

CALIFORNIA COASTAL COMMISSION

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Hearing Date: December 10-12, 2003
Commission Action:

**TH 20a****STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-03-153**APPLICANTS:** Howard and Gail Rich**PROJECT LOCATION:** 218 Highland, City of Newport Beach (County of Orange)

PROJECT DESCRIPTION: Addition and remodel of an existing 2,449 square foot two-story, duplex with an attached 490 square foot two-car garage. The proposed project includes: 1) an addition of 403 square feet to the existing 1st floor and 2) an addition of 156 square feet to the existing 2nd floor. Post project the two-story duplex will be 3,009 square feet with an attached 490 square foot two-car garage. No grading is proposed.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed project subject to **Nine (9) Special Conditions** requiring 1) an assumption-of-risk agreement; 2) no future shoreline protective device agreement; 3) future development agreement; 4) submittal of and conformance with a construction staging plan; 5) conformance with certain requirements related to the storage and management of construction debris and equipment; 6) conformance with the submitted drainage and run-off control plan; 7) adherence to requirements for exterior lighting adjacent to the wetland; 8) submittal of City approval for encroachment onto the City of Newport Beach land; and 9) a deed restriction against the residential property, referencing all of the Special Conditions contained in this staff report. The major issue of this staff report concerns waterfront development that could be affected by flooding and erosion during extreme storm events and development adjacent to a wetland (Semenuk Slough).

LOCAL & OTHER AGENCY APPROVALS RECEIVED: City of Newport Beach Planning Department Approval-In-Concept No. 0616-2203 dated April 7, 2000; City of Newport Beach Planning Department Modification Permit No. MD2003-028 dated March 26, 2003; and Department of the Army License No. DACW09-3-01-0018 dated February 2, 2003.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits: 5-02-060-[NSCA]; 5-01-451-[Walton]; 5-00-359-[Debonis & Faubion Construction]; 5-00-360-[Debonis & Faubion Construction]; City of Newport Beach certified Land Use Plan; Letter to Howard Rich from Commission Staff dated May 14, 2003; Letter to Commission Staff from Todd Halton received June 4, 2003; Letter to Howard Rich from Commission Staff dated July 3, 2003; Letter to Commission Staff from Todd Halton received August 7, 2003; Letter from Kurt M. Saxon of Saxon Engineering Services to Howard Rich Re: Flood and Erosion Hazard Investigation-218 Highland Drive, Newport Beach dated August 2, 2003; Letter to Howard Rich from Commission Staff dated September 5, 2003;

and Amended Letter from Kurt M. Saxon of Saxon Engineering Services to Howard Rich Re: Flood and Erosion Hazard Investigation-218 Highland Drive, Newport Beach dated August 2, 2003.

LIST OF EXHIBITS

1. Location Map
 2. Assessor's Parcel Map
 3. Site Plan
 4. Demolition Plans/Floor Plans
 5. Roof Plans
 6. Elevations
 7. Drainage Plans
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I. STAFF RECOMMENDATION, MOTION AND RESOLUTION OF APPROVAL

MOTION: *I move that the Commission approve Coastal Development Permit No. 5-03-153 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

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

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittees or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date 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 permittees to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

By acceptance of this Permit, the applicants acknowledge and agree (i) that the site may be subject to hazards from 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. 5-03-153 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 addition and remodel, if any government agency has ordered that the structure is not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the wetland before they are removed, the landowner shall remove all recoverable debris associated with the development from the wetland and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

3. FUTURE DEVELOPMENT RESTRICTION

This permit is only for the development described in Coastal Development Permit No. 5-03-153. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-03-153. Accordingly, any future improvements to the duplex authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-03-153 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. STAGING AREA FOR CONSTRUCTION

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittees shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to wetlands.

(1) The plan shall demonstrate that:

- (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition; and
- (b) Construction equipment, materials, or activity shall not be placed in any location which would result in impacts to wetlands.

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

(a) A site plan that depicts:

- 1. limits of the staging area(s);
- 2. construction corridor(s);
- 3. construction site;
- 4. location of construction fencing and temporary job trailers with respect to existing wetlands.

B. The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

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

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

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

6. **DRAINAGE AND POLLUTED RUNOFF CONTROL PLAN**

The applicants shall conform with the drainage and run-off control plan received on June 4, 2003 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. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

7. **LIGHTING**

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

8. CITY APPROVAL FOR ENCROACHMENT INTO PUBLIC RIGHT OF WAY

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit written evidence, for the review and approval of the Executive Director, that an approval for encroachment onto the 20-foot wide City property adjacent to the project site has been obtained from the City or written evidence from the City that no formal authorization is needed for the encroachment.
- B.** Approval of this coastal development permit shall not restrict the City's right and ability to remove any encroachment in order to construct public access and recreation improvements within the public right-of-way.

9. DEED RESTRICTION

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the residential parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire residential parcel governed by this permit. The deed restriction shall also 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, DESCRIPTION AND APPROVALS

1. PROJECT LOCATION AND DESCRIPTION

The project site is located at 218 Highland Street in the City of Newport Beach, Orange County (Exhibits #1-2). The project site faces upon the tidally influenced Semeniuk Slough located inland of Pacific Coast Highway. Semeniuk Slough is a remnant channel of the Santa Ana River, which formed when the Santa Ana River entered Newport Bay in the vicinity of present day River Avenue. Semeniuk Slough branches off the Santa Ana River and receives water from the Banning Channel and adjacent oil fields, wetlands and upland areas. While Semeniuk Slough is tidally influenced, there is presently no open boating passage between the slough and the bay or ocean. Semeniuk Slough is a wetland considered an environmentally sensitive habitat area and unique coastal resource in the City's Certified Land Use Plan. The Semeniuk Slough is within the City of Newport Beach and is designated as Recreational and Environmental Open Space in the certified Land Use Plan. The land on the far side of the slough is relatively undeveloped where there are

wetlands and some oil production facilities. This relatively vacant land is within unincorporated Orange County and is part of the approximately 75-acre area known as the Newport Banning Ranch. Public access to the slough is available adjacent to the project site along the Federal land adjacent to the Slough and the Highland Street, street end. The City's certified Land Use Plan indicates that lateral public access along the slough is present on the far (north) side of the slough.

The project site is composed of three separate but adjacent areas of land (Exhibit #3 & 7): The 1st property is the applicants' owned property where there is an existing two-story duplex (approximately 25 years old as stated by the Agent) located on site (a.k.a. 'residential parcel/property'). The 2nd property is the 20-foot strip of land owned by the City of Newport Beach, which was intended for a street but was not constructed. This street would have connected with Grant Street, which is east of the project site, and an alley behind the existing duplex, which was abandoned. The 3rd property is land owned by the Army Corps of Engineers (ACOE) and licensed to the applicants. The existing duplex is located approximately 46-feet from the Semeniuk Slough. The water's edge is actually located on Federal land (ACOE) that the applicants had obtained a license to use from the ACOE. No work is proposed under this application on the ACOE's property adjacent to the water (Semeniuk Slough).

