructed at the new basement level still within a center courtyard. The foundation system of the proposed residence will consist of continuous and spread footings. Grading will consist of approximately 2,586 cubic yards of cut for basement construction. Material will be exported to a location outside of the Coastal Zone.

The City of Newport Beach does not have a certified Local Coastal Program, only a certified Land Use Plan (LUP). Therefore, the Coastal Commission is the coastal development permit issuing entity for development on that parcel and the standard of review is Chapter 3 of the Coastal Act. The certified LUP may be used for guidance.

Prior Commission Actions at Subject Site

In 1990, the Commission approved CPD 5-90-568 as an Administrative Permit for the construction of the existing residence. The permit included demolition of a previously existing single family residence and attached garage and construction of the current 4,784 sq. ft., 14 ft high, single family residence with attached garage and 570 sq. ft. of extra parking area. The footprint of the new development replaced that of the former residence with only minor changes none seaward of the bluff. At the time the City of Newport Beach LUP had not yet been certified and the development was approved with a bluff set back of 20ft. The certified LUP was updated on October 13, 2005 including an update to the City's coastal bluff setback policy.

Geology and Soils Considerations

The proposed development is located on the bluff top portion of a coastal bluff that is subject to wave attack and erosion. As part of their geotechnical investigation, Coastal Geotechnical performed a slope stability analysis indicating gross slope stability factors-of-safety of at least 1.5

(static) and 1.1 (seismic) within the proposed building area.

Based upon an examination of available photographs, data and maps the investigation determined that the retreat rate of the sea cliff backing the subject site is on the order of approximately 0.10 feet per year. This equates to approximately 7.5 feet of retreat over the design life of the principal structure (75 years).

The Commission's staff Geologist has reviewed these geotechnical investigations and concurs that these investigations have adequately addressed concerns regarding bluff erosion and slope stability of the project site and make recommendations that should assure safety of the development.

In this area, the Commission typically requires that principal structures and major accessory structures such as guesthouses and pools be setback at least 25-feet from the bluff edge and that accessory structures that do not require structural foundations such as decks, patios and walkways to be sited at least 10-feet from the bluff edge to minimize the potential that the development will contribute to slope instability. If ancillary structures are threatened by erosion it is understood that they will be relocated rather than protected by structural means. Prior actions in the area (e.g. CDP No. 5-04-013-[Primm] and No. 5-04-035-[Hoff]), require such setbacks, as does the 2005 City of Newport Beach LUP update. A 2005 update to the City of Newport Beach certified LUP requires all new bluff top development located on a bluff subject to marine erosion be sited in accordance with the predominant line of existing development in the subject area, but not less than 25 feet from the bluff edge. As proposed, the residence and pool adhere to the 25-foot from the bluff edge setback policy.

Another LUP policy states that on bluffs subject to marine erosion, accessory structures such as decks, patios and walkways that do not require structural foundations are to be sited in accordance with the predominant line of existing development in the subject area, but not less than 10 feet from the bluff edge. Furthermore, the LUP policy requires accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards. Plans submitted by the applicant on April 27, 2007 show the residence setback 25-feet from the bluff edge, however, it is unclear whether the patio adheres to the 10-foot from bluff edge setback. Even though work is not proposed in the patio/artificial turf putting green area, as complete demolition of the residence and redevelopment of the site is proposed, it is reasonable to require the entire development comply with Commission and City bluff setback policies. Minor work within a portion of the 10-foot bluff edge setback area consisting of removal of existing hardscape/planters and restoration of the area to the natural grade may be necessary. Therefore, **Special Condition (4)** has been imposed, which requires submittal of Final Project Plans, showing the proposed residence setback 25-feet from the bluff edge (consistent with plans submitted by the applicant on April 27, 2007) and the backyard improvements adhering to the 10-foot bluff edge setback.

