

**CALIFORNIA COASTAL COMMISSION**

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Staff: Fernie Sy-LB  
Staff Report: December 22, 2010  
Hearing Date: January 12-14, 2011  
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

**APPLICATION NUMBER:** 5-10-254

**APPLICANTS:** Sean & Julie Pence

**AGENT:** Eric Aust

**PROJECT LOCATION:** 3 Canal Circle, City of Newport Beach (County of Orange)

**PROJECT DESCRIPTION:** Remodel and addition of an existing two-story, 2,454 square foot single-family residence with an attached 484 square foot two-car garage located on a water front parcel (Semeniuk Slough). Post project the two-story, single-family residence will be 2,980 square feet with an attached 451 square foot two-car garage. No grading is proposed

**SUMMARY OF STAFF RECOMMENDATION:**

The applicants are proposing the remodel and addition of an existing two-story single-family residence located on a water front parcel. The major issue of this staff report concerns waterfront development that could be affected by flooding and erosion during extreme storm events and development adjacent to a wetland (Semeniuk Slough). Typically in this area of Newport Beach, stringline is used in order to avoid encroachment of development on the slough. In this case, portions of the proposed additions do not adhere to the "accessory structure stringline" and the "principal structure stringline". However, impacts caused by these encroachments and the condition of existing development must also be considered. Significant portions of the existing "principal structure" and "accessory structure" already encroach further toward the slough and past the applicable stringlines. However, the proposed "structural" and accessory" additions do not encroach further toward the slough than the existing development. So while portions of the proposed additions do not adhere to the applicable stringlines, the project is still compatible to its surroundings in that they do not encroach any more toward the slough than existing development. Each development is reviewed on a case by case basis and while in this area stringline is typically used to prohibit encroachment toward the slough, in this instance the siting of the existing development already establishes the development pattern and the proposed project would not exacerbate an existing non-conformity. Thus, the development as proposed is consistent with the character of the surrounding area.

Commission staff is recommending **APPROVAL** of the proposed project subject to **ELEVEN (11) SPECIAL CONDITIONS** requiring: **1)** an assumption-of-risk agreement; **2)** no future shoreline protective device agreement; **3)** future development agreement; **4)** submittal of foundation plans; **5)** conformance with submitted project plans identifying the unpermitted rear patio deck and planter, steps leading to the slough, a small boat dock, and a large boat dock located in the ACOE property; **6)** conformance with submitted construction staging area(s) and construction corridor(s) plans; **7)** conformance with certain requirements related to the storage and management of construction debris and equipment; **8)** conformance with drainage and run-off control plans; **9)** submittal of revised landscape plans; **10)** adherence to requirements for exterior lighting adjacent

to the wetland; and **11)** a deed restriction against the residential property, referencing all of the special conditions contained in this staff report.

Section 30604 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. 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.

**LOCAL & OTHER AGENCY APPROVALS RECEIVED:** City of Newport Beach Planning Department Approval-In-Concept No. 2010-063 dated October 18, 2010; and Department of the Army License No. DACW09-3-06-0525 dated March 3, 2006.

**SUBSTANTIVE FILE DOCUMENTS:** City of Newport Beach certified Land Use Plan; *Geotechnical Investigation Proposed Residential Addition, 3 Canal Circle, Newport Beach, CA for Ms. Cathy Clark* prepared by Southern California Geotechnical dated April 3, 2007; *Update of Geotechnical Report Proposed Remodel – Single Family Residence, 3 Canal Circle, Newport Beach, California* prepared by Southern California Geotechnical dated October 26, 2010 ; and Letter from William Simpson & Associates, Inc. dated February 19, 2007.

#### **LIST OF EXHIBITS**

1. Location Map
2. Assessor Parcel Map
3. Site Plan/Limits of Addition
4. Proposed Floor Plans
5. Proposed Elevations
6. Stringline Plan

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#### **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 permittees 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 permittees 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 INDEMNITY**

By acceptance of this Permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from sea level rise, flooding and erosion; (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 PROTECTIVE DEVICE**

- A.** By acceptance of this Permit, the applicants agrees, on behalf of themselves 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. 5-10-254 including, but not limited to, the residence, and any future improvements, in the event that the development is threatened with damage or destruction from sea level rise, flooding, 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.
- B.** By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowners shall remove the development authorized by this permit, including the addition and remodel, 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 wetland before they are removed, the landowners shall remove all recoverable debris associated with the development from the wetland and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

**3. FUTURE DEVELOPMENT RESTRICTION**

This permit is only for the development described in Coastal Development Permit No. 5-10-254. 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. 5-10-254. Accordingly, any future improvements to the residence 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. 5-10-254 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

**4. SUBMITTAL OF FOUNDATION PLANS**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittees shall submit, for the Executive Director's review and approval, two (2) full size sets of foundation plans for the review and approval of the Executive Director. The final plans shall be in substantial conformance with the applicant's proposal for a 'mat foundation' (reinforced concrete slab on grade).
- B.** The permittees 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.

**5. CONFORMANCE WITH SUBMITTED PROJECT PLANS**

The applicants shall conform with the project plans received on October 28, 2010, that identified the unpermitted rear patio deck and planter, steps leading to the slough, a small boat dock, and a large boat dock located in the ACOE property with shading and which is labeled with the following: "These elements are not permitted by any coastal development permit." Neither this existing unpermitted development, nor any maintenance, repair, replacement, expansion, or enhancement of any kind, is authorized by this coastal development permit. 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. CONFORMANCE WITH CONSTRUCTION STAGING PLANS**

The applicants shall conform with the construction staging plans received on October 28, 2010 which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to wetlands. 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.

**7. STORAGE OF CONSTRUCTION MATERIALS, MECHANIZED EQUIPMENT AND REMOVAL OF CONSTRUCTION DEBRIS**

The permittees shall comply with the following construction-related requirements:

- A. No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to tidal erosion and dispersion;
- B. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- C. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or run-off of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. BMPs and GHPs which shall be implemented include, but are not limited to: stormdrain inlets must be protected with sandbags or berms, all stockpiles must be covered, and a pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines. All BMPs shall be maintained in a functional condition throughout the duration of the project.
- D. Construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of

sediment and other debris, which may be discharged into coastal waters. Debris shall be disposed at a debris disposal site outside the coastal zone.

**8. CONFORMANCE WITH DRAINAGE AND RUN-OFF CONTROL PLANS**

The applicants shall conform with the drainage and run-off control plans received on October 28, 2010 showing roof drainage and runoff from all impervious areas directed to percolation pits or pervious areas or vegetated/landscaped areas. 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.

**9. SUBMITTAL OF REVISED LANDSCAPE PLANS**

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for the Executive Director's review and approval, two (2) full sized sets of revised landscape plans that demonstrate the following:

(1) The plan shall demonstrate that:

- (a) All landscaping shall consist of native drought tolerant non-invasive plant species that are appropriate to the habitat type. Local native plant stock shall be used if available. No plant species listed as problematic and/or invasive by the California Native Plant Society, California Invasive 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 that doesn't meet the above requirements shall be removed;
- (b) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage; and
- (c) 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.

(2) The plan shall include, at a minimum, the following components:

- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and
- (b) a schedule for installation of plants.

**B.** The permittees 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 legally required.

**10. LIGHTING**

No lighting associated with the project shall significantly impact adjacent wetland habitat. All replaced or new lighting within the development shall be directed and shielded so that light is directed toward the ground and away from the wetlands (Semeniuk Slough).

