

CALIFORNIA COASTAL COMMISSION

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Staff: FSY-LB FSY
Staff Report: September 29, 2004
Hearing Date: October 13-15, 2004
Commission Action:

**STAFF REPORT: REGULAR CALENDAR****APPLICATION NO.:** 5-03-343**APPLICANTS:** Art & Lyn Nieto**RECORD PACKET COPY****AGENT:** Pacific Coast Architects: Attn: Phil Edmondson**PROJECT LOCATION:** 3601 Ocean Boulevard, City of Newport Beach
(Orange County)

PROJECT DESCRIPTION: Accessory additions to the bluff face side of an existing single-family residence consisting of: 1) an addition of a cantilevered jacuzzi with an infinity edge attached to an existing cantilevered deck; 2) a 13' x 13' seaward deck extension; 3) an addition of an exterior fireplace and 4) installation of a caisson foundation system to support the new accessory improvements. Grading will consist of 30 cubic yards of cut, 3 cubic yards of fill and 30 cubic yards of export to a location outside of the coastal zone. (FSY-LB).

SUMMARY OF STAFF RECOMMENDATION:

The subject site is a coastal bluff face lot located between the first public road and the sea in Corona Del Mar (Newport Beach). The applicants are proposing accessory additions to the bluff face side of an existing single-family residence. The primary issues before the Commission is the appropriateness of approving the project given the importance of preserving scenic resources, avoiding impacts to public access, minimizing landform alteration and avoiding development in hazard prone locations. Staff recommends that the Commission **DENY** the proposed project.

Development on the subject site is particularly sensitive because it is located adjacent to an important viewpoint (i.e. Inspiration Point) and it is a transitional area between the more developed bluff areas down-coast of the site, and the undeveloped bluff areas up-coast and seaward of the subject site. Prominent visual projections on the site should be avoided. As proposed, such projections are incorporated into the project design, not avoided. As submitted, the proposed project is primarily inconsistent with Sections 30251 and 30240(b) of the Coastal Act and the City of Newport Beach Land Use Plan (LUP) regarding coastal bluff sites. The proposed development constitutes new development seaward of the existing line of development, alters an undeveloped vegetated coastal bluff through grading; and will have an adverse impact on public use and enjoyment of public parks and of a beach seaward of the mean high tide line.

Furthermore, alternatives to the proposed project exist. For example, the existing bluff face deck could be remodeled (i.e. new hardscape, new landscaping, new fence or a new fireplace). Such an alternative would be consistent with the existing pattern of development, would preserve the integrity of the coastal bluff and would avoid the seaward encroachment of development. Therefore, staff recommends that the project be denied, as it would have a cumulative adverse impact on visual and public access coastal resources and have adverse impacts on the naturally appearing landform.

LOCAL APPROVALS RECEIVED: Approval in Concept (#1653-2003) from the City of Newport Beach Planning Department dated July 21, 2003.

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach Certified Land Use Plan; Coastal Development Permit #P-5-16-77-883 (Cooper); Coastal Development Permit #5-87-345-[Zellner]; Coastal Development Permit Waiver #5-95-149 (Johnson); *Geologic Feasibility Letter* prepared by Earth Systems Southwest dated May 19, 2003; Letter from Harold Larson (Structural Design) dated August 6, 2003; Letter from Commission staff to Pacific Coast Architects dated September 19, 2003; Letter from Pacific Coast Architects to Commission staff dated February 25, 2004; Letter from Randy Beard (Pure Water Pools, LLC) dated October 1, 2003; *Structural Calculations* prepared by ESI/FME Inc. (Structural Engineers) dated March 5, 2004; *Geotechnical and Geologic Investigation of Proposed Spa and Deck at 3601 Ocean Boulevard, Corona Del Mar, California (W. O. 236803-01)* prepared by Coast Geotechnical dated January 1, 2004 (Revised March 8, 2004); Letter from Commission staff to Pacific Coast Architects dated April 9, 2004; *Response to Coastal Commission Letter of April 9, 2004, for 3601 Ocean Boulevard, City of Newport Beach (W.O. 26803-02)* prepared by Coast Geotechnical dated May 20, 2004; and letter from Pacific Coast Architects to Commission staff dated May 24, 2004.

EXHIBITS

1. Vicinity Map
2. Assessor's Parcel Map
3. Area Picture
4. Site Plan
5. Floor Plan
6. Elevations/Section
7. Foundation Plan

STAFF RECOMMENDATION:

I. STAFF RECOMMENDATION OF DENIAL

Staff recommends that the Commission adopt the following resolution to deny the coastal development permit application. The motion passes only by affirmative vote of a majority of the Commissioners present.

A. Motion

I move that the Commission approve Coastal Development Permit No. 5-03-343 for the development proposed by the applicant.

B. Staff Recommendation of Denial

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

C. Resolution to Deny the Permit

The Commission hereby **DENIES** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. Project Location, Description and Background

1. Project Location

The proposed project is located at 3601 Ocean Boulevard in Corona Del Mar, City of Newport Beach, County of Orange (Exhibits #1-3). The project site is located within an existing developed urban residential area on the seaward side of Ocean Boulevard and, to a defined extent, the historic bluff has been substantially altered by other similar residential structures. The residential development along this southern portion of Ocean Boulevard, south of Inspiration Point, is located on the coastal bluff face. These bluff lots have garages at the Ocean Boulevard street level or a private driveway, such as this site, that leads to these homes. The residences in this area are located along the bluff face. Ocean Boulevard terminates to the east of the site at a City park overlooking Little Corona Del Mar State Beach/Buck Gully and to the adjacent west is a natural vegetated bluff and further west is a vista point from Inspiration Point to the beach (Corona Del Mar State Beach).

A single-family residence currently occupies the property and is constructed on the bluff face. The rear of the residence extends to near the top of a vertical coastal bluff that is about 50-feet in vertical height above the ocean and below this bluff are a gravel and cobble beach and tidepools. The ocean fronting side of the home is founded on caissons. A deck area is located on an existing knob and a cantilevered deck extends from the residence. Near the westerly property line a rock promontory outcrops and extends approximately 25-feet outward from the edge of the existing rear deck, forming a resistant knob. A portion (approximately 10-feet) of this knob has been undercut forming a concave slope. Rounded gravel, cobbles and boulders descend at the slope toe to form a beach. A storm drain exists on the adjacent property near the westerly property line. The corrugated metal pipe storm drain discharges water near the base of the bluff.

To the north of the project site, at the top of the bluff is Ocean Boulevard. To the east of the project site are existing residential developments. To the west of the project site are a natural vegetated bluff and a vista point from Inspiration Point to the beach (Corona Del Mar State Beach). To the south of the project site is a gravel and cobble beach. Public access to this beach is not provided across the site. However, public access is provided via the public park north of the site, by the beach access at Buck Gully and at Corona Del Mat State Beach.

2. Project Description

The proposed project will consist of accessory additions to the bluff face side of an existing single-family residence consisting of: 1) an addition of a cantilevered jacuzzi with an infinity edge attached to an existing cantilevered deck; 2) a 13' x 13' seaward deck extension; 3) an addition of an exterior fireplace and 4) installation of a caisson foundation system to support the new accessory improvements (Exhibits #4-7). Grading will consist of 30 cubic yards of cut, 3 cubic yards of fill and 30 cubic yards of export to a location outside of the coastal zone.

