

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641-0142

Filed: 2/22/96
49th Day: 4/11/96
180th Day: 8/20/96
Staff: CAREY *sc*
Staff Report: 2/26/96
Hearing Date: 3/12-15/96
Commission Action:



STAFF REPORT: CONSENT CALENDAR

W17j

APPLICATION NO.: 4-96-012

APPLICANT: Family Restaurants

AGENT: Image Builders

PROJECT LOCATION: 21150 Pacific Coast Highway, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Construction of a poured-in-place concrete retaining wall along west edge of an existing two-story building adjacent to Las Flores Creek to protect building foundation from flood flows.

Lot area:	1.78 acres
Building coverage:	17,625 sq. ft.
Pavement coverage:	58,746 sq. ft.
Landscape coverage:	1,405 sq. ft.
Parking spaces:	175
Ht abv ext grade:	24 ft.

LOCAL APPROVALS RECEIVED: City of Malibu Approval in Concept

SUBSTANTIVE FILE DOCUMENTS: 4-96-009 (Polos), 4-95-180 (Polos), 5-84-298 (Polos), Foundation Investigation, dated 12/17/95, prepared by Sampson and Associates

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project with Special Conditions regarding assumption of risk, debris removal, and wildfire waiver of liability. The proposed development is not located on the seaward portion of the project site and will not extend development any further seaward than what is currently existing on the site. As such, it will have no adverse impacts on public access or visual resources. The applicant's consulting engineer has determined that the project is feasible from an engineering standpoint. However, the Commission cannot absolutely acknowledge that the structure, which is designed to protect the foundations of an existing structure from flood flows, will be safe during all future storm events or that it will be constructed in a structurally sound manner and be properly maintained to

SUMMARY OF STAFF RECOMMENDATION (Continued):

eliminate any risk to the beach going public. As such, staff recommends that the applicant be required to assume the risk of developing the proposed project. Further, to ensure that any materials used in the proposed construction are not introduced into the stream, staff recommends that the applicant be required not to store materials or waste where it is subject to wave action or creek flows and that all materials be removed at the end of construction. Finally, the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wildfire. Staff recommends that the applicant be required to acknowledge and assume the liability from this risk. If the project is so conditioned, the staff recommends that the Commission find the proposed project consistent with the applicable policies of the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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 of the Coastal Act, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. 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.
7. 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. Plans Conforming to Geologic Recommendation

All recommendations contained in the Foundation Investigation Report, dated 12/17/95, prepared by Sampson and Associates shall be incorporated into all final design and construction including foundations, grading and drainage. All plans must be reviewed and approved by the consultants. Prior to the issuance of permit the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

2. Applicant's Assumption of Risk.

Prior to the issuance of the coastal development permit, the applicant shall obtain from the landowner execution and recordation of a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the landowner understands that the site may be subject to extraordinary hazard from waves during storms or flooding and the landowner assumes the liability from such hazards; and (b) that the landowner unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest.

3. Construction Responsibilities and Debris Removal

The applicant agrees not to store any construction materials or waste where it is subject to creek flow, wave erosion or dispersion. In addition, no machinery will be allowed in the intertidal zone at any

time. The permittee agrees to minimize the operation of construction machinery in the creek. The permittee shall remove from the site any and all debris that result from the construction period.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description and Background.

The applicant proposes the construction of a poured-in-place concrete retaining wall along west edge of an existing two-story building to protect the building foundation from flood flows. This building is directly adjacent to Las Flores Creek slightly upstream from where it enters the ocean and just downstream of the Pacific Coast Highway bridge.

The Commission has not identified any environmentally sensitive habitat areas along Las Flores Creek seaward of the bridge. Staff has confirmed that there is no riparian vegetation adjacent to the creek on this site. The State Lands Commission staff has reviewed this proposed project. Their letter states the following:

From the plans you have submitted, the proposed retaining wall does not appear to be located in an area of encroachment. As such, the SLC presently asserts no claims either that the project intrudes into sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters. This conclusion is without prejudice to any future assertion of state ownership or public rights, should circumstances change or should additional information come to our attention.

Existing development on the site consists of a two-story restaurant, a two-story, 4,048 sq. ft. building used for storage, a 177 space parking lot, and rock revetment. A restaurant has been operated at this location since 1928. The original restaurant was closer to the highway but after a fire, the replacement was built at the present location. The proposed project site is a point at the end of Las Flores Creek. The creek has deposited both sand and rock in a fan shaped deposit next to the shore. Some of the rocks deposited were one or two feet in diameter. The owners of the restaurant apparently constructed a grouted rip-rap revetment using rocks from the creek mouth sometime in the forties. In the storms of 1982-83, the restaurant sustained major damage from wave attack and flooding. In early 1984, the owner repaired and made substantial additions to the revetment, extending it some thirty feet further seaward.

