

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 OceanGate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

Filed: September 26, 2003
49th Day: November 14, 2003
180th Day: March 24, 2004
Staff: ALB-LB *ALB*
Staff Report: November 20, 2003
Hearing Date: December 10-12, 2003
Commission Action:



Th 4e

STAFF REPORT: CONSENT CALENDAR

APPLICATION NUMBER: 5-03-405

APPLICANT: Dorothy Johnson Trust, Attn: Dave Johnson

AGENT: John T. Morgan

PROJECT LOCATION: 6300 W. Oceanfront, City of Newport Beach, County of Orange

PROJECT DESCRIPTION: Demolition of an existing single-family residence and construction of a new three-story, 29' high, 2745 square foot single-family residence with an attached 375 square foot two-car garage and one-car carport on a beachfront lot. Approximately 310 cubic yards of grading (155 cy cut and 155 cy fill) is proposed for overexcavation and recompaction.

LOCAL APPROVALS RECEIVED: City of Newport Beach Approval-in-Concept (No. 2332-2003) dated September 23, 2003.

SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing demolition and construction of a 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 subject to five (5) special conditions requiring: 1) assumption of risk; 2) no future shoreline protective device; 3) future development be submitted to the Commission for permit amendment; 4) submittal of a drainage and run-off control plan; and 5) recordation of a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits: 5-03-210 (Cross); 5-02-306 (Cross); 5-02-274 (Datt); 5-02-255 (Cross); 5-02-211 (Sork); 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); City of Newport Beach certified Land Use Plan, and *Wave Runup & Coastal Hazard Study* for 6300 West Oceanfront, Newport Beach, CA prepared by Skelly Engineering dated September 2003.

LIST OF EXHIBITS:

1. Location Map
 2. Assessor's Parcel Map
 3. Project Plans
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STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

STAFF RECOMMENDATION TO ADOPT CONSENT CALENDAR:

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION:

I. APPROVAL WITH CONDITIONS

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

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the 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**

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.

2. **No Future Shoreline Protective Device**

A(1). By acceptance of this Permit, the applicant agrees, on behalf of itself 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. 5-03-405 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 applicant hereby waives, on behalf of itself 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 applicant further agree, on behalf of himself 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**

This permit is only for the development described in Coastal Development Permit No. 5-03-405. 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. 5-03-405. Accordingly, any future improvements to the single family house authorized by this permit, including but not limited to change in use from a permanent residential unit and 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. 5-03-405 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 applicant 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 permittee 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 applicant 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 6300 W. 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 sited within an existing urban residential area, located generally southeast (downcoast) of the Santa Ana River and northwest of the Newport Pier. There is an approximately 300 foot wide sandy beach between the subject property and the mean high tide line. Due to its beachfront location, the project site may be potentially exposed to the hazard of wave uprush during a severe storm event.

The proposed project will not have an adverse effect on public access. The proposed project is located along Oceanfront walk, an unimproved public right-of-way located seaward of the residential lots in this area. The project site is located north of the portion that has been improved. Under specific circumstances, private patio encroachments into the unimproved right-of-way have been authorized. No encroachments beyond the property line are proposed at the subject site. The existing seaside walls that currently encroach into the right-of-way will be removed. The proposed project is consistent with the City's 5' required setback from the seaward property line on the first floor and 2' 6" setback on the second floor. The Commission has found through previous permit actions in this area that the City's setbacks in this area are acceptable for maintaining public access and are consistent with the pattern of development in the subject area. Vertical public access to the beach is available at the end of Prospect Street, immediately southeast of the subject site.

The applicant is proposing to demolish an existing single-family residence and construct a new three-story, 29' high, 2745 square foot single-family residence with an attached 375 square foot two-car garage and one-car carport on a beachfront lot. A new patio with a 36" high perimeter wall will be constructed along the seaward side of the property. Approximately 310 cubic yards of grading (155 cy cut and 155 cy fill) is proposed for overexcavation and recompaction.

The applicant is proposing water quality improvements as part of the proposed project. To increase on-site infiltration, the project has been designed to direct roof and surface runoff to percolation pits, open drainage pockets, planting areas and trench drains.

