

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
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Newport Beach, CA 90802-4302
(562) 590-5071

Filed: October 7, 2002
49th Day: November 25, 2002
180th Day: April 5, 2003
Staff: FSY-LB FSY
Staff Report: November 21, 2002
Hearing Date: December 10-13, 2002
Commission Action:

**TU 5d****STAFF REPORT: CONSENT CALENDAR****APPLICATION NUMBER:** 5-02-306**RECORD PACKET COPY****APPLICANT:** Mark & Sue Ann Cross**AGENT:** Todd Schooler & Associates**PROJECT LOCATION:** 1024 West Oceanfront, City of Newport Beach, County of Orange**PROJECT DESCRIPTION:** Demolish and construct a new beach fronting single-family residence**LOCAL APPROVALS RECEIVED:** City of Newport Beach approval-in-concept (No. 1911-2002) dated September 3, 2002.**SUMMARY OF STAFF RECOMMENDATION:**

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

Staff is recommending **APPROVAL** of the proposed project with five (5) special conditions regarding: 1) assumption of risk; 2) no future shoreline protective device; 3) future development; 4) submittal of a Drainage and Run-Off Control Plan; and 5) a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits: 5-02-255 (Cross); 5-02-198 (Newell); 5-02-177 (Thorne); 5-02-145 (Collins); 5-02-144 (Collins); 5-01-401 (Collins); 5-01-400 (Collins); 5-01-396 (Collins & Fluter); 5-01-304 (Caesar); 5-01-298 (Ryan); 5-01-197 (Jacobs & Dolansky); 5-01-186 (Doukoullos); 5-01-084 (Muench); 5-00-492 (Palm); 5-00-420 (Collins); 5-00-285 (Collins); 5-00-262 (Puntoriero); 5-00-261 (Pearson); 5-00-192 (Blumenthal); 5-00-114 (Heuer); 5-00-086 (Wells); 5-00-059 (Danner); 5-99-477 (Watson); 5-97-380 (Hasket); 5-87-813 (Corona); 5-86-676 (Jonbey); 5-86-070 (Shea); City of Newport Beach certified Land Use Plan, letter from staff to Todd Schooler & Associates dated October 1, 2002; and *Wave Runup & Coastal Hazard Study* for 1024 West Oceanfront, Newport Beach, CA prepared by Skelly Engineering dated June 2002.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Site Plan/Roof Plan/Survey
 4. Floor Plans
 5. Elevations
-

STAFF RECOMMENDATION:

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

MOTION:

I move that the Commission approve CDP No. 5-02-306 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 **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

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

III. **SPECIAL CONDITIONS**

1. **Assumption of Risk, Waiver of Liability and Indemnity**

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

2. **No Future Shoreline Protective Device**

- A(1). By acceptance of this Permit, the applicants agree, 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. 5-02-306 including, but not limited to, the residence, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- A(2). By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that the landowner shall remove the development authorized by this permit, including the house, garage, foundations, and patio, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. **Future Development**

- A. This permit is only for the development described in Coastal Development Permit No. 5-02-306. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to this development governed by Coastal Development Permit No. 5-02-306. Accordingly, any future improvements to the structure authorized by this permit, including but not limited to, change in use from a permanent residential unit, 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. 5-02-306 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. **Drainage and Run-Off Control Plan**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit, for review and approval of the Executive Director, a drainage and runoff control plan showing roof drainage and runoff from all impervious areas directed to dry wells or vegetated/landscaped areas. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants which are non-invasive.
- B. The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. **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 parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION AND DESCRIPTION

The subject site is located at 1024 West Oceanfront within the City of Newport Beach, Orange County (Exhibits #1-2). The site is a beachfront lot located between the first public road and the sea. The project is inland of the Oceanfront walkway (a paved beachfront public lateral access way). The project is located within an existing urban residential area, located generally northwest of the Balboa Pier and southeast of the Newport Pier. There is a wide sandy beach (approximately 400-450 feet wide) between the subject property and the mean high tide line. Vertical public access to this beach is available approximately 240 feet to the east from the project site at the Tenth Street, street end and approximately 130 feet to the west from the project site at the Eleventh Street, street end.