The submitted geotechnical investigation states that the proposed residence may be supported by conventional continuous/spread footings and/or drilled piers founded in approved bedrock. The applicant has indicated the project proposes 30" deep footings. However, as Foundation Plans for the new residence or pool have not been submitted, **Special Condition (5)** is imposed requiring submittal of Final Project Plans, including Foundation Plans that reflect use of a conventional continuous/spread footing foundation system.

Site Drainage

The project Grading Plan shows how the on site roof and surface runoff will be directed away from the bluff face toward Brighton Road via use of swales and a French drain which will assist in preventing damage to the structural stability of the bluff. However, there is an added potential for water infiltration into the bluff due to the proposed pool. To ensure that drainage does not increase the potential for site erosion, the Commission imposes **Special Condition (6)**, which requires the applicants submit a pool protection plan with features such as a double lined pool, a pool overflow drain pipe connected to the on-site drain system and leak detection system.

Landscape Plan

Due to the fragile nature of coastal bluffs and their susceptibility to erosion, the Commission requires a special condition regarding the types of vegetation to be planted. The use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org). No plant species listed as problematic and/or invasive by the California Native Plant Society or the California Invasive Plant Council 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 shall be utilized within the property.

Furthermore, any plants proposed in a landscaping plan should be drought tolerant to minimize the use of water. Reducing the amount of irrigation water used can address both geologic stability issues as well as water quality/dry-weather urban runoff issues. It should also be noted that the geotechnical investigation found traces of seepage within the sea cliff backing the property believed to be the result of irrigation from within the site vicinity. Therefore, "drought tolerant" or "low water use" and "ultra low water use" plants should only be employed on site. No permanent in-ground irrigation system shall be installed onsite, if one already exists, it shall be removed and capped. However, temporary above ground irrigation may be utilized to establish plantings.

As a landscape plan was not included with the application submittal, the Commission imposes **Special Condition (7)**, which requires the applicants submit a Landscaping Plan, consisting of native plants, or non-native drought tolerant plants that are non-invasive.

B. HAZARDS

Development adjacent to the ocean and the edges of coastal bluffs and hillsides is inherently hazardous. Development which may require a bluff, hillside, or shoreline protective device in the future cannot be allowed due to the adverse impacts such devices have upon public access, visual resources, and shoreline processes. To minimize risks to life and property and to minimize the adverse effects of development on coastal bluffs, hillsides, and shoreline processes the development has been conditioned to require one or more of the following: adherence to the geotechnical recommendations, an appropriate set-back from the edge of a bluff or hillside, to prohibit the construction of protective devices (such as a retaining wall or shoreline protective device) in the future, for a drainage and runoff plan to minimize the percolation of water into the hillside or bluff, and to require that the landowner or any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development, which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms with the Chapter 3 policies of the Coastal Act.

D. PUBLIC ACCESS

The proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed the development, as conditioned, conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. Furthermore, uncontrolled runoff from the project site and the percolation of water could also affect the structural stability of bluffs and hillsides. To address these concerns, the development, as proposed and as conditioned, incorporates design features to minimize the infiltration of water and 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, the use of non-invasive drought tolerant vegetation, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

F. DEED RESTRICTION

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

G. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified

LUP was updated on October 13, 2005. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 of the Coastal Act.