**11. 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 landowner has executed and recorded against the residential parcel 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 residential parcel governed by this permit. The deed restriction shall also include language that indicates that it is superseding and replacing the deed restriction recorded on this property (Orange County Records Document #2008000270575) which had been recorded to satisfy conditions for an previously issued, unvested, and now expired coastal development permit for the subject property. (CDP No. 5-06-456). 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 AND PREVIOUS ACTION AT THE PROJECT SITE**

**1. Project Location and Description**

The project site is located at 3 Canal Street in the City of Newport Beach, Orange County (Exhibits #1-2). The lot size is approximately 4,208 square feet and the City of Newport Beach certified Land Use Plan (LUP) designates the site for Medium Density Residential and the proposed project adheres to this designation. The project site faces upon the tidally influenced Semeniuk Slough located inland of Pacific Coast Highway. Semeniuk Slough is a remnant channel of the Santa Ana River, which formed when the Santa Ana River entered Newport Bay in the vicinity of present day River Avenue. Semeniuk Slough branches off the Santa Ana River and receives water from the Banning Channel and adjacent oil fields, wetlands and upland areas. While Semeniuk Slough is tidally influenced, there is presently no open boating passage between the slough and the bay or ocean. Semeniuk Slough is a wetland considered an environmentally sensitive habitat area and

unique coastal resource in the City's Certified Land Use Plan. The Semeniuk Slough is within the City of Newport Beach and is designated as Open Space in the certified Land Use Plan. The land on the far side of the slough is relatively undeveloped where there are wetlands and some oil production facilities. This relatively vacant land is within unincorporated Orange County and is part of the approximately 505-acre area known as the Newport Banning Ranch. The City's certified Land Use Plan indicates that vertical public access to the slough is present along street ends located off of Canal Circle. For example, public access is available at a street end located two (2) lots (approximately 60-feet) south of the project site.

The residential parcel is flanked on the west and east by single-family residences; on the south by Canal Circle; and on the north by ACOE land and the Semeniuk Slough. On this north area of land owned by the ACOE are portions of a patio deck and planter, steps leading to the slough, a small boat dock, and a large boat dock. The Mean High Water Line is located at approximately +4.65', which is located adjacent to the patio deck and planter and stairs and underneath the boat docks and deck (discussed previously). The existing single-family residence is located approximately a minimum 14-feet and a maximum 28-feet from the Mean High Water Line (Exhibit 6). No work is proposed under this application on the ACOE's property adjacent to the water (Semeniuk Slough).

#### On the Residential Property Owned by the Applicants

The applicants are proposing the remodel and addition to an existing two-story, 2,454 square foot single-family residence with an attached 484 square foot two-car garage located on a water front parcel (Semeniuk Slough). The proposed project will result in a 17% increase in habitable area on the eastern portion of the residence which will not encroach any closer to the Mean High Water line than the existing residence and accessory structures located on the residential parcel.

Approximately 24% of the existing exterior walls will be demolished with the proposed project.

Post project the two-story, approximately 23-feet above existing grade, single-family residence will be 2,980 square feet with an attached 451 square foot two-car garage (Exhibits #3-5). No grading is proposed. The project more specifically consists of the following: 1) converting 33 square feet of the existing garage into 1<sup>st</sup> floor habitable area; 2) adding 166 square feet of habitable area to the existing 1<sup>st</sup> floor (east side of residence); 3) adding 327 square feet of habitable area to the existing 2<sup>nd</sup> floor (east side of residence); 4) adding a total of 644 square feet of 1<sup>st</sup> floor patio covers in the rear yard (298 square feet of patio cover) and eastern side (346 square feet of walkway cover) of the residence; and 5) a 64 square foot 2<sup>nd</sup> floor covered deck on the east side of the residence.

As identified in the submitted geotechnical report, the proposed additions will require new foundation elements consisting of a mat foundation. While the geotechnical report identifies the potential foundation system, no such plans have been submitted. Therefore, the Commission imposes **SPECIAL CONDITION NO. 4**, which requires submittal of foundation plans for a 'mat foundation' (reinforced concrete slab on grade).

The proposed project will also include exterior work and the architectural theme of the residence is "Coastal Plantation" and so the exterior work will mirror that theme. The upgraded elevations will have horizontal siding at the 2<sup>nd</sup> level and smooth stucco at the 1<sup>st</sup> level. The home will have a standing seam metal roof at the lower roofs and an asphalt shingle roof at the 2<sup>nd</sup> floor roof. All windows will be aluminum clad paned energy efficient windows. The existing brick fireplace and chimney will be removed.



The submitted geotechnical report states that the owner was considering constructing a non-retaining sea wall along the northwest side of the property adjacent to the Semeniuk Slough. However, that is currently not part of the proposed project or approved with this project.

### On Land Owned by the ACOE

No work is proposed on the land owned by the ACOE and licensed to the applicants.

Commission staff has determined that no previous coastal development permits were issued for the existing portions of a patio deck and planter, steps leading to the slough, a small boat dock, and a large boat dock located on the ACOE owned lands. The applicants are not seeking authorization for this existing unpermitted development through this application. Approval of the proposed project does not authorize the unpermitted portions of a patio deck and planter, steps leading to the slough, a small boat dock, and a large boat dock. The matter has been referred to the Commission's enforcement division for further investigation.

The proposed project includes the remodel and addition to an existing structure on a waterfront lot. The site is visible from a trail, which runs along the north side of the slough on the opposite shore from the proposed development. If not sited appropriately, this structure would have adverse impacts upon views to and along the slough and would be visually incompatible with the character of the surrounding area. For instance, development seaward of the line of development established for an area can interfere with views to and along the shoreline leading to degradation of those views.

The Commission has recognized that, in a developed area, where new construction is generally infilling and is otherwise consistent with the Coastal Act policies, no part of the proposed development should be built beyond a line drawn between the nearest adjacent corners of either decks or habitable structures of the immediately adjacent homes. These lines establish the existing line of development in the area. In order to determine whether the proposed project is compatible with the established line of development, the Commission has typically used two methods to review waterward encroachment of development toward the slough along this section of Canal Street in Newport Beach: 1) setbacks from the slough-front property line; and 2) string line evaluation. The City of Newport Beach setback requirement for this area is 5-feet. The existing and proposed habitable area would be setback approximately a minimum 7-feet and approximately a maximum 16-feet from the rear property line (rear lot line is at an angle) and the proposed 1<sup>st</sup> floor rear yard patio covers would encroach approximately a maximum 6-feet waterward of the residence, but is set back approximately a minimum 5-feet and a maximum 9-feet from the rear property line (Exhibit #4, page 2). Therefore, the project conforms to the city setback requirements. In addition, no new development is located closer to the rear property line than existing structures on the residential parcel.

The applicants have submitted a stringline drawing to Commission staff for analysis (Exhibit #6) and staff has determined that the proposed project does not adhere to either the "accessory structure stringline" or the "principal structure stringline." The applicants' "accessory structure stringline" drawing shows that the following items are not consistent with this stringline: 1) portions of the 298 square feet of the proposed 1<sup>st</sup> floor patio covers in the rear yard and east side of the residence; and 2) a portion of the new 64 square foot 2<sup>nd</sup> floor covered deck on the east side of the residence (Exhibit #6). Also, the applicants' "principal structure stringline" drawing shows that the following items are not consistent with this stringline: 1) a portion of the 327 square foot 1<sup>st</sup> floor

addition on the east side of residence; and 2) a portion of the 166 square foot 2<sup>nd</sup> floor addition on the east side of residence (Exhibit #?).