B. HAZARDS

Development adjacent to the ocean is inherently hazardous. Development that may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and 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 and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. DEVELOPMENT

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. To assure that future development is consistent with the Chapter 3 policies of the Coastal Act, the Commission finds that a future improvements special condition be imposed. As conditioned the development conforms to the Chapter 3 policies of the Coastal Act.

D. 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.

E. WATER QUALITY

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms to 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.

F. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

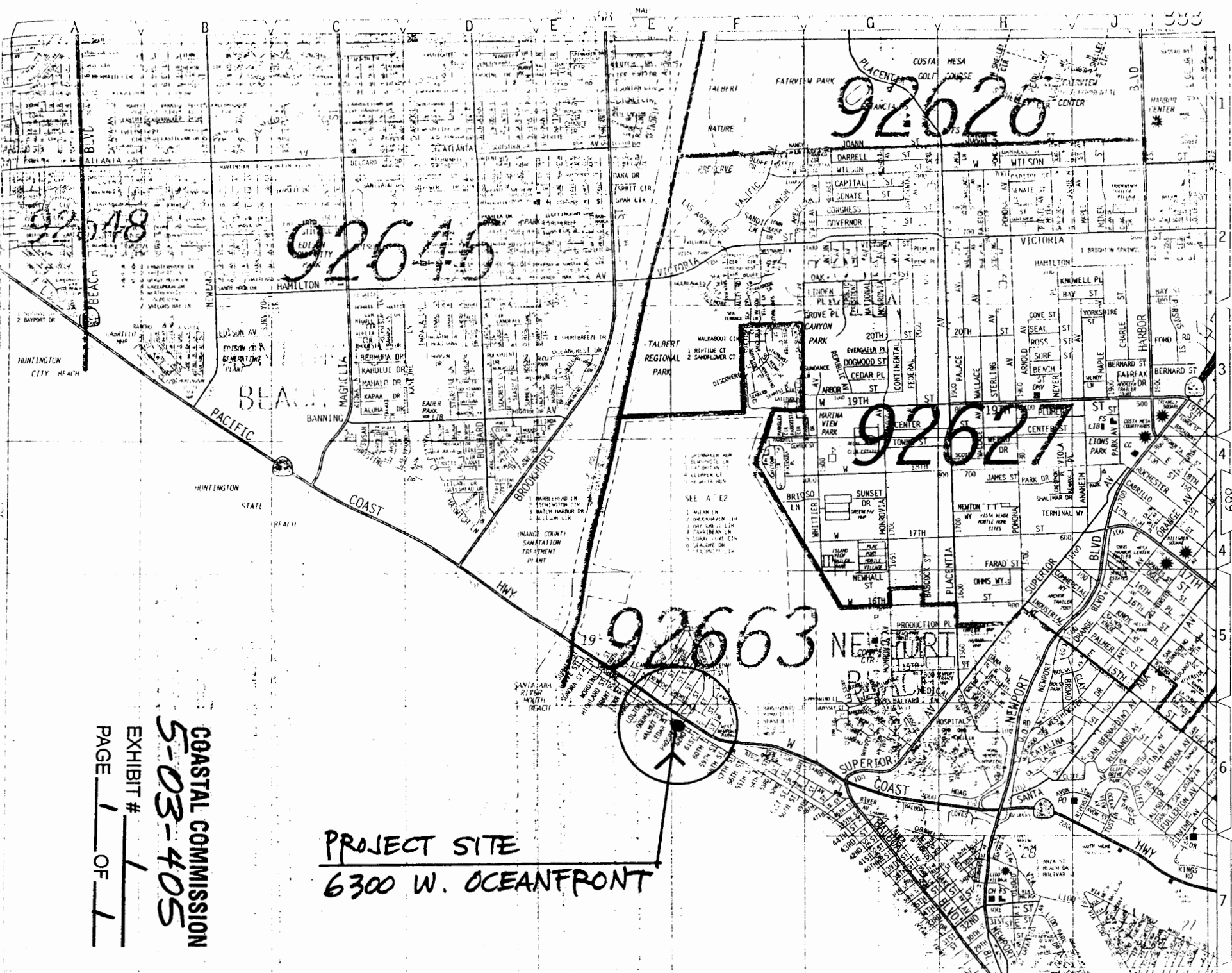
G. LOCAL COASTAL PROGRAM

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (LCP), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Land Use Plan (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 an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.



