

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: CONSENT CALENDAR

Application No.: 5-13-088

Applicant: John Whelan and Brad Prescott

Project Location: 4541 Brighton Road, Newport Beach, Orange County

Project Description: Demolition of an existing 3,111 sq. ft. single story residence and construction of a new 6,704 sq. ft. two-level, single family residence and 1,056 sq. ft. of garage space for four cars, new landscaping and hardscape including an interior courtyard pool and a bluff facing spa and outdoor barbeque.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The subject application requests approval for demolition of an existing 3,111 sq. ft. one story single family residence with attached garage and pool and construction of a new 15' tall (above street grade), 6,704 sq. ft. single family two-level residence (4,028 sq. ft. main floor and 2,676 basement level), plus two attached two-car garages (totaling 1,055 sq. ft.), foundation comprised of continuous and spread footings, retaining walls, basement level courtyard pool, bluff facing spa and concrete patio, and landscaping (Exhibit #2). Grading consists of approximately 1,969 cu. yds. of cut to create the proposed basement level.

The proposed development is located within the private, gated community of Cameo Shores. The applicant is proposing complete redevelopment of the coastal bluff top site including a new residence, new pool, new spa, and new hardscape and landscape improvements. The geotechnical study of the site deems the site is grossly stable under current and proposed conditions. As proposed, the residence meets the minimum 25' from bluff edge setback and minimum 10' bluff setback for hardscape improvements that are identified in the City's Coastal Land Use Plan. As part of the coastal development permit application, the applicants also proposes to remove non-conforming unpermitted development on the bluff face in the form of private pedestrian pathway stairs/steps descending the bluff face to the toe of the bluff and to restore/re-landscaping the bluff face. **Special Condition No. 3** requires the applicants revise the proposed landscape plan to ensure that the coastal bluff is landscaped with only native plants suitable to coastal bluff natural habitat.

Major Coastal Act issues associated with the proposed development include concerns regarding water quality, coastal bluff setbacks, geologic and coastal hazards. To address potential adverse impacts the Commission staff is recommending the following Special Conditions:

1) Conformance with Geotechnical Recommendations; 2) Pool & Spa Protection Plan; 3) Revised Landscaping Plans; 4) Assumption of Risk, Waiver of Liability and Indemnity; 5) No Future Blufftop or Shoreline Protection Devices; 6) Future Improvements; 7) Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris; 8) Removal of Unpermitted Development; 9) Condition Compliance; and 10) Deed Restriction

Commission staff recommends **approval** of coastal development permit application 5-13-0088, as conditioned.

The City of Newport Beach does not have a certified Local Coastal Program, only a certified Land Use Plan (LUP). Therefore, the Coastal Commission is the coastal development permit issuing entity for development on that parcel and the standard of review is Chapter 3 of the Coastal Act. The certified LUP may be used for guidance.

TABLE OF CONTENTS

I.	MOTION AND RESOLUTION	Page 4
II.	STANDARD CONDITIONS	Page 4
III.	SPECIAL CONDITIONS	Page 5
IV.	FINDINGS AND DECLARATIONS	
A.	PROJECT LOCATION AND DESCRIPTION	Page 10
B.	DEVELOPMENT	Page 13
C.	PUBLIC ACCESS	Page 14
D.	WATER QUALITY	Page 14
E.	UNPERMITTED DEVELOPMENT	Page 14
F.	DEED RESTRICTION	Page 15
G.	LOCAL COASTAL PROGRAM (LCP)	Page 15
H.	CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)	Page 15

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Location Map/Project Site

Exhibit 2 – Aerial Photograph

Exhibit 3 – Project Plans

Exhibit 4 – Landscape Plans

Exhibit 5 – Precise Grading Plan

Exhibit 6 – Geologic Cross-Section

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** the Coastal Development Permit Applications included in 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:

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

This permit is granted subject to the following 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 on which the Commission voted on the application. 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. **Conformance with Geotechnical Recommendations.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the Executive Director's review and approval, along with 2 copies of each plan, evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans including foundation and grading/drainage plans and certified that each of those final plans is consistent with all the recommendations contained in the geologic engineering investigations.

The applicants 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 legally required.

2. **Pool and Spa Protection Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for review and approval of the Executive Director, two (2) full size sets of a pool/spa protection plan prepared by an appropriately licensed professional that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool and spa. The pool and spa protection plan shall incorporate and identify on the plans the follow measures, at a minimum: 1) installation of a pool and spa leak detection system such as, but not limited to, leak detection system/moisture sensor with alarm and/or a separate water meter for the pool and spa which is separate from the water meter for the house to allow for the monitoring of water usage for the pool and spa, and 2) use of materials and pool and spa design features, such as but not limited to double linings, plastic linings or specially treated cement, to be used to waterproof the undersides of the pool and spa to prevent leakage, along with information regarding the past and/or anticipated success of these materials in preventing leakage; and where feasible 3) installation of a sub drain or other equivalent drainage system under the pool and spa that conveys any water leakage to an appropriate drainage outlet. The applicants shall comply with the final pool and spa plan approved by the Executive Director.

3. **Revised Final Landscape Plans**

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicants shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of Revised Final Landscape Plans prepared by an appropriately licensed professional which demonstrates the following:

- (1) The plans shall demonstrate that:

- (a) All planting shall provide 90 percent coverage within 90 days and shall be repeated if necessary to provide such coverage;
 - (b) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan;
 - (c) Landscaped areas not occupied by hardscape shall be planted and maintained for slope stability and erosion control. To minimize the need for irrigation and minimize encroachment of non-native plant species into adjacent or nearby native plant areas, all landscaping shall consist of native and drought tolerant plant species native to coastal Orange County and appropriate to the habitat type. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>);
 - (d) Removal of the existing stairs/steps and pathway located on the bluff face will be accompanied by revegetation and restoration of the area on the bluff face once impacted by the existing stairs/steps and pathway and any footings according to the specifics identified above in this condition; and
 - (e) No permanent irrigation system shall be allowed on the coastal bluff face. Any existing in-ground irrigation systems on the coastal bluff face shall be disconnected and capped. Temporary above ground irrigation to allow the establishment of the plantings is allowed. The landscaping plan shall show all the existing vegetation and any existing irrigation system.
- (2) The plan shall include, at a minimum, the following components:
- (a) A map showing the type, size, and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features, and

(b) a schedule for installation of plants.

