

CALIFORNIA COASTAL COMMISSION

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Staff: KFS-LB
Staff Report: October 26, 2000
Hearing Date: November 14-17, 2000
Commission Action:

**STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-00-261**RECORD PACKET COPY****APPLICANT:** Sandy Pearson**AGENT:** John T. Morgan, Jr., Architect**PROJECT LOCATION:** 7004 W. Oceanfront, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Demolish an existing two story duplex. Construction of an approximately 25 foot high, two story, 2,527 square foot single family residence with an attached 385 square foot, two-vehicle garage on a beach front parcel. In addition, construction of a patio and landscape walls on the seaward side of the residence. No grading is proposed.

Lot Area:	2250 square feet
Building Coverage:	1427 square feet
Paved Area:	822 square feet
Landscape Coverage:	None
Parking Spaces:	2
Cert. Land Use Design:	Two Family Residential
Zoning:	R-2
Ht above grade:	25 feet

LOCAL APPROVALS RECEIVED: City of Newport Beach approval-in-concept dated June 27, 2000.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits related to hazards: 5-00-086 (Wells); 5-00-059 (Danner); 5-00-114 (Heuer); 5-00-271 (Darcy); 5-99-477 (Watson); 5-99-289 (NMUSD); 5-99-072 (Vivian); 5-97-319 (Steffensen); 5-95-185 (Sloan); 5-86-844 (Baldwin), 5-86-153 (Kredell), and 5-85-437 (Arnold); City of Newport Beach certified Land Use Plan; Coastal Development Permits related to street end improvements: 5-93-114, 5-94-091, 5-95-010, 5-96-106, 5-97-258, and 5-99-298 (City of Newport Beach); Coastal Development Permits related to Oceanfront encroachments: 5-94-054 (Riegelsberger), 5-94-178 (RJH Properties), 5-94-280 (Hood), 5-96-218 (Collins), 5-96-225 (Fine), 5-97-171 (Barnes), and 5-97-243 (701 Lido Partnership) and 5-98-266 (WMC Development); *Wave Runup Study* for 7004 W. Oceanfront, Newport Beach, CA prepared by Skelly Engineering dated September 2000 with supplemental letter dated September 15, 2000.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed project subject to four (4) special conditions requiring 1) recordation of an Assumption-of-Risk deed restriction; 2) recordation of a No Future Protective Device deed restriction; 3) requirement to obtain Commission approval for any deviation related to oceanfront patio encroachments; and 4) a notification that this coastal permit does not prevent the City of Newport Beach from requiring the removal of oceanfront patio encroachments. The major issue of this staff report concerns beachfront development that could be affected by flooding during strong storm events. As of the date of this staff report, the applicant has indicated opposition to proposed special conditions 1 and 2.

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve CDP No. 5-00-261 pursuant to the staff recommendation.

Staff recommends a **YES** vote. This will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that the development 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 effects 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. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Assumption of Risk, Waiver of Liability and Indemnity
 - A. 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.
 - B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.
2. No Future Shoreline Protective Device
 - A. By acceptance of this permit, the applicant agrees, on behalf of himself 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. 5-00-261, including future improvements, in the event that the property 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 himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which reflects the above restriction on development. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3. Deviation from Approved Encroachments.

The only encroachment onto the City of Newport Beach Ocean Front public right-of-way allowed by this coastal development permit is a 15'x30' concrete patio surrounded by a 3'0" high concrete block wall with an opening to the beach. Any development in the public right-of-way, including improvements, repairs, and maintenance, cannot occur without an amendment to this coastal development permit or a new coastal development permit from the Coastal Commission, unless the Executive Director determines that no amendment or new permit is required.

4. City's Right to Revoke Encroachment Permit.

Approval of this coastal development permit shall not restrict the City's right and ability to revoke, without cause, the approved City encroachment permit in order to construct public access and recreation improvements within the public right-of-way.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 7004 W. Oceanfront Avenue on the Balboa Peninsula within the City of Newport Beach, Orange County (Exhibit 1). The site is a beachfront lot located between the first public road and the sea. Unlike the beachfront areas of Newport Beach south of 36th Street, there is no paved public walkway between the site and the public beach. The project is located within an existing urban residential area, located at the northern end of Newport Beach near the mouth of the Santa Ana River. There is a wide sandy beach (approximately 400-500 feet wide) between the subject property and the mean high tide line.

Vertical public access to this beach is available approximately 90 feet north and 60 feet south of the subject site at the end of Highland Street and Grant Street, respectively.

The applicant is proposing to demolish an existing two story duplex and to construct an approximately 25 foot high, two story, 2,527 square foot single family residence with an attached 385 square foot, two-vehicle garage on a beach front parcel. No grading is proposed (Exhibit 2).

The proposed project also includes a ground-level patio surrounded by a patio wall on the seaward side of the property (Exhibit 2, page 1). Specifically, the patio is comprised of a concrete slab and a three foot high, six inch wide concrete masonry wall which surrounds the patio. As part of the proposed perimeter wall, there will be a three foot high by three foot wide wood gate to provide access between the patio and the beach. The patio will be 30 feet wide by 20 feet deep. The seawardmost portion of the proposed patio will encroach into the City of Newport Beach Oceanfront public right-of-way. The public right-of-way is City owned land for street purposes. The portion of the new patio which would encroach onto the public right-of-way would be 15 feet deep (seaward from the beachside property line) and 30 feet wide.

B. PREVIOUS COMMISSION ACTION IN PROJECT AREA

The Commission has recently approved new development and residential renovation projects on beachfront lots in Orange County and southern Los Angeles with special conditions requiring the recordation of an assumption of risk deed restriction and no future protective device deed restriction. Projects in Hermosa Beach (Los Angeles County) are used for comparative purposes in the current situation because of their similar site characteristics, including the existence of a wide sandy beach between the subject site and the mean high tide line. Projects similar to the currently proposed development in Orange County include Coastal Development Permits 5-99-477 (Watson); 5-99-072 (Vivian); 5-97-319 (Steffensen); 5-95-185 (Sloan); 5-86-844 (Baldwin), 5-86-153 (Kredell), and 5-85-437 (Arnold). Recent examples in Hermosa Beach include Coastal Development Permits 5-00-086 (Wells); 5-00-059 (Danner); 5-00-114 (Heuer) and 5-00-271 (Darcy). Lastly, the Commission approved CDP 5-99-289 (NMUSD) in April 2000 for the construction of a sand wall around an elementary school playfield site south of the subject site.

C. HAZARDS

Section 30253 of the Coastal Act states, in relevant part:

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, geologic 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.

Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

1. Wave Uprush and Flooding Hazards

The subject site is located on a beach parcel on the Balboa Peninsula at the northern end of Newport Beach near the mouth of the Santa Ana River. Presently, there is a wide sandy beach between the subject development and the ocean. According to the Wave Runup Study prepared by Skelly Engineering dated September 2000, the mean high tide line is approximately 400-500 feet from the seaward edge of the subject property. This wide sandy beach presently provides homes and other structures in the area some protection against wave uprush and flooding hazards. However, similar to other nearby beach fronting sites such as those at A1 through A91 Surfside in Seal Beach (north of the subject site), the wide sandy beach is the only protection from wave uprush hazards. Similar situations exist in downtown Seal Beach and Hermosa Beach (Los Angeles County).