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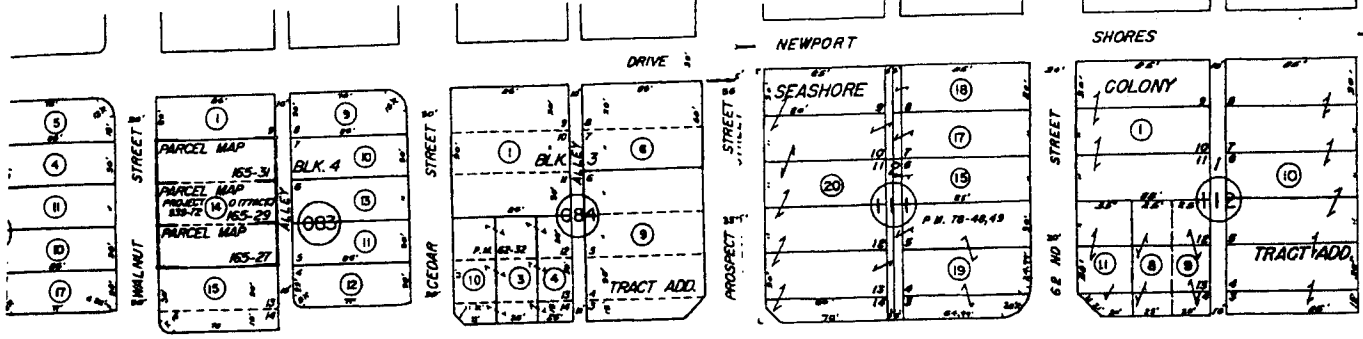
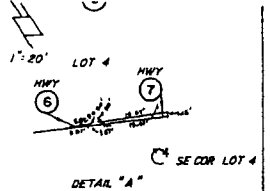
PROJECT SITE
 6300 W. OCEANFRONT

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45-08

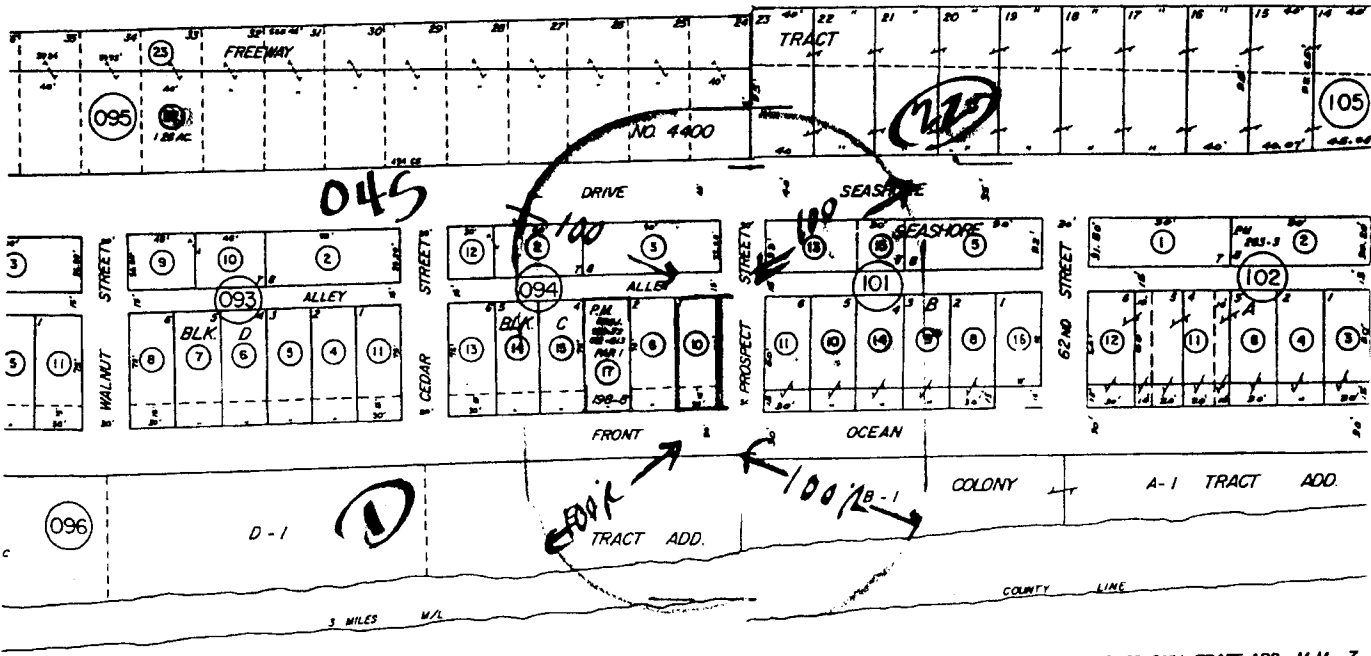
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HIGHWAY