The residential parcel is flanked on the East by a residence; on the West by Highland Street; on the South by a residence; and to the North by a 20-foot strip of unimproved City Street right-of-way, the ACOE owned land and the Semeniuk Slough (Exhibit #3 & 7). On this Northern area of land (i.e. City right-of-way/ACOE-owned land) are existing fencing, decking, stationary floating docks with ramp, low voltage lighting, railroad tie seawall, parking area, grass and gravel ground cover, tree, bamboo and misc. yard plants (Exhibits #3 & 7). The railroad tie seawall is only located on approximately 1/2 of the Northeast portion of the Federal land adjacent to the Semeniuk Slough.

The applicants are proposing the addition and remodel of an existing 2,449 square foot two-story, duplex with an attached 490 square foot two-car garage. The proposed project includes:

On the Residential Property Owned by the Applicants

Additions to an existing residential duplex consisting of 1) an addition of 403 square feet to the existing 1st floor and 2) an addition of 156 square feet to the existing 2nd floor (the existing 2nd floor deck will be converted into a bedroom) (Exhibits #3-7). Also, there will be a new 184 square foot 2nd floor deck and an existing non-conforming wood structure attached to the southerly side of the structure will be removed. Post project the two-story duplex will be 3,009 square feet with an attached 490 square foot two-car garage (Exhibits #3-7). No grading is proposed

On Land Owned by the City of Newport Beach

The hardscape area located adjacent to the northerly side of the duplex will be removed and replaced with permeable surface (pavers over a sand base).

On Land Owned by the ACOE

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

Commission Staff has researched but have been unable to identify any previous coastal development permits issued for the existing stationary floating docks, railroad tie seawall and other development located on the City and Corps-owned lands. Since no coastal development permits appear to have been granted for this development, a violation may have occurred. The applicants are not seeking authorization for this existing unpermitted development through this application. The matter has been referred to the Commission's enforcement division for further investigation.

2. APPROVALS

Army Corps of Engineers

The applicants have obtained a license (DACW09-03-0018) beginning November 1, 2000 and ending October 31, 2025 from the Army Corps of Engineers (ACOE) dated February 2, 2001 to continue to maintain the following structures on the land adjacent to the Semeniuk Slough: *fencing, decking, stationary floating docks with ramp, low voltage lighting, railroad tie seawall, grass and gravel ground cover, tree, bamboo and misc. yard plants*. This license is revocable at will by the Secretary of the Army. The applicants currently use this area as parking and a yard.

City of Newport Beach Planning Department

The applicants have obtained an Approval-In-Concept No. 0616-2203 from the City of Newport Beach Planning Department dated April 7, 2000.

In addition, the applicants have obtained a City of Newport Beach Planning Department Modification Permit No. MD2003-028 dated March 26, 2003, which requested to allow an addition and alteration to the existing duplex: *"Portions of the new ground floor addition will encroach up to one foot into the required 3-foot side yard setback. Also included in the application is a request to allow an existing stairway to be relocated and encroach up to 2-feet 7-inches into the side yard setback. The addition and stairway are located on the side of the property that is adjacent to a 20-foot wide City right-of-way."*

The applicants have not obtained an approval for use of the 20-foot strip of land adjacent to the applicant's property where the duplex currently exists (Exhibits #3 & 7). The applicants currently use this area as a parking area and a yard. The applicants maintain that no approval from the City of Newport Beach was necessary for the work located on this 20-foot strip of land. This will be more thoroughly discussed on page 15 of the staff report.

B. FLOODING AND EROSION 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.*

The subject site is located adjacent to Semeniuk Slough, a tidally influenced wetland which branches off the Santa Ana River. Semeniuk Slough is part of the Lower Santa Ana River Marsh. Water elevation within the slough is presently controlled by a series of flood control gates and one-way drainage pipes. These water elevation control devices allow for normal tidal circulation but minimize flooding hazards present when higher water levels occur within the Santa Ana River during storm events. The purpose of the culvert and drainage pipe system is to allow unrestricted circulation and normal tidal flows into and out of the marsh area and prevent flooding of the interior marsh and slough during times of river flood stage. The existing flood control devices are part of a 1.84 square mile marsh restoration and enhancement project known as the Federal Lower Santa Ana River Project which is part of the Santa Ana River Mainstem Project designed by the U.S. Army Corps of Engineers. The Federal Lower Santa Ana River Project includes habitat restoration, tidal circulation improvements, and flood control devices.

Section 30253 (1) states that new development shall minimize risks to life and property in areas of high geologic, flood, and fire hazard. Information submitted by the applicants indicate that the proposed development is sited in an area where flood hazards are presently mitigated. The applicants have submitted information that states the proposed project site is not located in any special flood hazard area as defined on the applicable Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs) for the area.

To further analyze the suitability of the site for the proposed development, Commission staff requested the preparation of a flooding and erosion hazard analysis and an analysis for the potential for tidal currents to erode the project site which might result in the need for protective devices in the future, prepared by an appropriately licensed professional (e.g. coastal engineer). The *Flood and Erosion Hazard Investigation by Saxon Engineering Services* dated August 2, 2003 states that the finished floor area for the proposed project will be 7.17 feet, or 0.9 feet above the 6.27 minimum required for the area by the City. The City of Newport Beach has established a minimum finished floor elevation for any habitable structure in the Balboa Peninsula and West Newport area of +6.27 feet. Furthermore, the investigation states: "*Based upon our field review (See site photographs in Appendix "C") there is no evidence of any erosion along the property frontage due to tide changes in the channel. There is however, evidence of silting of the main channel. Additionally it does not appear that the existing railroad tie wall that runs along approximately 1/2 of the water frontage is required as a seawall, nor does it serve to protect the property from flooding or erosion but rather serves as a decorative wall that allowed for additional level yard for the residence.*"

Although the applicants' report indicates that site is safe for development at this time, coastal areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect flooding and erosion regimes. Hydraulics are complex and may change over time, especially as flood control structures such as flood control gates and drainage pipes are modified, either through damage or deliberate design.

Flood and erosion hazards at the site are presently managed by mechanical structures. These existing flood control devices in the project area function in a manner that reduces flooding hazards. However, damage to these flood control devices could dramatically change flooding hazards at the site. In turn, flooding could cause increased erosion at the site. In order to address this situation with respect to Coastal Act policy, Special Conditions are necessary.

1. ASSUMPTION ON RISK

Given that the applicants have chosen to implement the project despite potential risks from erosion or flooding, the applicants must assume the risks. Therefore, the Commission imposes **Special Condition No. 1** for an assumption-of-risk agreement. In this way, the applicants are notified that the Commission is not liable for damage as a result of approving the permit for development. The condition also requires the applicants 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.

2. FUTURE SHORELINE PROTECTIVE DEVICE

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 and habitat areas. 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 addition and remodel of an existing structure, which is considered new development. Allowing new development that would eventually require a shoreline protective device would conflict with Section 30251 of the Coastal Act; which states that permitted development shall minimize the alteration of natural landforms, including beaches and wetland habitat areas, which would be subject to increased erosion from such devices.