While adhering to stringline in this area is typical in order to avoid encroachment of development toward the slough, impacts caused by these encroachments and the condition of existing development must also be considered. In this case, a significant portion of the existing "principal structure" and "accessory structures" already encroach further toward the slough and past the "accessory structure stringline" and the "principal structure stringline". However, the proposed "structural" and "accessory" additions do not encroach further toward the slough than the existing development on this residential parcel, and it is generally encroachment beyond the established line of development that the stringline policy is intended to prevent. Therefore, while portions of the proposed additions do not adhere to the "accessory structure stringline" and the "principal structure stringline", the project is still compatible to its surroundings in that it will not encroach any more toward the slough than what already exists.

To further analyze the suitability of the site for the proposed development, Commission staff requested the preparation of a flooding and erosion hazard analysis and an analysis for the potential for tidal currents to erode the project site which might result in the need for protective devices in the future, prepared by an appropriately licensed professional (e.g. coastal engineer). In response, the previous applicant (which had proposed development very similar to the current proposal that was approved under Coastal Development Permit No 5-06-456-(Clark)) submitted, a letter from William Simpson & Associates, Inc dated February 19, 2007 and the current applicants have supplied the same letter to respond to the issue. The letter states that it did not find an existing bulkhead or any kind of reliable protective device on site. Also, it states that the existing shoreline slopes gradually without evidence of significant erosion. It also concludes: "*Based on the visual observation and documents reviewed, we believe that for now a protective device at the proposed development is not necessary provided no grading or altering the existing earth slope. Slope appears to be stable at this point in time. However, we cannot represent that conditions will not change in the future and possibility exists that natural or man made factors may alter the future slope stability.*" The letter concludes that the existing slope should be monitored on a regular basis, and if damage is observed, a repair should be made.

At the rear of the existing residence located on the residential property are a patio deck and also a deck over the slough attached to two docks. On the ACOE property and into the slough there are portions of a patio deck and planter, steps leading to the slough, a small boat dock, and a large boat. The Mean High Water Line is located at approximately +4.65', which is located adjacent to the patio deck and planter and stairs and underneath the boat docks and deck (all located on the ACOE property).

The proposed additions would not encroach any closer to the water's edge than existing development on the residential parcel. This existing buffer is much smaller than the 100-foot buffer normally required by the Commission for development adjacent to wetlands; however, since the subject lot is only approximately 90-feet deep at its farthest point, a 100-foot buffer would preclude the construction of any development on the lot.

A potential impact to the adjacent wetlands are the unpermitted existing rear patio deck and planter, steps to the slough, a small boat dock, and a large boat dock located on site adjacent to the slough as identified previously. The applicants are not seeking authorization for this existing unpermitted development through this application and approval of the proposed development does not authorize the rear patio deck and planter, steps leading to the slough, a small boat dock, and a

large boat dock. Therefore, in order to clarify that the approval of the proposed project does not authorize this unpermitted development, the applicants have showed and stated on the project plans that these elements are not permitted by any Coastal Development Permit. In order make sure this is adhered to, the Commission imposes **SPECIAL CONDITION NO. 5**, which requires the applicants to conform to the submitted project plans received October 28, 2010.

The applicants have submitted a drainage run-off and control plan that shows drainage on site will be directed to permeable areas.

The applicants have stated that landscaping is proposed and plans have been submitted. The placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. 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.cal-ipc.org/>) and California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)) in their publications. Furthermore, any plants in the landscape plan should only be drought tolerant to minimize the use of water (and preferably native to coastal Orange County). 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>.

Commission staff has reviewed the submitted Landscaping Plan and determined that non-drought tolerant plants have been found: *Festuca Californica* and *Mimulus Cardinalis*. Therefore, the Commission imposes **SPECIAL CONDITION NO. 9**, which requires the applicants to submit a Revised Landscaping Plan, which consists of native drought tolerant plants, which are non-invasive.

An additional concern is the impact lighting may have upon the wetland. Thus, **SPECIAL CONDITION NO. 10** has been imposed, which requires that all replaced or new lighting within the development shall be directed and shielded so that light is directed toward the ground and away from the wetlands.

The subject site is a waterfront lot located between the nearest public roadway and the shoreline in the City of Newport Beach. There is wetland adjacent to the subject site. Public access, as indicated in the City's certified land use plan, is available adjacent to the project site along the Federal land adjacent to the slough accessible at street ends located off of Canal Circle. For example, public access is available at a street end located two (3) lots (approximately 60-feet) south of the project site (Exhibit #2). The proposed development will not obstruct access along the slough.

## **2. Previous Action at the Project Site**

### **Coastal Development Permit No. 5-06-456-(Clark)**

On October 10, 2007, the Commission approved Coastal Development Permit No. 5-06-456-(Clark) for the remodel and addition of an existing two-story, 2,485 square foot single-family residence with an attached 485 square foot two-car garage located. Post project the two-story, single-family residence would have been be 3,101 square feet with an attached 454 square foot two-car garage. No grading was proposed. The project was approved with **TEN (10) SPECIAL CONDITIONS** requiring: **1)** an assumption-of-risk agreement; **2)** no future shoreline protective

device agreement; **3)** future development agreement; **4)** submittal of construction staging area(s) and construction corridor(s) plans; **5)** conformance with certain requirements related to the storage and management of construction debris and equipment; **6)** submittal of revised project plans identifying the unpermitted rear patio deck and planter, steps leading to the slough, a small boat dock, and a large boat dock located in the ACOE property; **7)** submittal of revised drainage and run-off control plans; **8)** submittal of landscape plans; **9)** adherence to requirements for exterior lighting adjacent to the wetland; and **10)** a deed restriction against the residential property, referencing all of the special conditions contained in this staff report. The permit was issued on July 7, 2008. However, construction of the project was never started and the permit expired. The currently proposed project is very similar to this project. A deed restriction was recorded pursuant to the special conditions of the prior permit (5-06-456). Since no development was undertaken pursuant to that permit, it was never vested and expired. Thus, the deed restriction required under this latest action (CDP No. 5-10-254) will supersede and replace the prior deed restriction.

**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 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. 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. 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.