COAST



SEASHORE COLONY TRACT ADD. M.M. 7-
 OCEAN FRONT TRACT M.M. 4-
 TR NO. 4400 M.M. 162
 PARCEL MAP P.M. 246

7-25
 162-20 to 26 inc.
 198-B

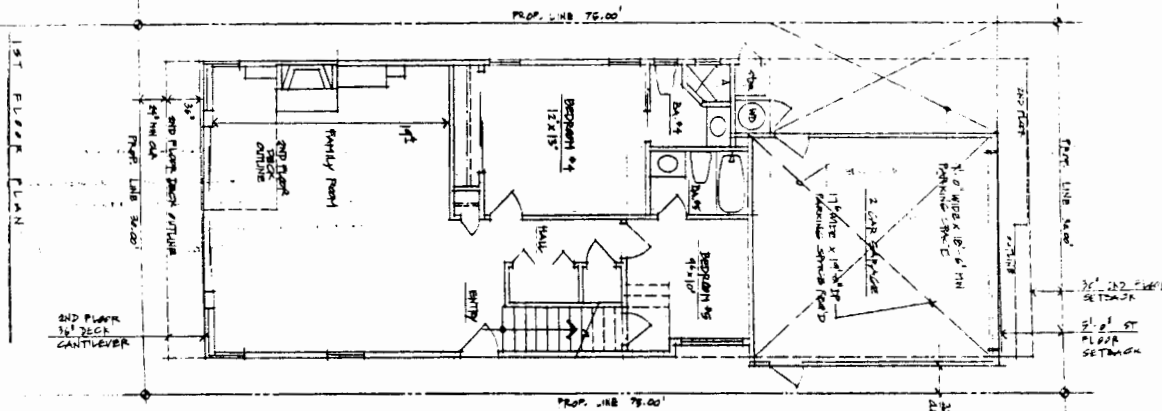
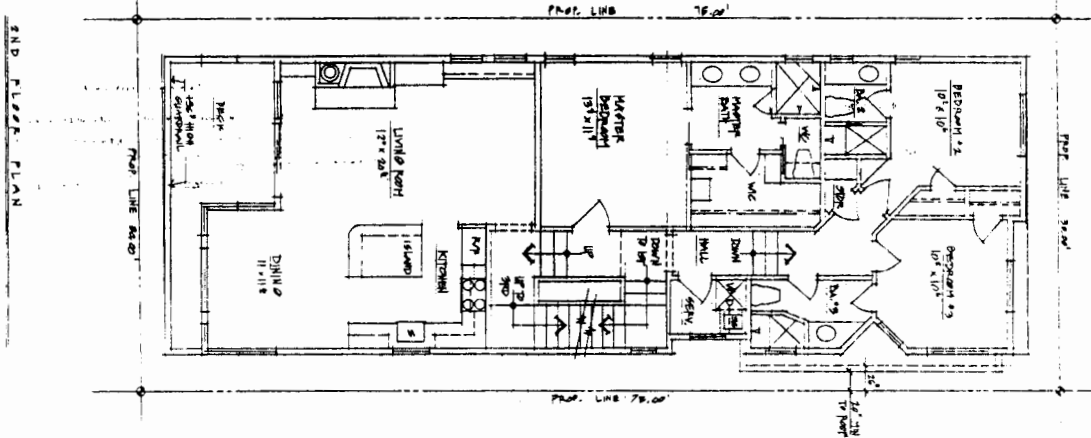
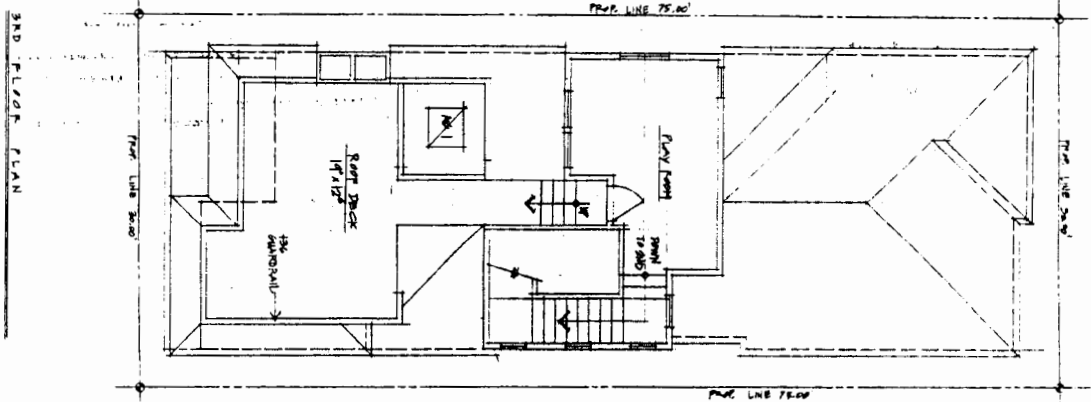
NOTE - ASSESSOR'S BLOCK &
 PARCEL NUMBERS
 SHOWN IN CIRCLES