In 1984, the Commission considered an after-the-fact permit for the revetment improvements. In Permit 5-84-298 (Polos), the Commission approved the repair, reconstruction, and expansion of the rock revetment by replacement of filter rock, and backfilling 2-7 ton cap rock extending 30 feet seaward, along the full 470-foot length of a previously existing storm damaged wall for the protection of the existing restaurant. This permit was approved with special conditions requiring an offer to dedicate lateral access, an assumption of risk deed restriction, certification by a civil engineer of the adequacy of the design, redesign of fencing, evidence of review of the project by the

State Lands Commission and the U.S. Army Corps of Engineers. The special conditions were met and the permit was issued.

More recently, the Commission approved permit 4-95-180 (Polos) for the construction of a 3,707 sq. ft. triplex with 3-car garage and septic system to replace a triplex destroyed by fire. This property is immediately downcoast of the proposed project site. This permit was approved with special conditions relating to assumption of risk, geology review, wildfire waiver, and debris removal.

At the March hearing, the Commission will also consider Permit Application 4-96-009 (Polos) for the remodel of an existing restaurant, including: modification of exterior elevations; removal of interior floor space to provide for exterior patio dining area; modify interior floor plan such that total service area will be reduced 2,700 sq. ft.; and upgrade septic system. The proposed project will not extend development seaward. The applicant for that permit is the landowner.

B. Hazards.

Section 30253 of the Coastal Act states in part that new development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property. Fires in the Malibu area have also burned all the way to the ocean so even beach front homes are not immune to the risk of wildfire. Further, oceanfront sites are also subject to flooding and erosion from storm waves.

The applicant proposes the construction of a poured-in-place concrete retaining wall along west edge of an existing two-story building to protect the building foundation from flood flows. This building is directly adjacent to Las Flores Creek slightly upstream from where it enters the ocean and just downstream of the Pacific Coast Highway bridge. The existing building is supported by several rows of 15-inch diameter wood piers extended into the sand. A relatively large void is present beneath the structure. When the flows in Las Flores Creek are high, water penetrates beneath the structure. The foundations are being undermined. The retaining wall is proposed to prevent water penetration beneath the building.

The applicant has submitted a Foundation Investigation Report, dated 12/17/95, prepared by Sampson and Associates, Consulting Engineers. This report evaluates the soils conditions and provides engineering recommendations. The study concludes that the proposed wall is feasible from an engineering point of view and that no unmitigatable conditions were uncovered during the investigation. The consultant's report states that:

Based on the field, laboratory data, and our analysis, it is our opinion that the proposed construction is feasible, provided that the recommendations in this report are incorporated fully in the design and construction stages of the project.

Based on the recommendations of the consulting engineers, the Commission finds that the development is consistent with Section 30253 of the Coastal Act so long as the consultant's recommendations are incorporated into project plans. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by the consulting Engineer as conforming to their recommendations.

Even though the consultants have determined that the proposed project will assure stability, the Commission cannot absolutely acknowledge that the wall will be safe during all future storms or be constructed in a structurally sound manner and be properly maintained to eliminate any potential risk to the beach going public. The Commission acknowledges that many of the oceanfront parcels in Malibu such as the subject property are susceptible to flooding and wave damage from waves and storm conditions. Past occurrences have resulted in public costs (through low interest loans) in the millions of dollars in the Malibu area alone. Additionally, the existing structure and the proposed retaining wall, by virtue of their location, are subject to hazard from flooding on Las Flores Creek.

The applicant may decide that the economic benefits of development outweigh the risk of harm which may occur from the identified hazards. Neither the Commission nor any other public agency that permits development should be held liable for the applicant's decision to develop. In this case, the applicant is a lease holder who operates the existing restaurant on the property. Because the lease could end or be transferred to another party, it is necessary to require the underlying landowner to expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the decision to develop. This waiver of liability will take the form of an assumption of risk deed restriction recorded against the landowner's property.

Additionally, in order to minimize erosion, the Commission finds it necessary to require the applicant to minimize the utilization of construction equipment within the creek and to not store materials or waste where it might be subject to creek flow or wave action. Only as conditioned is the proposed development consistent with Section 30253 of the Coastal Act.

C. Local Coastal Program

Section 30604 of the Coastal Act states that:

- a) Prior to certification of the local coastal program, a coastal

development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

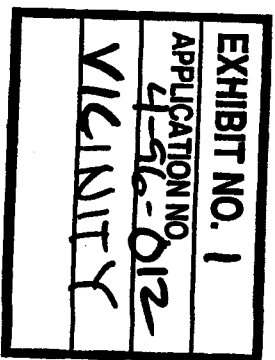
D. California Environmental Quality Act.

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity would have on the environment.