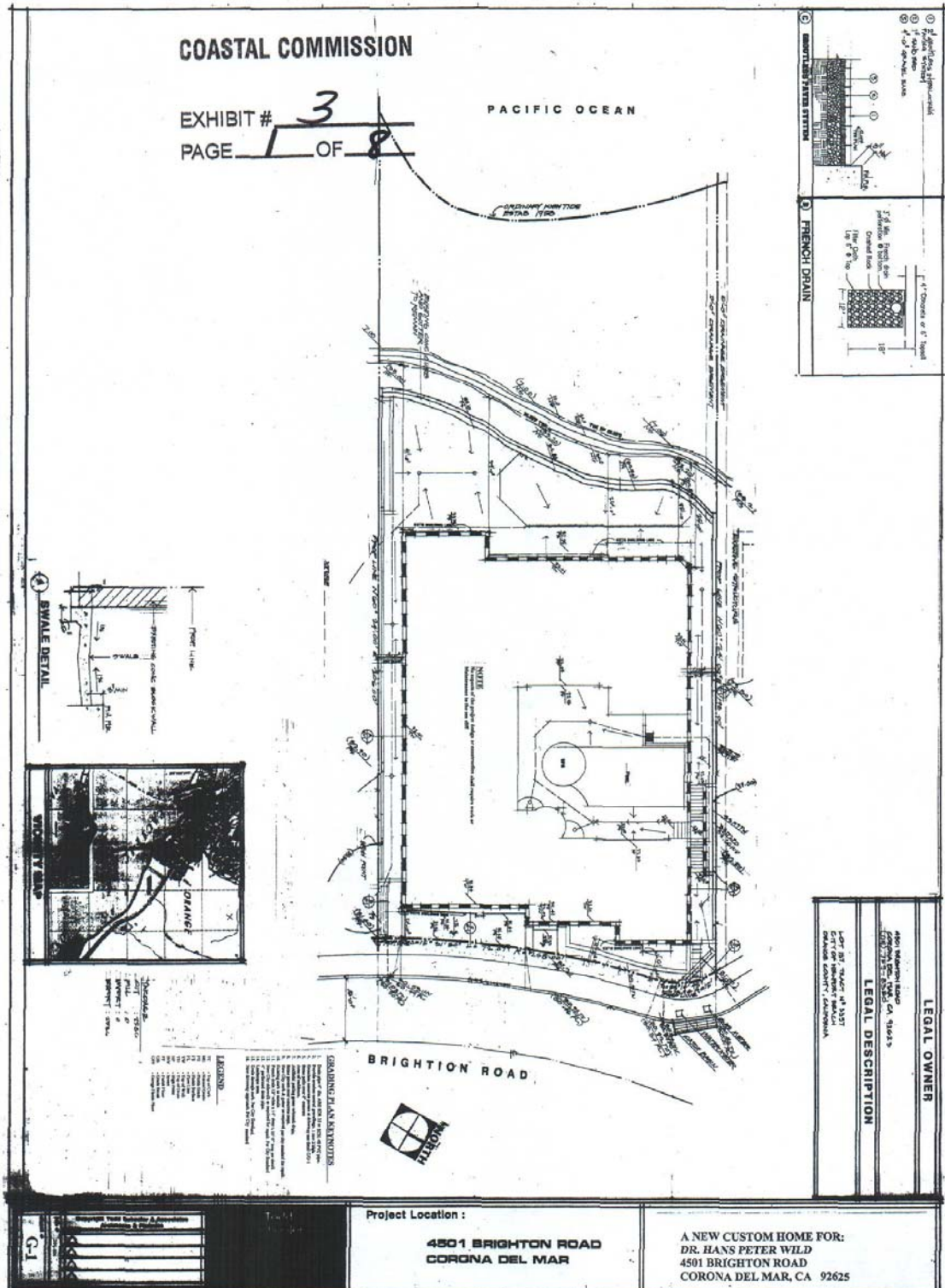
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