ASSESSOR'S MAP
 BOOK 045 PAGE 09
 COUNTY OF ORANGE

1949

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 EXHIBIT # 2
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EXHIBIT # 3
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A2

FLOOR PLANS

Deborah Jones, Trust
 6300 West Coastway
 Newport Beach, CA

ARCHITECT
 John T. Morgan, Jr.
 1662 Becamont Avenue
 Santa Ana, CA 92705

STATE ASSOCIATION
 The Association of Professional Engineers and Surveyors of the State of California
 1701 Franklin Street, Sacramento, California 95811
 (916) 441-2300

STATE DELICIOUS NOTES
 The State of California has adopted the following provisions for the design and construction of buildings and structures:
 1. The design and construction of buildings and structures shall conform to the provisions of the California Building Code, as amended.
 2. The design and construction of buildings and structures shall conform to the provisions of the California Fire Code, as amended.
 3. The design and construction of buildings and structures shall conform to the provisions of the California Electrical Code, as amended.
 4. The design and construction of buildings and structures shall conform to the provisions of the California Mechanical Code, as amended.
 5. The design and construction of buildings and structures shall conform to the provisions of the California Plumbing Code, as amended.
 6. The design and construction of buildings and structures shall conform to the provisions of the California Safety Code, as amended.
 7. The design and construction of buildings and structures shall conform to the provisions of the California Structural Code, as amended.
 8. The design and construction of buildings and structures shall conform to the provisions of the California Trenching and Shoring Code, as amended.
 9. The design and construction of buildings and structures shall conform to the provisions of the California Welding and Fabrication Code, as amended.
 10. The design and construction of buildings and structures shall conform to the provisions of the California Woodworking Code, as amended.

ROOFING NOTES
 1. All roof areas shall be constructed in accordance with the provisions of the California Building Code, as amended.
 2. The roof structure shall be designed to support the dead load, live load, and wind load as specified in the California Building Code, as amended.
 3. The roof structure shall be designed to support the dead load, live load, and wind load as specified in the California Building Code, as amended.

CLADDING NOTES
 1. All exterior walls shall be constructed in accordance with the provisions of the California Building Code, as amended.
 2. The exterior walls shall be designed to support the dead load, live load, and wind load as specified in the California Building Code, as amended.
 3. The exterior walls shall be designed to support the dead load, live load, and wind load as specified in the California Building Code, as amended.

DOOR AND WINDOW NOTES
 1. All doors and windows shall be constructed in accordance with the provisions of the California Building Code, as amended.
 2. The doors and windows shall be designed to support the dead load, live load, and wind load as specified in the California Building Code, as amended.
 3. The doors and windows shall be designed to support the dead load, live load, and wind load as specified in the California Building Code, as amended.

STRUCTURE NOTES
 1. The structure shall be designed to support the dead load, live load, and wind load as specified in the California Building Code, as amended.
 2. The structure shall be designed to support the dead load, live load, and wind load as specified in the California Building Code, as amended.