- B.** The permittees shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.
4. **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 bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion; (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.
5. **No Future Bluff or Shoreline Protective Devices.** By acceptance of this Permit, the applicant agrees, on behalf of himself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-13-088 including, but not limited to, the residence, foundations, decks, balconies, hardscape and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future. By acceptance of this Permit, the applicant/landowner hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

By acceptance of this Permit, the applicant/landowner further agrees, on behalf of himself and all successors and assigns, that the landowner(s) shall remove the development authorized by this Permit, including the residence, foundations, patios, balconies, hardscape and any other future improvements if any government agency has ordered that the structures 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.

In the event the edge of the bluff recedes to within five (5) 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 applicants, that addresses whether any portions of the residence are

threatened by bluff and slope instability, erosion, landslides, sea level rise or other natural hazards. The report shall identify all those immediate or potential future measures that could stabilize the principal residence without bluff or shore 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.

6. **Future Improvements.** This permit is only for the development described in Coastal Development Permit No. 5-13-0088. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to this development governed by the Coastal Development Permit No. 5-13-0088. Accordingly, any future improvements to the structures authorized by this permit, including but not limited to, repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit No. 5-13-0088 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.
7. **Construction Best Management Practices.** The permittee shall comply with the following construction-related requirements and shall do so in a manner that complies with all relevant local, state and federal laws applicable to each requirement:
 - (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave, wind, rain, or tidal erosion and dispersion;
 - (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
 - (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
 - (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMP's shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
 - (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Best Management Practices (BMP's) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction

activity shall be implemented prior to the onset of such activity. Selected BMP's shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The applicant shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The applicant shall develop and implement spill prevention and control measures;
- (3) The applicant shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50 feet away from a storm drain, open ditch or surface water; and
- (4) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

8. **Removal of Unpermitted Development.** The applicants shall, pursuant to the final approved landscaping plans described in Condition 3, above, remove the existing unpermitted stairs/steps and pathway from the bluff face, and restore the areas of the bluff impacted by the unpermitted development, within 90 days of the issuance of this permit. The Executive Director may grant additional time for good cause.
9. **Condition Compliance.** Within 180 days of Commission action on this Coastal Development Permit application, or within such additional time as the Executive Director may grant in writing for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the expiration of this coastal permit approval and the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act
10. **Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have 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:

A. PROJECT LOCATION AND DESCRIPTION

The proposed project site is located at 4541 Brighton Road, in the Cameo Shores area of Newport Beach. The subject site is between the first public roadway and the sea on a coastal bluff top lot subject to wave erosion (Exhibits #1-2). The site is a 16,187 square foot lot designated Low Density Residential by the City of Newport Beach Land Use Plan (LUP); the proposed project adheres to this designation. The project is located within an existing developed urban residential area. The site is surrounded by single-family residential development to the north, south and east. To the west of the project site is an approximately 26-foot high coastal bluff, rocky beach and the Pacific Ocean. There is a gated vertical access walkway (owned by the Cameo Shores HOA) between the project site and the upcoast property.

Public access to the shoreline through this community does not currently exist. However, the proposed project will not create new adverse effects on public access. The proposed development, on an existing residential lot, will not affect the existing public access conditions. It is the locked privately owned accessways, not this home that impedes public access. The nearest public access and public recreational opportunities are located at Little Corona Beach to the northwest and Crystal Cove State Park to the southeast.

The proposed project consists of demolition of an existing single-story, single-family residence, existing pool (on street side of lot), existing spa (on bluff side of lot) and garage and the construction of a new 6,704 square foot (4,028 sq. ft. main floor and 2,676 sq. ft. basement level) residence, 15 feet above street grade, two attached 2-car garages, basement level interior courtyard pool, bluff facing spa, hardscape and landscape improvements on a coastal bluff top lot. Grading will consist of approximately 1,969 cubic yards of cut for basement construction entirely within the footprint of the ground level structure which meets the 25-foot bluff top setback. The proposed basement daylights to a north facing basement level courtyard facing the northern (street-facing) property line with stairs leading up to the ground/street level. The basement does not daylight on the bluff side of the lot and will not require grading on the bluff side of the lot. No grading is proposed within the 25-foot bluff edge setback. The two, street level two-car garages accommodate a total of four cars for the development; exceeding the Commission's typical parking standard of two (2) parking spaces per dwelling unit. The foundation system of the proposed residence will consist of continuous and spread footings.

The applicant has also submitted a preliminary drainage plan that shows all roof and surface runoff directed to area drains leading storm water and water runoff to two large perforated trench

drains for on-site infiltration before discharging at the frontage road to existing on-street storm drains. Drainage for the basement level courtyard is also directed to area drains connected to a water lift station directing water runoff back up to the two large perforated trench drains and ultimately the on-street storm drains. As proposed all drainage is directed away from the coastal bluff to avoid potential soil saturation and erosion. The proposed grading/drainage plan is consistent with past Commission approvals in the area. During construction, the applicant will be required to implement best management practices (BMPs) designed to minimize erosion and prevent debris from entering the storm drain system and the ocean. In order to minimize adverse construction-related impacts upon marine resources, **Special Condition No. 7** provides construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. These best management practices (BMP) are designed to minimize erosion and prevent debris from being dispersed down the coastal bluff or the storm drain system leading to the ocean.

Resources

No portion of the applicant's development area contains resources that rise to the level of ESHA. Nevertheless, preservation and enhancement of the City's coastal bluffs is a goal supported by both the environmental protection policies of the Coastal Act, and the certified Land Use Plan (LUP). Encroachment onto the bluff by development increases the potential for the introduction of non-native plant species, and predation of native species by domestic animals, and destabilization of the coastal bluff from excess irrigation.

Furthermore, due to the fragile nature of coastal bluffs and their susceptibility to erosion, the Commission requires a special condition regarding the types of vegetation to be planted. The use of non-native vegetation that is invasive can have an adverse impact on the existence of native vegetation. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society (www.CNPS.org). No plant species listed as problematic and/or invasive by the California Native Plant Society or the California Invasive Plant Council shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California shall be utilized within the property.

