

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Long Beach, CA 90802-4302
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Filed: December 11, 2007
49th Day: January 29, 2008
180th Day: June 8, 2008
Staff: Liliana Roman-LB
Staff Report: December 20, 2007
Hearing Date: January 9-11, 2008
Commission Action:



Th4a

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-07-287

APPLICANT: Beach Property, LLC

AGENT: Evan Fisher

PROJECT LOCATION: 1752 East Oceanfront, Newport Beach (Orange County)

PROJECT DESCRIPTION: Lot line adjustment, demolition of an existing two-story single family residence and construction of a new 3,593 sq. ft., 27' high, two-story single family residence with an attached 488 sq. ft. two-car garage, hardscape improvements on a beachfront lot and removal of landscaping encroaching upon the beach .

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-In-Concept (No. 0895-2007) dated July 11, 2007, Lot Line Adjustment #LA2007-014 (PA2007-208).

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing construction of a new beach-fronting single-family residence. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events.

Staff is recommending **APPROVAL** of the proposed project with five (5) special conditions regarding: 1) conformance with the submitted drainage and run-off control plan; 2) a requirement to submit a revised site plan to address proposed removal of landscaping that is encroaching upon the public beach; 3) assumption of risk; 4) no future shoreline protective device; 5) future development; and 6) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report. A landscaping condition hasn't been imposed because the applicant is not proposing any new landscaping.

Section 30600(c) of the Coastal Act provides for the issuance of coastal development permits directly by the Commission in regions where the local government having jurisdiction does not have a certified Local Coastal Program. The City of Newport Beach only has a certified Land Use Plan and has not exercised the options provided in 30600(b)

or 30600.5 to issue its own permits. Therefore, the Coastal Commission is the permit issuing entity and the standard of review is Chapter 3 of the Coastal Act. The certified Land Use Plan may be used for guidance.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan, *Coastal Hazard and Wave Runup Study for 1752 East Oceanfront, Newport Beach, CA* by GeoSoils, Inc. dated 10/07 and *Geotechnical Engineering Investigation for Proposed Residence at 1752 E. Ocean Front, Newport Beach, CA* by Coast Geotechnical, Inc. dated 3/19/07

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Project Plans
-

STAFF RECOMMENDATION:

Staff recommends that the Commission **APPROVE** the permit application with special conditions.

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:

I. APPROVAL WITH CONDITIONS

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

II. STANDARD CONDITIONS

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. Grading and Drainage Plan

The applicant shall conform to the grading and drainage plans received in the South Coast District office on, December 11, 2007. 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 required.

2. Revised Site Plans

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit two (2) sets of revised final site plans to the Executive Director for review and approval. The revised final plan shall substantially conform to the preliminary plans by Evan Fisher, Architect dated 4/24/07, but shall be revised to depict the existing landscape encroachment onto the public sandy beach. The existing landscape encroachment consisting of non-native small trees, shrubs and ice plant shall be shaded and clearly marked *“landscape encroachment not permitted by any coastal development permit to be removed*

prior to or concurrent with demolition and construction of the single family residence” on each set of plans;

- B. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final 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 flooding and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission’s approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

4. No Future Shoreline Protective Device

- A. By acceptance of this permit, the applicant agrees, on behalf of itself 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. 5-07-287 including, but not limited to, the residence, garage, foundations, and patios, 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 applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the residence, garage, foundations, and patios, 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. Future Development

This permit is only for the development described in Coastal Development Permit No. 5-07-287. 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. 5-07-287. 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. 5-07-287 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

6. Generic 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 landowner(s) 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 LOCATION AND DESCRIPTION

The subject site is located at 1752 East Oceanfront within the City of Newport Beach, Orange County (Exhibits 1 and 2). The lot size is 4,773 square feet. The City of Newport Beach Land Use Plan (LUP) designates the site as High-Density Residential; the proposed project is a single-family residence allowable under this designation. The project is located within an existing urban residential area, located between the Balboa Pier and the entrance jetties to Newport Bay.

The site is a beachfront lot located between the first public road and the sea. There is a wide sandy beach (approximately 400 feet wide) between the subject property and the Pacific Ocean. Vertical public access to the beach is available nearby at the "I" Street and "L" Street, street ends. Due to its oceanfront location, the project site may be potentially exposed to the hazard of wave up-rush during a severe storm event.