**E. HABITAT**

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

**F. 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.

**G. 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.

**H. LOCAL COASTAL PROGRAM**

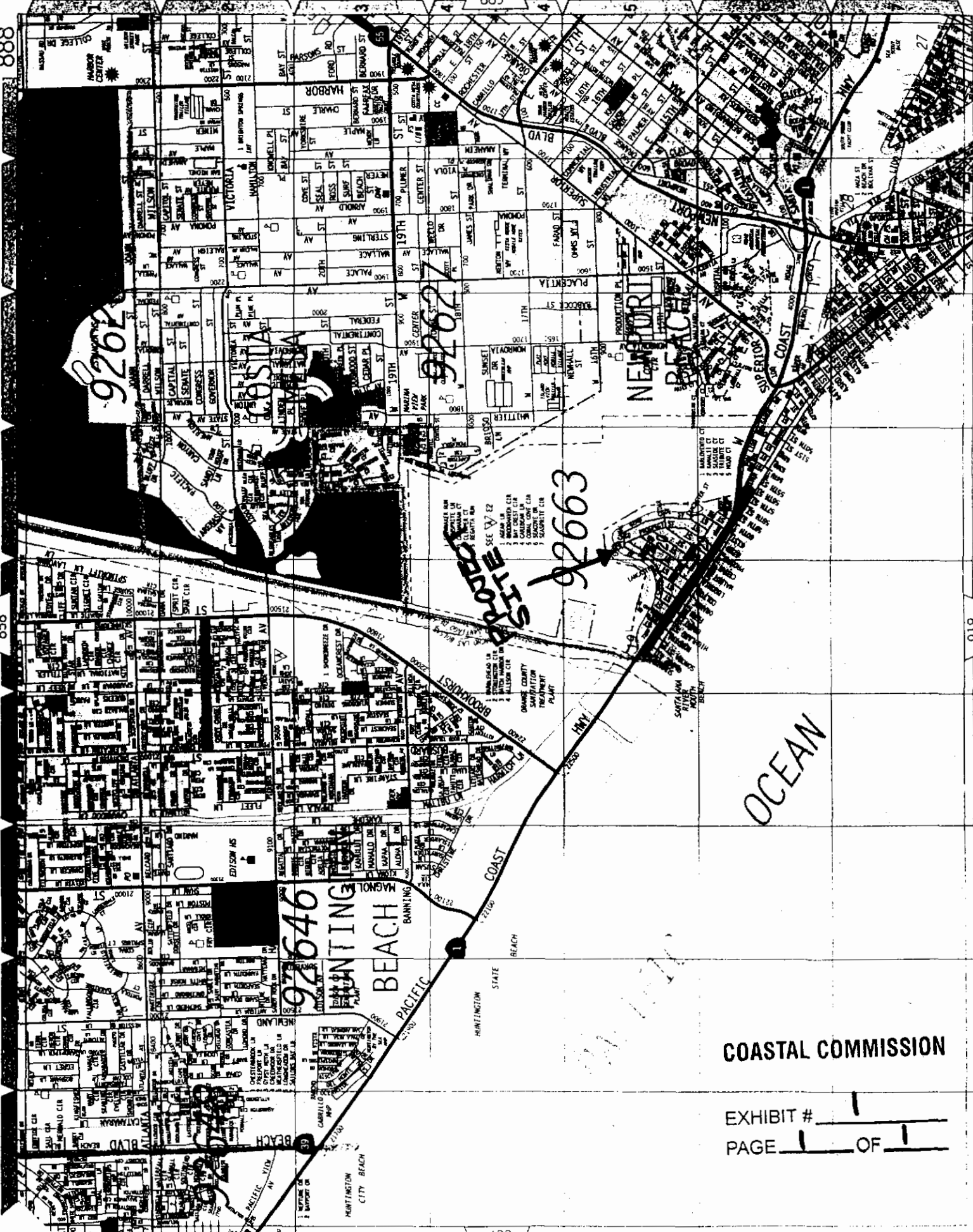
The LUP for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 8, 2009. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, 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.

**I. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

The City of Newport Beach is the lead agency responsible for certifying that the proposed project is in conformance with the California Environmentally Quality Act (CEQA). The City determined that in accordance with CEQA, the project is ministerial or categorically exempt. Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

Although the proposed development is categorically exempt from CEQA, the Commission has imposed conditions to ensure conformity with Coastal Act requirements. 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 consistent with the requirements of the Coastal Act and CEQA.

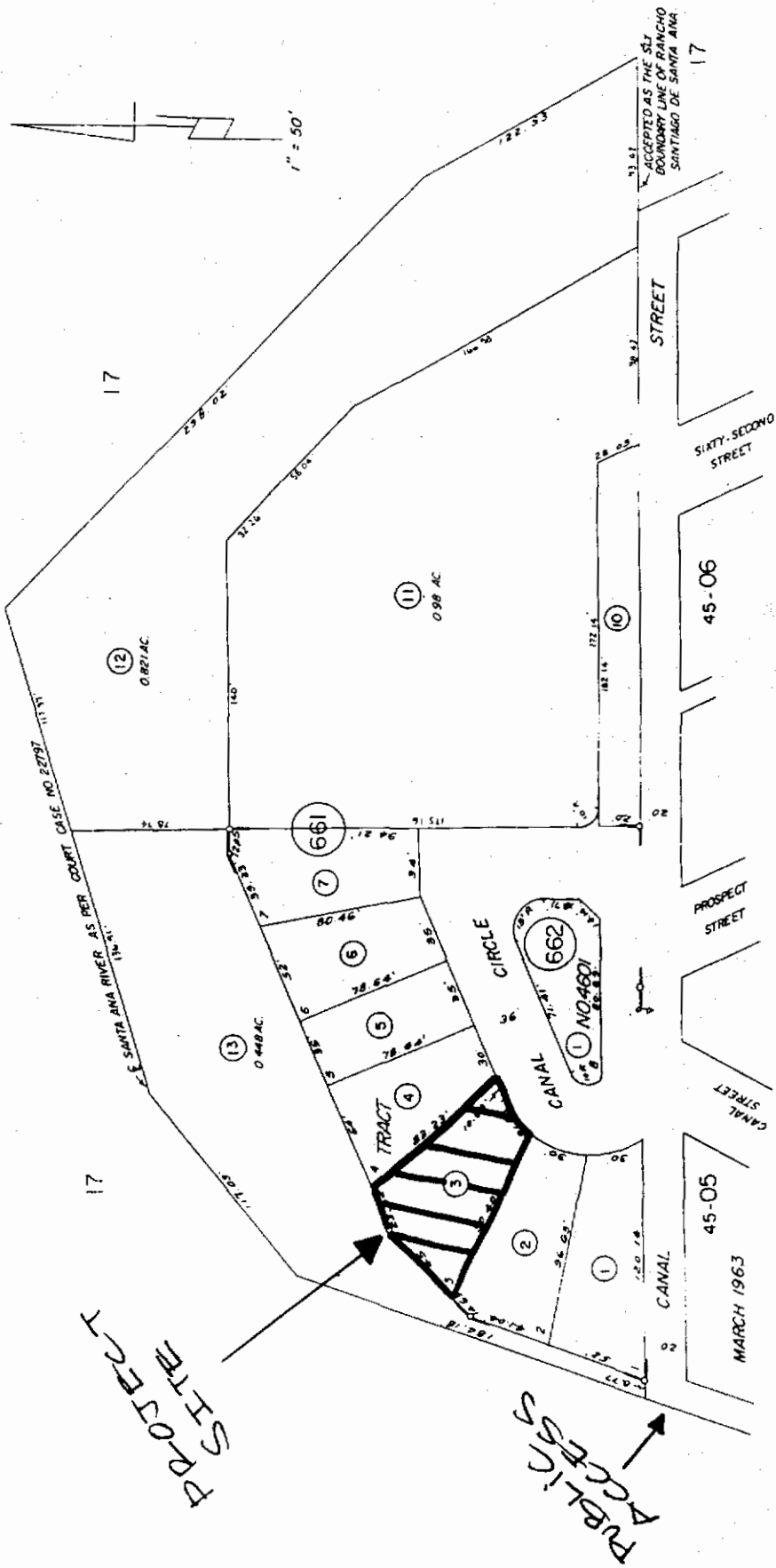


COASTAL COMMISSION

EXHIBIT # 1  
PAGE 1 OF 1

SEE SPECIAL PAGE 114-669 FOR SUBSURFACE FEE TITLE ASSESSMENT FOR E.1/2, SW.1/4, SEC. 20, T.6S., R.10W.