3. Prior Commission Action on Subject Site

a. Coastal Development Permit #P-5-16-77-883 (Cooper)

On June 20, 1977, the South Coast Regional Commission approved Coastal Development Permit #P-5-16-77-883 (Cooper) for the construction of a single-family residence on a vacant bluff lot. The primary issues discussed in the staff report were impacts on scenic; visual; recreational; marine; geologic; and public resources. The staff report discussed how the parcel had been used by the public to access the tidepools and rocky shoreline located immediately below the site, which is inaccessible from the shoreline of Corona Del Mar State Beach and Little Corona Del Mar Beach during high tide. Thus, this raised a prescriptive rights issue. In addition, the staff report also discussed how the project would block the view of the natural coastal bluff face and the view below the bluff edge to the mean high tide line. While the project had significant concerns, the staff report recommended approval with conditions.

Coastal Development Permit #P-5-16-77-883 (Cooper) was approved with Four (4) Special Conditions, which required: 1) submittal of a slope restoration and maintenance plan; 2) submittal of a detailed and complete study and plans indicating method of protection of tidepools and marine resources from construction impacts; 3) submittal of evidence of recorded vertical and lateral access easements across the property; and 4) the extension of an option to purchase the property at no more than fair market value to any interested group which might purchase the property for public benefit. The applicant never completed condition compliance and the permit was not issued. The permit subsequently lapsed.

b. Coastal Development Permit #5-87-345-[Zellner]

On June 12, 1987, the Commission approved Coastal Development Permit #5-87-345-[Zellner] for the construction of a 4,751 square foot three-story single-family residence on a vacant bluff lot. The primary issues discussed in the staff report were impacts on scenic; visual; and geologic resources. The staff report discussed how the project site was near Inspiration Point and that a fence that was to be located on the side near Inspiration Point would have adverse impacts to scenic and visual resources. In addition, the staff report also discussed the structural integrity and stability of the bluffs and the appropriate setback on site. A 25-foot setback was not considered on this site due to its' entire location on the bluff face. A stringline setback could not be drawn since while there was a residence located immediately downcoast on the subject site, there was no structure located upcoast of the project site.

Coastal Development Permit #5-87-345-[Zellner] was approved with Three (3) Special Conditions, which required: 1) submittal of a landscape and erosion control plan; 2) an agreement to design the westerly fence so that it would maximize views of the existing rock outcrop on site as seen from Inspiration Point and the seating areas overlooking Corona Del Mar Beach; and 3) and assumption of risk deed restriction. The primary issues addressed by the staff report regarded hazards, protection of tidepools and scenic resource policies of the Coastal Act. The findings also make reference to an investigation of prescriptive public access rights, but concludes that the issue was resolved in advance of the public hearing. However, the resolution to the issue is not clear from the findings or information available in the permit file.

c. Coastal Development Permit Waiver #5-95-149 (Johnson)

On September 14, 1995, the Commission approved Coastal Development Permit Waiver #5-95-149 (Johnson). CDP #5-95-149-W was a waiver that allowed construction of a 9' (w) by 14" (l) deck extension onto the seaward side of an existing residence.

B. Scenic Resources

Section 30251 of the Coastal Act states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies that relate to development at the subject site:

Development of Coastal Bluff Sites, Policy 2 (b) states,

Grading, cutting and filling of natural bluff face or bluff edges shall be prohibited in order to preserve the scenic value of bluff areas, except for the purpose of performing emergency repairs, or for the installation of erosion-preventive devices or other measures necessary to assure the stability of the bluffs.

The certified Land Use Plan recognizes Ocean Boulevard, which is located north and above the project site, as a coastal view area that should be considered when new development is proposed seaward of the road (Exhibit #3). No work is proposed on the existing residence and would therefore remain below the grade of Ocean Boulevard, therefore not impacting any coastal views from Ocean Boulevard. The site is presently developed with a 4,751 square foot three-story single-family residence with three decks totaling 633 square feet. The proposed work would take place on the seaward side of the existing residence on the coastal bluff face and portions of the project would be visible from Inspiration Point, a city park with a public viewpoint which is located west of the project site and the beach below the site (Exhibit #3). On the eastern (i.e. down-coast) side of the project site are existing single-family residences located on the coastal bluff similar to the existing one located on the project site. On the adjacent western (i.e. up-coast) side and the area seaward of the existing residence on the project site are natural vegetated bluffs visible from public vantage points such as Inspiration Point, and from the rocky beach below the proposed development. A prominent rock outcropping located on the seaward, up-coast side of the project site, which can be seen from Inspiration Point, would be altered so that a 13' x13' deck extension and fireplace could be constructed. This would result in the alteration of a natural landform and would have an adverse visual impact on public views from Inspiration Point and would not be sited and designed to be visually compatible with the undisturbed character of the bluff areas up-coast and seaward of the existing residence.. Also, an infinity edge jacuzzi is part of the proposed project and it would significantly encroach seaward. Instead of a natural vegetated bluff seen on the bluff face from the beach below, a deck extension and fireplace and infinity edge jacuzzi would be visible.

In addition, a caisson and grade beam foundation system is proposed to support the accessory improvements. These caissons are to be imbedded into the bluff, however, bluff erosion may result in exposure of the caissons ensuing in adverse visual impacts when viewed from the beach below. Development at this site, if approved, must be sited and designed to be visually

compatible with the character of the natural bluff areas located up-coast and seaward of the existing residence. It is also necessary to ensure that new development be sited and designed to protect views to and along the beach area and minimize the alteration of existing landforms and seaward encroachment of development. The proposed project, as submitted, would be a significant new development encroaching seaward. This seaward encroachment also raises the concern over cumulative impacts if others propose to develop the coastal bluff face in a similar manner.

1. Landform Alteration & Community Character

The subject site is presently occupied by a 4,751 square foot, multi-level single-family residence with existing deck areas, totaling 663 square feet, on the seaward side of each level of the home. The applicants are proposing to further expand their accessory improvements on the seaward bluff face side of the existing structure consisting of: 1) an addition of a cantilevered jacuzzi with an infinity edge attached to an existing cantilevered deck; 2) a 13' x 13' seaward deck extension; 3) an addition of an exterior fireplace and 4) installation of a caisson foundation system to support the new accessory improvements. Grading will consist of 30 cubic yards of cut, 3 cubic yards of fill and 30 cubic yards of export to a location outside of the coastal zone. The 13' x 13' deck extension will be accomplished by grading a portion of a prominent rock feature on the bluff face. The proposed jacuzzi will project up to 21-feet seaward of the existing deck. A caisson and grade beam foundation system will support the proposed accessory improvements. The proposed project would expand the existing substantial development footprint and would have adverse visual impacts by replacing views of a natural vegetated bluff available from Inspiration Point and the beach below, with more accessory development. The Commission finds that the proposed project does not minimize alteration of natural landforms, is not visually compatible with the character of surrounding area and will affect the scenic and visual qualities of the subject area. As such, the proposed project is inconsistent with Section 30251 of the Coastal Act and the City's LUP policy regarding coastal bluff sites as discussed below.

a. Landform Alteration

The Coastal Act requires new development to be sited to "*minimize the alteration of natural land forms.*" The proposed project would be located along a coastal bluff face. The existing adjacent bluffs up-coast of and seaward of the existing residential structure on the project site are natural vegetated bluffs visible from public vantage points such as Inspiration Point and the beach below the project site. Further west of this bluff is Inspiration Point, which provides a public viewpoint area. Any alteration of this landform on site would affect the scenic views of the coastline when viewed from the beach below and Inspiration Point. A prominent rock outcropping located on the up-coast, seaward portion of the project site, which can be seen from Inspiration Point, would be altered so that a 13' x13' deck extension and fireplace could be constructed. In addition, a caisson and grade beam foundation system is proposed to support the accessory improvements. These caissons are to be imbedded into the bluff and erosion of the bluff face would lead to exposure of the caissons and would alter the appearance of the natural bluff landform. As such, new development at the subject site must be appropriately sited to minimize adverse effects to existing

scenic resources. Thus, the proposed project is inconsistent with Section 30251 of the Coastal Act regarding scenic resources.