FLASHING NOTES
 1. All flashing shall be constructed in accordance with the provisions of the California Building Code, as amended.
 2. The flashing shall be designed to support the dead load, live load, and wind load as specified in the California Building Code, as amended.
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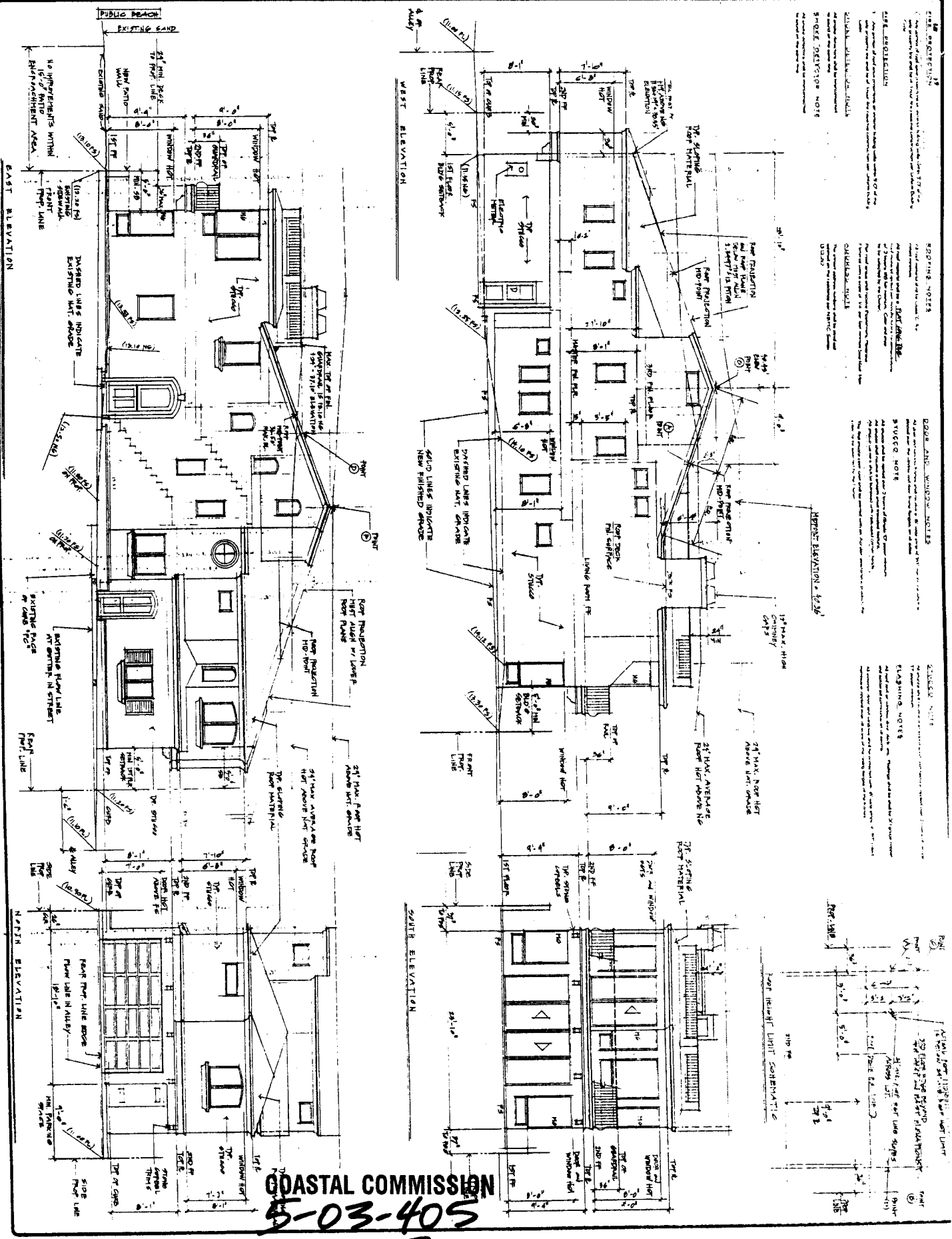
GENERAL NOTES
 1. The contractor shall be responsible for obtaining all necessary permits and approvals from the local authorities.
 2. The contractor shall be responsible for obtaining all necessary materials and labor for the construction of the building.
 3. The contractor shall be responsible for the safety of the construction site and the workers.