The applicant is proposing to demolish an existing single family residence and construct an approximately 27'-5" foot high above finished grade, two story, 4,097 square foot single family residence with an attached 615 square foot, three-car garage at 1024 West Oceanfront (Exhibits #3-5). In addition, construction of a 3 foot high rear yard patio wall and approximately 6 foot high side yard entry gates and walls and 161 square feet of 2nd floor deck will take place. No grading is proposed.

The applicant has not submitted a drainage and run-off control plan. Therefore, a special condition and been imposed requiring the submittal of a drainage and run-off control plan.

B. PRIOR COMMISSION ACTION AT THE SUBJECT SITE

On March, 1987, the Commission approved Waiver 5-87-070 (Shea). CDP 5-87-070-W was a waiver that allowed the demolition of an existing single family residence and construction of a new 4,500 square foot, 27 foot high, single family residence with an attached three car garage.

C. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development which may require a protective device in the future can not be allowed due to the adverse impacts such devices have upon 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, for a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite, prohibit construction of protective devices (such as a seawall) in the future, and to require that the landowner or any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

D. 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.

E. 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 conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

F. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. Furthermore, uncontrolled runoff from the project site and the percolation of water could also affect the structural stability of bluffs and hillsides. To address these concerns, the development, as proposed and as conditioned, incorporates design features to minimize the infiltration of water and the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, the use of non-invasive drought tolerant vegetation, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

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 Standard and 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 January 9, 1990. 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

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

mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

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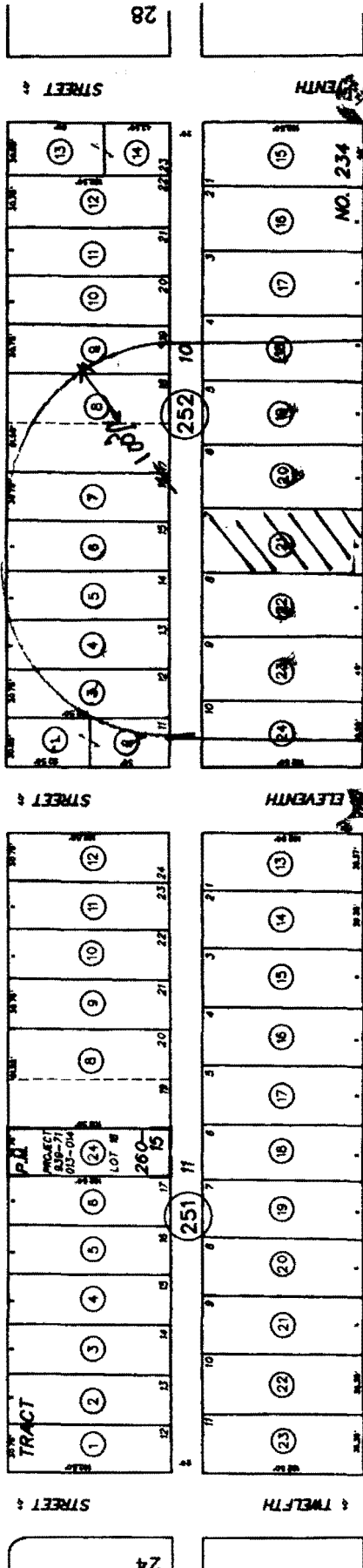
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BALBOA