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ASSESSOR'S MAP  
BOOK 114, PAGE 66  
COUNTY OF ORANGE

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

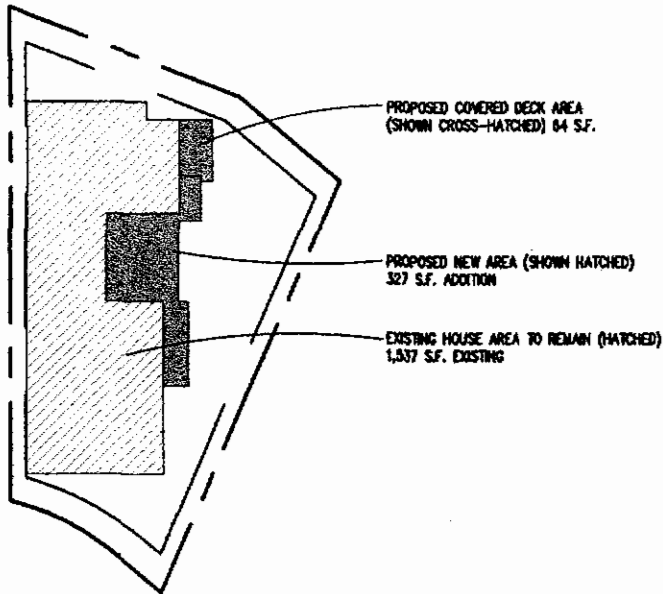
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EXHIBIT # 2  
PAGE 1 OF 1

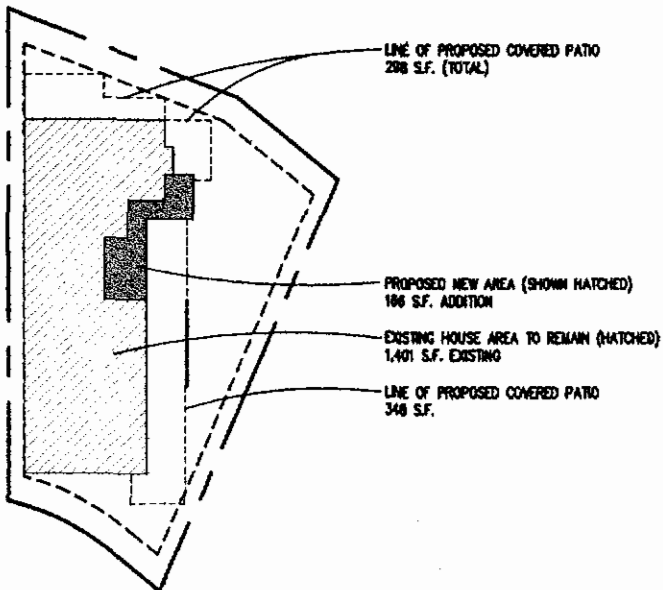






**3 proposed level two diagram of new area**

A0.2 SCALE: 1" = 20'-0"



**2 proposed level one diagram of new area**

A0.2 SCALE: 1" = 20'-0"

**COASTAL COMMISSION**

EXHIBIT # 3  
PAGE 2 OF 2

# a10

1001 • REDWOOD BLVD, SUITE 100  
EMERYVILLE, CALIFORNIA 94608  
TEL: 415.435.1000

**pence  
remodel**

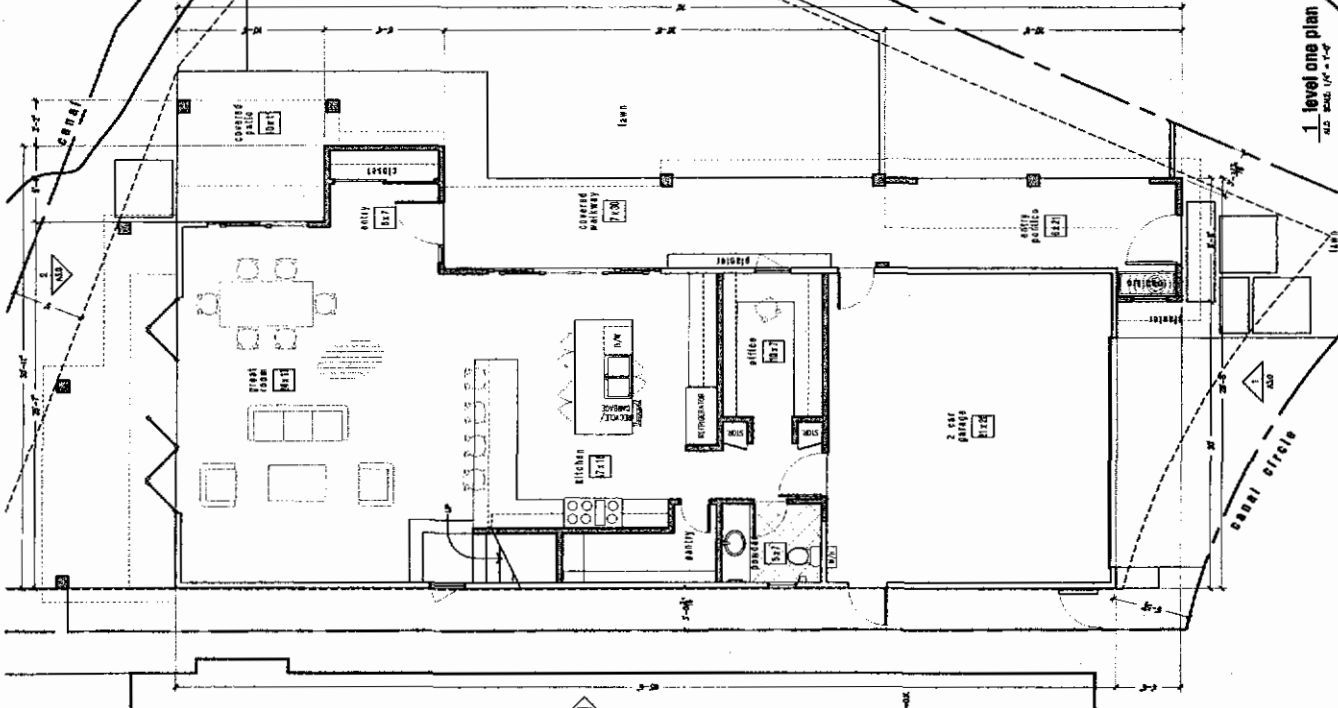
1001 • REDWOOD BLVD, SUITE 100  
EMERYVILLE, CALIFORNIA 94608  
TEL: 415.435.1000

california coastal commission submittal

27 october 2010  
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800 411 004

**eric just**  
1715 water street  
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211011:  
santa + jillie jencia  
477 prunedale street  
newport beach, california 92663  
tel: 949.531.8703