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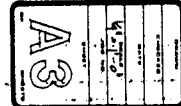
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5-03-405

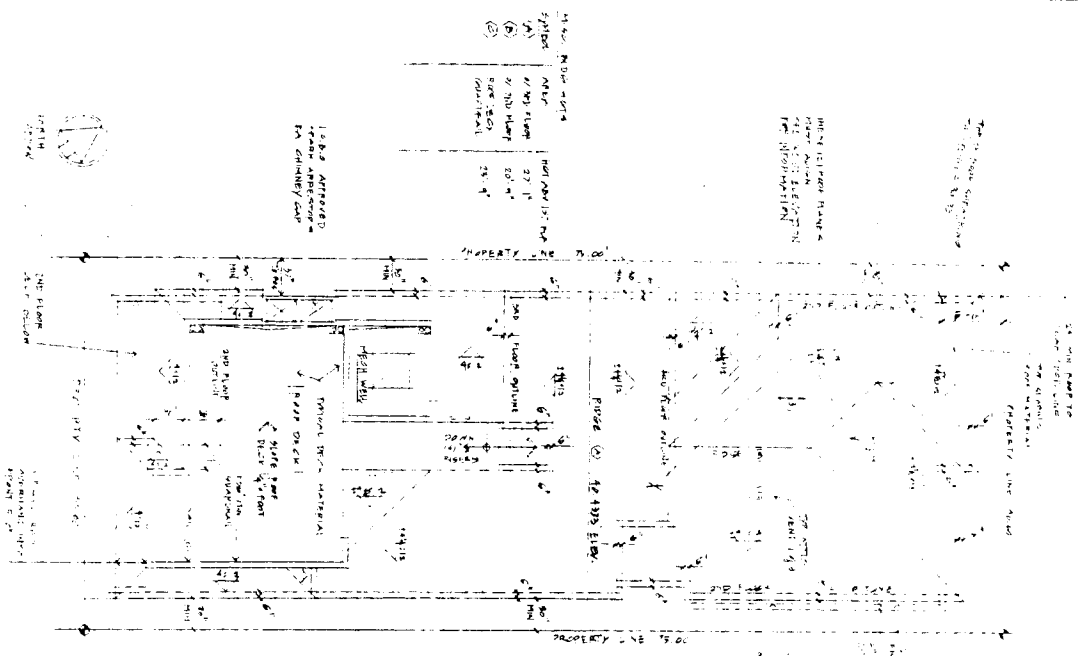
EXHIBIT # 3
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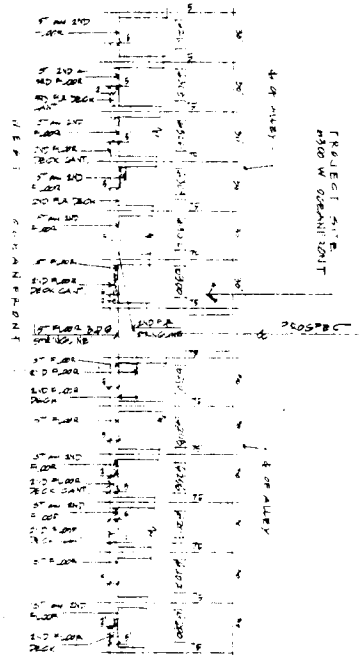
ARCHITECT
 18682 Becomont Avenue
 Santa Ana, CA 92705
 (714) 261-1272

Jeremy Johnson, Trust
 8300 West Coastway
 Newport Beach, CA

ARCHITECT
 18682 Becomont Avenue
 Santa Ana, CA 92705
 (714) 261-1272



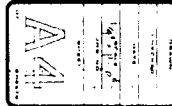
FLOOR PLAN



ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND SPECIFICATIONS.
 ALL MATERIALS SHALL BE APPROVED BY THE ARCHITECT.
 ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
 ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE ARCHITECT.

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 EXHIBIT # 3
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ARCHITECT
 1000 West 10th Street
 Santa Ana, CA 92701
 Phone: (714) 241-1111
 Fax: (714) 241-1112

PROJECT NO. 5-03-405
 SHEET NO. 4 OF 4
 DATE: 05/03/05
 DRAWN BY: [Name]
 CHECKED BY: [Name]