Even though wide sandy beaches afford protection of development from wave and flooding hazards, development in such areas is not immune to hazards. For example, in 1983, severe winter storms caused heavy damage to beachfront property in Surfside. Additionally, heavy storm events such as those in 1994 and 1998, caused flooding of the Surfside community. As a result, the Commission has required assumption-of-risk deed restrictions for new development on beachfront lots throughout Orange County and southern Los Angeles County.

Section 30253 (1) states that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard. Based on historic information and current conditions at the subject site, the proposed development is not considered to be sited in a hazardous area. There is currently a wide sandy beach in front of the proposed development. In addition, the existing development was not adversely affected by the severe storm activity which occurred in 1983, 1994, and 1998. Since the proposed development is no further seaward of existing development, which has escaped storm damage during severe storm events, the proposed development is not anticipated to be subject to wave hazard related damage. Nonetheless, any development on a beachfront site may be subject to future flooding and wave attack as coastal conditions (such as sand supply and sea level) change.

To further analyze the suitability of the site for the proposed development, Commission staff requested the preparation of a wave run-up, flooding, and erosion hazard analysis, prepared by

an appropriately licensed professional (e.g. coastal engineer), that anticipates wave and sea level conditions (and associated wave run-up, flooding, and erosion hazards) through the life of the development. For a 75 to 100 year structural life, the hazard analysis would need to take the 1982/83 storm conditions (or 1988 conditions) and add in 2 to 3 feet of sea level rise in order to determine whether the project site would be subject to wave run-up, flooding, and erosion hazards under those conditions. The purpose of this analysis is to determine how high any future storm damage may be so the hazards can be anticipated and so that mitigation measures can be incorporated into the project design.

When initially asked to provide a wave uprush analysis, the applicant's agent provided verification from the City of Newport Beach Building Department stating that the subject site is not located in an area subject to flooding from wave activity based on Flood Insurance Rate Maps (FIRM) published by the Federal Emergency Management Agency (FEMA). However, Commission technical staff determined the method of analysis used for preparation of the FIRM documents to be insufficient for Commission purposes and made a subsequent request for a wave uprush study prepared by an appropriately licensed professional.

The applicant then provided the Wave Uprush Study prepared by Skelly Engineering dated September 2000 which addresses the potential of hazard from flooding and wave attack at the subject site. The report concludes the following:

"...[W]ave runup and overtopping will not significantly impact this property over the life of the proposed improvement. The proposed development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or adjacent area. There are no recommendations necessary for wave runup protection. The proposed project minimizes risks from flooding."

The Commission's Senior Coastal Engineer has reviewed the Wave Runup Study and, based on the information provided and subsequent correspondence, concurs with the conclusion that the site is not subject to hazards from flooding and wave uprush at this time. Therefore, the proposed development can be allowed under Section 30253 of the Coastal Act, which requires new development to *"assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices..."*

Although the applicant's report indicates that site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes, including sand regimes. The mechanisms of sand replenishment are complex and may change over time, especially as beach process altering structures, such as jetties, are modified, either through damage or deliberate design. Therefore, the presence of a wide sandy beach at this time does not preclude wave uprush damage and flooding from occurring at the subject site in the future. The width of the beach may change, perhaps in combination with a strong storm event like those which occurred in 1983, 1994 and 1998, resulting in future wave and flood damage to the proposed development.

Given that the applicant has chosen to implement the project despite potential risks from wave attack, erosion, or flooding, the applicant must assume the risks. Therefore, the Commission

imposes Special Condition 1 for an assumption-of-risk agreement. In this way, the applicant is notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicant to indemnify the Commission in the event that third parties bring an action against the Commission as a result of the failure of the development to withstand the hazards. In addition, the condition ensures that future owners of the property will be informed of the risks and the Commission's immunity from liability. As conditioned, the Commission finds the proposed project is consistent with Section 30253 of the Coastal Act.

The assumption-of-risk condition is consistent with prior Commission actions for development along the beach. For instance, the Executive Director issued Administrative Permits 5-86-676 (Jonbey), 5-87-813 (Corona), and more recently 5-97-380 (Haskett) with assumption-of-risk deed restrictions for improvements to existing homes. In addition, the Commission has consistently imposed assumption-of-risk deed and no future protective device restrictions on new development. Examples include Coastal Development Permits 5-99-289 (NMUSD); 5-99-477 (Watson), 5-99-372 (Smith), 5-99-072 (Vivian), 5-86-844 (Baldwin), 5-86-153 (Kredell), and 5-85-437 (Arnold).

2. Future Shoreline Protective Devices

The Coastal Act limits construction of protective devices because they have a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Under Coastal Act Section 30235, a shoreline protective structure must be approved if: (1) there is an existing principal structure in imminent danger from erosion; (2) shoreline altering construction is required to protect the existing threatened structure; and (3) the required protection is designed to eliminate or mitigate the adverse impacts on shoreline sand supply.

The Commission has generally interpreted Section 30235 to require the Commission to approve shoreline protection for development only for existing principal structures. The construction of a shoreline protective device to protect new development would not be required by Section 30235 of the Coastal Act. The proposed project involves the demolition of an existing structure and construction of a new single family residence. The proposed single family home is new development. The construction of a shoreline protective device to protect this type of new development would conflict with Section 30251 of the Coastal Act, which states that permitted development shall minimize the alteration of natural landforms, including beaches which would be subject to increased erosion from such a device.

In the case of the current project, the applicant does not propose the construction of any shoreline protective device to protect the proposed development. While the Commission recognizes that the applicant is proposing a brick wall parallel to the seaward property line, the wall is not designed to function as a shoreline protective device and cannot be relied upon to provide protection from wave uprush. The Wave Runup Study concludes that the *"long term erosion rate is small"* and that *"[t]he presence of the Santa Ana River jetty provides significant structural stability to the beach at the subject site."* However, as previously discussed, nearby beachfront communities have experienced flooding and erosion during severe storm events, such as El Nino storms. It is not possible to completely predict what

conditions the proposed structure may be subject to in the future. Consequently, it is conceivable the proposed structure may be subject to wave uprush hazards.

Shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, shoreline protective devices can cause changes in the shoreline profile, particularly changes in the slope of the profile resulting from a reduced beach berm width. This may alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on public property.

The second effect of a shoreline protective device on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. A loss of area between the mean high water line and the actual water is a significant adverse impact on public access to the beach.

Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. As set forth in earlier discussion, this portion of Newport Beach is currently characterized as having a wide sandy beach. However, the width of the beach can vary, as demonstrated by severe storm events. The Commission notes that if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. The Commission also notes that many studies performed on both oscillating and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device exists.

Fourth, if not sited in a landward location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments, bulkheads, and seawalls interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events, but also potentially throughout the winter season.

Section 30253 (2) of the Coastal Act states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. Therefore, if the proposed structure requires a protective device in the future it would be inconsistent with Section 30253 of the Coastal Act because such devices contribute to beach erosion. In addition, the construction of a shoreline protective device to protect new development would also conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms, including sandy beach areas which would be subject to increased erosion from shoreline protective devices. The applicant is not currently proposing a seawall and does not anticipate the need for one in the future. The coastal processes and physical conditions are such at this site that the project is not expected to engender the need for a seawall to protect the proposed development. There is a

wide sandy beach in front of the proposed development that provides substantial protection from wave activity.