As stated previously, there is currently a railroad tie seawall located along ½ of the water frontage of the Federal land licensed to the applicants (Exhibit #7). However, the *Flood and Erosion Hazard Investigation* by Saxon Engineering Services dated August 2, 2003 states: "Additionally it does not appear that the existing railroad tie wall that runs along approximately ½ of the water frontage is required as a seawall, nor does it serve to protect

the property from flooding or erosion but rather serves as a decorative wall that allowed for additional level yard for the residence. The applicants' agent also states in a letter received June 4, 2003: *"The existing property has no formal seawall or bulkhead. Some residents along this wetland area have erected small railroad tie walls as part of an effort to create a dock area, but the Army Corp of Engineers has not developed any sea wall in this area."* Furthermore, the agent states in a letter received September 30, 2003: *"The existing railroad tie wall is not a required element. This wall was constructed at a time prior to Mr. Rich' purchasing the property, and its sole function is to level some of the yard area in lieu of having a sloped yard. This wall only occurs at about half of the shore area as previously shown in photo's from the project site. The portion of the yard under the wood deck area has no tie wall."* Therefore, the existing railroad tie seawall is not necessary to protect the existing or proposed development on the site and no shoreline protective device is necessary. Allowing new development that would eventually require a shoreline protective would conflict with Section 30251 of the Coastal Act; which states that permitted development shall minimize the alteration of natural landforms, including beaches and wetland habitat areas, which would be subject to increased erosion from such devices.

In the case of the current project, the applicants do not propose the construction of any shoreline protective device to protect the proposed development. However nearby beachfront communities have experienced flooding and erosion during severe storm events, such as El Nino storms. Therefore, it is not possible to completely predict what conditions the proposed development may be subject to in the future. Consequently, it is conceivable the proposed development may be subject to flooding and erosion hazards.

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 of the explicit statutory prohibition and because such devices contribute to 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. This includes sandy beach and wetland habitat areas, which would be subject to increased erosion from shoreline protective devices. The applicants are not currently proposing a shoreline protective device and do 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 shoreline protective device to protect the proposed development.

To further ensure that the proposed project is consistent with Section 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 prohibits the applicants, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development authorized 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.

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. FUTURE DEVELOPMENT

The project site is located on a waterfront lot that may be subject to future flooding and erosion as coastal conditions change. Since coastal processes are dynamic and structural development may alter the natural environment, future development adjacent to the water could adversely affect future shoreline conditions if not properly evaluated. For this reason, the Commission is imposing **Special Condition No. 3** which states that any future development or additions on the property, including but not limited to hardscape improvements, grading, landscaping, vegetation removal and structural improvements, requires a coastal development permit from the Commission or its successor agency. Section 13250 (b) of Title 14 of the California Code of Regulations specifically authorizes the Commission to require a permit for improvements that could involve a risk of adverse environmental effect. This condition ensures that any future development on this site that may affect shoreline processes receives review by the Commission.

CONCLUSION

The Commission finds that, based on the analysis submitted by the applicants, all significant risks of hazards from flooding and erosion at the site have been resolved, therefore, the Commission finds that the proposed development is consistent with Section 30253 of the Coastal Act. However, hazards potentially exist from flooding and erosion at the subject site if existing flood control devices deteriorate or are damaged. Therefore, to ensure that the proposed project does not result in future adverse effects to coastal processes, **Special Conditions No. 1, 2 and 3** have been imposed which require an assumption of risk agreement, no future shoreline protective devices agreement and future development agreement. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Section 30253.

C. BIOLOGICAL RESOURCES AND WATER QUALITY

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240(b) of the Coastal Act states:

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed development is occurring adjacent to Semeniuk Slough, which is a wetland as defined under the Coastal Act. One of the main reasons for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their important ecological function. First and foremost, wetlands provide critical habitat, nesting sites, and foraging areas for threatened or endangered species. Wetlands also serve as migratory resting spots on the Pacific Flyway a north-south flight corridor extending from Canada to Mexico used by migratory bird species. In addition, wetlands serve as natural filtering mechanisms to help remove pollutants from storm runoff before the runoff enters into streams and rivers leading to the ocean. Further, wetlands serve as natural flood retention areas.

Moreover, preserving, expanding, and enhancing Southern California's remaining wetlands is particularly critical because of their scarcity. As much as 75% of coastal wetlands in southern California have been lost, and, statewide up to 91% of coastal wetlands have been lost.

Development, including grading and the construction of residential structures, could cause impacts upon adjacent wetlands by discharging silt to the wetlands. In addition, occupation and use of residential structures adjacent to wetlands can cause disturbances to the biological resources in the wetlands.

Section 30240(b) of the Coastal Act requires that development in areas adjacent to environmentally sensitive habitat areas, such as wetlands, must be sited and designed to prevent impacts which would significantly degrade those areas. In addition, Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters and wetlands be maintained. The proposed-to-be-remodeled duplex is located approximately 46 feet from the Semeniuk Slough. The additions to the duplex will not encroach more than 1-foot or 2-feet 7-inches into the 3-foot northerly sideyard setback towards the Semeniuk Slough. Therefore, the proposed development is adequately setback from the Semeniuk Slough.

If construction equipment and staging is not appropriately managed, adverse impacts upon the Semeniuk Slough could occur. For instance, soil stockpiles could erode causing sedimentation of wetlands. In addition, if not sited appropriately, construction equipment and activity could cause trampling of the wetlands. Therefore, the Commission imposes **Special Condition No. 4**, which requires that, prior to issuance of the coastal development permit, the permittees shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to wetlands. The plan shall demonstrate that construction equipment or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition and that construction equipment and activity shall not be placed in any location which would result in impacts to wetlands. The plan shall include, at a minimum, the following components: a site plan that depicts the limits of the staging area(s); construction corridor(s); construction site; the location of construction fencing and temporary job trailers with respect to existing wetlands.

In addition, in order to ensure that construction and materials are managed in a manner which avoids impacts to adjacent wetlands, the Commission imposes **Special Condition No. 5**, which requires that construction materials, debris, or waste be placed or stored where it will not enter storm drains or be subject to tidal erosion and dispersion; removal of debris within 24 hours of completion of construction; implementation of Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed such that construction debris and sediment are properly contained and secured on site and to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking.

During storm events, the pollutants which have collected upon the roof and upon other impervious surfaces created by the proposed project may be discharged from the site into the storm water system and eventually into coastal waters which can become polluted from those discharges. Water pollution can result in decreases in the biological productivity of coastal waters. In addition, impervious surfaces magnify peak flows dramatically which can lead to erosion. In order to mitigate these impacts, the applicants have submitted a drainage plan and narrative received June 4, 2003 that states: "...the site drainage for this project, including the roof drainage, shall be diverted into either underground drainage percolation trenches lined with gravel, or onto the adjacent side yard where it can soak in rather than run off." Downspouts will be used to direct rooftop drainage to permeable areas. Also, the hardscape area located adjacent to the northerly side of the duplex will be removed and replaced with permeable surface (pavers over a sand base). Sand bags will be used during construction during the wet season to prevent any runoff from existing driveway and will be directed to an existing gravel lined percolation pit adjacent to the driveway. In order to verify that this drainage and run-off control plan will be adhered to, the Commission imposes **Special Condition No. 6** which requires the conform to the drainage and run-off control plan received by Commission Staff on June 4, 2003. Roof drainage and runoff from all impervious areas should directed to dry wells or vegetated/landscaped areas so it can permeate and be filtered before going offsite. Vegetated landscaped areas should only consist of native plants or non-native drought tolerant plants which are non-invasive.