The applicant has provided a preliminary landscape/hardscape plan (Exhibit #3) that proposes concrete paving, pool, water feature and trees such as California Sycamores, and a low-water use, non-invasive plant palette for the front yard (street-facing). For the backyard (bluff facing) portion of the lot, mostly hardscape including a spa, paved patio, outdoor barbeque kitchen and complete re-planting within 10-feet of the bluff edge and on along the entire bluff face consisting of the same low-water use, non-invasive plant palette. However, for the bluff facing portion of the lot, the Commission imposes **Special Condition No. 3** which requires the applicants revise the proposed landscape plan to ensure that the coastal bluff is landscaped with only native plants suitable to coastal bluff natural habitat.

Geology and Coastal Hazards

The geologic stability of the site has been evaluated by Petra Geotechnical, Inc. in a report titled "Geotechnical Investigation, Proposed Single-Family Residence Additions, 4541 Brighton Road,

Newport Beach, CA” dated March 28, 2013. A Coastal Hazard Study for the site was also conducted by GeoSoils, Inc. dated July 2, 2013. The bedrock slope supporting the development is backed by resistant, cemented strata and is considered grossly stable, but that erosion of the terrace materials on the upper slope may occur episodically promoted by heavy rainfall and saturated conditions. Wave erosion along the base of the slope and lateral retreat of the bedrock seacliff is considered unlikely over the next 75+/- years given the evidence for resistance to erosion over the past 64 years.

The geotechnical investigation concludes that the proposed development is considered geotechnically feasible provided the recommendations of the report are incorporated. Recommendations relate to site preparation and grading, general foundation design and drainage; no special design or construction methods were deemed necessary for construction of the project. The Commission imposes **Special Condition No. 1** requiring the applicant to submit a full set of final plans certified consistent with the recommendations specified in the geotechnical report. Furthermore, **Special Condition No. 2** requires a pool and spa protection plan that incorporates mitigation of the potential for geologic instability caused by leakage from the proposed pool and spa on this blufftop lot.

Bluff Setbacks

On bluff top lots in Newport Beach subject to Commission review, the Commission has typically required new development to conform to a minimum 25-foot setback from the bluff edge for primary structures (e.g. the enclosed living area of residential structures) and minimum 10 foot setback for secondary structures (e.g., patios, decks, garden walls) or requires conformance with the stringline setbacks. These setback policies are included in the City’s certified Land Use Plan (last updated in 2005). The bluff edge setback is imposed in order to ensure that the development conforms to Section 30253 of the Coastal Act which requires that hazards be minimized and that new development will not have to rely on future shoreline or bluff protection devices. Although the site has currently been found to be grossly stable from a geotechnical perspective, bluffs are subject to forces that cause instability and geologic predictions of site stability over the life of the proposed development cannot be made with certainty. Thus, the Commission requires a bluff edge setback that would provide the most protection from coastal hazards for new development without having to rely on future bluff protection devices 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 proposed development conforms to both the 25’ foot bluff edge setback and the structural stringline (with adjacent structures) setback. The proposed new residence will not encroach any further seaward than the existing footprint of the residence proposed for demolition.

Additionally, all new bluff-side hardscape improvements including a concrete patio, spa, and outdoor bbq/kitchen also conform to the certified LUP 10-foot bluff edge setback requirement for non-structural, at-grade accessory structures on blufftop lots. The proposed project is consistent with the pattern of development in the surrounding area.

To minimize the project’s potential future impact on shoreline processes, **Special Condition No. 5** prohibits construction of any future bluff or shoreline protective device(s) to protect the development approved pursuant to Coastal Development Permit No. 5-13-088 including, but not

limited to, the residence, foundations, patio, spa and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, sea level rise or other natural coastal hazards in the future. Thus, pursuant to Special Condition No. 5, the applicants agree to waive any right to construct any future bluff or shoreline protective devices such as revetments, seawalls, caissons, cliff retaining walls, shotcrete walls, and other such construction that armors or otherwise substantially alters the bluff face. Special Condition 5 does not preclude the applicants from applying for future coastal development permits for maintenance of existing development or future improvements to the site (other than blufftop or shoreline protective devices) including landscaping and drainage improvements aimed to prevent slope and bluff instability. The Commission would determine the consistency of such proposals with the Coastal Act in its review of such applications.

Development on coastal bluff sites is inherently dangerous, therefore, the Commission imposes **Special Condition No. 4** requiring the applicant to assume the risk of development. By this means, the applicants are notified that the proposed development is built in an area that is potentially subject to bluff and slope instability, sea level rise, erosion, landslides and wave uprush or other tidal induced erosion that can damage the applicant's property. The applicant is also notified that the Commission is not liable for such damage as a result of approving the permit for development. Finally, the condition requires the applicant to waive claims against the Commission and indemnify the Commission for third-party claims.

Future Development

The proposed development is located within an existing developed area and is compatible with the character and scale of the surrounding area. The proposed new residence does not encroach any further seaward than the existing residence. However, the proposed project raises concerns that future development at the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. In order to ensure that development on the site does not occur which could potentially adversely impact the geologic stability concerns expressed in this staff report, the Commission imposes **Special Condition No. 6**. This condition informs the applicant that future development at the site requires an amendment to this permit (5-13-088) or a new coastal development permit. Future development includes, but is not limited to, structural additions, landscaping, hardscape and fencing.