The existing single family residence straddles the lot line between lot 14 and the easterly half of lot 13, another residence straddles the westerly half of lot 13 and lot 12. The proposed lot line adjustment is to combine the easterly half of lot 13 and all of lot 14 into a single parcel for single family development. A lot tie connects the adjacent lot 15 to the subject site; lot 15 contains landscaping improvements. No changes are proposed to the existing side yard landscaping. The applicant is proposing to demolish an existing two-story single-family residence and construct a new 3,241 sq. ft., 27' high, two-story single-family residence with an attached 488 sq. ft. two-car garage, courtyard, covered terrace and sun terrace (Exhibit 3). Hardscape improvements include a courtyard of brick veneer concrete pavers. No change is proposed to existing property walls and existing landscape in a large side yard.

Portions of Oceanfront in the central part of the Balboa Peninsula near the City's two municipal piers are developed with a public walkway/bikeway. The project site is not located along the portion of Oceanfront that is bordered by the City's paved beachfront public lateral access way (boardwalk), the southern property line meets the sandy public beach. Although there is no paved walkway, the City holds a public right-of-way for street/walkway/bikeway purposes. In the vicinity of the subject site, the City has never constructed any part of the Oceanfront street, but it has at times addressed the possibility of constructing a bike path and pedestrian walkway in the right-of-way in this area. Until the City pursues such public access improvements, the City, in conjunction with a program certified by the Commission through Land Use Plan policies, has allowed adjacent homeowners in certain areas to construct limited patio encroachments (e.g. garden walls, patio flatwork, landscaping) of a specified width and depth, subject to payment of an annual in-lieu fee that is used by the City to make public access improvements. The proposed project is located in an area where no such encroachments are allowed except for landscaping trees existing prior to October 1991 and groundcover (See Policy 3.1.3-3(D) in Newport Beach's certified Coastal Land Use Plan). Post-1991 landscaping encroaching onto the sandy beach exists on the site consisting of groundcover, large mature bushes and small palm-like trees. Aerial photographs of the site taken March 2001 show extensive groundcover on the sandy beach seaward of the property line. Aerial photographs of the site taken February 2006 show groundcover vegetation, bushes and approximately 6-8 small palm-like trees encroaching onto the sandy beach. The applicant proposes to remove all existing non-native landscape seaward of the property line to improve lateral public access along the wide sandy beach seaward of the subject site. **Special Condition No. 2** requires the applicant to submit final site plans depicting the existing landscape encroachment onto the public sandy beach proposed for removal. Native groundcover should be allowed to persist on the sandy beach. Vertical public

access to this beach is available less than 20 feet east of the site at the L Street terminus. As proposed, the project will not have an adverse effect on public access.

The applicant is proposing driveway access to the property from the alley that is landward of the subject site. Thus, existing parking along L Street will not be impacted by the proposed project.

To address water quality concerns, the applicant proposes to direct site drainage and runoff from all impervious areas and from roof downspouts to area drains leading to trench drains at the rear (alley) side of the property.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned for one or more of the following: 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 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 to 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 to 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. 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, one or more of the following: 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. Therefore, the Commission finds that the proposed development, as conditioned, conforms to 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