BOULEVARD



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MARCH 1949

TRACT NO. 234
PARCEL MAP

MAY 13-38, 37
P.M. 280-15

ASSESSOR'S MAP
BOOK 047 PAGE 25
COUNTY OF ORANGE

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

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EXHIBIT # 2
PAGE 1 OF 1

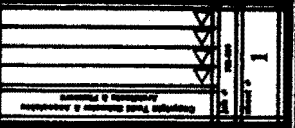
1080.000 Feet

A NEW CUSTOM HOME FOR:
MARK & SUE ANN CROSS
8141 EAST KAISER BLVD. #120
ANAHEIM, CA 92808

1024 WEST OCEANFRONT
NEWPORT BEACH, CA

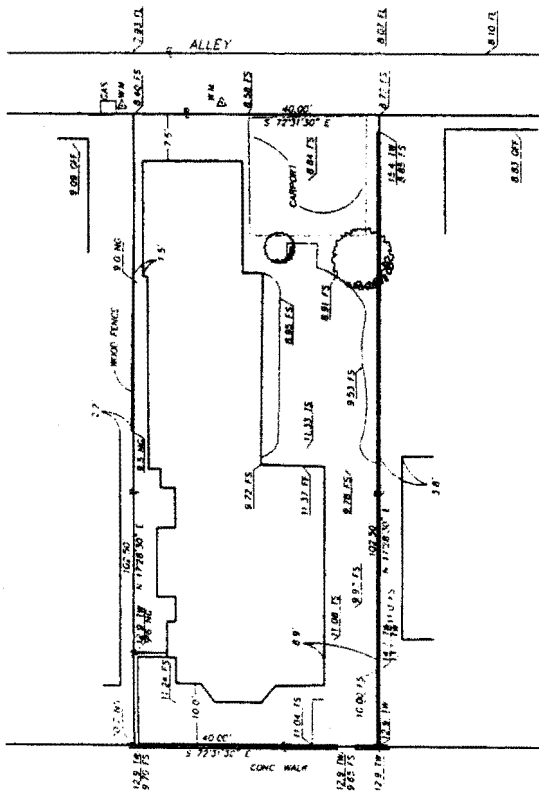
Project Location :

