

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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**W 11d**

Filed: July 31, 2006  
49th Day: September 18, 2006  
180th Day: January 27, 2007  
Staff: Ryan Todaro-LB  
Staff Report: August 24, 2006  
Hearing Date: September 13-15, 2006  
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

**APPLICATION NUMBER:** 5-06-165

**APPLICANTS:** David and Marhnelle Hibbard

**AGENT:** James Lashley

**PROJECT LOCATION:** 36 North La Senda Drive, Laguna Beach, Orange County

**PROJECT DESCRIPTION:** Remodel and 586 square-foot addition to an existing 2,015 square-foot, single-family residence and ancillary improvements on a blufftop lot.

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**SUMMARY OF STAFF RECOMMENDATION:**

Commission staff is recommending **APPROVAL** of the proposed project with **Five (5) Special Conditions** regarding: **1)** assumption of risk; **2)** no future blufftop or shoreline protective devices; **3)** additional approvals for any future development; **4)** conformance with geotechnical recommendations; **5)** a deed restriction against the property, referencing all of the Special Conditions contained in this staff report.

**SUBSTANTIVE FILE DOCUMENTS:** Report of Investigation, Geologic/Soils and Foundation Conditions for Proposed Residential Addition, 36 North La Senda, Three Arch Bay, South Laguna, California, prepared by Ian S. Kennedy, Inc., dated December 28, 2005; City of Laguna Beach certified Local Coastal Program (as guidance only), Coastal Development Permit No. 5-05-303.

**LOCAL APPROVALS RECEIVED:** City of Laguna Beach Approval in Concept, dated 5/2/06.

**LIST OF EXHIBITS**

1. Location Map
  2. Assessor's Parcel Map
  3. Site Plan
  4. Cross Section
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**STAFF RECOMMENDATION:**

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

**MOTION:**

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

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 applicants acknowledge and agree (i) that the site may be subject to hazards from bluff and slope instability, erosion, landslides 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 Blufftop or Shoreline Protective Devices**

- A. By acceptance of this Permit, the applicants agree, on behalf of themselves and all other successors and assigns, that no bluff protective device(s) or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-06-165 including, but not limited to, the residence and hardscape and any future improvements, in the event that the development is threatened with damage or destruction from bluff and slope instability, erosion, landslides, wave uprush, 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.
- B. 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 residence and hardscape, if any government agency has ordered that the structure(s) is/are 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.
- C. In the event the edge of the bluff recedes to within ten (10) feet of the principal residence but no government agency has ordered that the structures are not to be occupied, a geotechnical investigation shall be prepared by a licensed coastal engineer and geologist retained by the applicant, that addresses whether any portions of the residence are threatened by bluff and slope instability, erosion, landslides or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without bluff protection, including but not limited to removal or relocation of portions of the residence. The report shall be submitted to the Executive Director and the appropriate local government official. If the geotechnical report concludes that the residence or any portion of the residence is unsafe for occupancy, the permittee shall, within 90 days of submitting the report, apply for a coastal development permit

amendment to remedy the hazard which shall include removal of the threatened portion of the structure.

3. **Future Development**

This permit is only for the development described in Coastal Development Permit No. 5-06-165. 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. 5-06-165. Accordingly, any future improvements to the single-family house authorized by this permit, including but not limited to improvements to the residence, hardscape, 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. 5-06-165 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

4. **Conformance with Geotechnical Recommendations**

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with all recommendations contained in the following geologic engineering investigations: Report of Investigation, Geologic/Soils and Foundation Conditions for Proposed Residential Addition, 36 North La Senda, Three Arch Bay, South Laguna, California, prepared by Ian S. Kennedy, Inc., dated December 28, 2005.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced geologic engineering report.
- C. The permittee 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 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 DESCRIPTION**

The subject site is an oceanfront bluff top lot, located at 36 North La Senda, Laguna Beach (Three Arch Bay), Orange County. Two approximately 70 year-old single-family residences occupy the rectangular shaped, 7,405 square-foot lot; the primary residence, which is proposed to be remodeled and the subject of this permit, and a cottage located at the bluff edge, where no work is proposed. The land use designation for this lot is Village Low Density and adjacent lots are also developed with single-family residences (Exhibit #2).