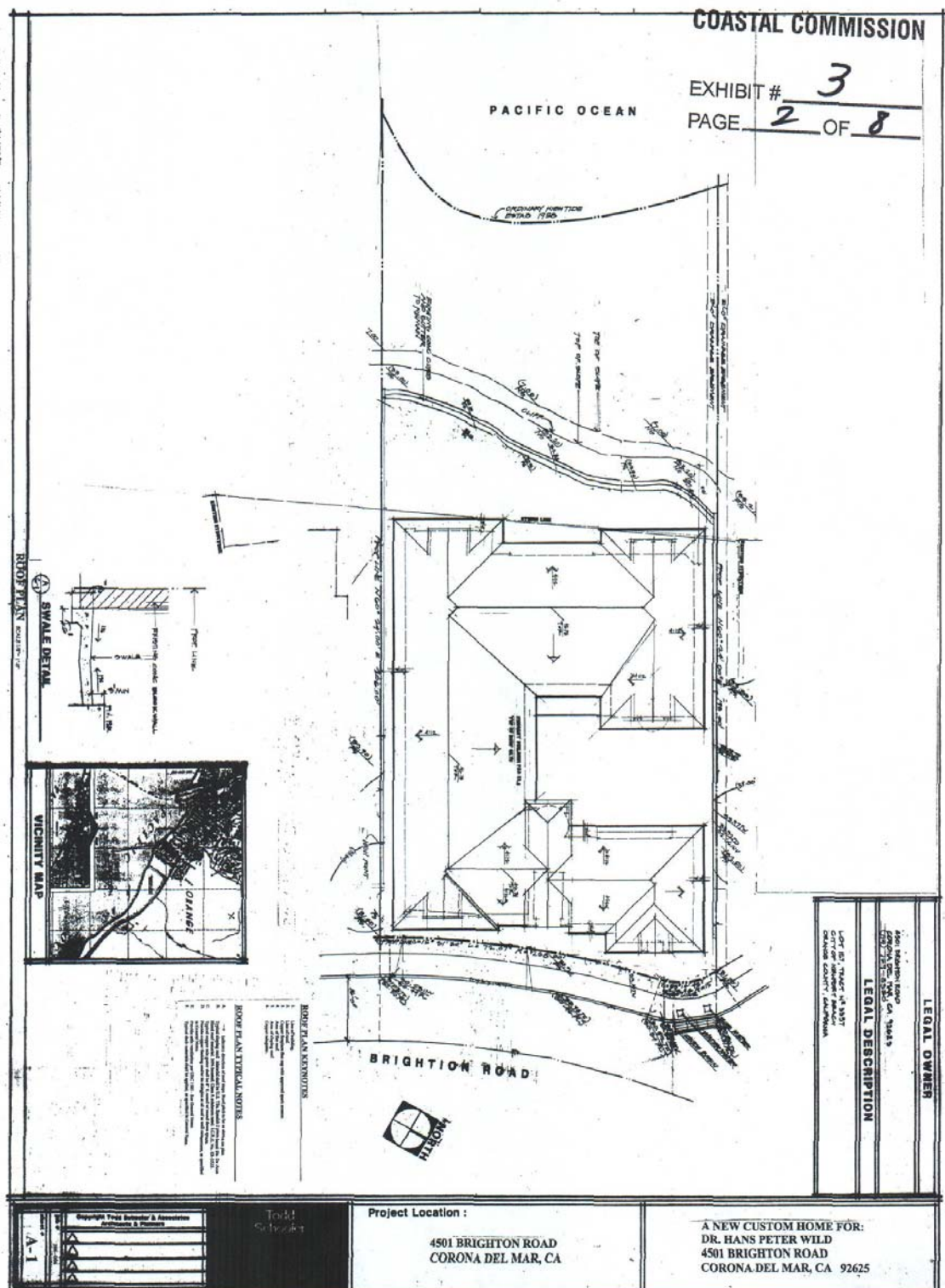
As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the 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.