The City's LUP policy regarding coastal bluffs states that grading, cutting and filling of natural bluff face or bluff edges is prohibited in order to preserve the scenic value of the bluff area. Grading, cutting and filling are allowed though if it is for the purpose of performing emergency repairs or for the installation of erosion-preventive devices to assure the stability of the bluffs. The proposed project is not necessary to stabilize any existing bluff instability and is not necessary to protect the existing 4,000+ square foot residence with existing decks. The proposed project would cause the alteration of natural landforms and would impact the coastal scenic views of the area, for accessory development, thus violating the City's LUP policy on coastal bluff sites.

b. City Setback, Stringline Analysis and 25-Foot Setback

Seaward encroachment of new development can often have adverse impacts on a variety of coastal resources. For example, the seaward encroachment of private development toward a beach can discourage public utilization of the beach adjacent to such development. The seaward encroachment of structures can also have adverse visual impacts. In addition, the seaward encroachment of structures can increase the hazards to which the new development will be subjected (the hazard and access issues are discussed elsewhere in these findings). Therefore, the Commission has often used either 1) City setbacks from the seaward property line; 2) a string line evaluation; or 3) 25-foot setback to review seaward encroachment of development. If a stringline is used, two types of string lines are applied to evaluate a proposed project—a structural string line and a deck string line. A structural string line refers to the line drawn between the *nearest* adjacent corners of the adjacent structures on either side of the subject site. Similarly, a deck string line refers to the line drawn between the nearest adjacent corners of adjacent decks on either side of the subject site. Setbacks, string lines and 25-foot setbacks are applied to limit new development from being built any further seaward than existing adjacent development. If not properly regulated the continued seaward encroachment of development can have a significant cumulative adverse impact on coastal resources.

City Setback

Section 30251 of the Coastal Act states that permitted development shall be designed "*to be visually compatible with the character of the surrounding area.*" Therefore, proposed development must be compatible with its' surroundings. The plans submitted by the applicants show that the project conforms to the City zoning setback requirement of 10-feet, but conformance to the City required setback however does not address the potential impacts that the seaward encroaching development will have on the project site. Adhering to the City setback of 10-feet for development located on the bluff face would not achieve the objectives of Coastal Act Section 30251. Section 30251 of the Coastal Act states that permitted development should minimize landform alteration, visual impacts and the cumulative adverse impact that would occur if other lots develop the bluff face in the manner proposed.

Stringline

Since the City's setback cannot be used to evaluate the potential impacts that the seaward encroaching development will have on the project site, the applicability of the structural and deck stringlines will be evaluated. Considering the applicability of a stringline, there is a residence immediately downcoast (east) of the project site and no structures upcoast (west) of the project site, only the natural vegetated bluff. Therefore, a stringline drawn between the corners of the nearest adjacent structures and decks cannot be made.

Though the application of the stringline cannot be applied with this project, the purpose of the stringline is to prevent seaward encroachment of new development that can often have adverse impacts on a variety of coastal resources. The proposed project would encroach seaward and create adverse visual impacts. The 13' x 13' deck extension will be accomplished by grading a portion of a prominent rock feature on the bluff face. In addition, the proposed jacuzzi will project up to 21-feet seaward of the existing deck. The proposed project would result in seaward encroachment and also be a visible intensification of use of the site, inconsistent with the adjacent undeveloped bluff area up-coast and seaward of the site. Thus, the proposed project must be denied because it proposes of seaward encroachment, which would have adverse impacts on coastal resources and would violate Section 30251 of the Coastal Act.

25-Foot Setback

In cases where use of a stringline to limit seaward encroachment of development is not appropriate, the Commission will use a bluff edge setback for primary structures and accessory improvements. In this area, the Commission typically requires that structures be setback at least 25-feet from the bluff edge and hardscape features be setback at least 10-feet from the bluff edge to minimize the potential that the development will contribute to visual impacts (and to address slope instability issues where such stability is of concern). However, the development site is located entirely on a coastal bluff face. Therefore, application of a bluff edge setback is not appropriate for this project.

c. Community Character

The proposed project would be incompatible with the visual character of the bluff areas up-coast and seaward of the existing development on the project site. The Coastal Act requires new development to be sited to "*be visually compatible with the character of surrounding areas.*" The proposed project would be located along a coastal bluff face. On the down-coast side of the project site are existing single-family residences located on the coastal bluff similar to the existing one on the project site. However, the existing adjacent bluffs west and south of (i.e. up-coast and seaward of) the existing residence on the project site are natural vegetated bluffs. The subject site is at a transition point between the residential development on the bluff face located down-coast and the undeveloped bluff promontory up-coast of the site. There must be a careful blending of the

development on the site with the adjacent bluff areas. The existing development on the site achieves this careful blending. However, the proposed project would upset the prior careful design of development on the site. Rather than blending, the proposed project creates a visually prominent projection of development. The proposed project would further modify the appearance of the bluffs, particularly from Inspiration Point and the beach below. Therefore, the proposed project is inconsistent with Section 30251 of the Coastal Act because the project is not compatible with the character of the surrounding areas. By not protecting the unique characteristics of the project area, the proposed project is altering and adversely impacting the community character. Therefore, the proposed project must be denied.

d. Cumulative Impacts

The proposed project would increase the visual prominence of development on the bluff face and would degrade the visual quality of the adjacent undeveloped bluff areas. If such development were allowed at this site, the established seaward extent of development would be changed. Incrementally, similar such development on adjacent lots would have a significant cumulative adverse visual impact. Thus, scenic resources would not be preserved or enhanced. Rather, they would be degraded. At this location, scenic resources are especially important since the site is located near Inspiration Point, a public vista point, which attracts a large number of visitors on a daily basis to enjoy the view of the coast. The proposed project would adversely change views from these significant public vantage points. Therefore, the Commission cannot allow the proposed project to be constructed as submitted.

2. Conclusion

The Commission finds that the proposed project, as currently proposed, is not sited and designed to protect scenic and visual qualities of coastal areas as a resource of public importance. Denial of the proposed project would preserve existing scenic resources and would be consistent with preserving the existing community character. The alteration of the bluff would result in an adverse visual effect when viewed from public vantage points such as the beach below the project site and Inspiration Point. Allowing the proposed project would also lead to seaward encroachment of new development. The Commission finds that the proposed project would result in the alteration of natural landforms and would not be visually compatible with the character of the surrounding area. Consequently, the proposed project would increase adverse impacts upon visual quality in the subject area. In addition, all of this work is for a deck and pool, which are features that aren't necessary to have full use and enjoyment of the property particularly given that there is already an existing 4,751 square foot three-story single-family residence with three decks totaling 633 square feet located on site. Therefore, the Commission finds that the proposed project is inconsistent with Section 30251 of the Coastal Act and with the City's LUP policy regarding coastal bluff sites and therefore must be denied.

C. Development Adjacent to Public Parks and Recreation Areas

Section 30240 (b) of the Coastal Act, in relevant part states:

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 project site is located on the seaward side of Ocean Boulevard upon a segment of the bluffs that have been altered by residential development. However, the subject site is at a prominent transition point between the developed stretch of bluff face, down-coast, and the undeveloped bluff and beach areas up-coast of the site. Seaward of the proposed development is a gravel and cobble beach (Exhibit #3). The part of the beach seaward of the mean high tide line, which would change depending on the tide, is public. However, public access to the beach is not provided across the site from Ocean Boulevard. Public access is provided via Inspiration Point, the public park immediately up-coast of the site, and by the beach access at Buck Gully and at Corona Del Mar State Beach, which are also adjacent to the site.