An additional concern is the impact lighting may have upon the wetland. Thus, **Special Condition No. 7** has been imposed, which requires that all replaced or new lighting within the development shall be directed and shielded so that light is directed toward the ground and away from the wetlands.

CONCLUSION

In order to assure that no impacts to wetlands or water quality occur with the proposed project, **Special Conditions No. 4, 5, 6 and 7** have been imposed which require submittal of and conformance with a construction staging plan; conformance with certain requirements related to the storage and management of construction debris and equipment, conformance with the submitted drainage and run-off control plan and new or replaced exterior lighting on site. As conditioned, the Commission finds that the proposed project is consistent with Coastal Act Sections 30231 and 30240(b) of the Coastal Act.

D. PUBLIC ACCESS

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.

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 waterfront lot located between the nearest public roadway and the shoreline in the City of Newport Beach. There is wetland adjacent to the subject site. Public access is available adjacent to the project site along the Federal land adjacent to the Slough and at the Highland Street, street end. The City's certified Land Use Plan indicates that lateral public access along the Slough is present on the far (north) side of the slough.

When a private development does not provide adequate on-site parking, users of that development who arrive by automobile are forced to occupy public parking used by visitors to the coastal zone. Thus, all private development must provide adequate on-site parking to minimize adverse impacts on public access.

The Commission has consistently found that two parking spaces are adequate to satisfy the parking demand generated by one individual residential unit. The proposed duplex provides two parking spaces located in an attached garage, two additional outdoor parking spaces on Federal land licensed to the applicants and one additional parking space on the 20-foot wide City owned strip of land. Therefore, as currently designed, the development is consistent with the parking required.

As stated previously, the proposed project includes development upon a 20-foot wide strip of land owned by the City of Newport Beach, which was intended for a street but was not constructed. This street would have connected with Grant Street, which is east of the project site, and an alley behind the existing duplex, which was abandoned. The applicants currently use this area as a parking area and a yard. Work associated with the proposed project will occur within this 20-foot strip of land consisting of replacement of hardscape with pavers. The applicants have not obtained an approval for use of the 20-foot strip of land adjacent to the applicants' property where the duplex currently exists. The applicants state that the City of Newport Beach did not require him to obtain such an approval. However, such an approval, or written evidence from the City that no formal approval is required, is necessary to verify that the proposed encroachment is allowable. This strip of land may in the future be converted into a public street, which could be used to access the Semeniuk Slough, thus providing public access. **Therefore, Special Condition No 8** is imposed, which requires the applicants to obtain an approval for the encroachment onto the 20-foot wide strip of City property, or written evidence from the City that no formal approval is required. **Special Condition No. 8** also states that approval of this coastal development permit shall not restrict the City's right and ability to remove any encroachment in order to construct public access and recreation improvements within the public right-of-way.

As conditioned, the Commission finds adequate access is available nearby and the proposed development is consistent with Sections 30210, 30211 and 30212 of the Coastal Act.

E. 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 **Special Condition No. 9** requiring that the property owner record a deed restriction against the residential property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

F. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development 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 the Chapter 3 policies of the Coastal Act.

The Newport Beach Land Use Plan was effectively certified on May 19, 1982. The certified LUP was updated on January 9, 1990. The City currently has no certified implementation plan. Therefore, the Commission issues CDP's 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. As per the LUP requirements, an Assumption of Risk Special Condition is being required and a comprehensive geological report was supplied with the application.

The proposed development, as conditioned, 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.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

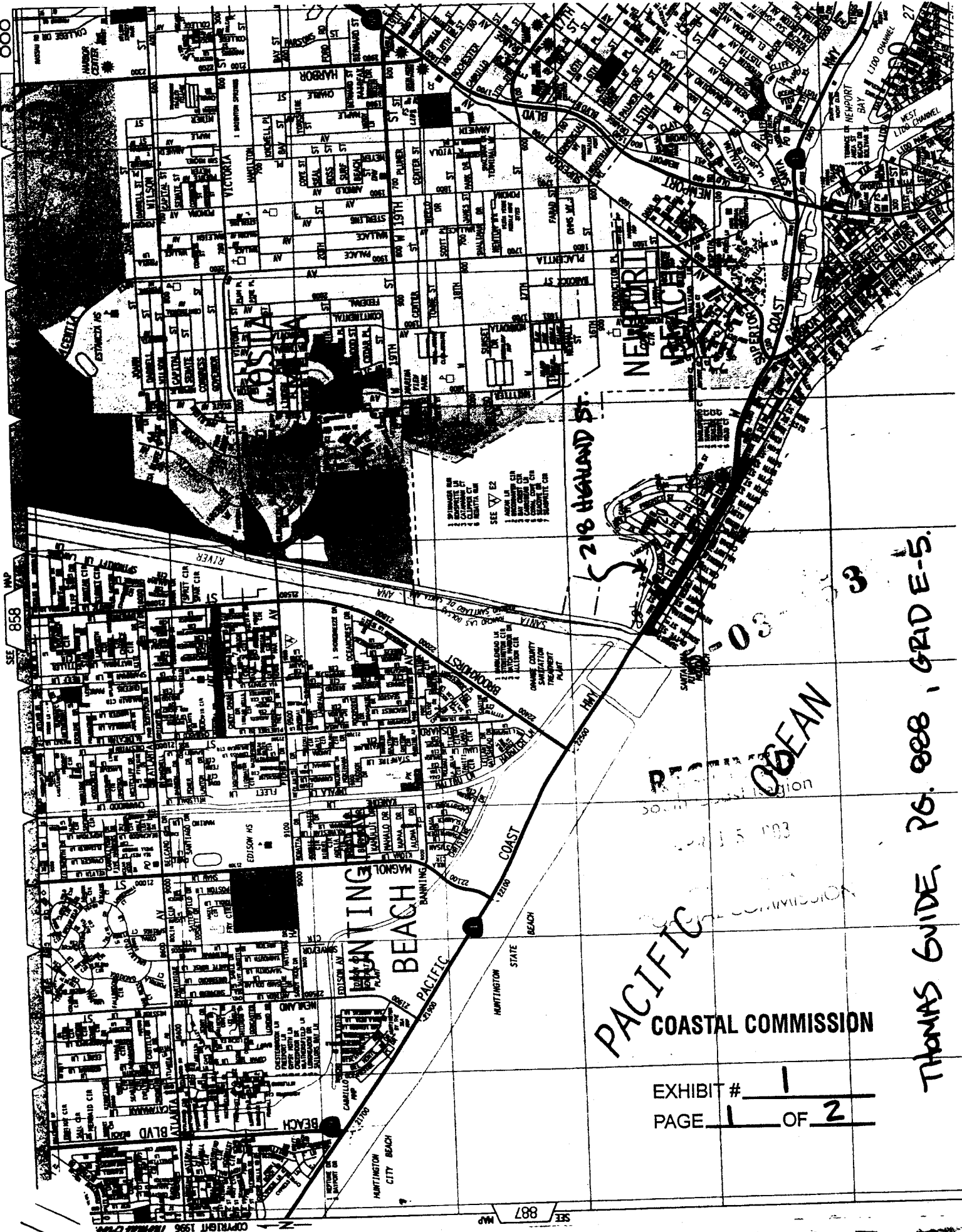
Section 13096(a) of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California 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 further feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is located in an urban area. All infrastructure necessary to serve the site exists in the area. As conditioned, the proposed project has been found consistent with the hazard, biological resource and water quality protection, visual resource and public access policies of Chapter 3 of the Coastal Act. Mitigation measures include: **1)** an assumption-of-risk agreement; **2)** no future shoreline protective device agreement; **3)** future development agreement; **4)** submittal of and conformance with a construction staging plan; **5)** conformance with certain requirements related to the storage and management of construction debris and equipment; **6)** conformance with the submitted drainage and run-off control plan; **7)** adherence to requirements for exterior

lighting adjacent to the wetland; 8) submittal of City approval for encroachment onto the City of Newport Beach land; and 9) a deed restriction against the residential property, referencing all of the Special Conditions contained in this staff report.