The applicant proposes to remodel and add 586 square feet of subterranean living space to an existing 2,015 square-foot, two-story, single-family residence and replace an existing concrete at-grade patio with a wood deck. The project will result in a 2,601 square-foot, two-story over basement level, single-family residence with an attached 390 square-foot garage and an approximately 280 square-foot deck (Exhibit #3). The addition would take place within the existing footprint of the single-family residence. In addition, the height of the existing single-family residence, which is 17.5 feet (as measured from the frontage road), would not change. The applicant proposes a standard, shallow foundation system. No caissons are proposed. Grading will consist of approximately 122 cubic feet of cut, which will make room for the addition. The project will avoid disturbance to existing landscaping, thus, no landscaping is proposed.

The subject site is located within the locked gate community of Three Arch Bay in the City of Laguna Beach (see Exhibit #1). Laguna Beach has a certified Local Coastal Program (LCP) except for the four areas of deferred certification: Irvine Cove, Blue Lagoon, Hobo Canyon, and Three Arch Bay. Certification of the Three Arch Bay area was deferred due to access issues arising from the locked gate nature of the community. The proposed development needs a coastal development permit from the Coastal Commission because it is located in the Three Arch Bay area of deferred certification. Because the site is located within a locked gate community, no public access exists in the immediate vicinity. The nearest public access exists at 1000 Steps County Beach approximately one half mile upcoast of the site.

The applicant's geologic consultant has determined that the northwest corner of the proposed deck's foundation is located approximately 75 feet from the near vertical sea cliff and the southwest corner of the proposed deck's foundation is located approximately 81 feet from this near vertical sea cliff (Exhibit #3). Furthermore, the adjoining single-family residence that is proposed to be remodeled/expanded is located even further landward of the proposed deck and further away from the face of the sea cliff.

In the project vicinity, the Commission typically imposes a minimum bluff top setback of 25 feet from the edge of the bluff for primary structures (e.g. the enclosed living area of residential

structures). The minimum 25-foot setback from the bluff edge is deemed acceptable within the Three Arch Bay community based on the relatively stable, underlying San Onofre formation bedrock. The intent of the setback is to substantially reduce the likelihood of proposed development becoming threatened given the inherent uncertainty in predicting geologic processes in the future, and to allow for potential changes in bluff erosion rates as a result of rising sea level. The setback proposed in this case exceeds the minimum setback the Commission typically requires.

Along with a bluff edge setback for enclosed living area, the Commission typically imposes a 10-foot bluff edge setback for hardscape/patio type development, such as the proposed deck. Hardscape/patio type improvements can be moved away from hazards more readily than primary structures. In addition, consistently applying an appropriate bluff edge setback provides equitability for developments within the same general area. The setback proposed in this case exceeds the minimum setback the Commission typically requires.

The proposed project's plans indicate that all drainage will continue to be collected in area drains, and then be directed toward the street. Drainage from the seaward side of the property is proposed to be collected and pumped to the street. The proposed drainage plan is consistent with Section 30253 of the Coastal Act which requires that hazards be minimized.

#### **B. HAZARDS**

Development adjacent to a blufftop is inherently hazardous. Development, which 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 blufftop; require a drainage and runoff control plan to reduce and treat the runoff discharged from the site; prohibit construction of protective devices (such as blufftop or shoreline protective devices) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. Therefore, 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 with the Chapter 3 policies of the Coastal Act.