B. DEVELOPMENT

Development adjacent to the ocean and the edges of coastal bluffs and hillsides is inherently hazardous. Development which may require a bluff, hillside, or shoreline protective device in the future cannot be allowed due to the adverse impacts such devices have upon public access, visual resources, and shoreline processes. To minimize risks to life and property and to minimize the adverse effects of development on coastal bluffs, hillsides, and shoreline processes the development has been conditioned to require one or more of the following: adherence to the geotechnical recommendations, an appropriate set-back from the edge of a bluff or hillside, to prohibit the construction of protective devices (such as a retaining wall or shoreline protective device) in the future, for a drainage and runoff plan to minimize the percolation of water into the hillside or bluff, and to require that the landowner or any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development

conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

C. 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, as conditioned, conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

D. 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 and 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.

E. UNPERMITTED DEVELOPMENT

Development has occurred on the subject site without benefit of the required coastal development permit including a pedestrian path down the face of the coastal bluff to the toe of the bluff that is identified in the City's certified Land Use Plan as significant natural landforms with scenic and environmental resources to be protected. As further described above, a site specific review confirms that the habitat on the coastal bluff slope on this property is somewhat degraded due to the predominance of non-native plant species. As such, no portion of the area at this particular subject site that is proposed to be developed contains resources that rise to the level of ESHA. Nevertheless, preservation and enhancement of the City's coastal bluffs is a goal supported by both the environmental protection policies of the Coastal Act, and policies of the certified LUP. The proposed home as conditioned to be constructed on a section of the lot already developed will therefore not impact the coastal bluff habitat; and the proposed landscaping of the coastal bluff itself will restore the coastal bluff habitat and that restoration is compatible with any ESHA that may exist on this and adjacent coastal bluffs. Consequently, even if the unpermitted stairs/steps and pathway were considered to be the sort of development that is normally associated with a single-family residence, the unpermitted structures were constructed, and are located in, designated ESHA, and therefore constitute development that requires a coastal development permit application.

The applicant proposes to resolve the unpermitted development on the subject site through this Coastal Development Permit application by proposing to remove the stairs/steps and pedestrian pathway and re-vegetate the area, thereby removing the nonconforming unpermitted development. The applicant submitted a landscape plan which also proposes replanting the coastal bluff with drought tolerant, non-invasive trees, shrubs and groundcover plant species.

Special Condition No. 3 requires the applicants to revise the proposed landscaping plan to only include native plants suitable to a coastal bluff habitat. **Special Condition No. 9** requires the

applicant to comply with the permit conditions in a timely manner in order to resolve the violation. **Special Condition No. 8** ensures that the unpermitted stairs/steps and pathway will be removed as part of the proposed project. Although unpermitted development has occurred on site, consideration of the application by the Commission is based solely on Chapter 3 policies of the Coastal Act, and policies of the City LUP for guidance.

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 Land Use Plan for the City of Newport Beach was effectively certified on May 19, 1982. The certified LUP was updated on October 2005. 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 (CEQA)

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.

APPENDIX A

SUNSTANTIVE FILE DOCUMENTS

Approval-in-Concept #2013-007 from the City of Newport Beach dated 3/13/13.

Geotechnical Investigation, Proposed Single-Family Residence, 4541 Brighton Road, Corona del Mar CA, dated March 28, 2013, prepared by Petra Geotechnical, Inc.

Geotechnical Comments, Pool and Spa Foundations, Proposed Single-Family Residence, 4541 Brighton Road, Corona del Mar CA, dated July 2, 2013, prepared by Petra Geotechnical, Inc.

Coastal Hazard Study for 4541 Brighton Road, Corona del Mar, California, dated July 2, 2013, prepared by GeoSoils. Inc.