As conditioned, there are no feasible alternatives or additional 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.

H:\FSY\Staff Reports\Dec03\5-03-153-[Rich]RC(NB)



SHOWN IN
 1 CLAYTON CT
 2 HUNTINGTON
 SEE E2
 1 HUNTINGTON
 2 HUNTINGTON
 3 HUNTINGTON
 4 HUNTINGTON
 5 HUNTINGTON

218 HIGHLAND ST.

3

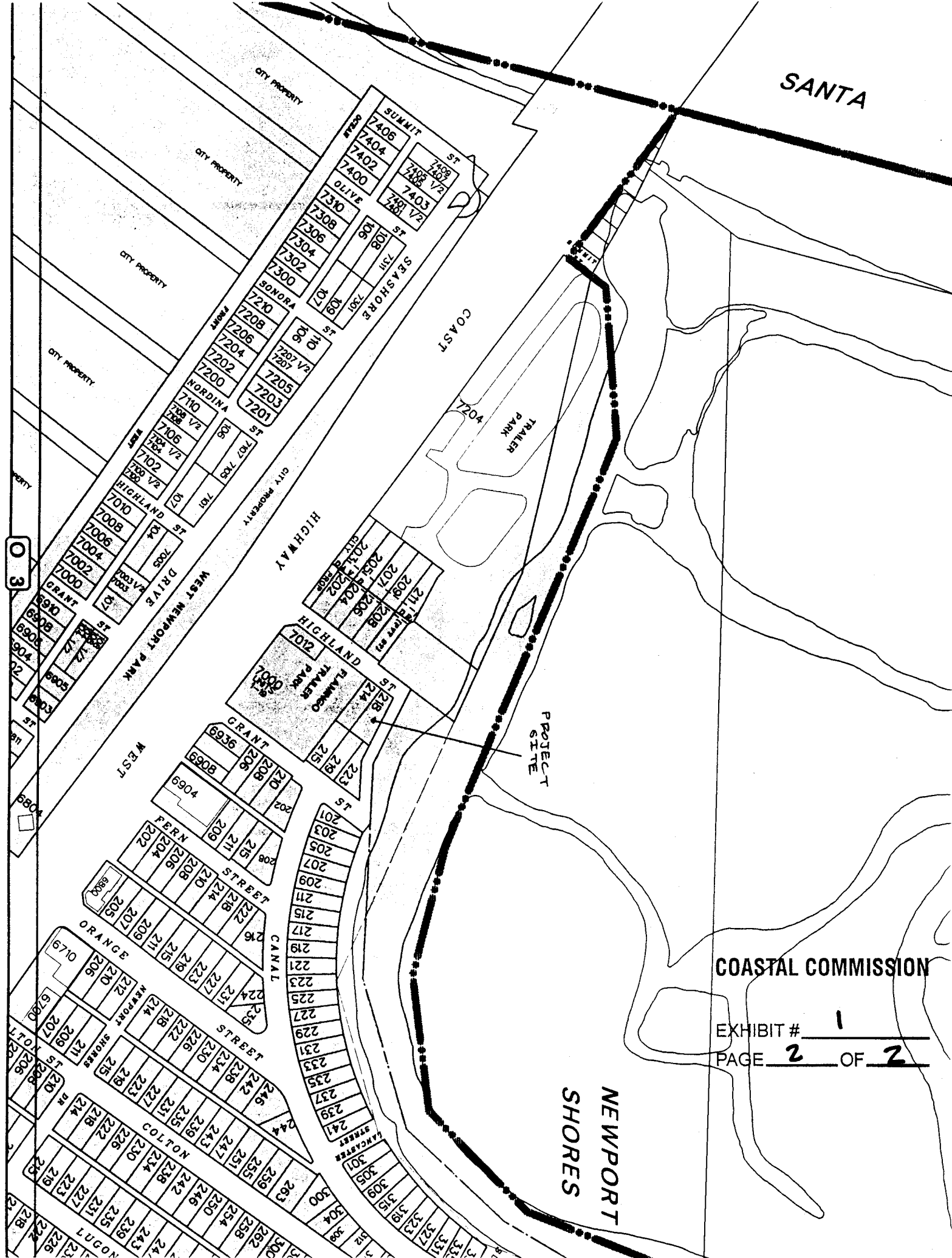
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EXHIBIT # 1
 PAGE 1 OF 2

THOMAS GUIDE PG. 888, GRAD E-5.