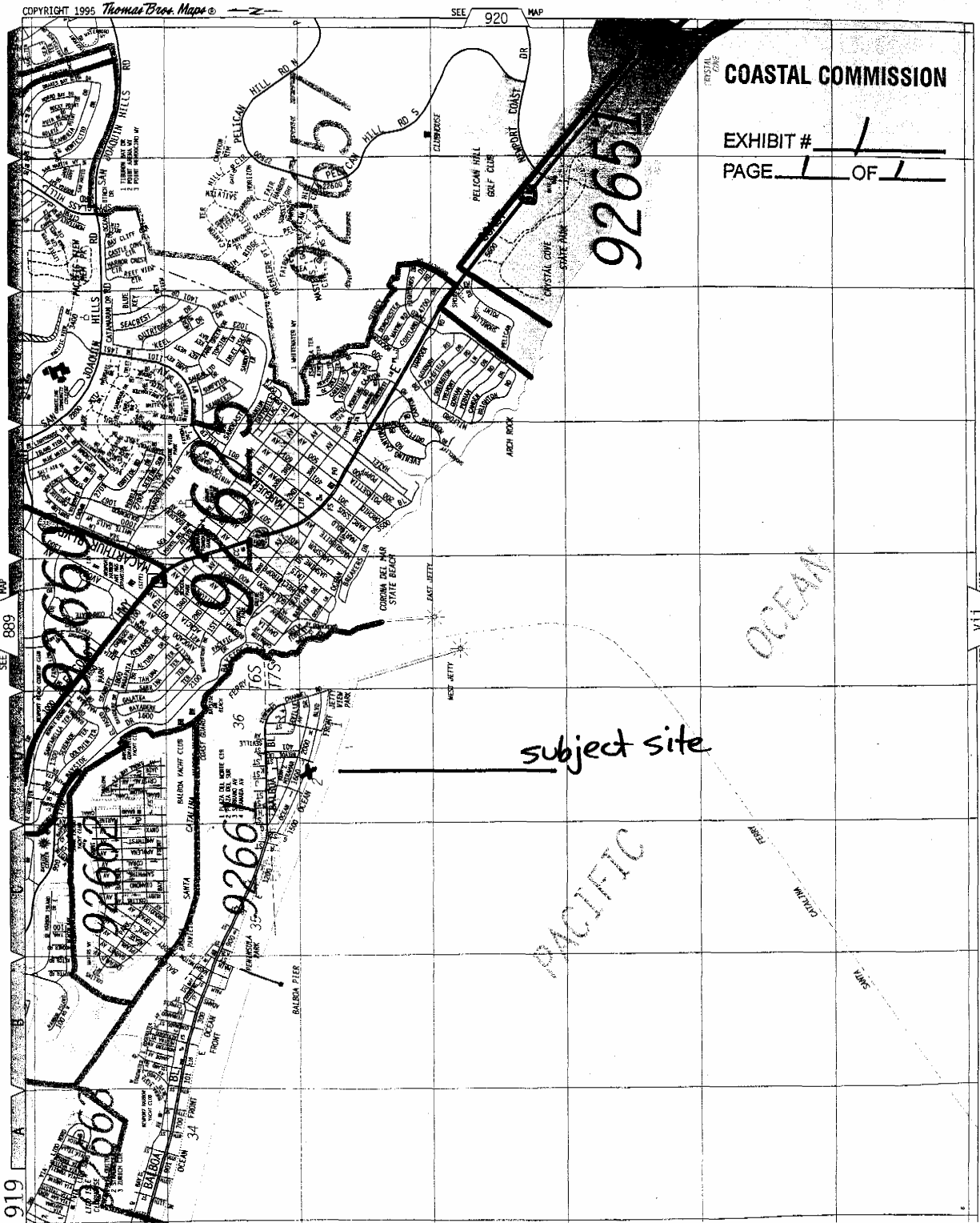
To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions 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 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 an LCP 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.



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COASTAL COMMISSION

EXHIBIT # 2
 PAGE 1 OF 1

NOTE - ASSESSOR'S BLOCK #

31

REFER TO ENCLOSED
 ASSESSOR'S BOOK 48 PAGE 31

M.M. 17-33-36

TR. NO. 518

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NOTE - ASSESSOR'S BLOCK &
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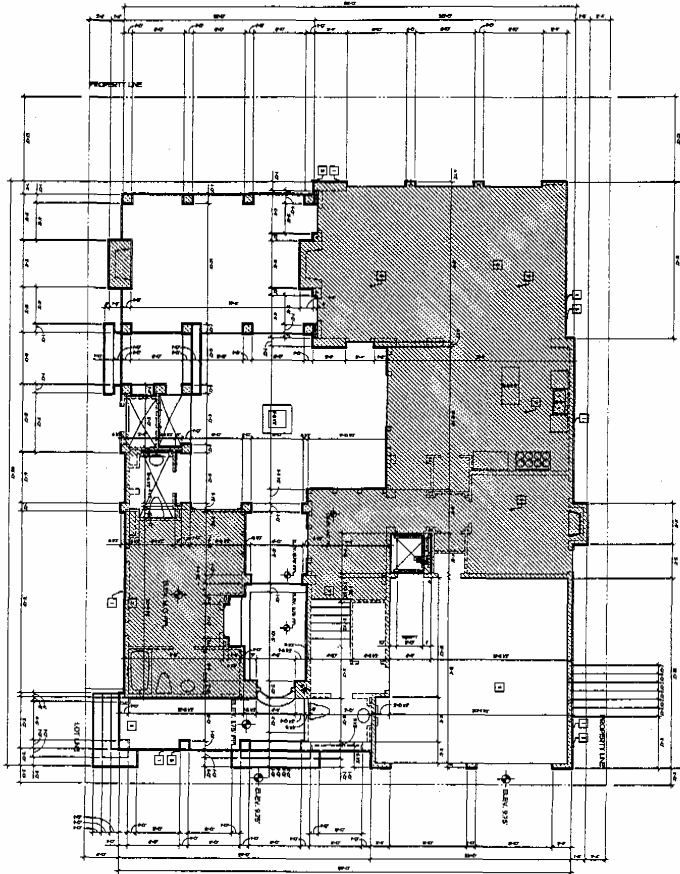
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COASTAL COMMISSION