Lodd & Lodd

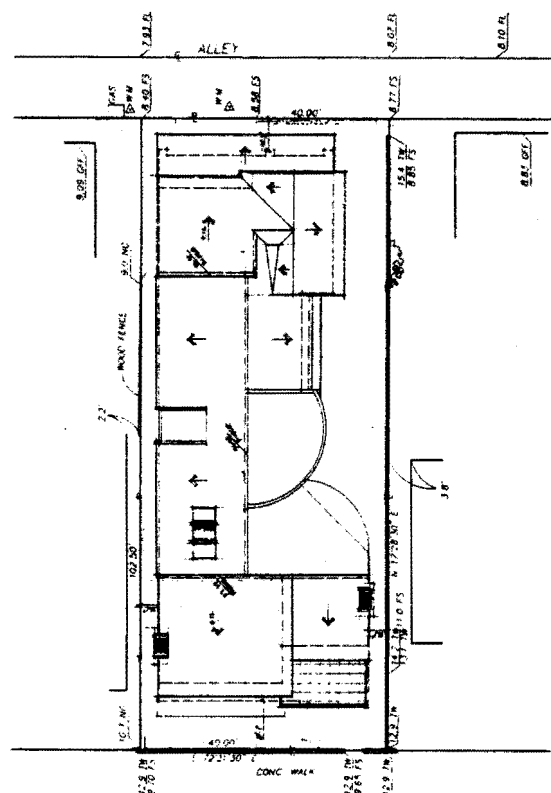


TOPOGRAPHIC MAP

SCALE: 1" = 40' 10"
DATE: 7/8/85
1024 W. OCEANFRONT NEWPORT BEACH, CA
SOUTH COAST SURVEYING



SURVEY MADE 7/8/85



ROOF PLAN SITE PLAN MADE 7/8/85

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EXHIBIT # 3
PAGE 1 OF 1

A NEW CUSTOM HOME FOR:
MARK & SUE ANN CROSS
8141 EAST KAISER BLVD. #120
ANAHEIM, CA 92808

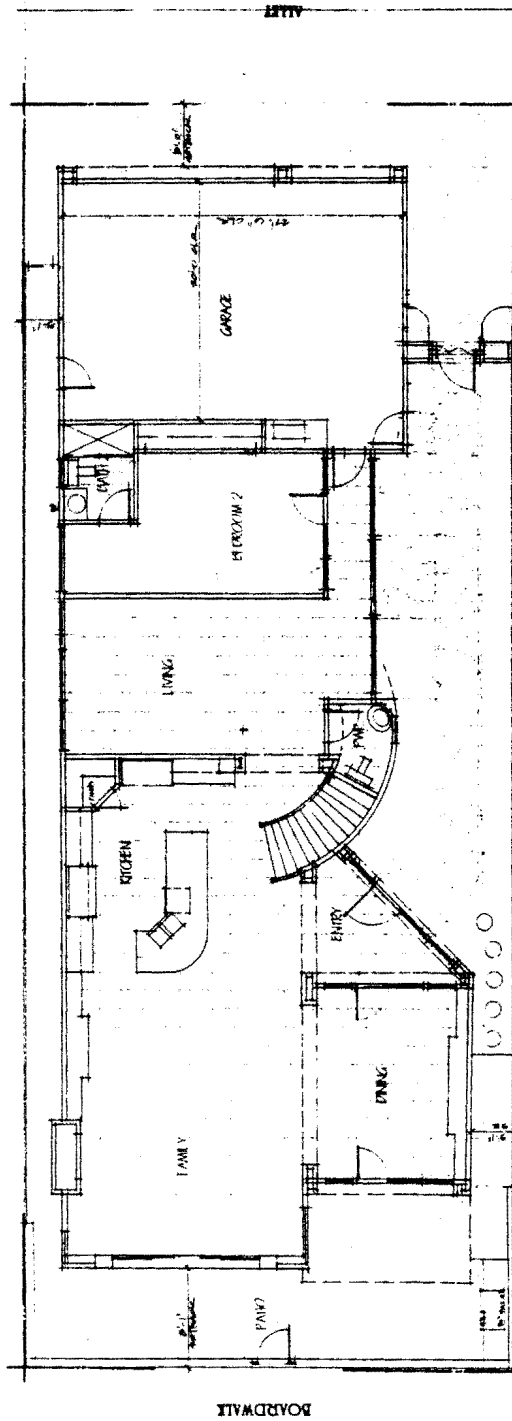
1024 WEST OCEANFRONT
NEWPORT BEACH, CA

Project Location :