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COASTAL COMMISSION

EXHIBIT # 1
 PAGE 2 OF 2

NEWPORT SHORES

03

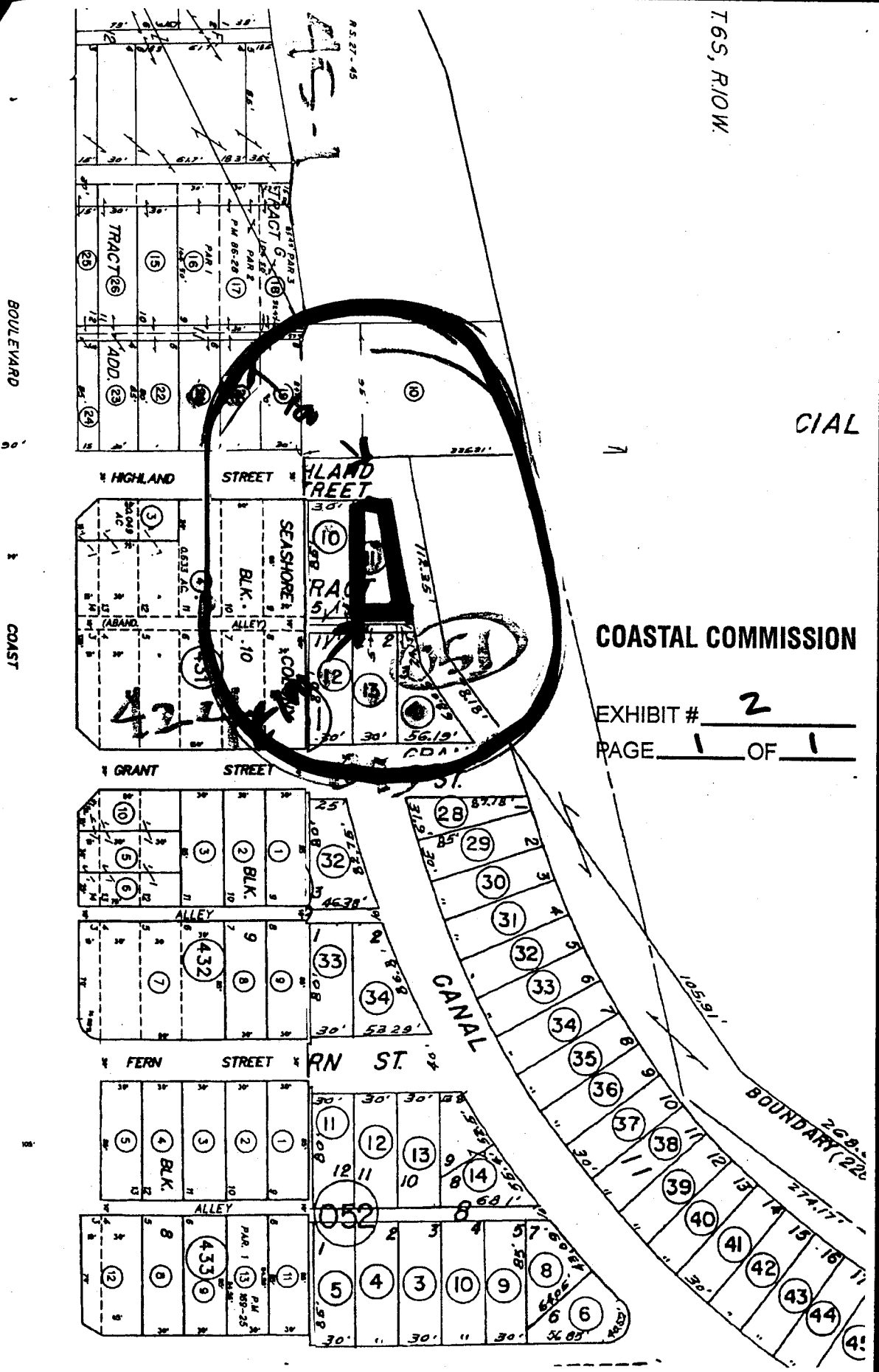
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COASTAL COMMISSION

EXHIBIT # 2
PAGE 1 OF 1

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

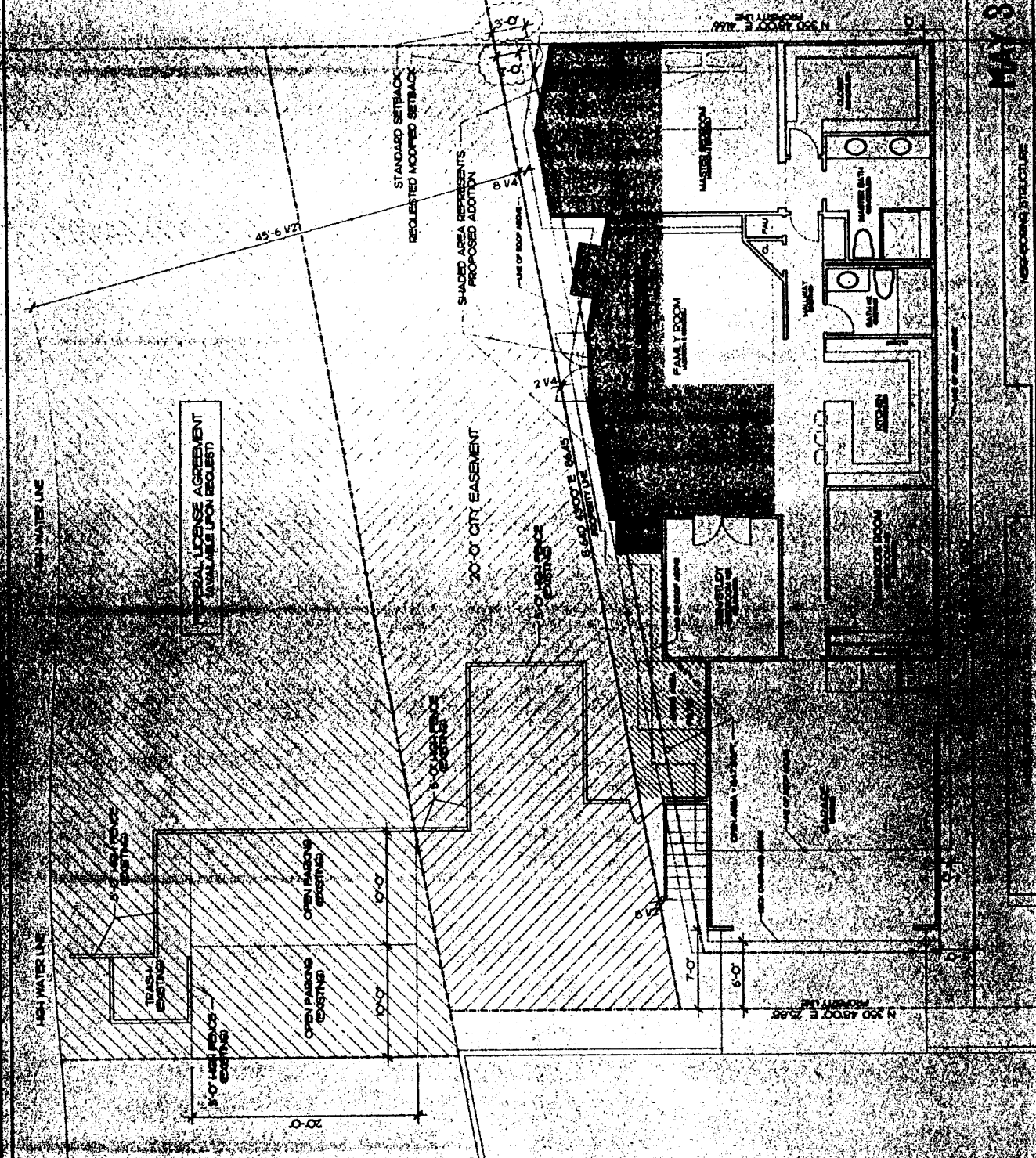


Ownership Map



Rich Residence
 218 A/B Highland St.
 Newport Beach, CA
 Tract 772, Lot 4, Block 1

DATE: MAY 30, 2002
 DRAWN BY: [Signature]