To further ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, the Commission imposes Special Condition No. 2 which requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application. This condition is necessary because it is impossible to completely predict what conditions the proposed structure may be subject to in the future. Consequently, as conditioned, the development can be approved subject to Section 30251 and 30253.

By imposing the “No Future Shoreline Protective Device” special condition, the Commission requires that no shoreline protective devices shall ever be constructed to protect the development approved by this permit in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future.

3. Conclusion

The Commission finds that hazards potentially exist from wave uprush and flooding at the subject site. Therefore, to ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Conditions 1 and 2 require the applicant to record Assumption-of-Risk and No Future Shoreline Protective Devices deed restrictions. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Sections 30251 and 30253.

D. PUBLIC ACCESS

1. Encroachments

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

The proposed development includes construction of patio encroachments onto the City of Newport Beach Oceanfront public right-of-way on the seaward side of the home (Exhibit 2). The City holds the public right-of-way for street purposes. The public right-of-way is designated on assessor's parcel maps as Oceanfront Street (Exhibit 1, page 2). The portions of Oceanfront in the central part of the Balboa Peninsula near the City's two municipal piers is developed with a public walkway/bikeway. In the vicinity of the subject site, however, 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. In the 7000 block of West Oceanfront, where the proposed project is occurring, 5 of the 6 properties on the block (including existing development on the subject site) have patios which occupy a portion of the public right-of-way (Exhibit 5 and 6). The development now pending proposes to reconstruct the existing patio and to maintain the encroachment. Thus, the proposed encroachments will continue to reduce the amount of public sandy beach area available for public access and recreation and could interfere with the City's future use of the right-of-way for public access.

The proposed encroachments would contribute to the cumulative adverse impact on beach use resulting from the various existing encroachments on the public right-of-way in the area. In addition, the encroachments could make it difficult in the future for the City to improve the public right-of-way for lateral access purposes. For instance, the public right-of-way could be used to extend the City's concrete bikeway/walkway along the beach. The bike path currently runs inland in the vicinity of the subject site.

In 1991, the Commission certified an amendment to the City of Newport Beach Land Use Plan (LUP). The LUP acknowledges the adverse public access impacts that will result from the development on the sandy beach area which is owned by the City of street purposes. This cumulative impact is addressed by a mitigation plan. The mitigation plan requires that all encroachments onto the City's Oceanfront public right-of-way, including the proposed encroachment, must be approved by an Annual Oceanfront Encroachment Permit issued by the City. The fees generated by these encroachment permits are then used to fund the improvements of street-ends in the area, including the provision of two metered public parking spaces per street end.

The fees vary depending on the depth (i.e. seaward from the beachside property line) of permitted encroachment onto the Oceanfront public right-of-way. The proposed 15 foot encroachment is within the 15 foot maximum depth of encroachment allowed in this area by the LUP encroachment policies.

The LUP encroachment policies prohibit encroachments: (1) between 36th and "A" Streets, (2) on Peninsula Point, (3) which would interfere with vertical public access, (4) that require the issuance of a City Building Permit, or exceed three feet in height, and (5) that existed prior to October 22, 1991, and which did not have an approved encroachment permit prior to that date. The proposed development does not fall into one of these categories of prohibited encroachments.

LUP Encroachment Policy 5.A. contains the mitigation plan which requires the City to reconstruct thirty-three unimproved street ends between 36th Street and Summit, and the City will use its best efforts to improve three or more street ends per year. To date, the

Commission has approved coastal development permits 5-93-114, 5-94-091, 5-95-010, 5-96-106, 5-97-258, and 5-99-298 for improvements to the ends of 37th, 38th, 40th, 42nd through 60th Streets, and Cedar Street, Walnut Street, and Lugonia Street. Of these approvals, the street ends at 37th, 38th, 40th, and 42nd through 59th Streets have been completed. The improvements approved at 60th through Lugonia Street are anticipated to be completed soon. In addition, the hard surface walkway perpendicular to Seashore Drive at Orange Avenue required by Policy 5.A. has been completed.

When it certified the LUP amendment allowing these encroachments, the Commission found that, if developed consistent with this mitigation plan for street improvements which enhance vertical public access, encroachments onto the City's Oceanfront public right-of-way would be consistent with the public access and recreation policies of Chapter 3 of the Coastal Act. The Commission's findings of denial as submitted and approval as modified of City of Newport Beach LUP Amendment 90-01, as described in the staff reports dated December 4, 1990 and May 28, 1991, respectively, are hereby incorporated by reference.

The Commission finds that the proposed encroachment is consistent with the LUP policies in that they are located in an approved encroachment zone, the applicant has submitted the approved Oceanfront Encroachment Permit, and the City is continuing to carry out the public access improvements that are necessary to mitigate the adverse impacts of the encroachments. Section 13250 of the California Code of Regulations provides that development such as the proposed encroachments are not exempt from obtaining a coastal development permit pursuant to Coastal Act Section 30610(a). However, to ensure that no further encroachments occur unless the coastal development permit is amended, the Commission imposes Special Condition 3 which requires that an amendment to this permit be obtained for any deviations to the encroachments approved by this permit. This would allow the Commission to evaluate future encroachment deviations for adverse public access and recreation impacts.

As a condition of the City's approval of an encroachment permit, the permittee must sign an encroachment agreement in which the permittee waives his or her right to contest the ability of the City to remove the encroachments in order to build public access improvements within the public right-of-way. The proposed project is thus being conditioned (Special Condition 4), consistent with the City's certified LUP (Encroachment Policy 6B), to provide that issuance of the coastal development permit does not restrict nor interfere with the City's right to revoke its encroachment permit, without cause, in order to construct public access and recreation improvements in the public right-of-way. This would ensure future opportunities for public access and recreation.

Further, the Commission previously approved coastal development permits 5-94-054 (Riegelsberger), 5-94-178 (RJH Properties), 5-94-280 (Hood), 5-96-218 (Collins), 5-96-225 (Fine), 5-97-171 (Barnes), and 5-97-243 (701 Lido Partnership) and 5-98-266 (WMC Development) which incorporated similar conditions to minimize the adverse impacts to public access resulting from similar encroachments onto the Oceanfront public right-of-way in the area. Therefore, the Commission finds that the proposed encroachments onto the public right-of-way, only as conditioned, would be consistent with the public access and recreation policies of the Coastal Act.

2. New Development

Section 30212 of the Coastal Act states, in relevant part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(2) adequate access exists nearby...

The subject site is a beachfront lot located between the nearest public roadway and the shoreline on the Balboa Peninsula in the City of Newport Beach. There is a wide public sandy beach seaward of the subject site which provides lateral public access. Vertical public access to this beach is available approximately 90 feet north and 60 feet south of the subject site at the ends of Highland Street and Grant Street, respectively. Therefore, the Commission finds adequate access is available nearby and the proposed development is consistent with Section 30212 of the Coastal Act.

E. **VISUAL QUALITY**

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The proposed project includes the construction of a residential structure on an oceanfront lot. If not sited appropriately, this structure would have adverse impacts upon views to and along the ocean and would be visually incompatible with the character of the surrounding area. Furthermore, appropriate siting can restore and enhance visual quality.