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EXHIBIT # 3
 PAGE 2 OF 6

SLAB EDGE PLAN
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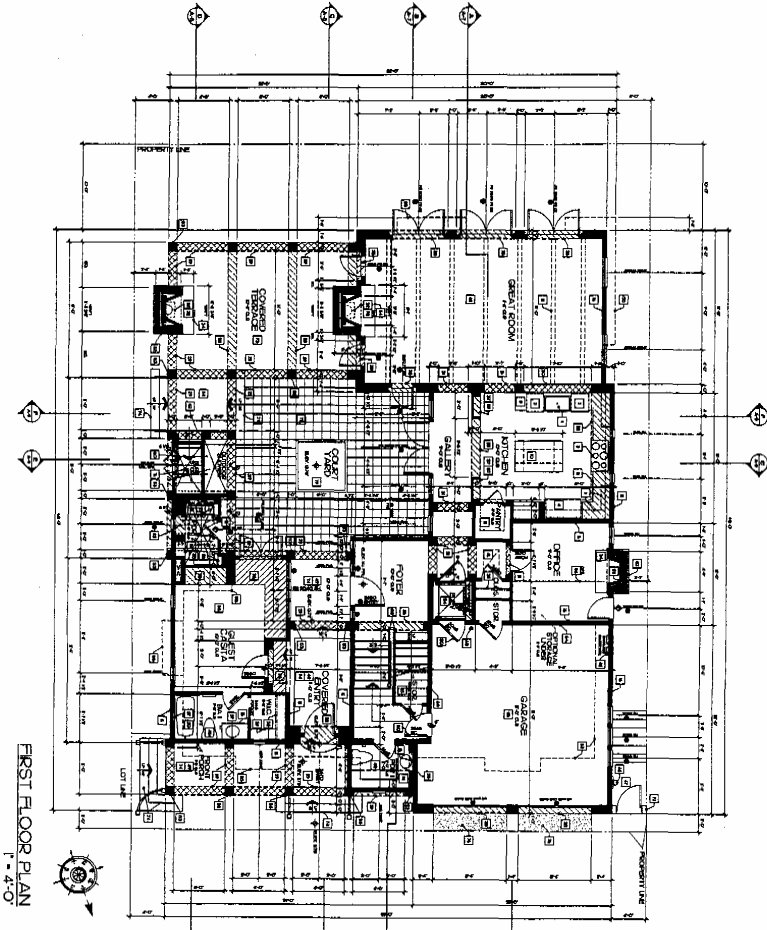
- SLAB PLAN NOTES**
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COASTAL COMMISSION

EXHIBIT # 3
 PAGE 3 OF 6

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FLOOR PLAN NOTES

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE IBC AND ALL APPLICABLE LOCAL ORDINANCES.
2. ALL MATERIALS SHALL BE APPROVED BY THE ARCHITECT PRIOR TO INSTALLATION.
3. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
4. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND NOTES.
5. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE IBC AND ALL APPLICABLE LOCAL ORDINANCES.
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12. ALL WORK SHALL BE DONE IN ACCORDANCE WITH THE SPECIFICATIONS AND NOTES.