FEDERAL LICENSE AGREEMENT
 AVAILABLE UPON REQUEST



COASTAL COMMISSION

EXHIBIT # 3
 PAGE 1 OF 1

MAY 30, 2002

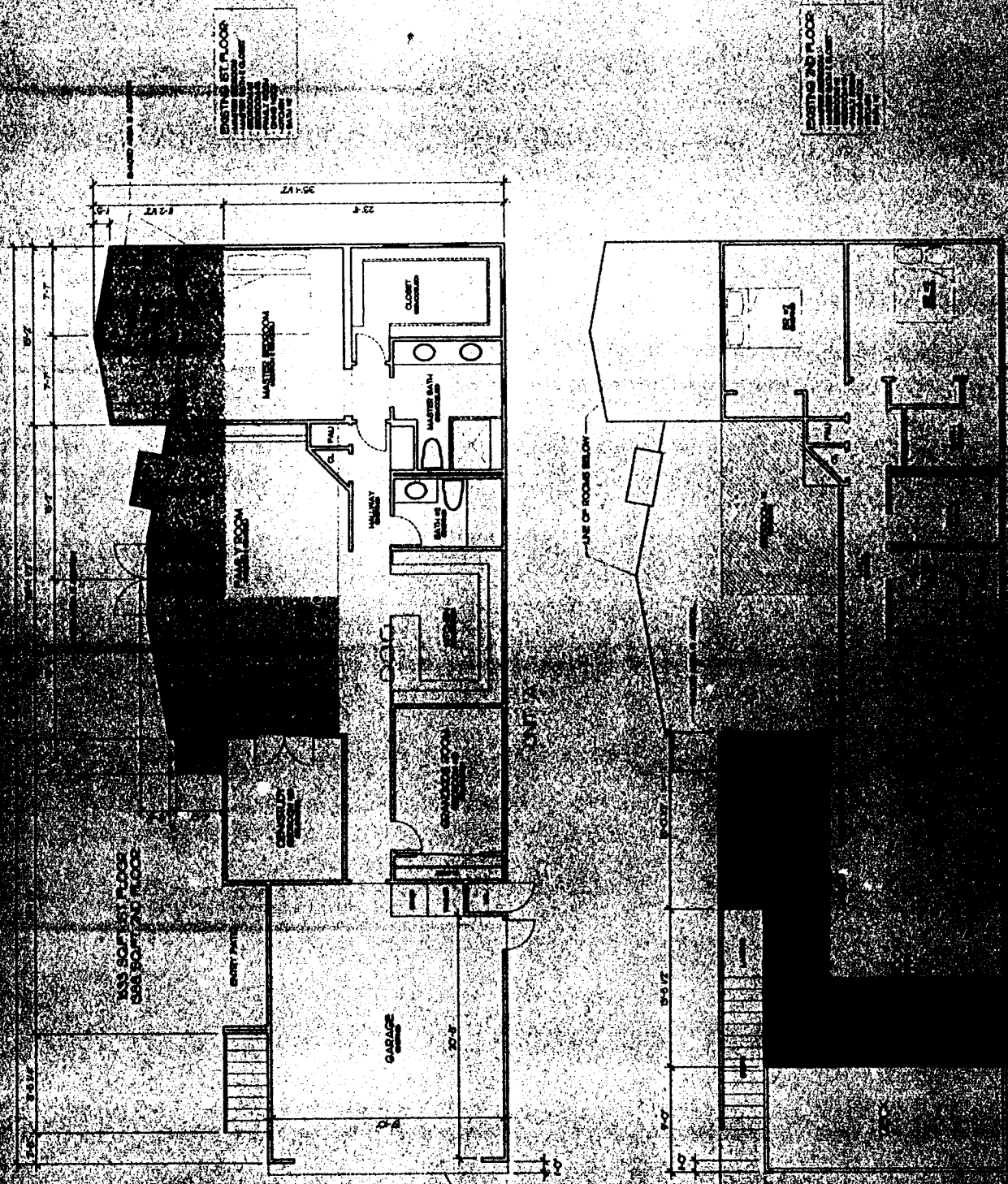
PROPOSED SETBACK LINE

CENTRAL OF HIGHLAND STREET

Rich Residence
218 A/B Highland St.
Newport Beach, CA
Tract 772, Lot 4, Block 10



Scale: 1/8" = 1'-0"
Date: 5/3/13
Project: Rich Residence

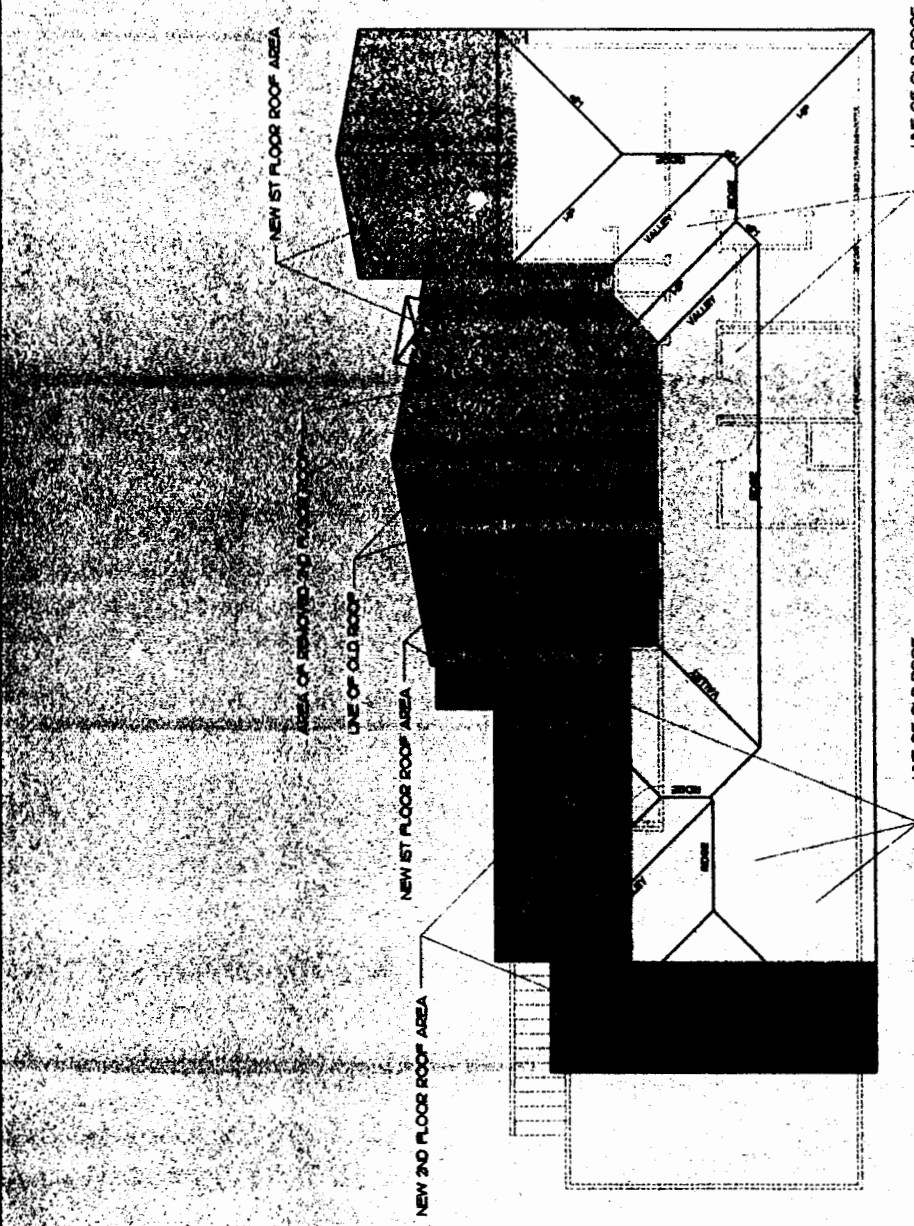
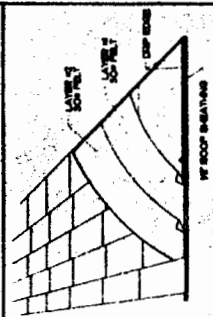