The subject site is clearly visible from the popular public beach which is located seaward of the subject site. Development on this oceanfront parcel can affect public views along the coast from the public beach. Degradation of those views would be inconsistent with Section 30251 of the Coastal Act. Degradation of views can occur when development is not consistent with the character of surrounding development. 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 further seaward than a line drawn between the nearest adjacent corners of either decks or structures of the immediately adjacent homes. In this case, the structural and deck stringlines would be drawn from the properties flanking the

subject site at 7006 and 7002 West Oceanfront. The proposed development does not conform with the stringline drawn between the flanking properties. Specifically, the proposed development encroaches approximately 1 foot beyond a stringline drawn between the nearest seaward corner of the adjacent structures (Exhibit 6).

The encroachment beyond the stringline occurs in this case because the residence at 7006 West Oceanfront is set back farther than most of the other homes on the 7000 block of West Oceanfront. There are 6 properties within the 7000 block of West Oceanfront (between Grant Street and Highland Street). Four of the six properties in this block (including the existing development at the subject site) have development that is seaward of the location of the development at 7006 West Oceanfront (Exhibit 6). Due to this pattern of development, the stringline does not adequately represent the pattern of development that is present on the 7000 block of Oceanfront.

The majority of development in the 7000 block of West Oceanfront conforms with the City of Newport Beach's oceanfront setback standards of 5 feet from the oceanfront property line on the first floor, and 2.5 feet from the oceanfront property line on the second floor (Exhibit 6). In Newport Beach, the Commission has commonly found that the City's enclosed living space setbacks establish a clear line of development for many areas of the city. Conformance with those setback standards on the 7000 block of West Oceanfront would be consistent with the line of development established for the area. In this case, the proposed project conforms with the City's setback standards and is therefore consistent with the line of development.

In addition to enclosed living space, the line of development for decks and patios must be analyzed for impacts upon public views to and along the shoreline. In this case, the line of development for decks and patios has been established by the encroachment policies of the certified LUP previously discussed. In the 7000 block of West Oceanfront, low decks and patios may extend 15 feet beyond the seaward property boundary. The patios flanking the subject site extend to this 15 foot maximum. In fact, 5 of the 6 properties on the 7000 block (including the existing development on the subject site) have existing patios which extends to the 15 foot maximum. Under the proposed project, the location of the patio would remain unchanged and would be consistent with the pattern of development in the area. Therefore, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

F. LOCAL COASTAL PROGRAM

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 City of Newport Beach Land Use Plan (LUP) component of its LCP was originally certified on May 19, 1982. The City currently has no certified implementation plan. Therefore, the complete LCP has not been prepared or certified. Therefore, the Commission issues CDPs within the City based on the development's conformance with the Chapter 3 policies of the Coastal Act. The LUP policies may be used for guidance in evaluating a development's consistency with Chapter 3.

The City of Newport Beach owns a public right-of-way, the Oceanfront "paper" Street, which runs between private property and the beach along West Newport and the Balboa Peninsula. Portions of the right-of-way are developed with a public bikeway/walkway. The public bikeway/walkway provides public access and recreation opportunities. However, in West Newport (including the vicinity of the subject site) and the eastern end of the Balboa Peninsula, the public right-of-way is unimproved. Since the public right-of-way in these areas is not physically improved, there are no public improvements to serve as a barrier preventing private encroachment onto the public beach.

There has been a history of mostly minor private development, such as patios, decks, and landscaping, which had been built onto the public right-of-way in an inconsistent manner. Since these improvements were on a beach, pursuant to Sections 13250 and 13253 of the Commission's regulations, they are not exempt from coastal development permit requirements pursuant to Coastal Act Section 30610(a) which exempts certain improvements to single family homes from coastal development permit requirements. Some of these encroachments were not approved by coastal development permits and therefore were in violation of the Coastal Act.

In order to address the situation in a comprehensive manner, the City of Newport Beach applied for an LUP amendment (90-01) which provided policies to establish conditions and restrictions on the nature and extent of private encroachments onto Oceanfront from private residential development on Oceanfront. The amendment also established a mitigation plan for the encroachments. On June 11, 1991, the Commission approved LUP amendment 90-01 with suggested modifications. The Commission found that the amendment, as modified, is consistent with the Chapter 3 policies of the Coastal Act. The City accepted the suggested modifications which are now a part of the LUP.

As modified by the Commission and accepted by the City, the LUP encroachment policies include encroachment zones of varying depth ranging from 0 to 15 feet. In the project area, the maximum allowable encroachment into the Oceanfront "paper street" is 15 feet from the seaward property line. In addition, no encroachments are allowed which would interfere with public access to the beach or ocean and no encroachments may exceed 3 feet in height. The encroachments, as proposed, conform to the standards for height and depth of encroachment contained in the LUP policies.

The LUP amendment established a program to mitigate the adverse impacts of the encroachments upon public access by using encroachment permit fees to fund street-end improvements. The street end improvements include the removal of private encroachments from the street ends and the construction of at least 2 metered public parking spaces on each street end. The City of Newport Beach has been implementing the improvements on a consistent basis (Coastal Development Permits 5-93-114, 5-94-091, 5-95-010, 5-96-106, 5-97-258, and 5-99-298).

Also, the LUP encroachment policies provide that the encroachment permits are revocable, without cause, in the event the City pursues the construction of public improvements along Oceanfront. The Commission imposes Special Condition 4 which places the applicant on notice that approval of the coastal development permit does not restrict nor interfere with the City's right to revoke the encroachment permit and require the removal of the encroachments.

Finally, among other provisions, the LUP encroachment policy provides that no seawalls may be constructed which would be designed to protect private development within the encroachment zone. Special Condition 2 reinforces this LUP policy.

The Commission found the LUP Encroachment policies, as modified, to be consistent with Sections 30210, 30211, 30212, and 30214 of the Coastal Act. The proposed development, as conditioned, conforms with the public access and recreation policies of Chapter Three of the Coastal Act as well as the certified LUP encroachment policies. Therefore, the Commission finds that approval of the proposed development, as conditioned, would not prejudice the City's ability to prepare a local coastal program consistent with the Chapter Three policies of the Coastal Act as required by Section 30604(a).