Todd K. Hooker

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Architects & Planners

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FIRST FLOOR PLAN

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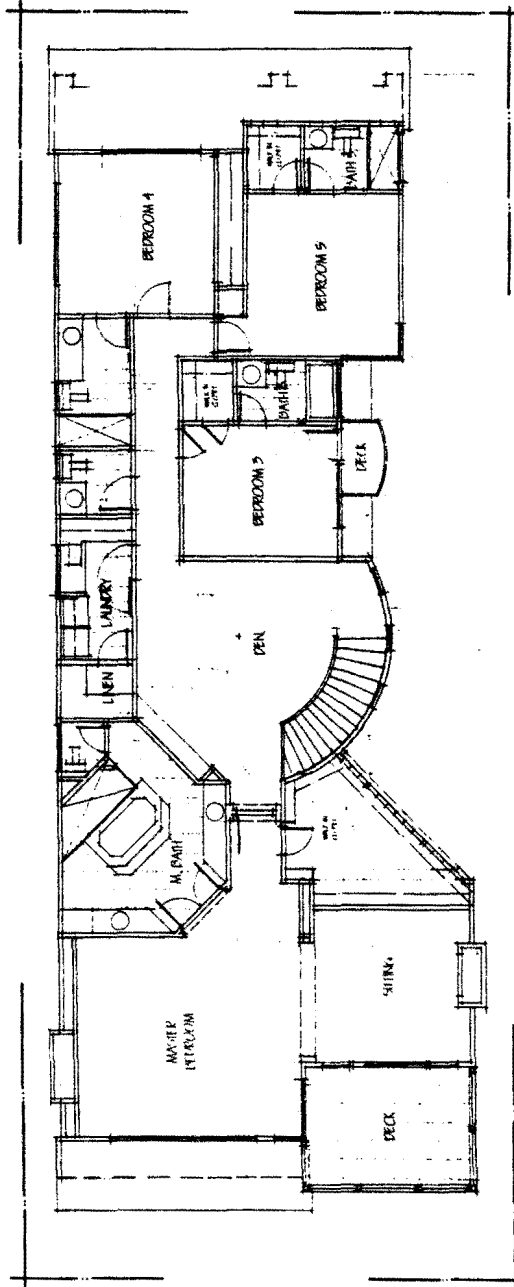
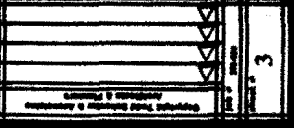
EXHIBIT # 4
PAGE 1 OF 2

A NEW CUSTOM HOME FOR:
 MARK & SUE ANN CROSS
 8141 EAST KAISER BLVD. #120
 ANAHEIM, CA 92808

1024 WEST OCEANFRONT
 NEWPORT BEACH, CA

Project Location :