COASTAL COMMISSION

EXHIBIT # 4
PAGE 2 OF 2

ROOF PLAN NOTES

ROOF PLAN NOTES:
 1. ALL ROOFING SHALL BE PERFORMED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL RESIDENTIAL CODE BOOKS TO BE PLANNED.
 2. TYPICAL ROOF SLOPE: 1/4"
 3. ROOF UNDERLAY SHALL BE 30# FELT.
 4. ALL ROOFING SHALL BE 1/2" THICK 12 GA. GALVALUM.
 5. ALL ROOFING SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.
 6. ALL ROOFING SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.
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COASTAL COMMISSION

EXHIBIT # 5
 PAGE 1 OF 1



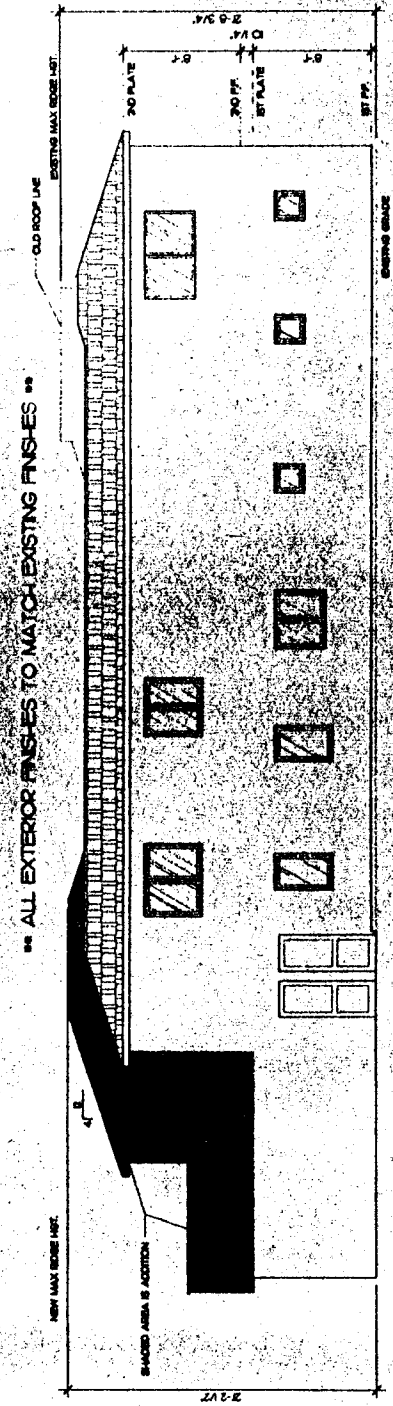
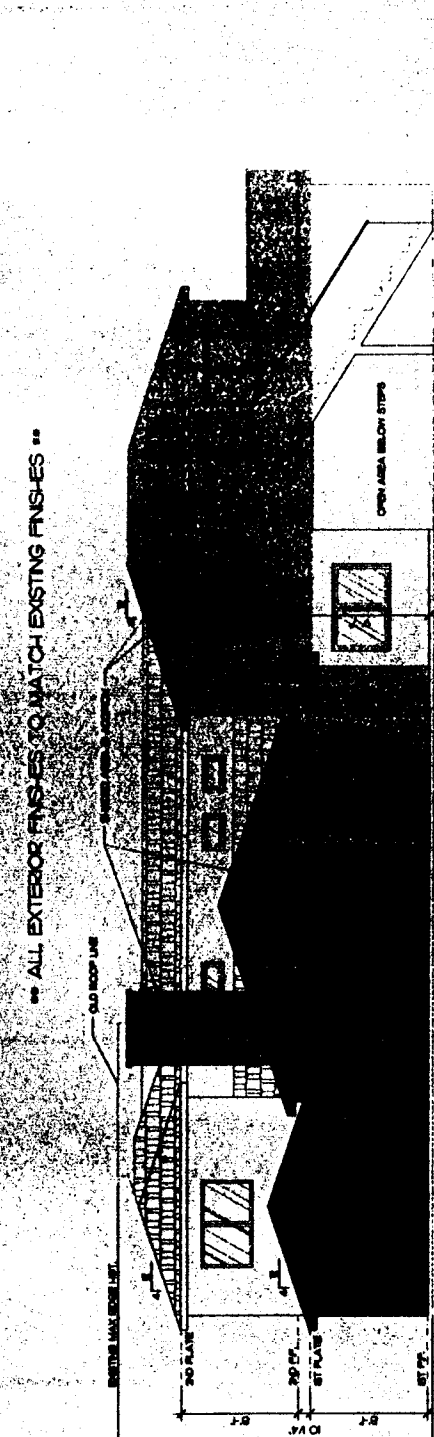
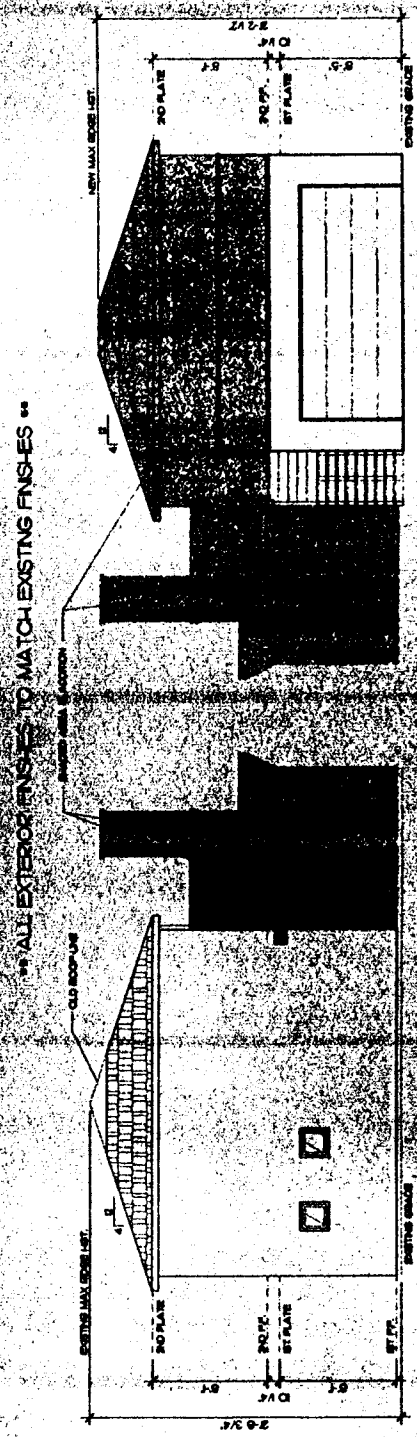
Rich Residence
 218 A/B Highland St.
 Newport Beach, CA
 Tract 772, Lot 4, Block 10

Arch. No. 714
 Drawn By: TMA
 Scale: 1/4" = 1'-0"
 Date: 08/09
 Rev. 1/01



Rich Residence
 218 A/B Highland St.
 Newport Beach, CA
 Tract 772, Lot ---, Block 10

6
 Revisions Building Section



COASTAL COMMISSION

EXHIBIT # 6
 PAGE 1 OF 1

MAY 30 2003