OCEAN

PACIFIC

COASTAL COMMISSION

EXHIBIT # 1

PAGE 1 OF 1

SEE vii MAP



COASTAL COMMISSION

EXHIBIT # 2

PAGE 1 OF 2

Subject Site



WHELAN RESIDENCE

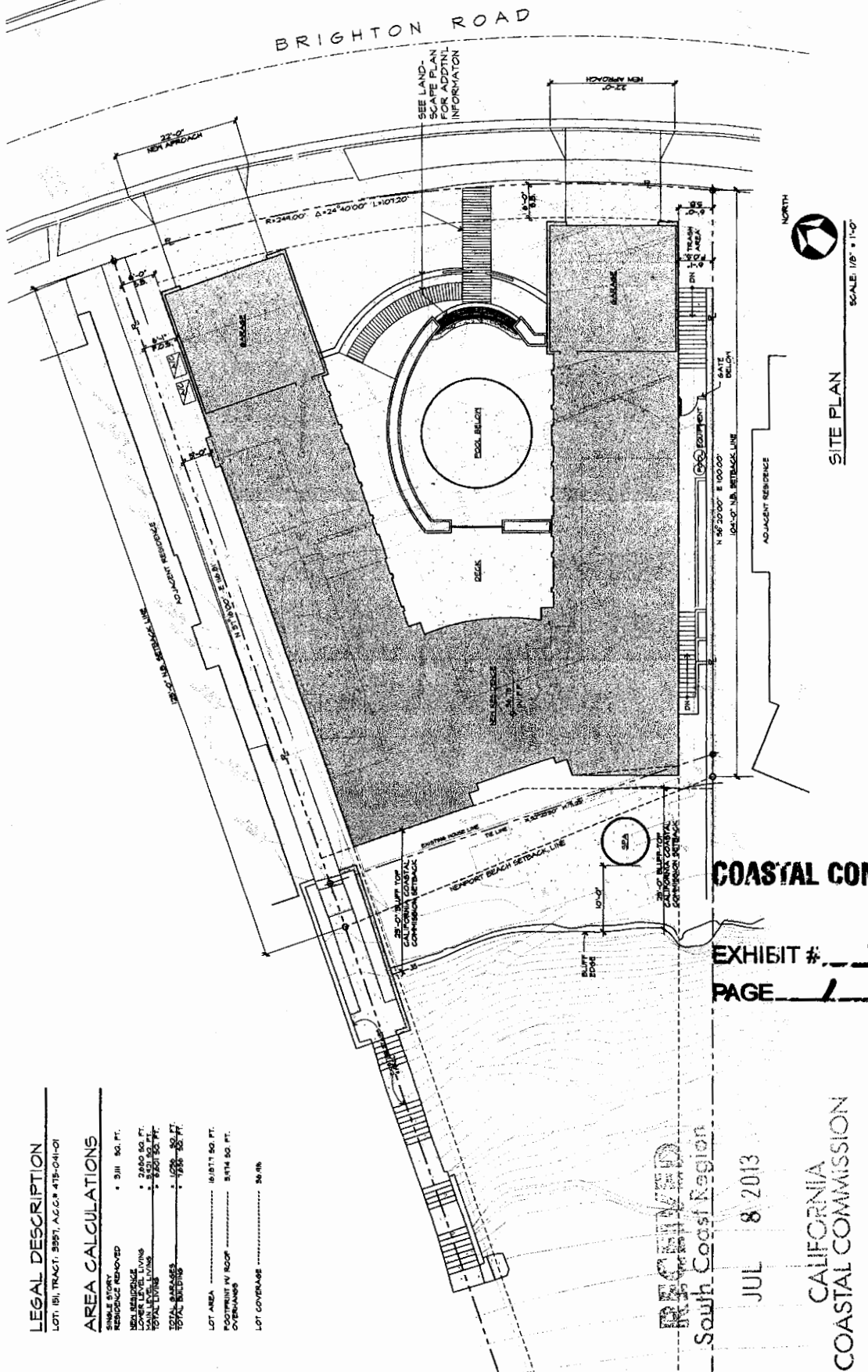
4541 BRIGHTON ROAD, CORONA DEL MAR, CA



A New Home for:
John Whelan
4541, Brighton Rd, Corona Del Mar, CA 92625 (949) 760-1885

SITE PLAN

DATE:
6-10-2013



LEGAL DESCRIPTION	
LOT: 151, TRACT 59971, A.C.C.# 475-041-01	

AREA CALCULATIONS	
SINGLE STORY RESIDENCE REMOVED	+ 3111 SQ. FT.
NEW RESIDENCE	+ 7460 SQ. FT.
POOL	+ 2421 SQ. FT.
TOTAL LIVING	+ 9221 SQ. FT.
TOTAL GARAGES	+ 1028 SQ. FT.
TOTAL BUILDING	+ 10249 SQ. FT.

LOT AREA	
LOT AREA	16,071 SQ. FT.
FOOTPRINT BY ROOF OVERHANGS	8,514 SQ. FT.
LOT COVERAGE	53.4%

RECEIVED
South Coast Region
JUL 8 2013
CALIFORNIA
COASTAL COMMISSION

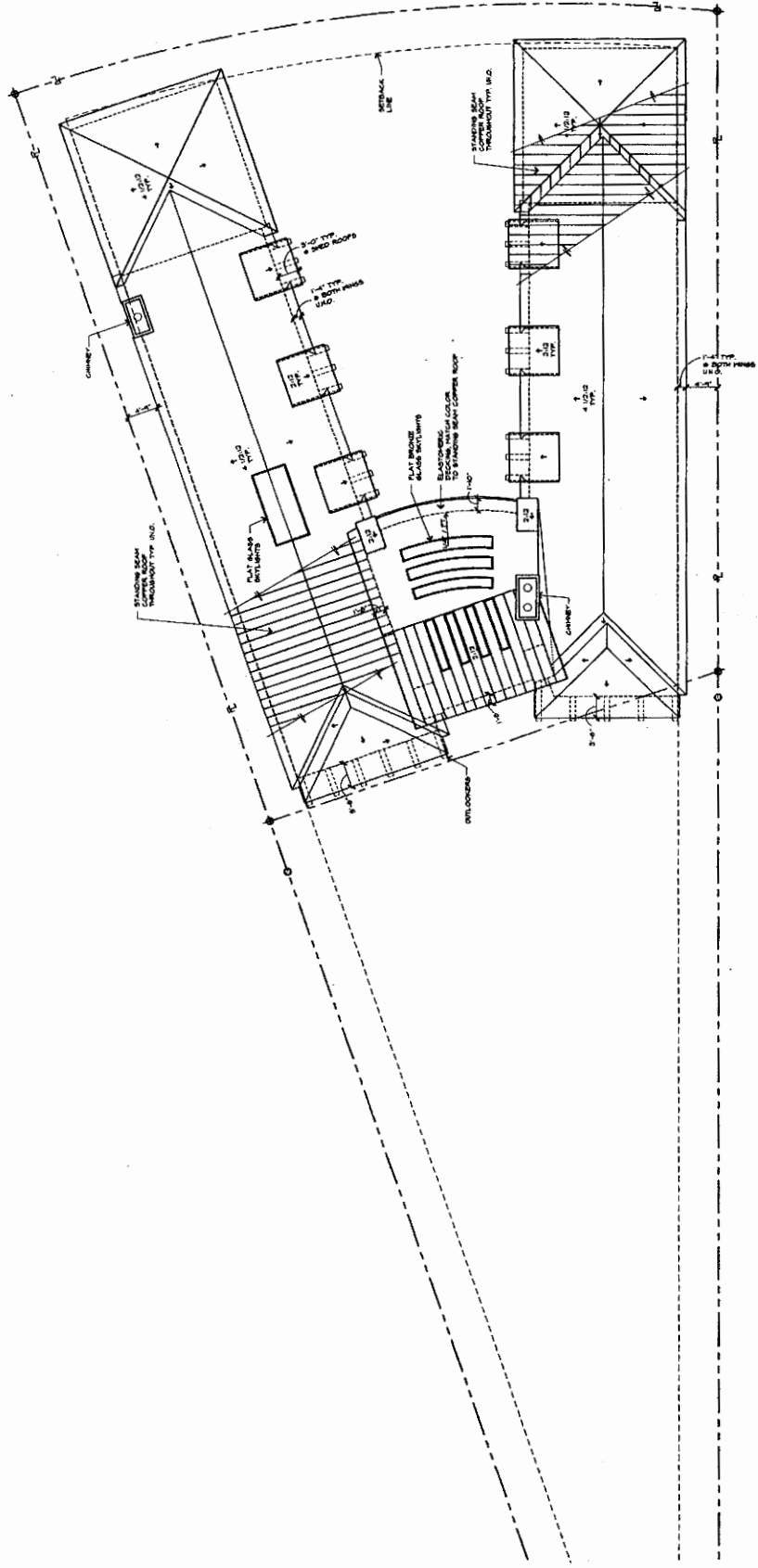


A New Home for
John Whelan
4541, Brighton Rd, Corona Del Mar, CA 92625 (949) 760-1885

ROOF PLAN

DATE
6-5-83

2



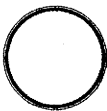
NORTH

ROOF PLAN

SCALE: 1/8" = 1'-0"