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

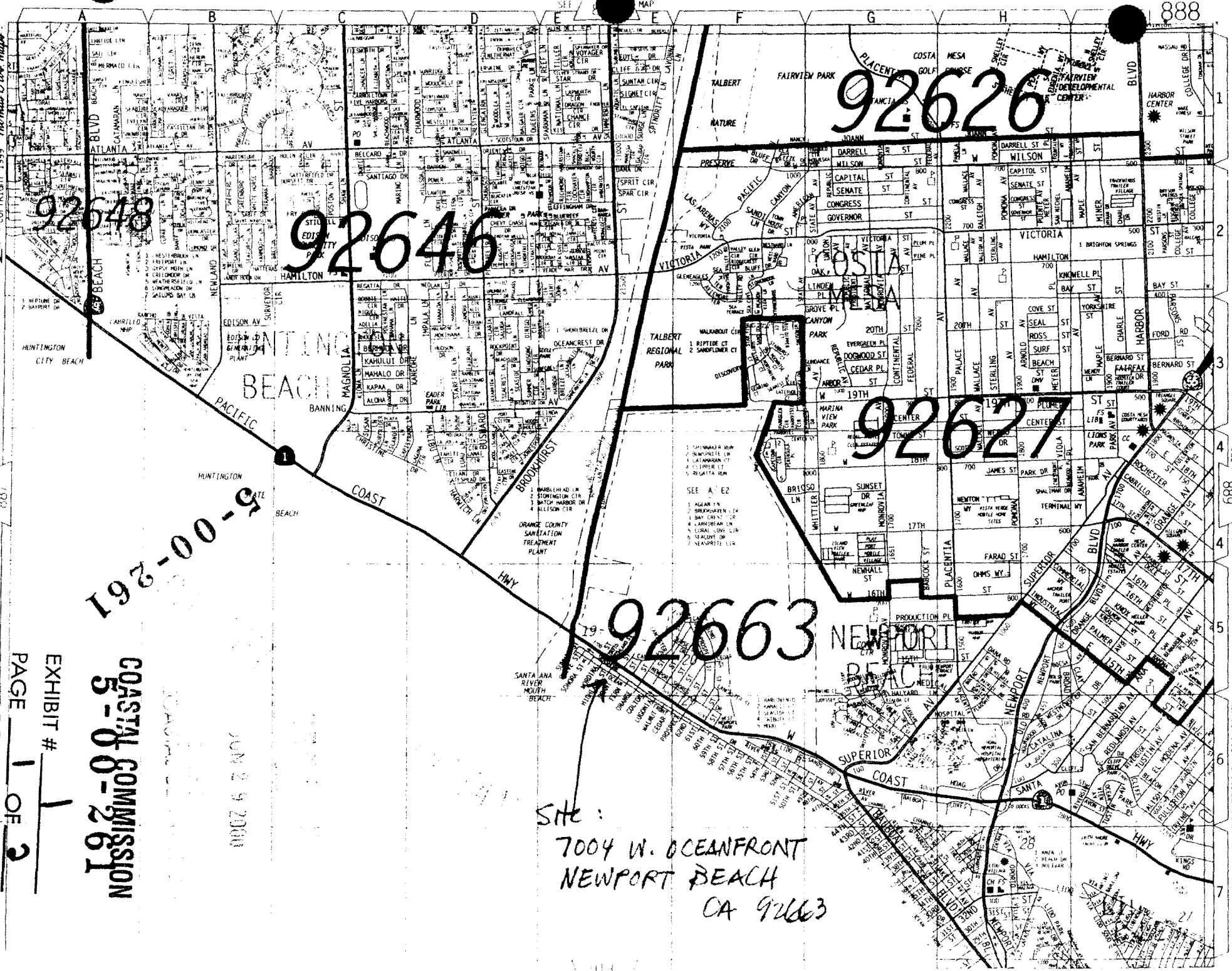
Section 13096 of the Commission's regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) 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 effect which the activity may have on the environment.

The project is located in an urbanized area. Development already exists on the subject site. The proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. The conditions also serve to mitigate significant adverse impacts under CEQA. Conditions imposed are: 1) an assumption-of-risk agreement; 2) a prohibition of future shoreline protective devices; 3) a notification that changes to the proposed patio encroachments may require a Commission approval; and 4) a notification that this coastal development permit approval does not restrict the ability of the City to revoke their encroachment permit to pursue construction of access and recreation improvements in the public right-of-way. There are no feasible alternatives or mitigation measures available which will lessen any significant adverse impact the activity would have on the environment. Therefore, the Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and is consistent with CEQA and the policies of the Coastal Act.

COASTAL COMMISSION
5-00-261

JUN 29 2000



SITE:
7004 W. OCEANFRONT
NEWPORT BEACH
CA 92663

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COASTAL # 5-00-261

RECEIVED
JUL 14 2000
CALIFORNIA
COASTAL COMMISSION

COASTAL COMMISSION
5-00-261
EXHIBIT # 2
PAGE 1 OF 4

LEGAL OWNER
Mr. and Mrs. Ed Pearson
7004 West Oceanfront
Newport Beach, CA 92663

PROJECT NAME
PEARSON RESIDENCE

PROJECT ADDRESS
7004 West Oceanfront
Newport Beach, CA 92663

PROJECT DESCRIPTION
A 10,000 sq. ft. single family residence with a 2-car garage and a 100 sq. ft. detached garage.

PROJECT HISTORY
The project was first proposed in 1998. The owner and architect have since revised the plans to meet the requirements of the Coastal Commission.

PROJECT STATUS
The project is currently under review by the Coastal Commission.

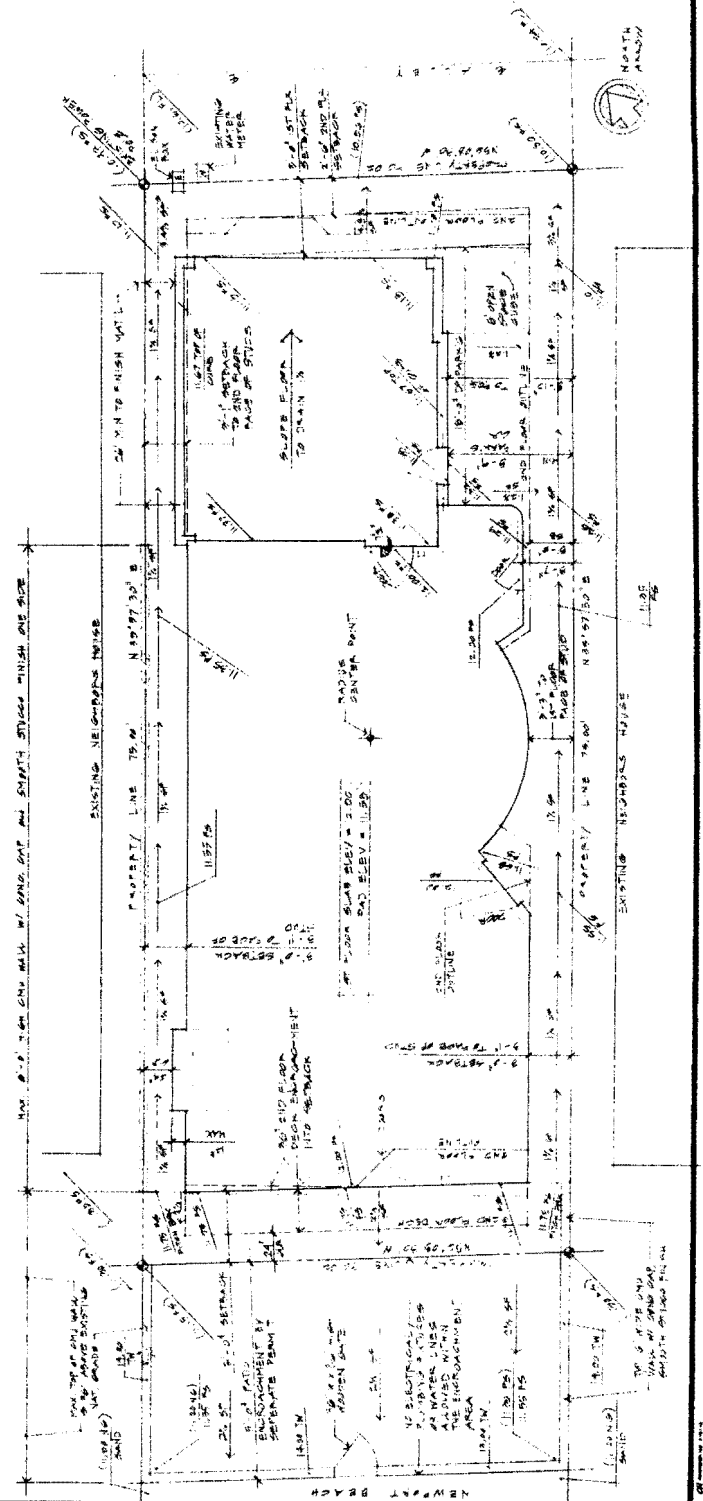
PROJECT CONTACTS
Architect: John T. Morgan
Structural Engineer: [Name]
Civil Engineer: [Name]
Electrical Engineer: [Name]
Mechanical Engineer: [Name]
Landscape Architect: [Name]

PROJECT SCHEDULE
Design: 12 weeks
Construction: 24 weeks
Total: 36 weeks

PROJECT BUDGET
Total: \$1,000,000

PROJECT RISK
The project is considered to be at a low risk of failure.