#### **D. PUBLIC ACCESS**

The proposed project is located within an existing locked gate community located between the sea and the first public road paralleling the sea. Public access through this community does not currently exist. The proposed development on an existing residential lot will not affect the existing

public access conditions. It is the locked gate community, not this home that impedes public access. As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed 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. Due to the potential for increased hazards in blufftop areas, which could be caused by encouraging water infiltration for water quality purposes, maximizing on site retention of drainage is not required. The development, as proposed, 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 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 conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

**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, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, 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 City of Laguna Beach Local Coastal Program was certified with suggested modifications, except for the areas of deferred certification, in July 1992. In February 1993 the Commission concurred with the Executive Director's determination that the suggested modification had been properly accepted and the City assumed permit issuing authority at that time.

The subject site is located within the Three Arch Bay area of deferred certification. Certification in this area was deferred due to issues of public access arising from the locked gate nature of the community. However, as discussed above, the proposed development will not further decrease or impact public access within the existing locked gate community. Therefore the Commission finds that approval of this project, as conditioned, will not prevent the City of Laguna Beach from

preparing a total Local Coastal Program for the areas of deferred certification that conforms with and is adequate to carry out the Chapter 3 policies 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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COASTAL COMMISSION

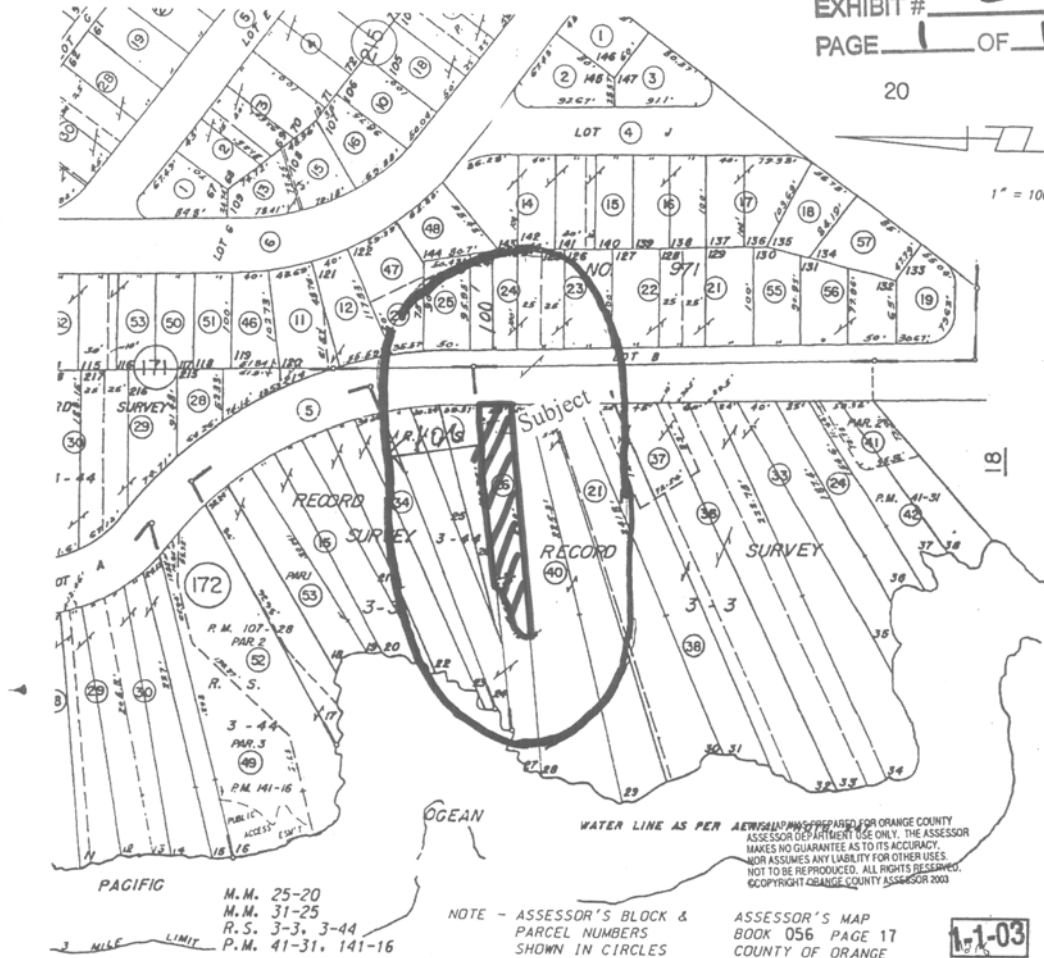
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EXHIBIT # 2