FLOOR PLAN KEYNOTES

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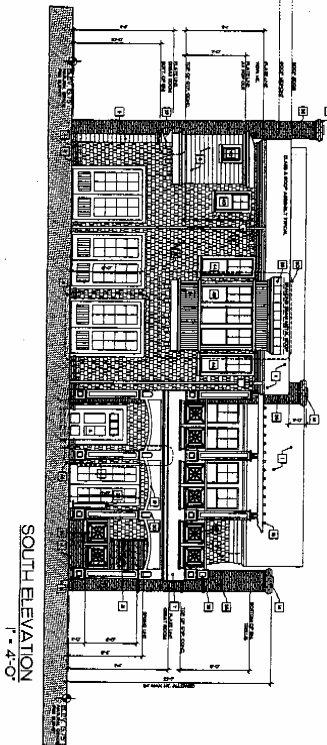
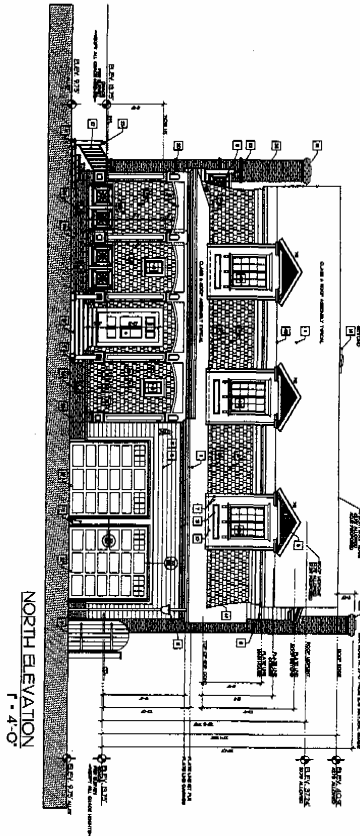
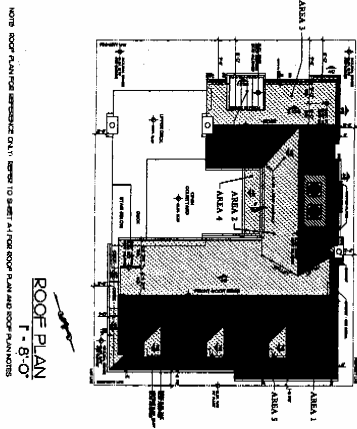
Architectural title block containing the following elements from left to right:

- Scale: 1/4" = 1'-0"
- Sheet number: A-3
- Professional seal of Ryan Fisher, Architect, No. 12345, State of Florida.
- Project name: 5-07-287 (Beach Property LLC)
- Project location: [Redacted]
- Date: [Redacted]
- Architect's name: RYAN FISHER ARCHITECT
- Address: [Redacted]
- Phone: [Redacted]
- Website: [Redacted]

COASTAL COMMISSION

EXHIBIT # 3
 PAGE 5 OF 6

IF EXHIBIT 307 THOSE DRAWINGS AND THE ACCOMPANYING SPECIFICATIONS AS INSTRUMENTS OF SERVICE ARE THE EXCLUSIVE PROPERTY OF EVAN FORMER AND MAY NOT BE REPRODUCED IN ANY FORM WITHOUT WRITTEN PERMISSION FROM THE ARCHITECT.



ELEVATION NOTES:

1. ALL MATERIALS AND FINISHES SHALL BE AS SHOWN ON THE DRAWINGS.
2. ALL MATERIALS AND FINISHES SHALL BE APPROVED BY THE ARCHITECT PRIOR TO INSTALLATION.
3. ALL MATERIALS AND FINISHES SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS.
4. ALL MATERIALS AND FINISHES SHALL BE INSTALLED IN ACCORDANCE WITH THE LOCAL BUILDING CODES.
5. ALL MATERIALS AND FINISHES SHALL BE INSTALLED IN ACCORDANCE WITH THE NATIONAL BUILDING CODES.
6. ALL MATERIALS AND FINISHES SHALL BE INSTALLED IN ACCORDANCE WITH THE INTERNATIONAL BUILDING CODES.
7. ALL MATERIALS AND FINISHES SHALL BE INSTALLED IN ACCORDANCE WITH THE AMERICAN INSTITUTE OF ARCHITECTS (AIA) CODE OF ETHICS.
8. ALL MATERIALS AND FINISHES SHALL BE INSTALLED IN ACCORDANCE WITH THE ARCHITECT'S GENERAL CONDITIONS OF CONTRACT.
9. ALL MATERIALS AND FINISHES SHALL BE INSTALLED IN ACCORDANCE WITH THE ARCHITECT'S SPECIFICATIONS.
10. ALL MATERIALS AND FINISHES SHALL BE INSTALLED IN ACCORDANCE WITH THE ARCHITECT'S DRAWINGS.

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9. ALL MATERIALS AND FINISHES SHALL BE INSTALLED IN ACCORDANCE WITH THE ARCHITECT'S SPECIFICATIONS.
10. ALL MATERIALS AND FINISHES SHALL BE INSTALLED IN ACCORDANCE WITH THE ARCHITECT'S DRAWINGS.