**project data**

**EXISTING SQUARE FOOTAGE:**  
TOTAL EXISTING 1,000 S.F.  
NEW CONSTRUCTION 1,000 S.F.  
TOTAL 2,000 S.F.

**ADDITIONAL SQUARE FOOTAGE:**  
TOTAL 1,000 S.F.

**OUTDOOR SPACE:**  
TOTAL 1,000 S.F.

**NEW REMODELED LIVING SQUARE FOOTAGES:**  
TOTAL 1,000 S.F.

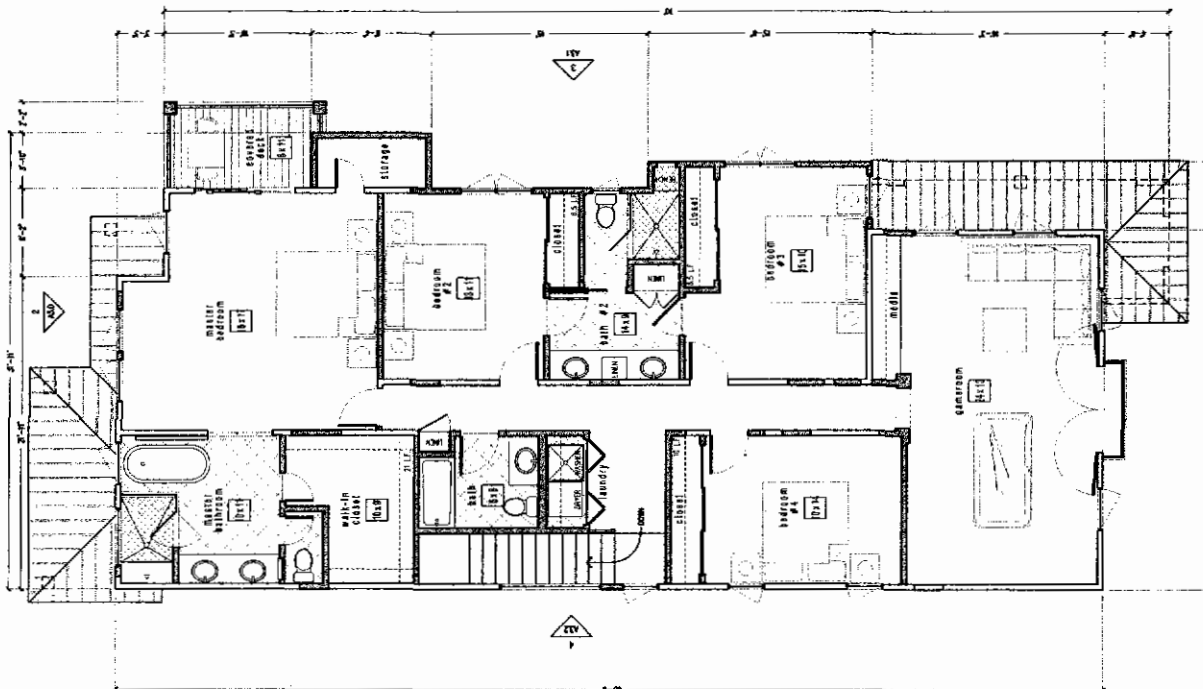
**2nd FLOOR:**  
TOTAL 1,000 S.F.

**BUILDING PERCENTAGE:**  
TOTAL 1,000 S.F.

**CONSERVATION:**  
TOTAL 1,000 S.F.

**wall legend**

EXISTING CONSTRUCTION TO REMAIN  
NEW CONSTRUCTION  
NEW CONSTRUCTION TO REMAIN  
NEW CONSTRUCTION TO REMAIN  
NEW CONSTRUCTION TO REMAIN  
NEW CONSTRUCTION TO REMAIN



**COASTAL COMMISSION**

EXHIBIT # **4**

PAGE **1** OF **2**



**a3.0**

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

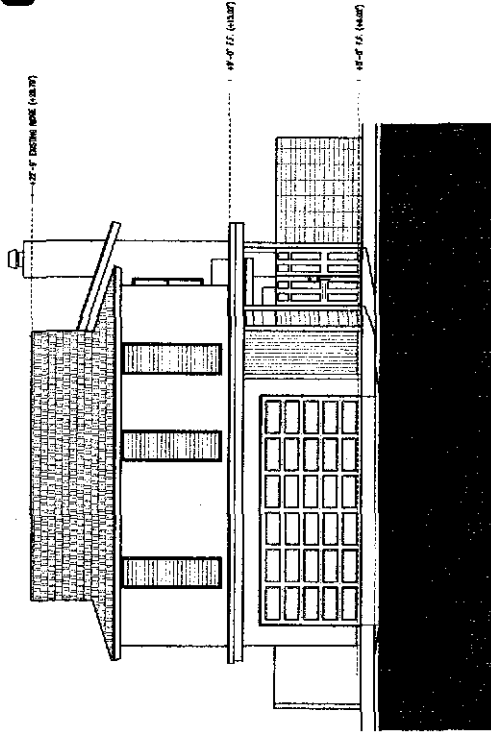
**pence  
remodel**  
3 woodlark  
newport beach, california 92663

california coastal commission submittal

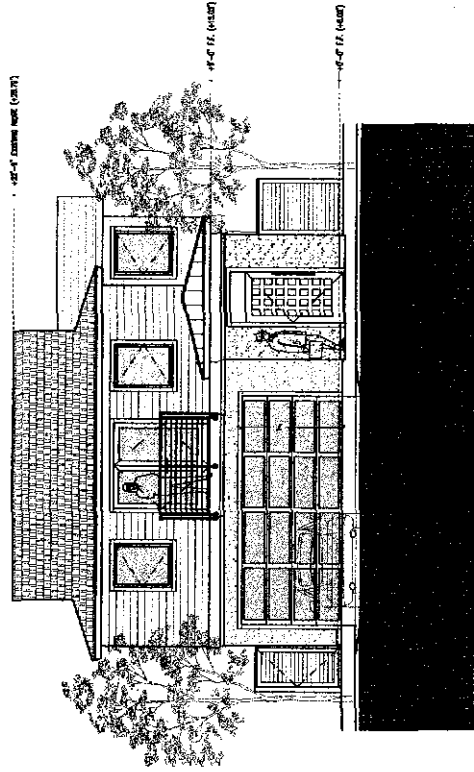
27 august 2010  
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job #1028

**eric aulst**  
218 w. 14th st. #104  
newport beach, california 92663  
tel 949.337.2220

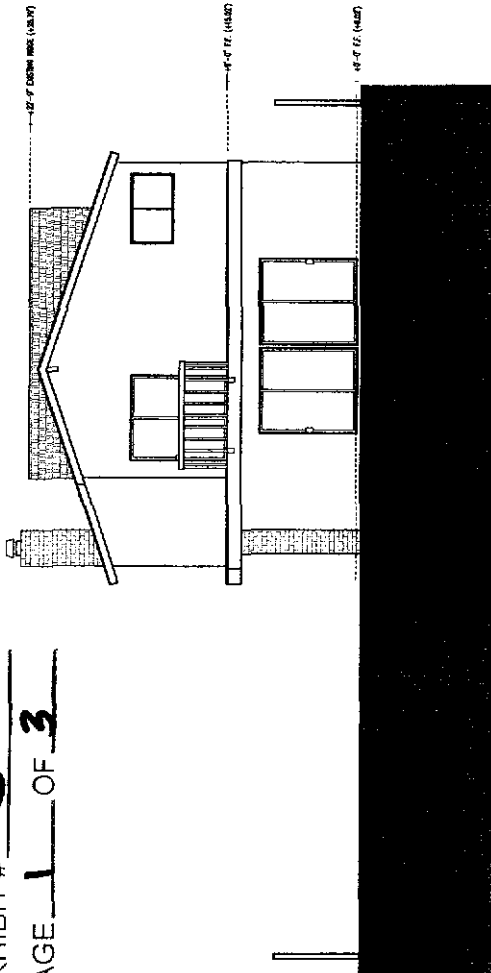
client:  
pence + bick 2006  
477 princeton street  
newport beach, california 92663  
tel 949.337.2722



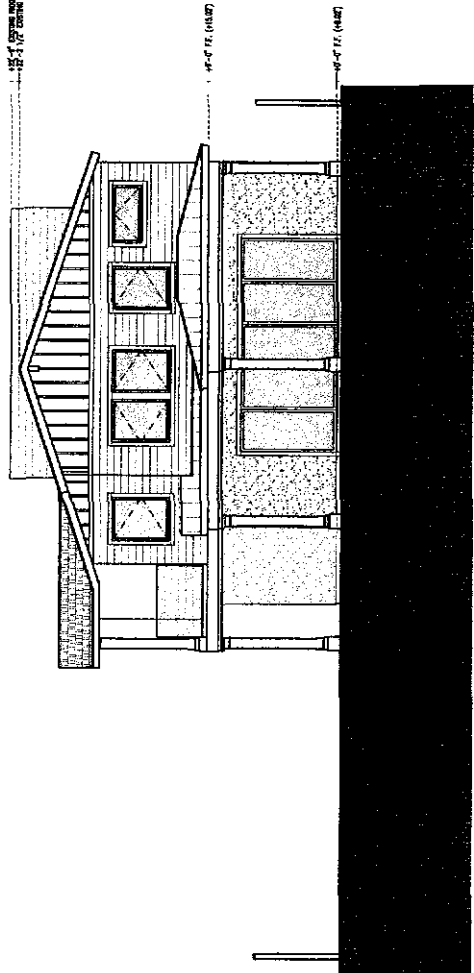
**1a existing exterior front elevation (east)**  
A30 SCALE: 1/4" = 1'-0"