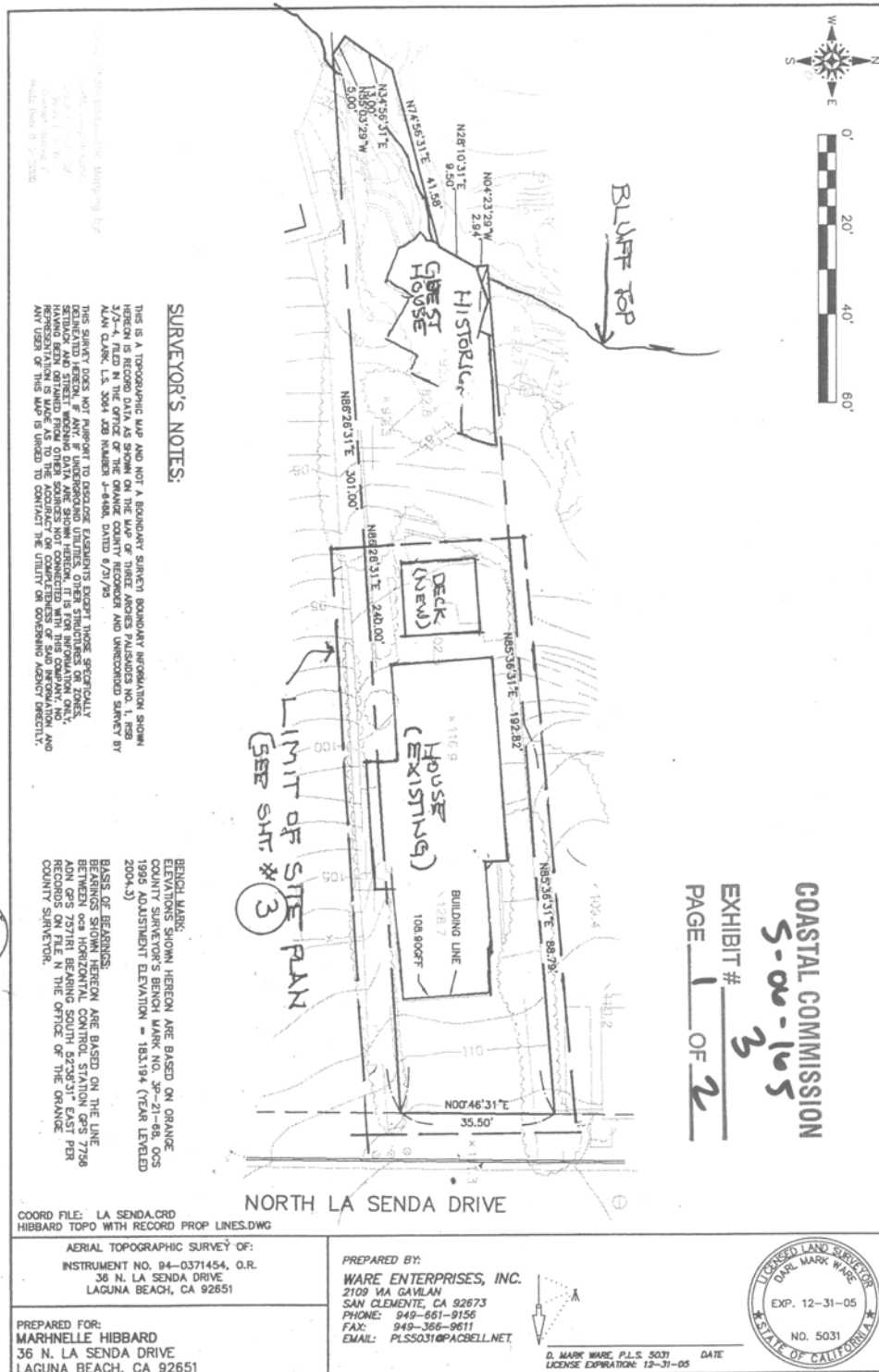
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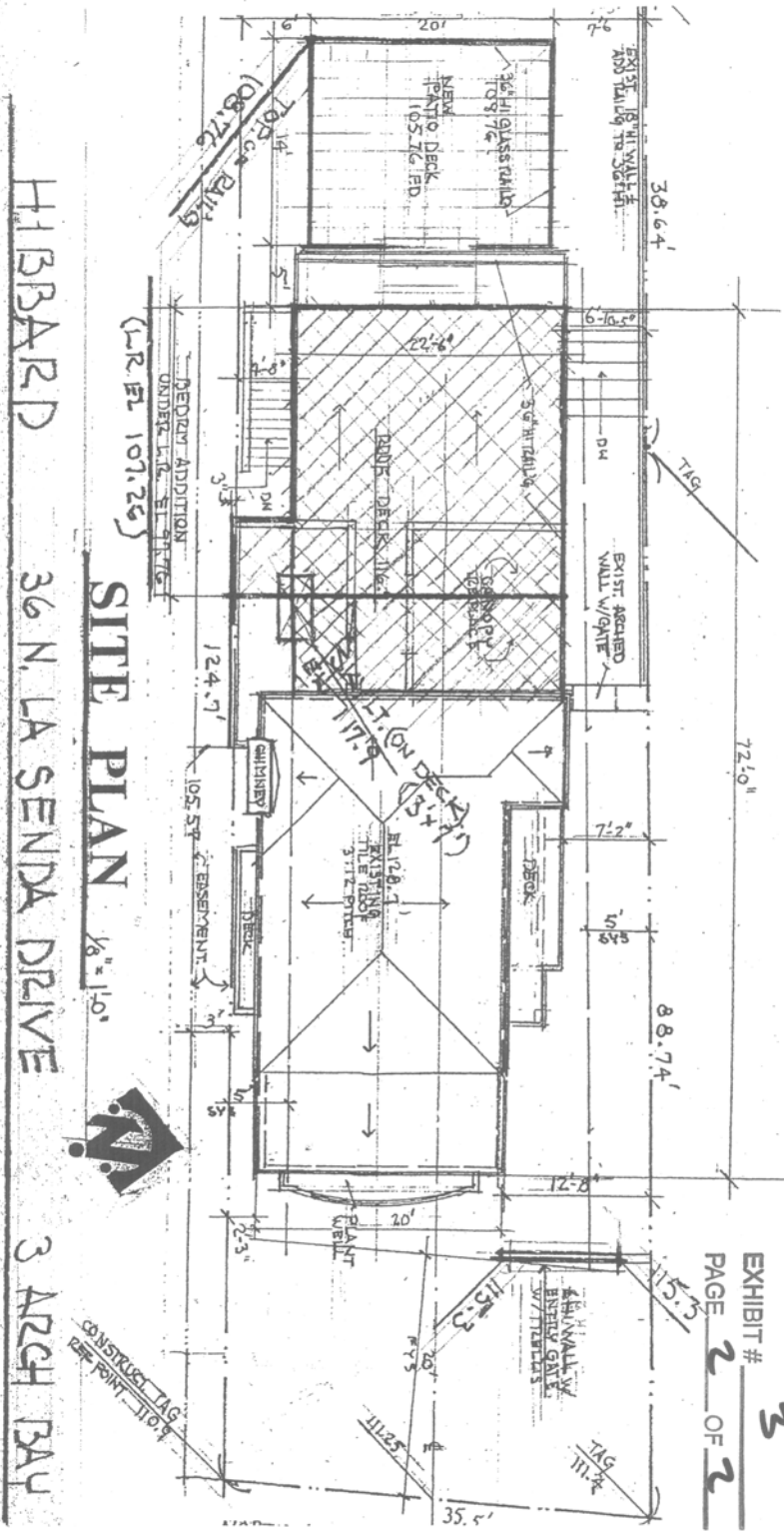