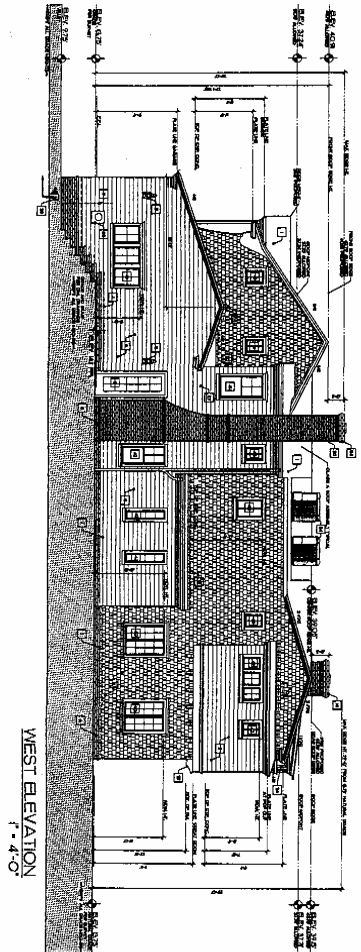
DOVNEY RESIDENCE

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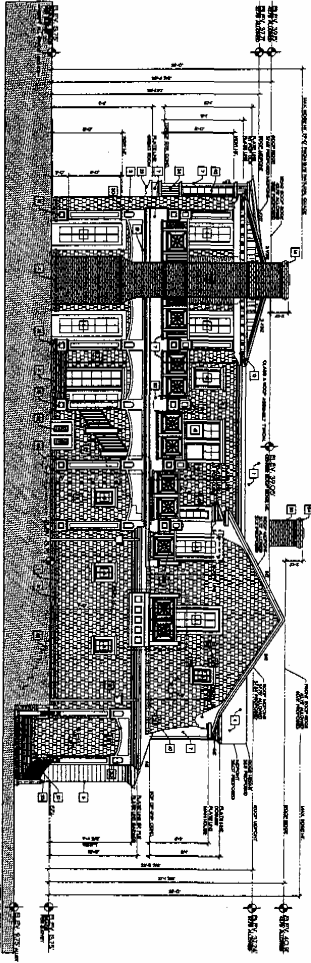
COASTAL COMMISSION

EXHIBIT # 3
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IF ANY PART OF THESE DRAWINGS AND THE ACCOMPANYING SPECIFICATIONS OR INSTRUMENTS OF SERVICE ARE THE EXCLUSIVE PROPERTY OF EVAN FISHER AND MAY NOT BE REPRODUCED IN ANY FORM WITHOUT WRITTEN PERMISSION FROM THE ARCHITECT.



WEST ELEVATION
 1/4" = 4'-0"



EAST ELEVATION
 1/4" = 4'-0"

ELEVATION NOTES

1. REFER TO THE ARCHITECT'S GENERAL NOTES FOR A COMPLETE LIST OF MATERIALS AND FINISHES.
2. ALL MATERIALS AND FINISHES SHALL BE APPROVED BY THE ARCHITECT PRIOR TO INSTALLATION.
3. THE ARCHITECT SHALL BE NOTIFIED IMMEDIATELY IN WRITING OF ANY DISCREPANCIES OR OMISSIONS.
4. THE ARCHITECT SHALL BE NOTIFIED IMMEDIATELY IN WRITING OF ANY CHANGES TO THE DRAWINGS.
5. THE ARCHITECT SHALL BE NOTIFIED IMMEDIATELY IN WRITING OF ANY DELAYS TO THE PROJECT.
6. THE ARCHITECT SHALL BE NOTIFIED IMMEDIATELY IN WRITING OF ANY COST INCREASES.
7. THE ARCHITECT SHALL BE NOTIFIED IMMEDIATELY IN WRITING OF ANY SCHEDULE CHANGES.
8. THE ARCHITECT SHALL BE NOTIFIED IMMEDIATELY IN WRITING OF ANY QUALITY ISSUES.
9. THE ARCHITECT SHALL BE NOTIFIED IMMEDIATELY IN WRITING OF ANY SAFETY ISSUES.
10. THE ARCHITECT SHALL BE NOTIFIED IMMEDIATELY IN WRITING OF ANY LEGAL ISSUES.
11. THE ARCHITECT SHALL BE NOTIFIED IMMEDIATELY IN WRITING OF ANY OTHER ISSUES.

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DO NOT REPRODUCE




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