COASTAL COMMISSION

EXHIBIT # 3
PAGE 2 OF 7

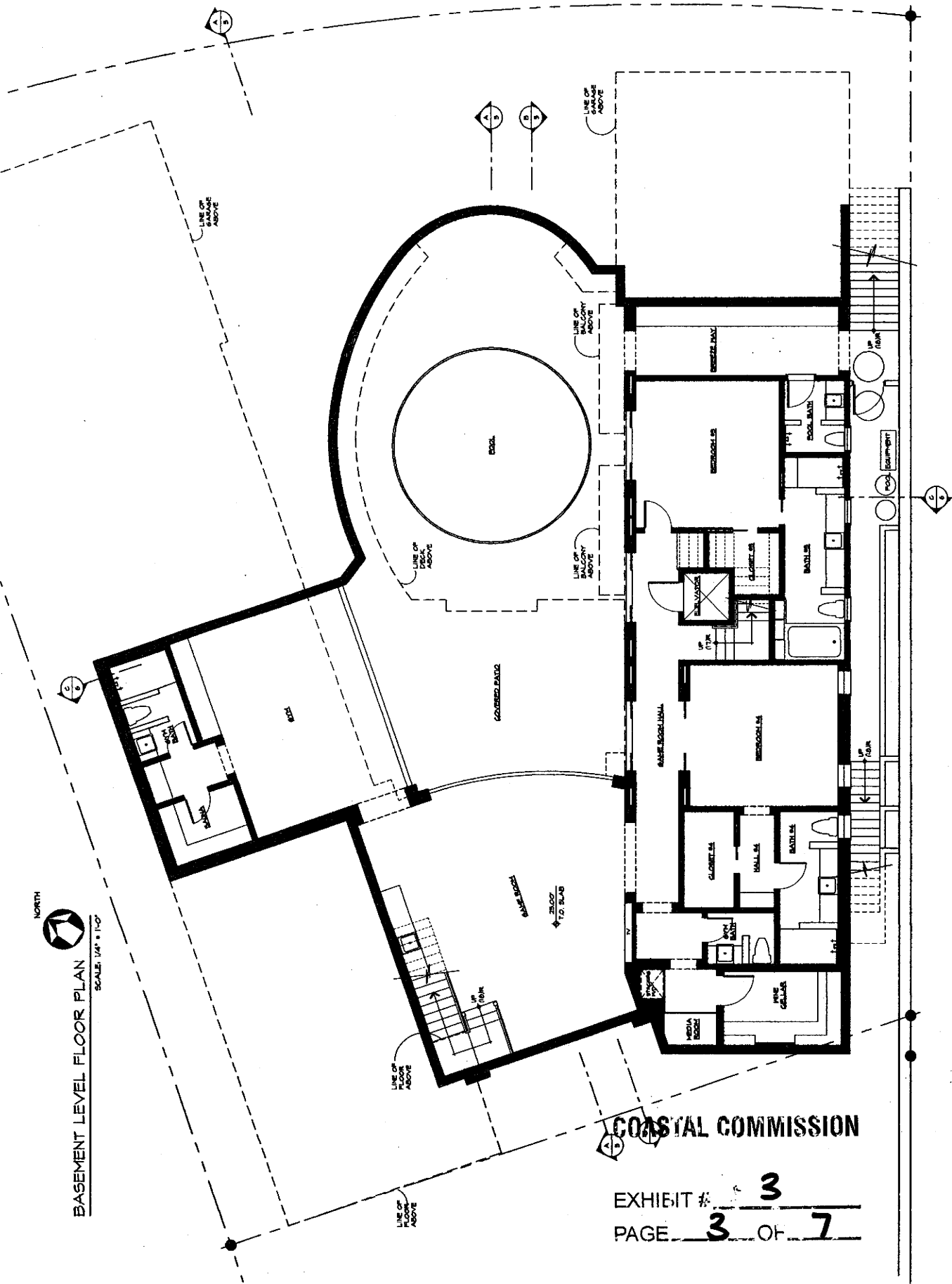


A New Home for
John Whelan
4541, Brighton Rd, Corona Del Mar, CA 92625 (949) 760-1885

**BASEMENT LEVEL
FLOOR PLAN**

DATE
6-6-2015

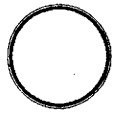
3



BASEMENT LEVEL FLOOR PLAN
SCALE: 1/4" = 1'-0"