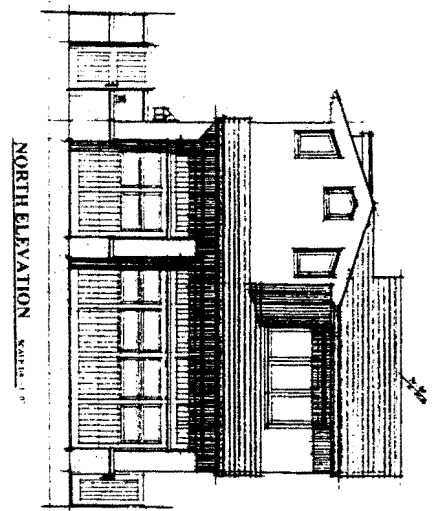
Todd Kibbaker



COASTAL COMMISSION

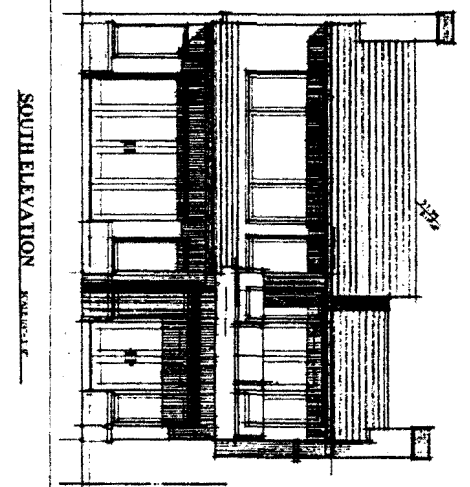
EXHIBIT # 4
 PAGE 2 OF 2

COASTAL COMMISSION

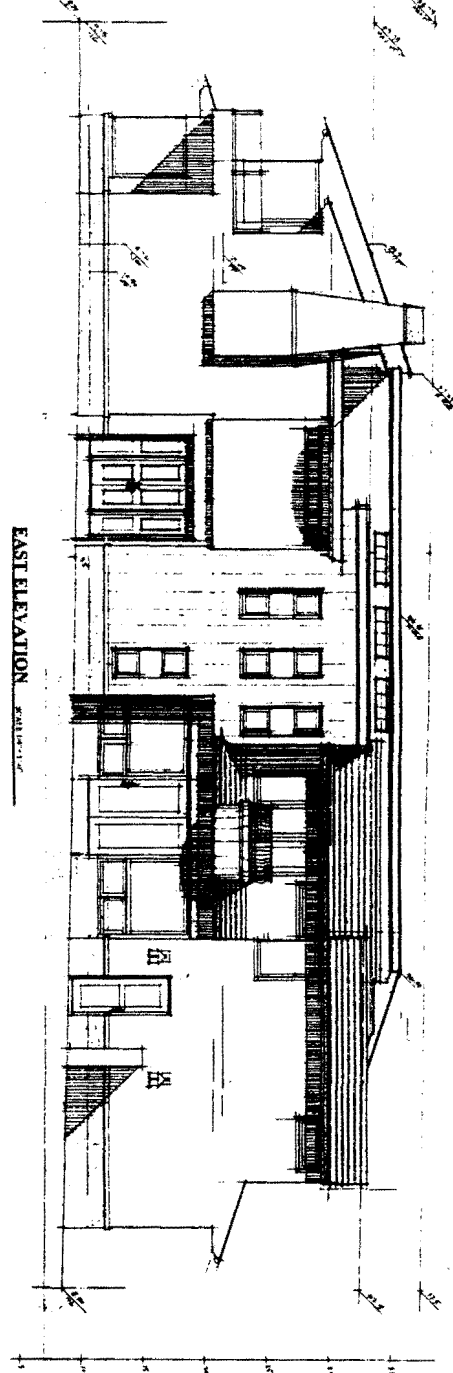


NORTH ELEVATION NORTH

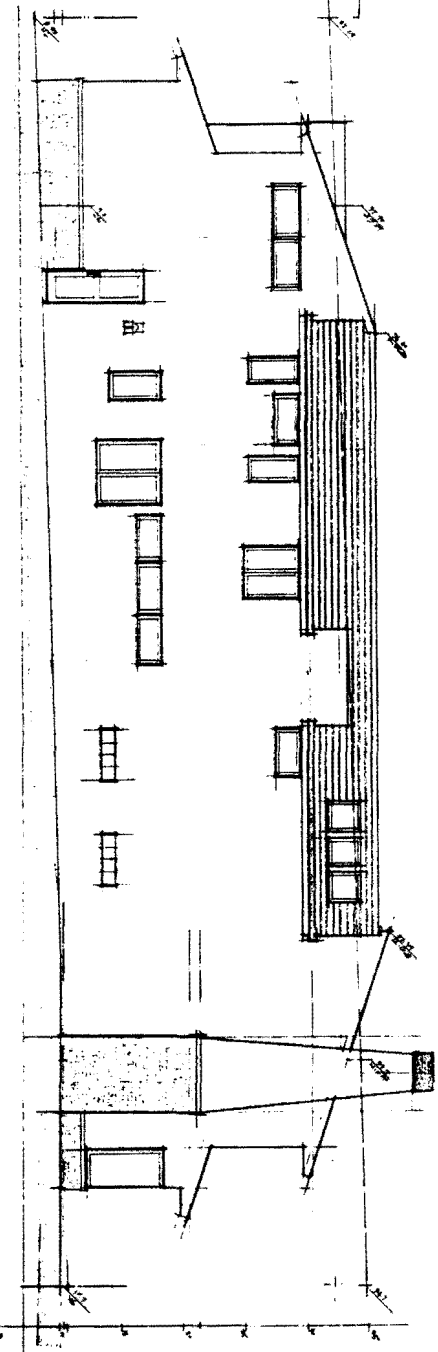
- ELEVATION KEYNOTES**
1. All exterior walls are to be finished with stucco.
 2. All windows are to be double hung with wood trim.
 3. All doors are to be solid core with wood trim.
 4. All exterior doors are to be double doors with transoms.
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SOUTH ELEVATION SOUTH



EAST ELEVATION EAST



WEST ELEVATION WEST

WEST ELEVATION



1



1



1