The proposed development would not cause significant, adverse environmental impacts which would not be adequately mitigated by the conditions imposed by the Commission. Therefore, the proposed project, as conditioned, is found consistent with CEQA and with the policies of the Coastal Act.

1942M

BJC



21150 PACIFIC COAST HWY.
MALIBU, CA 90265

RESTAURANT:	497 Seats (E)
SEPTIC TANK:	1000 Gallon (E)
	1500 Gallon (E)
	3000 Gallon (E)
	7500 Gallon (E)
PRESENT:	2 - 47' X 100' Drainfield (E)
FUTURE:	100Z (Available)
PERC RATE:	Unknown

NOTES:

1. This approval is for a new retaining wall. No renovation of the private sewage disposal system is required.
2. This approval only relates to the minimum requirements of the City of Malibu Uniform Plumbing Code and does not include an evaluation of any geological, or other potential problems, which may require an alternative method of wastewater disposal.
3. This approval is valid for one year or until City of Malibu Uniform Plumbing Code and/or Administrative Policy changes render it noncomplying.

**CITY OF MALIBU
ENVIRONMENTAL HEALTH**

IN-CONCEPT APPROVAL

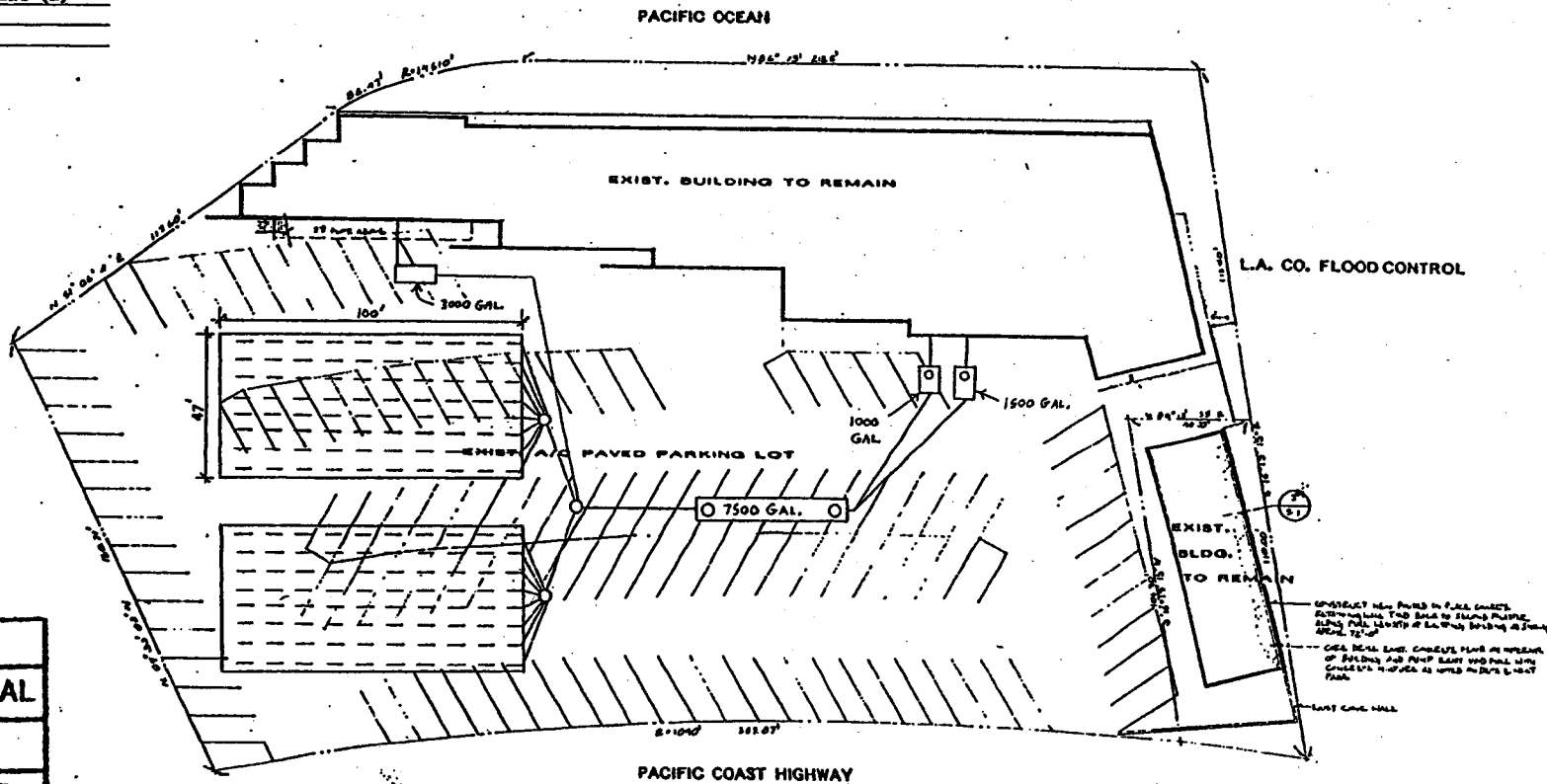
L Young

**APPROVAL IS REQUIRED
OF THE ISSUANCE OF
CONSTRUCTION PERMITS.**

EXHIBIT NO. 2

APPLICATION NO.