PROJECT NOTES
1. The project is located in a coastal zone and is subject to the requirements of the Coastal Commission.
2. The project is a single family residence and is not a commercial or industrial project.
3. The project is a new construction and is not a renovation or addition to an existing structure.
4. The project is a 10,000 sq. ft. single family residence with a 2-car garage and a 100 sq. ft. detached garage.
5. The project is currently under review by the Coastal Commission.



PROJECT NAME	PEARSON RESIDENCE
PROJECT ADDRESS	7004 West Oceanfront Newport Beach, CA 92663
PROJECT DESCRIPTION	A 10,000 sq. ft. single family residence with a 2-car garage and a 100 sq. ft. detached garage.
PROJECT HISTORY	The project was first proposed in 1998. The owner and architect have since revised the plans to meet the requirements of the Coastal Commission.
PROJECT STATUS	The project is currently under review by the Coastal Commission.
PROJECT CONTACTS	Architect: John T. Morgan Structural Engineer: [Name] Civil Engineer: [Name] Electrical Engineer: [Name] Mechanical Engineer: [Name] Landscape Architect: [Name]
PROJECT SCHEDULE	Design: 12 weeks Construction: 24 weeks Total: 36 weeks
PROJECT BUDGET	Total: \$1,000,000
PROJECT RISK	The project is considered to be at a low risk of failure.
PROJECT NOTES	1. The project is located in a coastal zone and is subject to the requirements of the Coastal Commission. 2. The project is a single family residence and is not a commercial or industrial project. 3. The project is a new construction and is not a renovation or addition to an existing structure. 4. The project is a 10,000 sq. ft. single family residence with a 2-car garage and a 100 sq. ft. detached garage. 5. The project is currently under review by the Coastal Commission.

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ARCHITECT
John T. Morgan
18682 Redwood Avenue
San Jose, CA 95125
IN THE CITY OF SAN JOSE

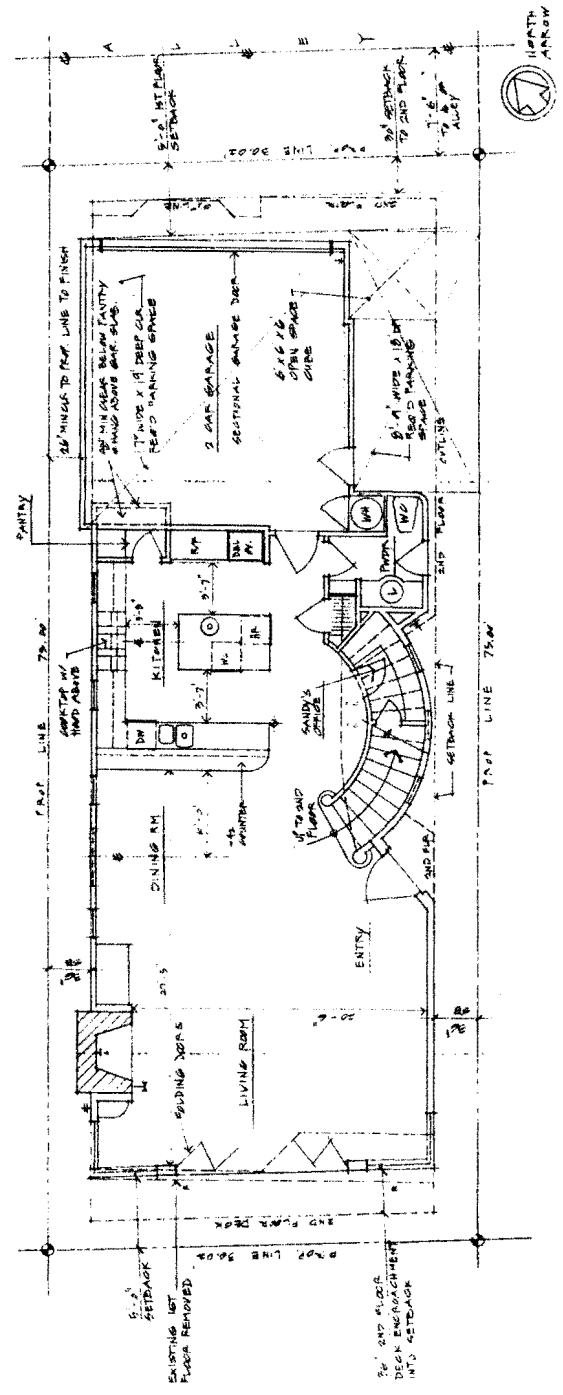
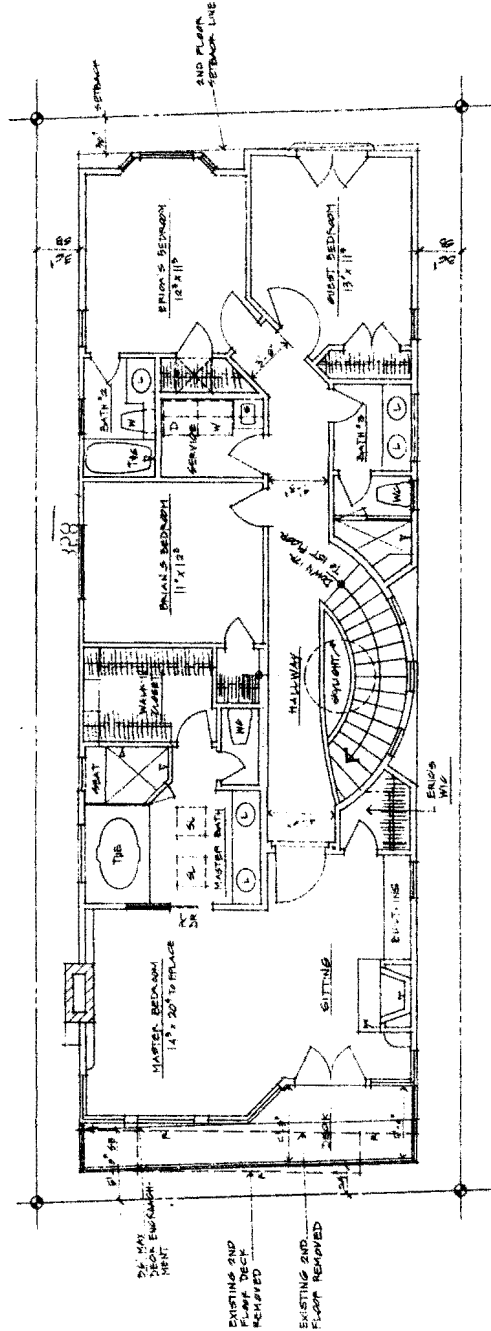
PEARSON RESIDENCE
7004 West Oceanfront
Newport Beach, CA