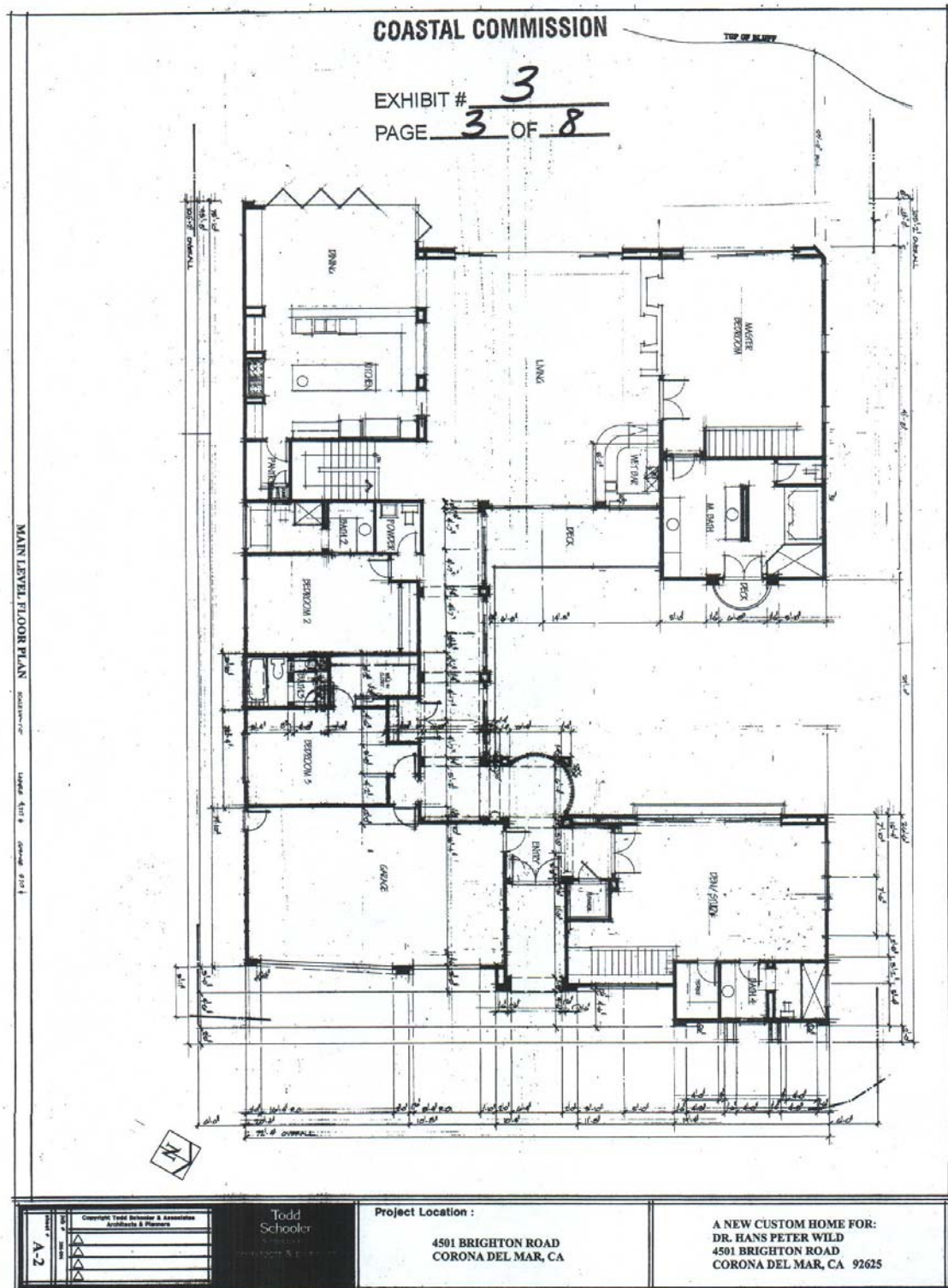
NOTE - ASSESSOR'S BLOCK &
PARCEL NUMBERS
SHOWN IN CIRCLES

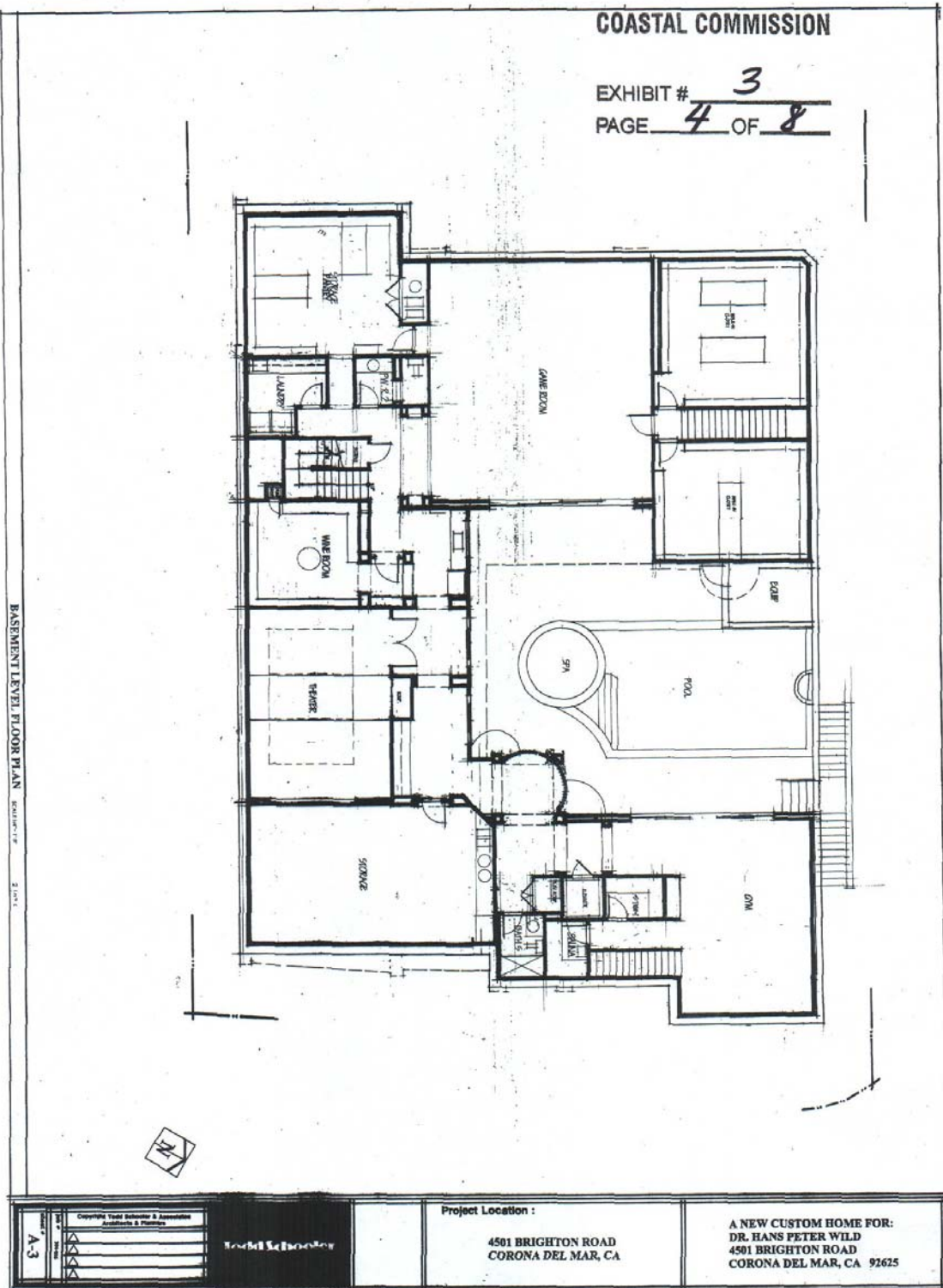