**1 exterior front elevation (east)**  
A30 SCALE: 1/4" = 1'-0"



**2a existing exterior elevation (west)**  
A30 SCALE: 1/4" = 1'-0"



**2 proposed exterior elevation (west)**  
A30 SCALE: 1/4" = 1'-0"

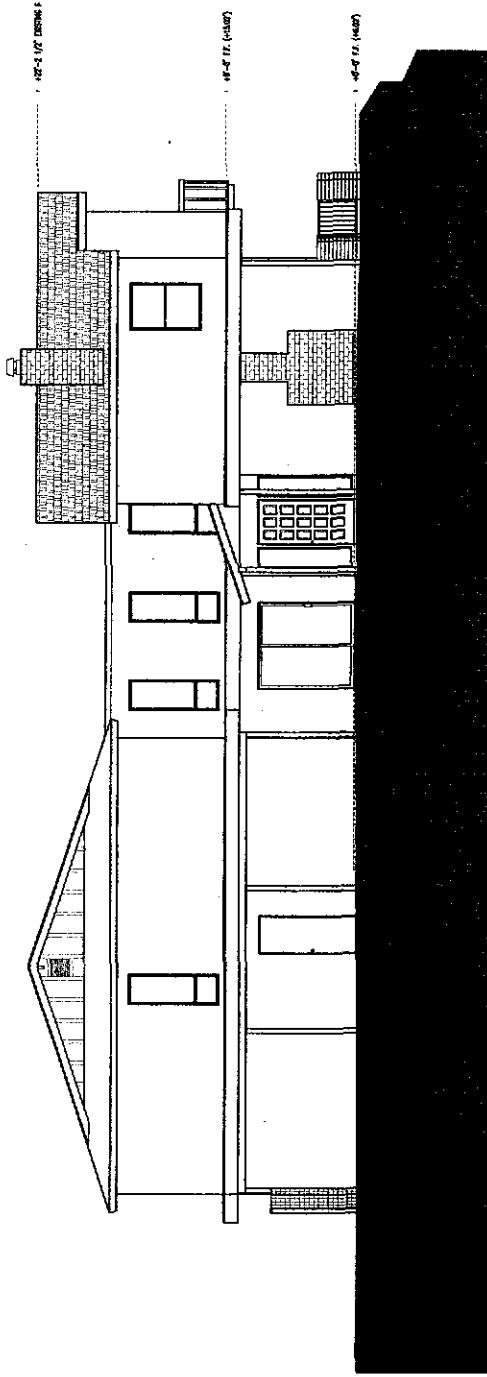
**83.1**

north exterior elevation  
1/4" = 1'-0"

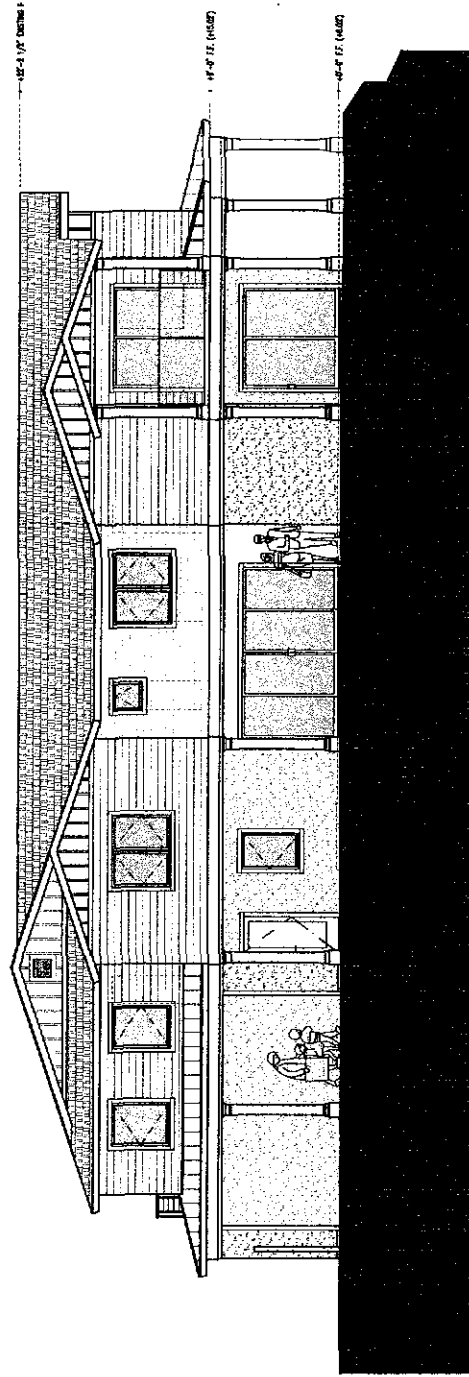
**pence  
remodel**

3 sheet cable  
report March, 2010  
6000

california coastal commission submittal



**3a. existing exterior elevation (north)**  
ASLT SCALE: 1/4" = 1'-0"



**3. proposed exterior elevation (north)**  
ASLT SCALE: 1/4" = 1'-0"

27 October 2010  
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Job #1008

**eric elise**  
210 vesalia street  
newport beach, california 92663  
tel: 949.537.2520

0110011  
dawn + jake pence  
477 prospect street  
newport beach, california 92663  
tel: 949.633.8700

**a3.2**

with modular elevations  
1/8" = 1'-0"

**pence  
remodel**

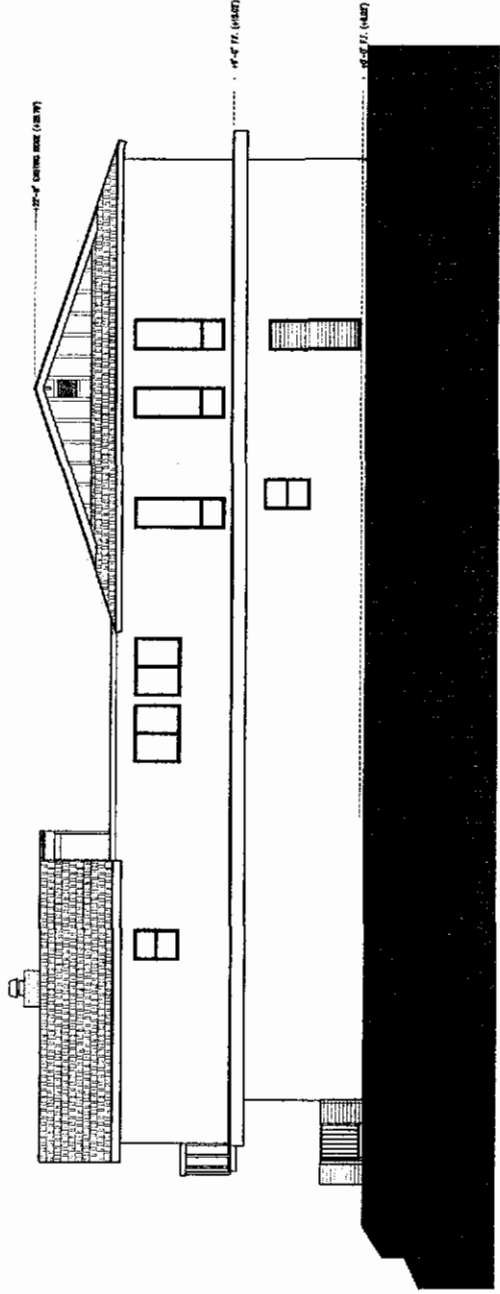
3 road club  
newport beach, california  
92663