FLOOR PLANS

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COASTAL COMMISSION 5-00-261

EXHIBIT # 2
PAGE 2 OF 4



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ARCHITECT
JOHN T. MORGAN
10682 Beachmont Ave.
Sausalito, CA 94965
P.O. BOX 10000
Sausalito, CA 94965

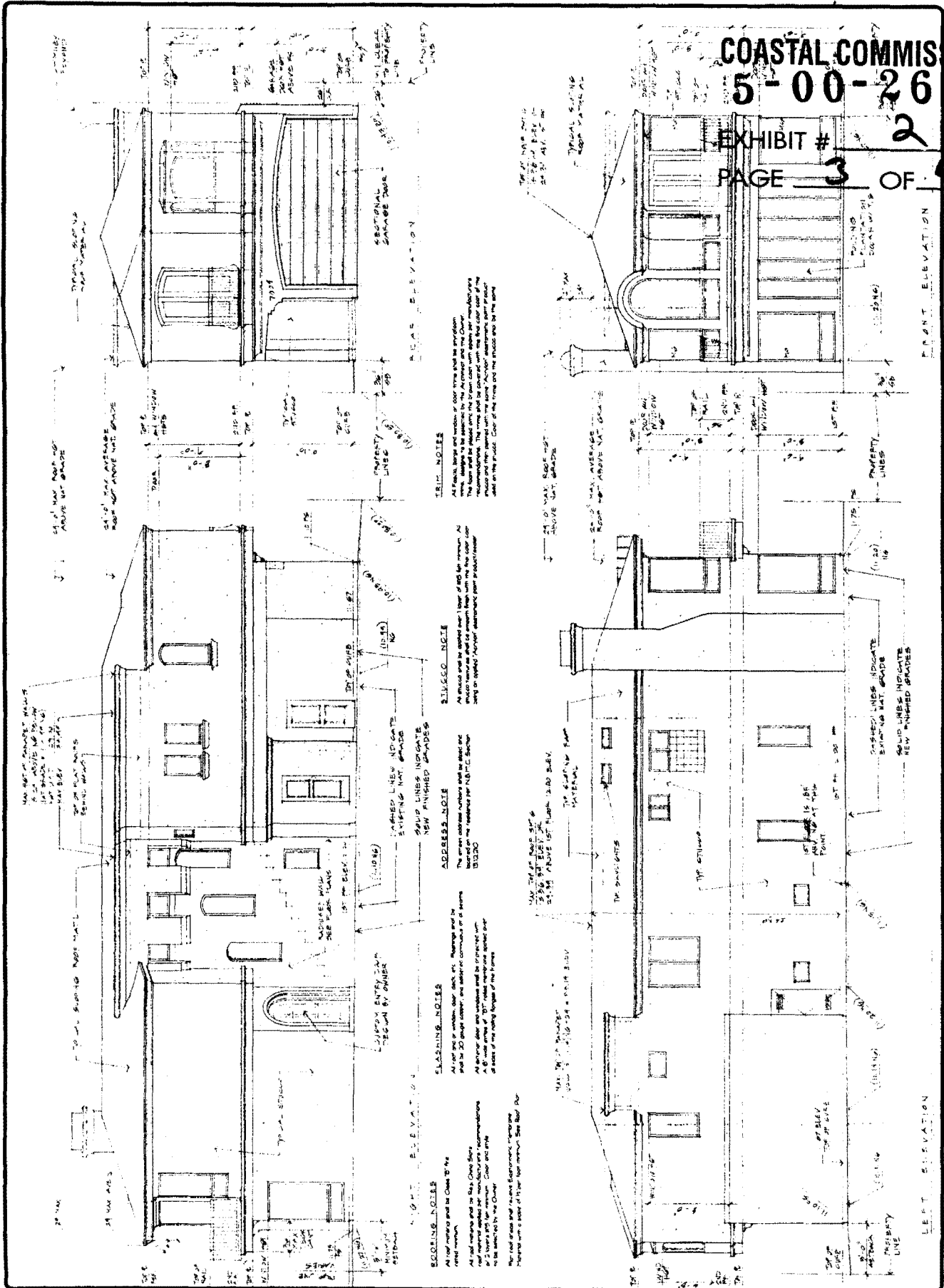
PEARSON RESIDENCE
7001 West Oceanfront
Newport Beach, CA