Ownership Map

SUSAN W. CASE, INC.
917 GLENNEYRE ST #7
LAGUNA BEACH CA 92651
(714) 404-8405



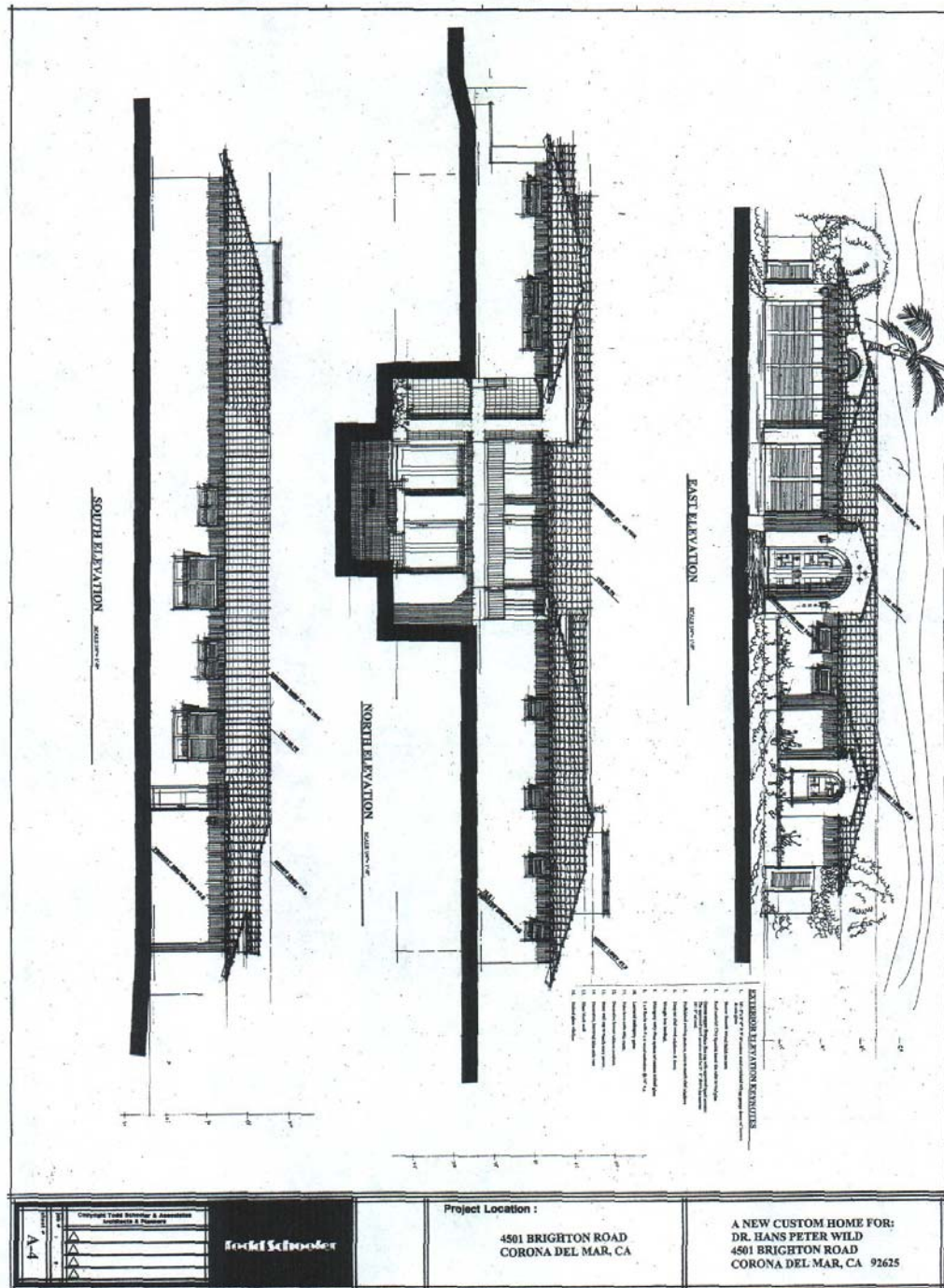






COASTAL COMMISSION

EXHIBIT # 3
PAGE 5 OF 8



COASTAL COMMISSION

EXHIBIT # 3
PAGE 6 OF 8