Development at this site, if approved, must be sited and designed to conform with the requirements of Section 30240 (b) of the Coastal Act. Section 30240 (b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts, which would significantly degrade those areas. Development at the project site must be sited and designed in a manner that won't degrade the quality of the adjacent park and beach areas. For instance, Inspiration Point is an important public vantage along this stretch of coastline. Many individuals visit Inspiration Point solely to enjoy the views to and along the coastline. The continuance of Inspiration Point as an important public vantage is dependent upon preservation of views. Any development that degrades public views will degrade the overall public access experience enjoyed by visitors to Inspiration Point.

Furthermore, continued use of the adjacent recreational beach areas could be adversely impacted by seaward encroachment of development. Thus, it is necessary to ensure that new development be sited and designed to prevent seaward encroachment of development that would impact public access to coastal recreation areas. The proposed project, as submitted, would be a significant new development encroaching seaward. The existing gravel and cobble beach below the project site is relatively narrow. Allowing development to encroach seaward would create a dominant private presence adjacent to that small beach leading to additional discouragement of public use of the area seaward of the mean high tide line. It would thereby degrade the recreational value of the area.

The proximity of the proposed project to the public beach raises Coastal Act concerns, as it would be new seaward encroaching development that would discourage use of the public beach seaward of the mean high tide line that is already small in size. The project would diminish the value of the beach for public use by discouraging public access to the beach through the presence of the new infinity edge jacuzzi and extended deck visible from the beach. The proposed jacuzzi and extended deck would be imposing structural features that would affect public use of the portion of the beach that is seaward of the mean high tide line beach by discouraging the public from using the beach area. This would force the public to move more

seaward and thus have an impact on public use of the beach. Thus, the proposed project would adversely impact public access.

The Commission finds that the proposed project, as currently proposed, is not sited and designed to prevent impacts that would significantly degrade the adjacent recreational areas, nor would such development be compatible with the continuance of the area for recreation. Denial of the proposed project would preserve existing park and recreational areas. The Commission finds that the area seaward of the mean high tide line in front of the development is a recreation area and that the proposed project would degrade that area and adjacent park areas, by discouraging public use of the area. Therefore, the Commission finds that the proposed project is inconsistent with Section 30240 (b) of the Coastal Act and must be denied.

D. Development Requiring Protective Devices

Section 30253 of the Coastal Act states, in pertinent 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.*

Development on a bluff is inherently risky due to the potential for bluff erosion and collapse. Bluff development poses potential adverse impacts to the geologic stability of bluffs and the stability of residential structures. In general, bluff instability is caused by environmental factors and impacts caused by man. Environmental factors include seismicity, wave attack, drying and wetting of soils, wind erosion, salt spray erosion, rodent burrowing, percolation of rain water, poorly structured bedding, and soils conducive to erosion. Factors attributed to man that may be relevant to this site include irrigation, over-watering, building too close to the bluff edge, improper site drainage, use of impermeable surfaces that increase runoff, use of water-dependent vegetation, and breaks in water or sewage lines.

1. Site Specific Bluff Information

a. Geotechnical Issues

To address site-specific geotechnical issues, the applicants have submitted several reports including a *Geologic Feasibility Letter* prepared by Earth Systems Southwest dated May 19, 2003, *Geotechnical and Geologic Investigation of Proposed Spa and Deck at 3601 Ocean Boulevard, Corona Del Mar, California (W. O. 236803-01)* prepared by Coast Geotechnical dated January 1, 2004 (Revised March 8, 2004), and *Response to Coastal Commission Letter of April 9, 2004, for 3601 Ocean Boulevard, City of Newport Beach (W.O. 26803-02)* prepared by Coast Geotechnical dated May 20, 2004. These reports conclude that with regards to slope stability, that there is no significant evidence of cracking or distress to the existing foundation of the existing

residence both lateral and vertical that relates to site stability. In addition, they further state that the existing residence and cantilevered deck are performing satisfactorily with no visual evidence of distress due to unstable foundation conditions. However, the investigations also conclude that the proposed project had some major concerns. For instance, the investigation states that while the bluff is geologically stable with respect to deep-seated sliding, the bluff face is prone to rock fall, with the outer edge of the promontory lip not suitable for foundation support. In addition, the sandstone bedrock is anticipated to be very difficult to excavate and special equipment likely will be needed. The information provided states that a setback due to slope instability was not pertinent to the site. In regards to long-term bluff retreat, review of aerial photographs did not reveal any measurable bluff retreat over the past fifty years. However, the potential exists for episodic bluff retreat to occur due to moisture changes in the cliff; seismic activity; weathering; and continued erosion. The investigation further states that adequate data was not made available to the consultant and may not exist for the site to make a quantitative analysis of long-term bluff retreat, so a conservative approach using a 45-degree setback line was used. This approach requires that all foundation elements be founded behind or below a line extending upwards at a 45-degree angle from the toe of the slope. The information submitted ultimately concludes the coastal bluff on the site is grossly stable and that the project is feasible from an engineering perspective provided the applicant complies with the recommendations contained in the investigation.

These geotechnical investigations and reviews determine that the project can be built safely if the applicant uses deep foundation elements founded below the 45-degree setback line described above. The Commission's staff geologist agrees with this conclusion. The project can be built, but only with the support of fairly massive foundation elements.

2. Coastal Hazards

To analyze the suitability of the site for the proposed development relative to potential wave hazards, Commission staff requested the preparation of a wave run-up, flooding, and erosion hazard analysis, prepared by an appropriately licensed professional (e.g. coastal engineer). The purpose of this analysis is to determine the potential for future storm damage and any possible mitigation measures, which could be incorporated into the project design.

The applicants have provided the *Geotechnical and Geologic Investigation of Proposed Spa and Deck at 3601 Ocean Boulevard, Corona Del Mar, California (W. O. 236803-01)* prepared by Coast Geotechnical dated January 1, 2004 (Revised March 8, 2004), which addresses the potential of hazard from flooding and wave attack at the subject site. The investigation states that they had reviewed air photographs from the 1930's and the present and there was no indication of significant change in the morphology of the bluff or beach. Furthermore, it claims that detrimental bluff or beach erosion is not likely to occur to the proposed development. However, localized rock fall is likely to occur over the lifespan of the development but is not considered adverse to site improvements due to the proposed use of deepened foundations (caissons) and structural slabs.

Although the applicants' report indicates that the site is safe for development at this time, beach areas are dynamic environments, which may be subject to unforeseen changes. Such changes may affect beach processes.

3. Conclusion

The proposed development is located in a hazard prone environment. On the other hand, geotechnical investigations conclude that the proposed project is feasible from the engineering perspective, but only given a massive engineering effort. This massive engineering effort would require installation of a caisson foundation system to support the new accessory improvements in an area where hazards do exist. The fact that a project could technically be built at this location is not sufficient to conclude that it *should* be undertaken. The project should be proposed so that no massive engineering feats are required for construction of the proposed project. In addition, all of this work is for a deck and pool, which are features that aren't necessary to have full use and enjoyment of the property particularly given that there is already an existing 4,751 square foot three-story single-family residence with three decks totaling 633 square feet located on site.

Due to the project's impact on coastal views and the alteration of natural landforms, possible project alternatives were requested from the applicants in order to find an approvable project that would limit impact on coastal views and alteration of natural landforms. The applicants have stated that they feel that the current project proposal is the best and least impacting; therefore, no other alternatives were submitted. An alternatives analysis conducted by staff has been provided in Section II D. of this staff report.