california coastal commission submittal

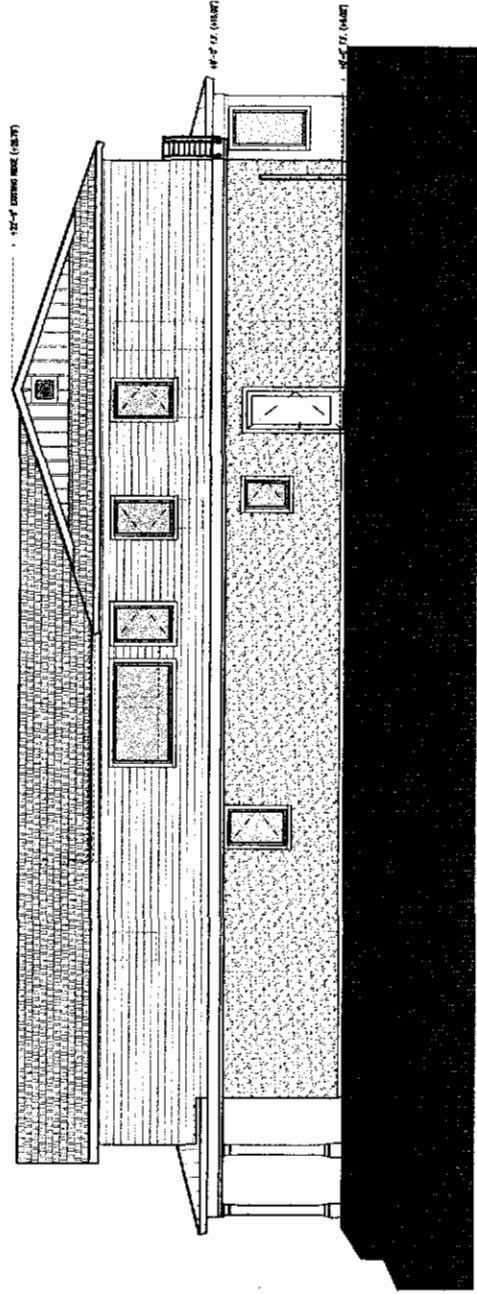
1 2 3 4 5  
0 1 2 3 4 5  
27 October 2010  
Copyright 2010  
Job # 1008

**eric auste**  
218 w. 10th street  
newport beach, california 92663  
tel: 949.857.5525

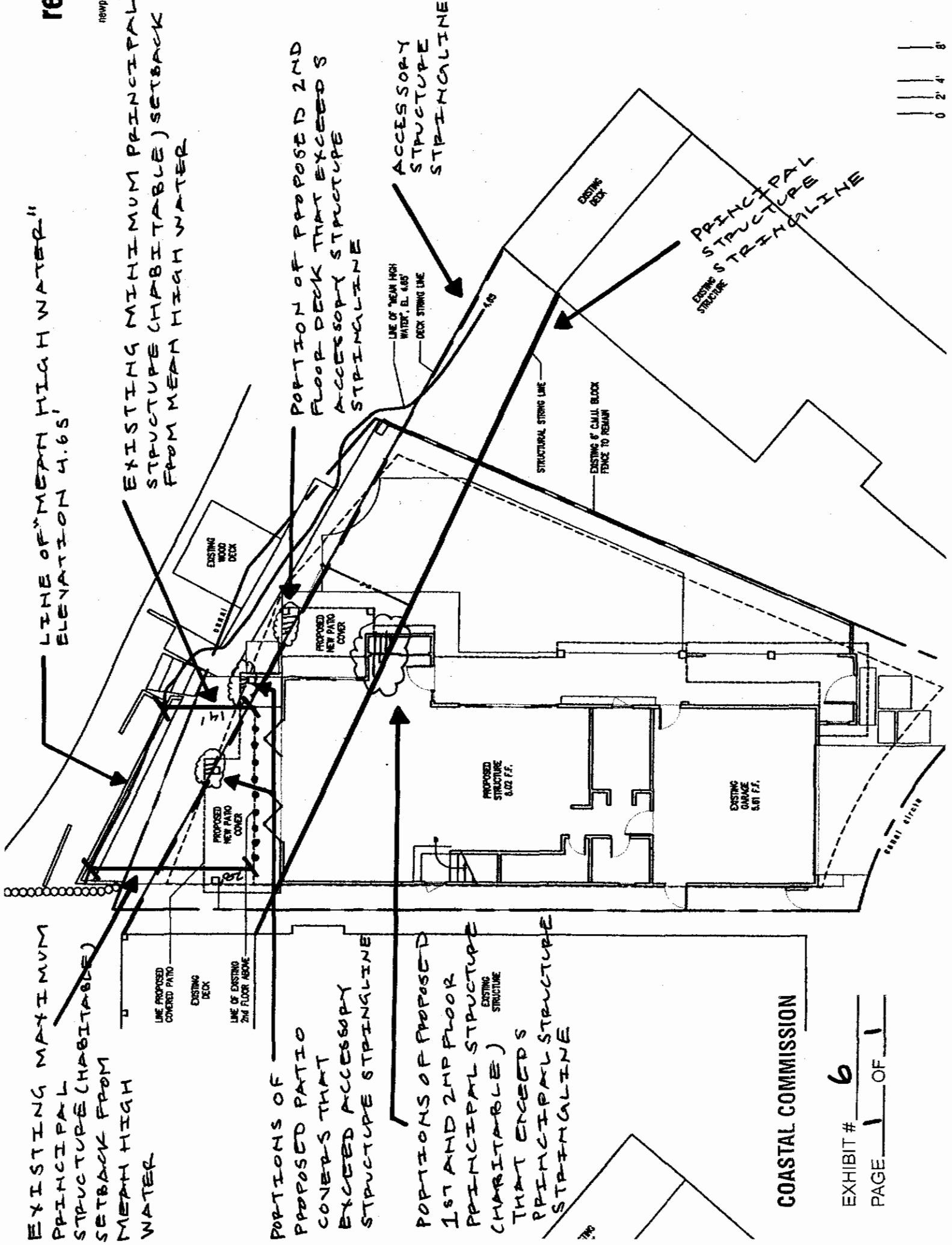
CLIENT:  
Pence + Pence  
477 Prospect Street  
Newport Beach, California 92663  
tel: 949.857.8722



**4a existing exterior elevation (south)**  
ALL SCALE 1/4" = 1'-0"



**4 proposed exterior elevation (south)**  
ALL SCALE 1/4" = 1'-0"



LINE OF "MEAN HIGH WATER" ELEVATION 4.65'

EXISTING MINIMUM PRINCIPAL STRUCTURE (HABITABLE) SETBACK FROM MEAN HIGH WATER

PARTION OF PROPOSED 2ND FLOOR DECK THAT EXCEEDS ACCESSORY STRUCTURE STRINGLINE

ACCESSORY STRUCTURE STRINGLINE

PRINCIPAL STRUCTURE STRINGLINE

EXISTING MAXIMUM PRINCIPAL STRUCTURE (HABITABLE) SETBACK FROM MEAN HIGH WATER

PARTIONS OF PROPOSED PATIO COVERS THAT EXCEED ACCESSORY STRUCTURE STRINGLINE

PARTIONS OF PROPOSED 1ST AND 2ND FLOOR PRINCIPAL STRUCTURE (HABITABLE) THAT EXCEEDS PRINCIPAL STRUCTURE STRINGLINE

COASTAL COMMISSION

EXHIBIT # 6

PAGE 1 OF 1