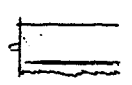
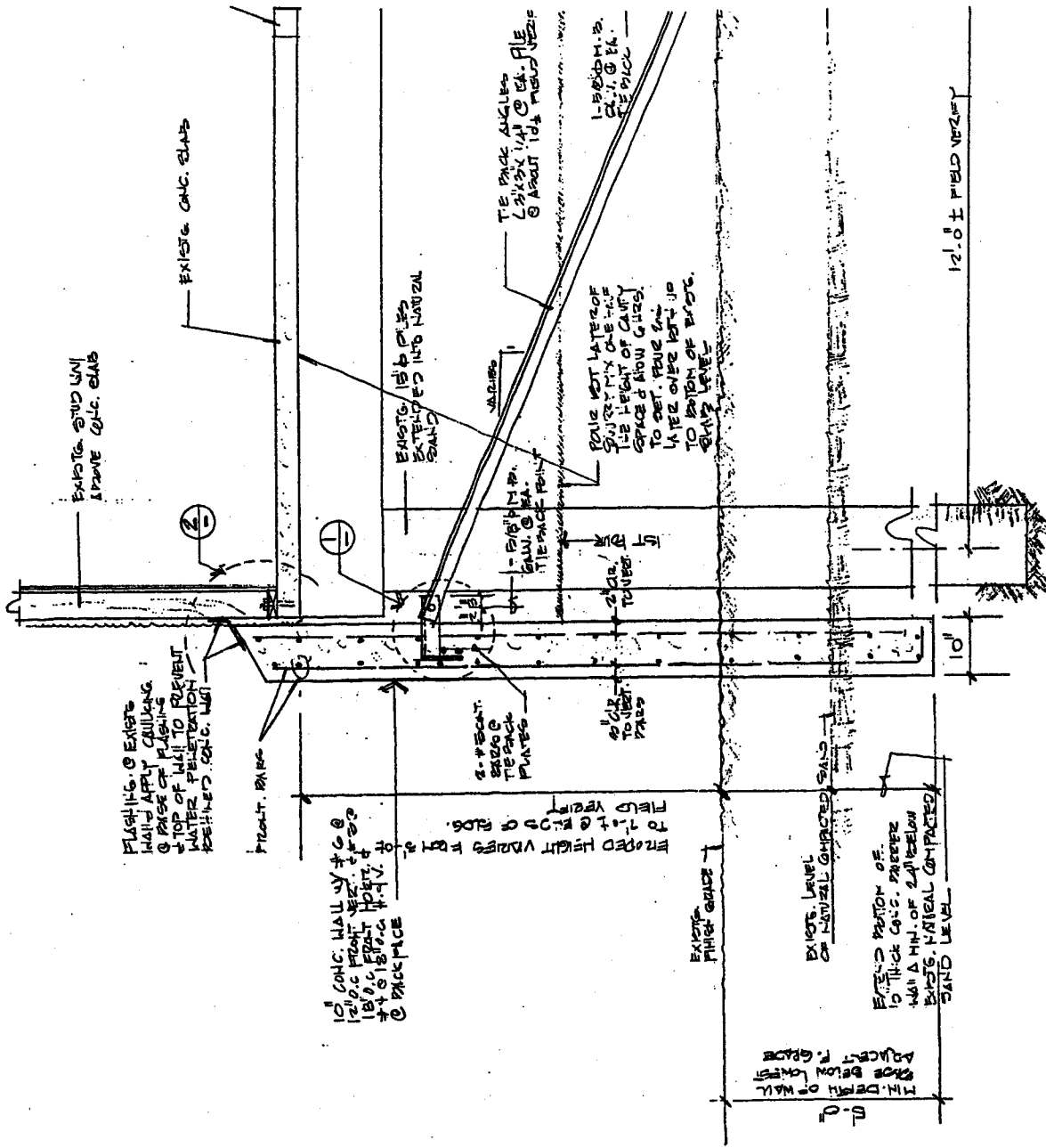
PLOT PLAN



PLOT PLAN



$1^{\circ} = 40'$



SEE ELEVATION FOR DIMENSIONS ON WIDENING AGAINST EXIST.



EXHIBIT NO. 3
APPLICATION NO. 4-96-612
CROSS SECTION