COASTAL COMMISSION

EXHIBIT # 3
PAGE 3 OF 7

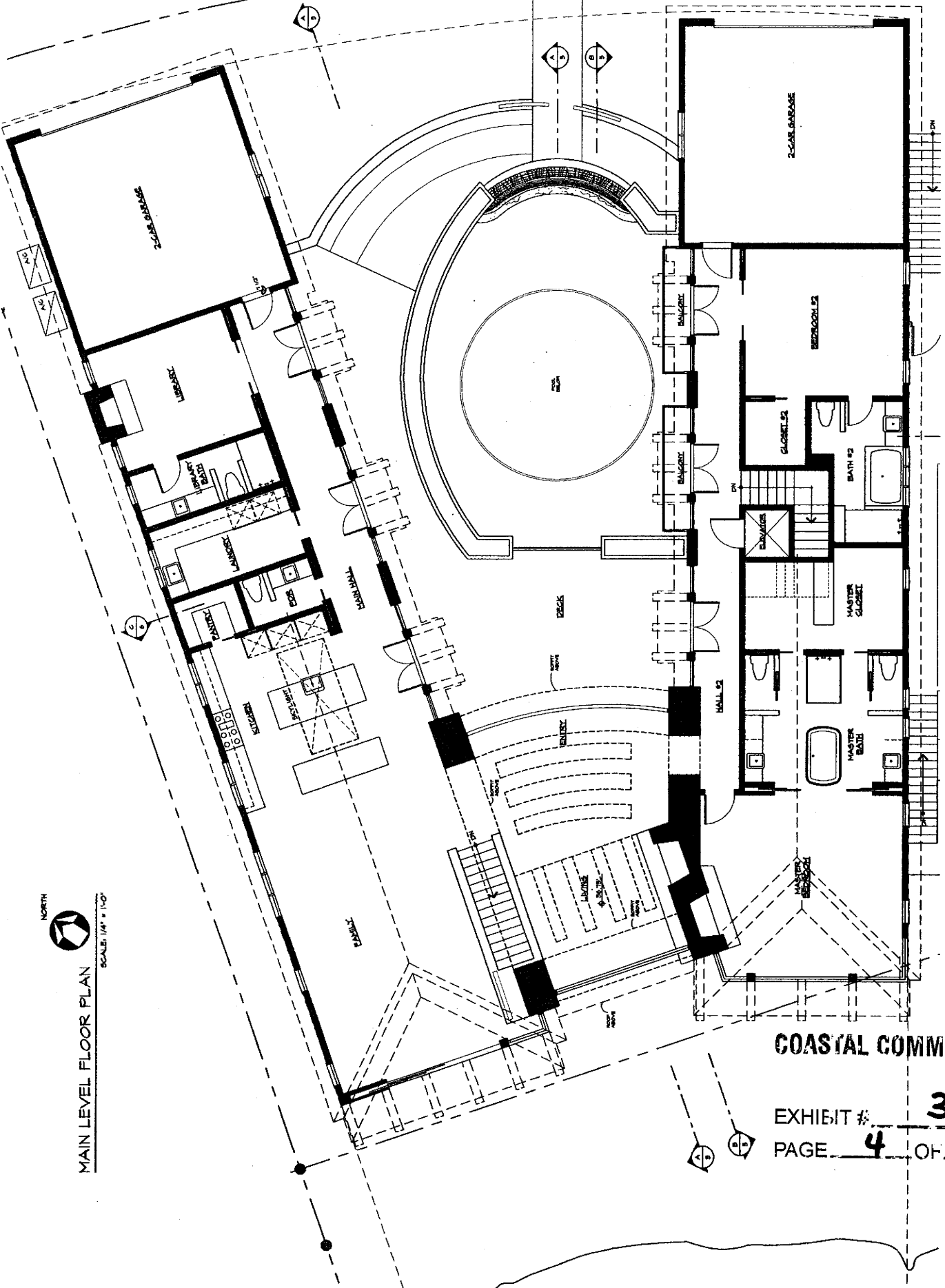


A New Home for
John Whelan
4511, Brighton Rd., Corona Del Mar, CA 92625 (949) 760-1885

MAIN LEVEL
FLOOR PLAN

DATE
6-2-2019

4



MAIN LEVEL FLOOR PLAN
SCALE: 1/4" = 1'-0"

COASTAL COMMISSION

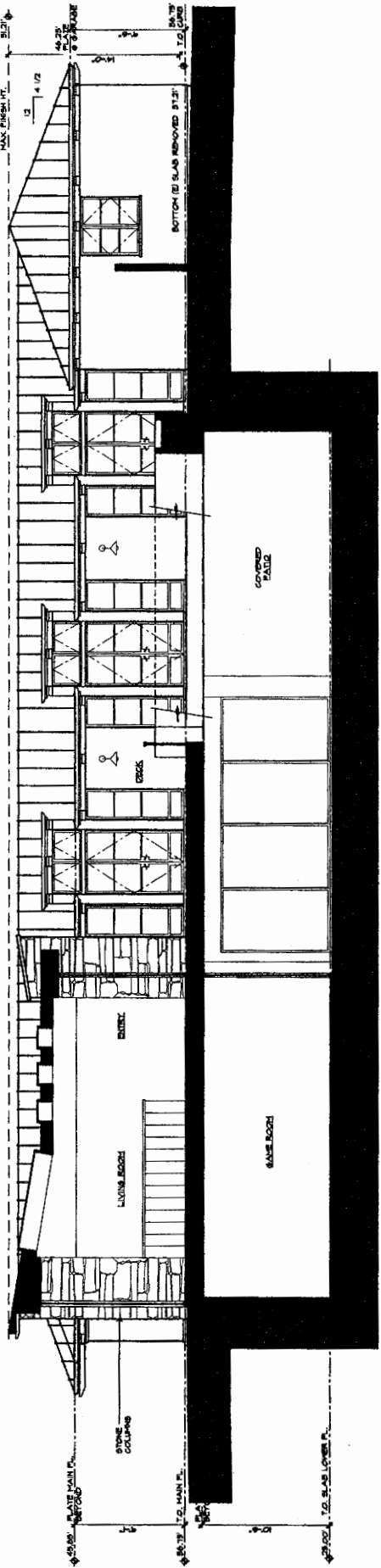
EXHIBIT # 3
PAGE 4 OF 7



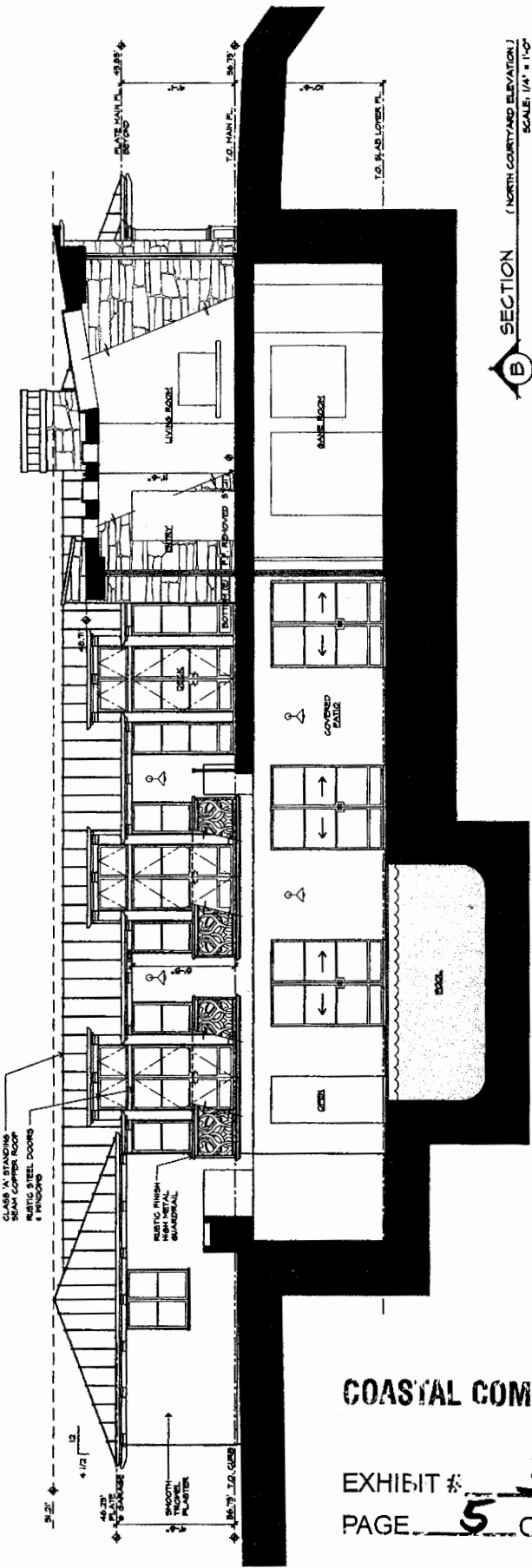
A New Home for:
John Whelan
4541, Brighton Rd. Concord Bldg. Man., CA 93625 (949) 760-1885