E. Alternatives

Denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicants' property, nor unreasonably limit the owner's reasonable investment backed expectations of the subject property. The applicants already possess a substantial residential development of significant economic value of the property. In addition, several alternatives to the proposed development exist. Among those alternative developments are the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):

1. No Project

No changes to the existing site conditions would result from the "no project" alternative. The owner would continue to use the existing home. There would be no additional disturbance of the bluff face and no seaward encroachment of development. Preventing alteration of the bluff face would result in no adverse impacts to the scenic views of the coastline when viewed from the beach below the site and Inspiration Point and would not discourage public use of the beach. This alternative would result in the least amount of effects to the environment and also would not have any adverse effect on the value of the property.

2. Remodeling of the Existing Bluff Face Deck

Another alternative to the proposed project would be updating and remodeling of the existing bluff face decks (i.e. new hardscape, new landscaping, new fence or a new fireplace). There would be no disturbance of the bluff face and no seaward encroachment of development and would not discourage public use of the beach below the site.

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 City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. Since the City only has an LUP, the policies of the LUP are used only as guidance. The Newport Beach LUP includes the following policies that relate to development at the subject site:

Public Access, Policy 4 states,

Public access in coastal areas shall be maximized consistent with the protection of natural resources, public safety, and private property rights.

Development of Coastal Bluff Sites, Policy 2 (b) states,

Public Views. The location and design of a proposed project shall take into account public view potential.

Development of Coastal Bluff Sites, Policy 2 (b) states,

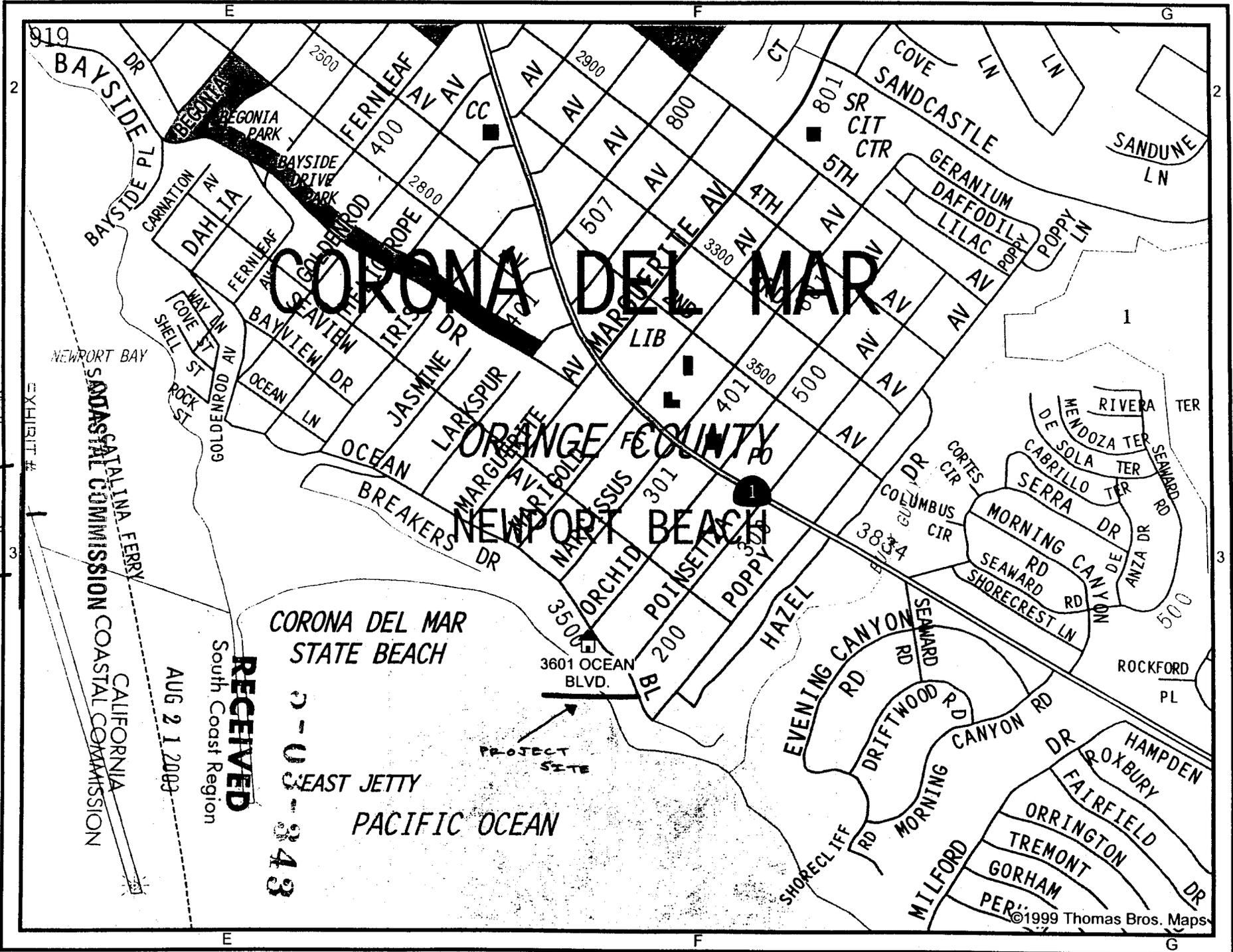
Grading, cutting and filling of natural bluff face or bluff edges shall be prohibited in order to preserve the scenic value of bluff areas, except for the purpose of performing emergency repairs, or for the installation of erosion-preventive devices or other measures necessary to assure the stability of the bluffs.

The construction of the proposed project is inconsistent with the policies in the City's certified LUP and as well as Chapter 3 policies of the Coastal Act discusses previously, specifically Sections 30251 and 30240 (b). Development on the coastal bluff would cause adverse impacts to the natural landform, the coastal scenic resources and public access, which is inconsistent with these Sections of the Coastal Act. Section 30251 of the Coastal Act states that permitted development should minimize landform alteration, visual impacts and the cumulative adverse impact that would occur if other lots develop the bluff face in the manner now proposed at the subject site. Section 30240 (b) of the Coastal Act states that development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas and be incompatible with their recreational use. The proposed development would prejudice the City's ability to prepare a Local Coastal Program for Newport Beach that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a). Therefore, the project is found inconsistent with the policies in the City's certified LUP and the Chapter 3 policies of the Coastal Act and must be denied.

G. California Environmental Quality Act

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect, which the activity may have on the environment.

As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as remodeling of the existing home that would substantially lessen any significant adverse impacts, the activity may have on the environment. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.