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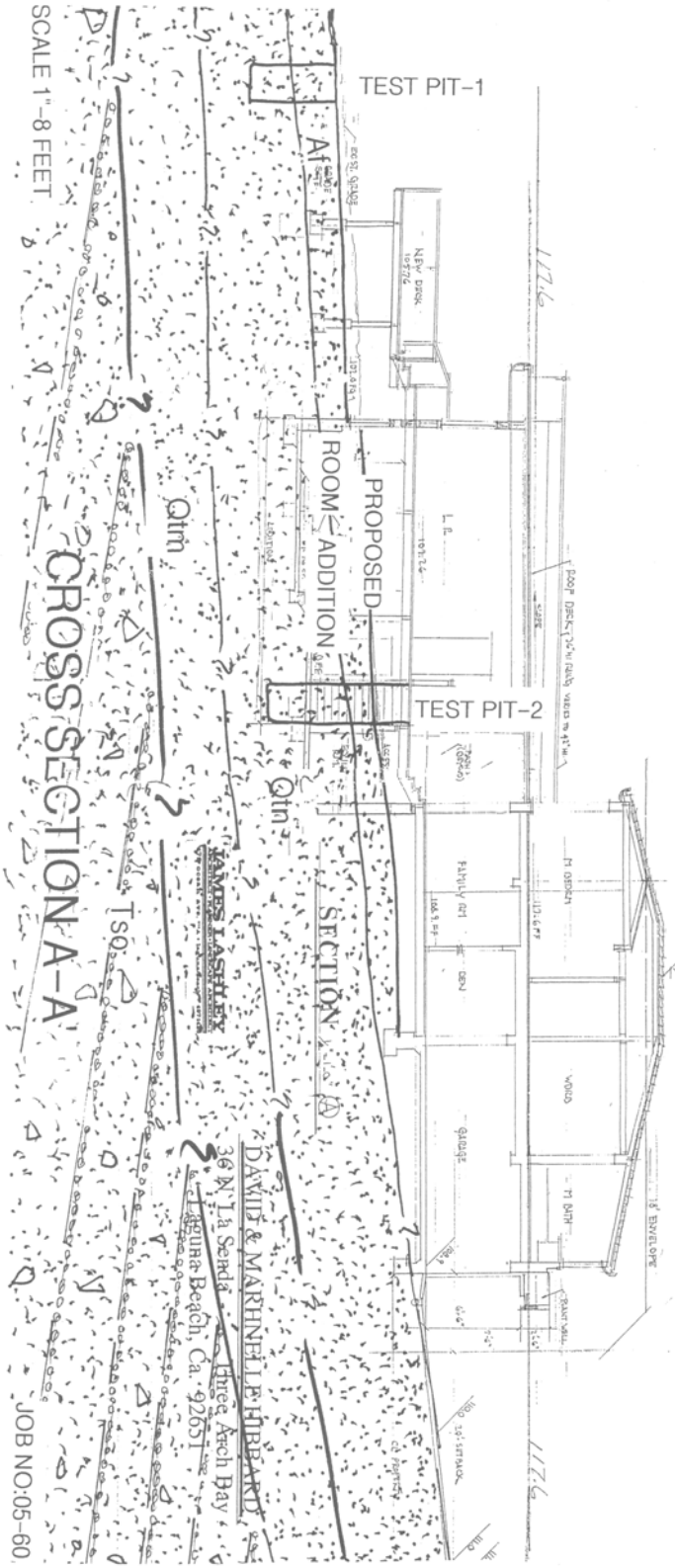
JAMES LASHLEY  
 479 OCEAN AVENUE, STE. A  
 LAGUNA BEACH, CA 92651



Horizontal & Vertical position  
 of story poles staked &  
 verified per plan.  
 CERTIFIED ON 10/24/05  
 [Signature]

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