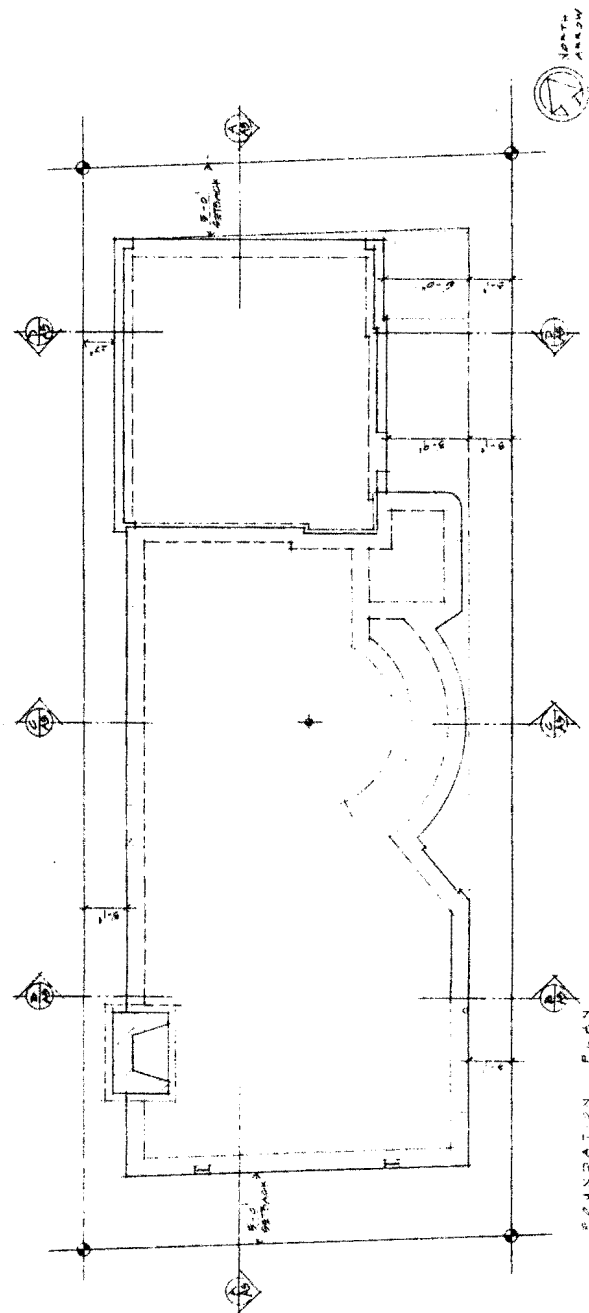
ELEVATIONS

DATE	1/15/88
BY	JOHN T. MORGAN
SCALE	1/4" = 1'-0"
PROJECT	PEARSON RESIDENCE
SHEET	3

COASTAL COMMISSION
5-00-261

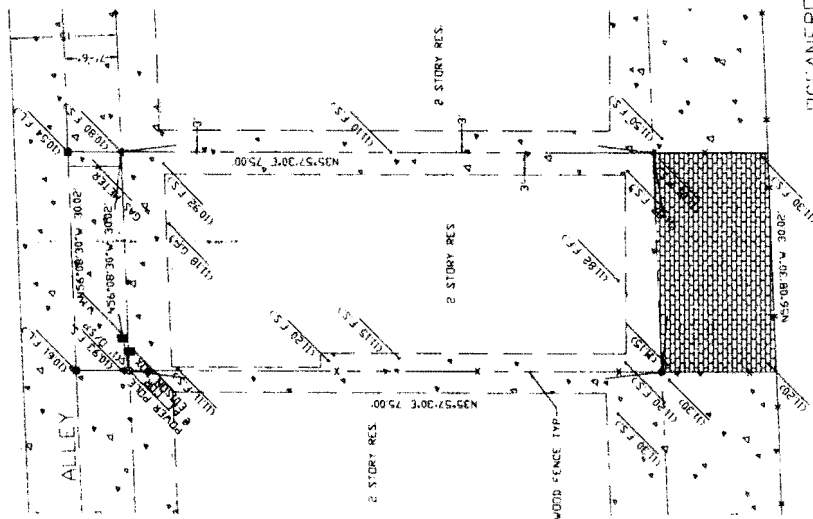
EXHIBIT # 2
PAGE 3 OF 4







SCALE 1"=10'



OCEANFRONT CONTINUED

MONUMENT NOTES
 ■ SET CHIS. X
 ▲ SET L&T L.S. 4653
 ● SET H.P. L.S. 4653

COASTAL COMMISSION
 5-00-261

EXHIBIT # 5
 PAGE 1 OF 1



RAM Surveying, Inc.
 2300 Lake Forest Drive #409
 (949) 808-2824
 Ram-Medena L.S. 4653

TOPOGRAPHIC SURVEY

DATE 2-01-00

JOB# 00-14

OWNER
 Dr. Pearson
 7084 W. Oceanfront
 Newport Beach, CA

LEGAL DESCRIPTION
 Portion of Lot 3, Block J and
 15 feet of Oceanfront as varied

BENCH MARK
 Northeast Pl. Corner
 Elevation = 1086

ADDRESS OF PROJECT
 2300 Lake Forest Drive #409
 Newport Beach, CA

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DATE	
BY	
CHECKED	
APPROVED	
REVISIONS	
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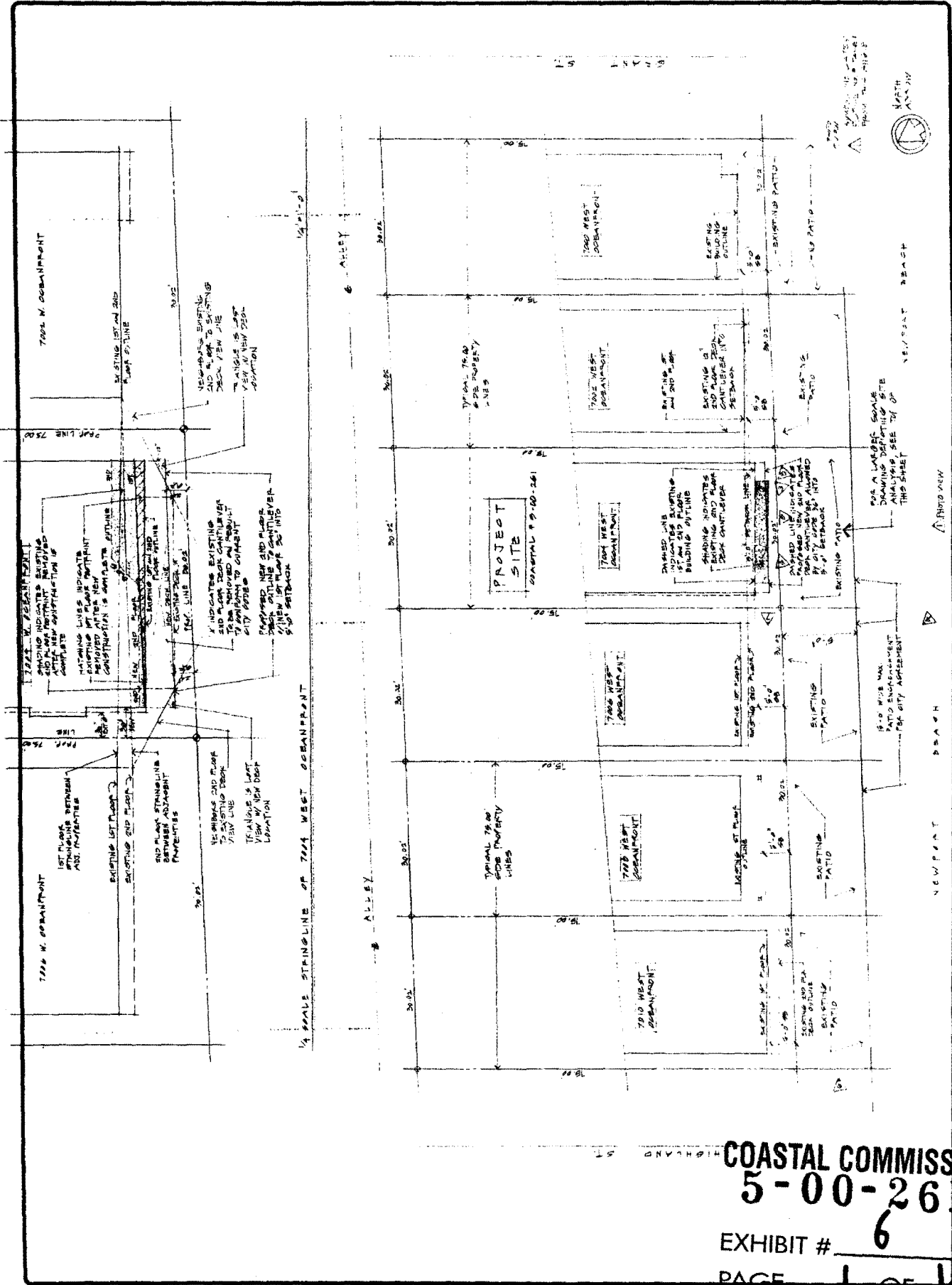
ARCHITECT
JOHN T. MORGAN
10622 Beaconmont Avenue
Santo Ave. CA 92705
PH 714/273-2724

PEARSON RESIDENCE
7004 West Oceanfront
Newport Beach, CA

DATE: 11/11/81
BY: JPM
CHECKED: JPM
APPROVED: JPM

A5

PROJECT: 5-00-261
SHEET: 1 OF 1
DATE: 11/11/81
BY: JPM
CHECKED: JPM
APPROVED: JPM



COASTAL COMMISSION
5-00-261

EXHIBIT # 6

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