VICINITY MAP

Notes

PAGE 1 OF 3

EXHIBIT # 1

SAN CATALINA FERRY
SADASTAL COMMISSION COASTAL COMMISSION

AUG 21 2009

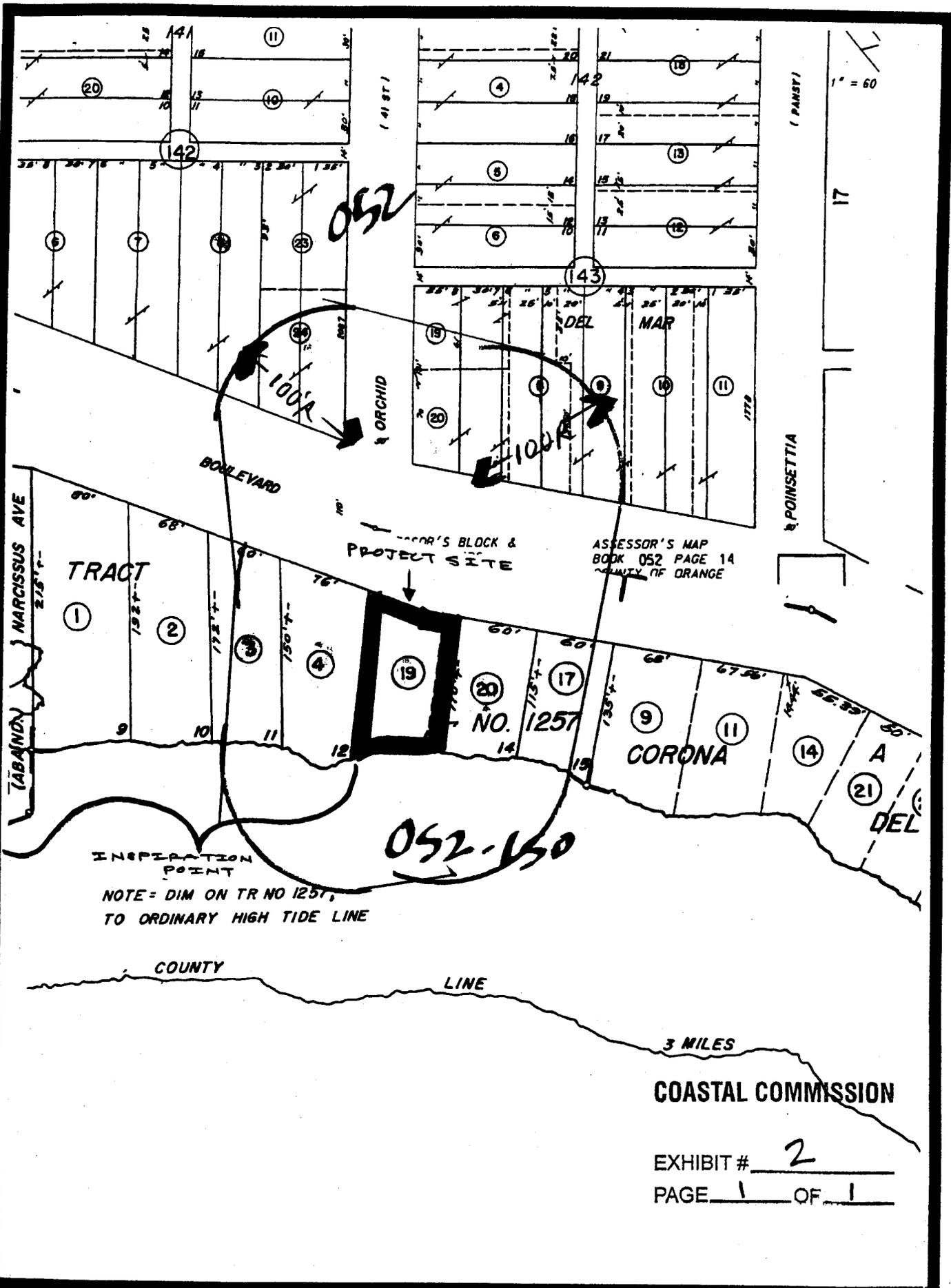
RECEIVED
South Coast Region

0-03-343

CORONA DEL MAR STATE BEACH
EAST JETTY
PACIFIC OCEAN

3601 OCEAN BLVD.

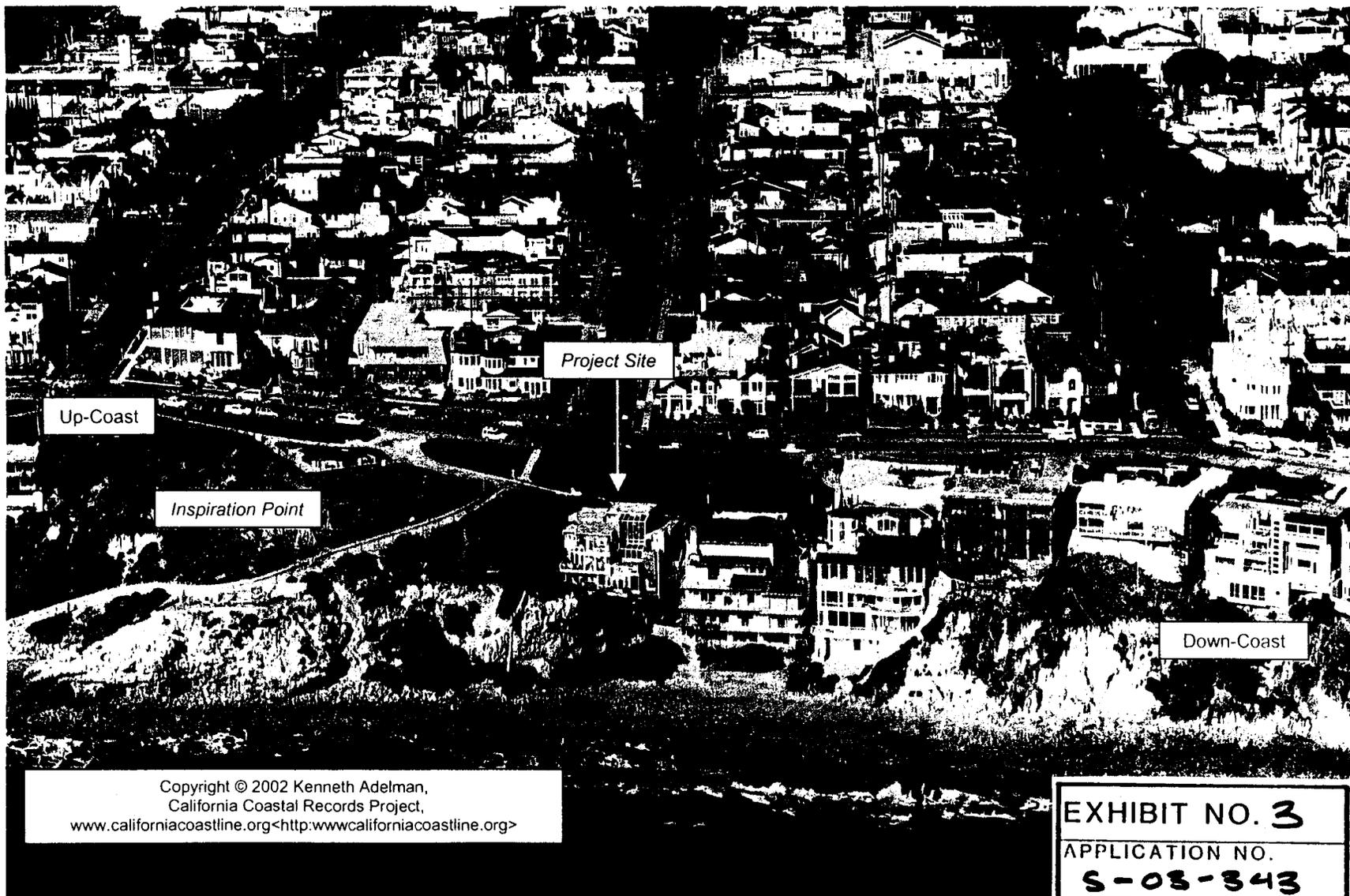
PROJECT SITE



Ownership Map

COASTAL COMMISSION

EXHIBIT # 2
 PAGE 1 OF 1



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California Coastal Records Project,
www.californiacoastline.org<<http://www.californiacoastline.org>>

EXHIBIT NO. 3
APPLICATION NO. S-03-343
 California Coastal Commission



COURTNEY AUGUSTINE L. NIETO M.E.T.
3400 OCEAN BLVD.
CORONA DEL MAR, CA 92625

SITE PLAN W/
GRADING & DRAINAGE

24 MAY 2012



300

NIETO RESIDENCE

3600 OCEAN BLVD

GRADING SYMBOLS:

- NEW SPOT ELEVATION
- EXISTING SPOT ELEVATION
- CUT AREA
- FILL AREA
- EXISTING CONTOURS

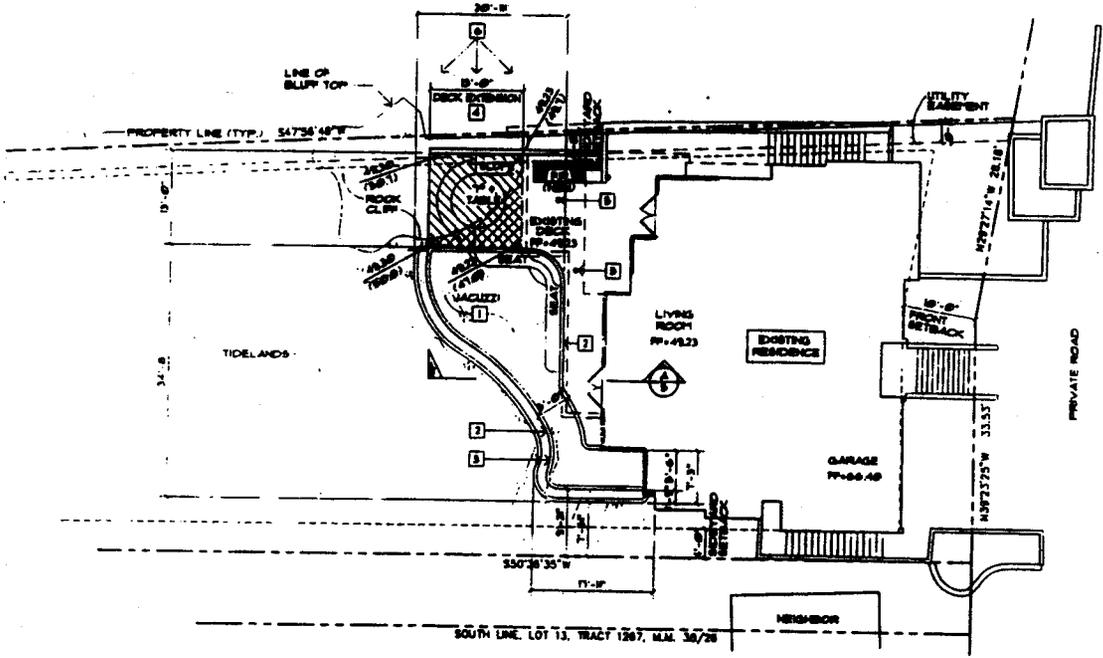
GRADING NOTES:

1. CUT + DECK EXPANSION _____ 8 C.Y.
GARAGE EXCAVATIONS _____ 8 C.Y.
TOTAL CUT _____ 16 C.Y.
TOTAL FILL _____ 3 C.Y.
2. ALL CUT MATERIALS WILL BE HAULED TO AN ORANGE COUNTY DISPOSAL FACILITY, NON-COASTAL LOCATION!
3. ALL OTHER SITE AREAS ARE EXISTING TO REMAIN.

NOTES

1. PROPOSED DOUBLE INFINITY EDGE JACUZZI
2. INFINITY EDGE
3. WATER TROUGH
4. SLOPE DECK EXPANSION AT 1/8" SLOPE TO EXISTING DECK
5. EXISTING DECK DRAINS TO EXISTING SUBSURFACE DRAINAGE SYSTEM. EXISTING SYSTEM IS DIRECTED TO GUTTER APPROXIMATELY HALF WAY DOWN BLUFF FACE.
6. PROPOSED DECK EXTENSION IS BELOW EXISTING VEGETATION AND NOT VISIBLE FROM ADJACENT INSPIRATION POINT AREA. REPLACEMENT IS VISIBLE.

SCALE 1/8" = 1'-0"



SITE PLAN
APN: 067-06-12

COASTAL COMMISSION

EXHIBIT # 4
PAGE 1 OF 1



CHERRIE ARCHITECTURE & INTERIOR DESIGN
3400 OCEAN BLVD.
CORONA DEL MAR, CA 92625

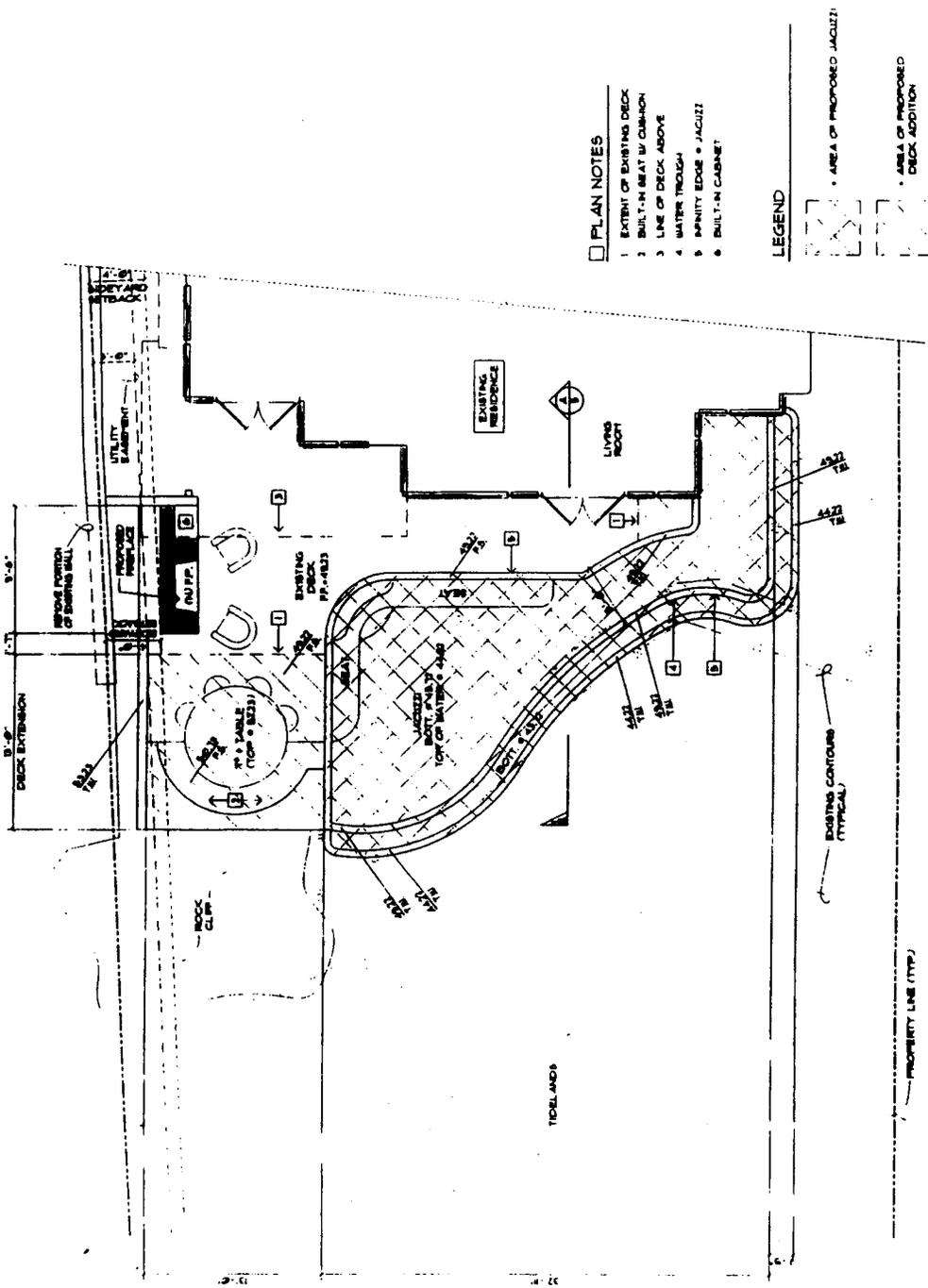
FLOOR PLAN

NIETO RESIDENCE

600 PLAN



4



PLAN NOTES

1. EXTENT OF EXISTING DECK
2. BUILT-IN SEAT BY COLUMBON
3. LINE OF DECK ABOVE
4. WATER TROUGH
5. SANITARY EDGE - JACUZZI
6. BUILT-IN CABINET

LEGEND

- AREA OF PROPOSED JACUZZI
- AREA OF PROPOSED DECK ADDITION



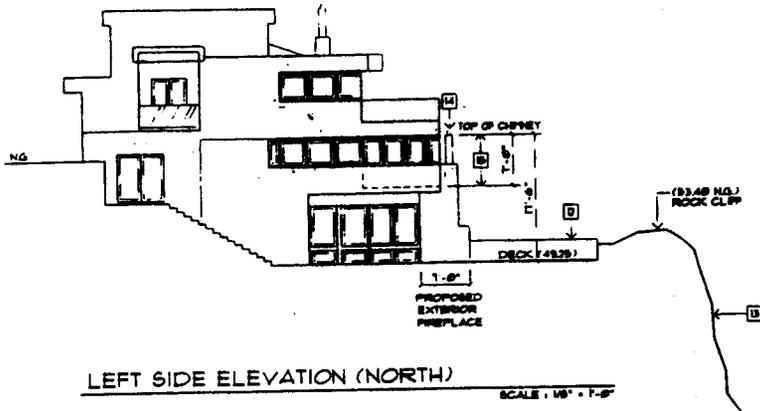
SCALE 1/4" = 1'-0"

FLOOR PLAN

COASTAL COMMISSION

EXHIBIT # 5

PAGE 1 OF 1



- PLAN NOTES**
1. DOUBLE INFINITY EDGE JACUZZI, WATER SURFACE FLUSH W/ DECK SURFACE.
 2. EXISTING DECK BY DELETED GUARDRAIL.
 3. NEW CANTILEVERED / BUTTRESSED CONCRETE STRUCTURAL SYSTEM THAT TIES TO EXISTING STRUCTURAL SYSTEM.
 4. EXISTING CRAB SPACE.
 5. EXISTING RESIDENCE.
 6. INFINITY EDGE WATER TROUGH.
 7. NEW CANTILEVERED CONCRETE DECK.
 8. EXISTING CARBON.
 9. NEW CONCRETE CARBON.
 10. NEW CONCRETE BEAM SYSTEM.
 11. NEW CONCRETE CARBON BEYOND.
 12. NEW BUILT-IN SEAT AREA.
 13. EXISTING BLUFF FACE.
 14. APPROVED SPARK ARRESTOR.
 15. CHIMNEY FLUE MUST BE 1'-0" MIN. ABOVE ADJACENT DECK SURFACE.

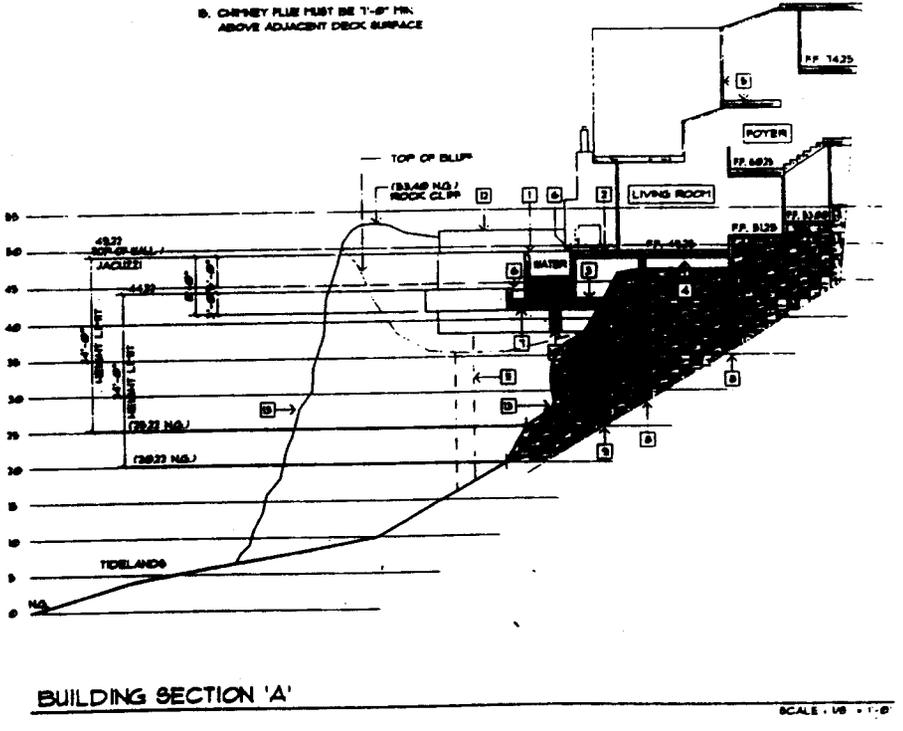
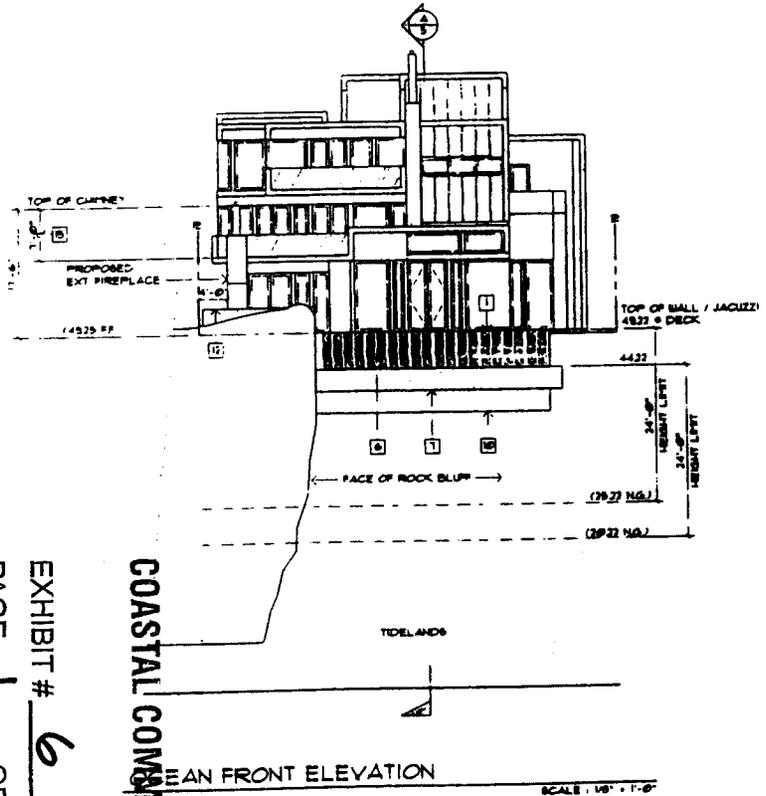


EXHIBIT # 6
PAGE 1 OF 1

COASTAL COMMISSION



CLAYTON ALBERTSON & LYNN NIETO
REGISTERED ARCHITECTS
CORPORATION, PLACENTIA, CA 92679

EXTERIOR ELEVATIONS / SECTION

NIETO RESIDENCE