SECTIONS 'A' & 'B'

DATE
6-2-2018



A SECTION (SOUTH COURTYARD ELEVATION)
SCALE: 1/4" = 1'-0"



B SECTION (NORTH COURTYARD ELEVATION)
SCALE: 1/4" = 1'-0"

COASTAL COMMISSION

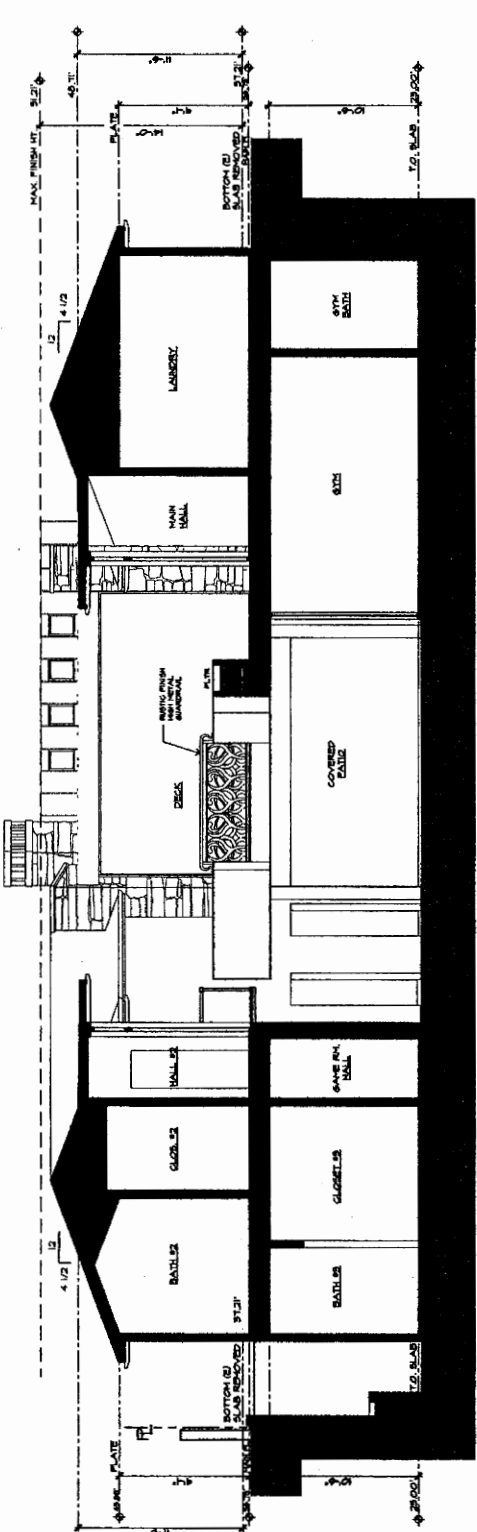
EXHIBIT #: 3
PAGE 5 OF 7



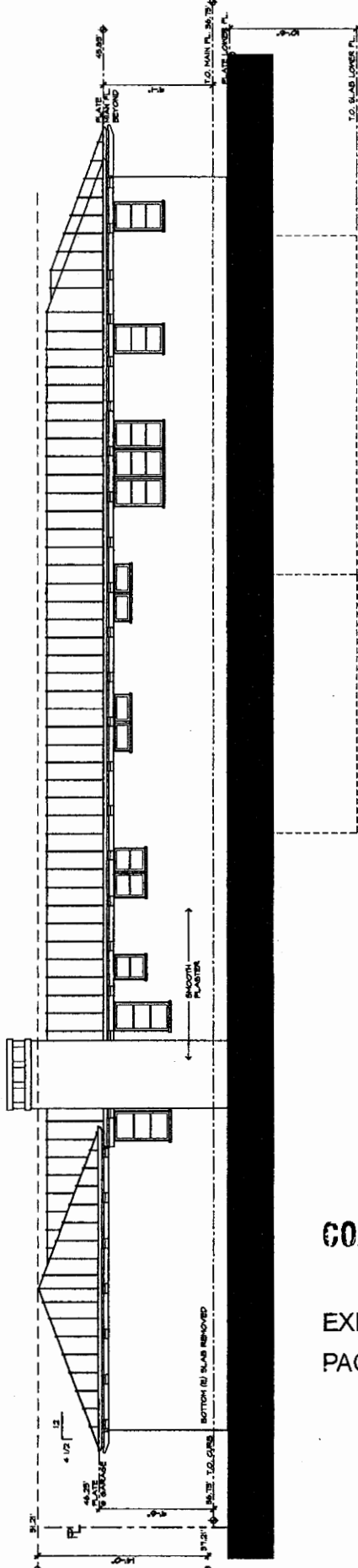
A New Home for:
John Whelan
4541, Brighton Rd. Corona Del Mar, CA 92625 (949) 760-1285

EXTERIOR
ELEVATION 'C'
DATE
6-4-2015

6



C SECTION (EAST COURTYARD ELEVATION)
SCALE: 1/4" = 1'-0"



NORTH ELEVATION
SCALE: 1/4" = 1'-0"

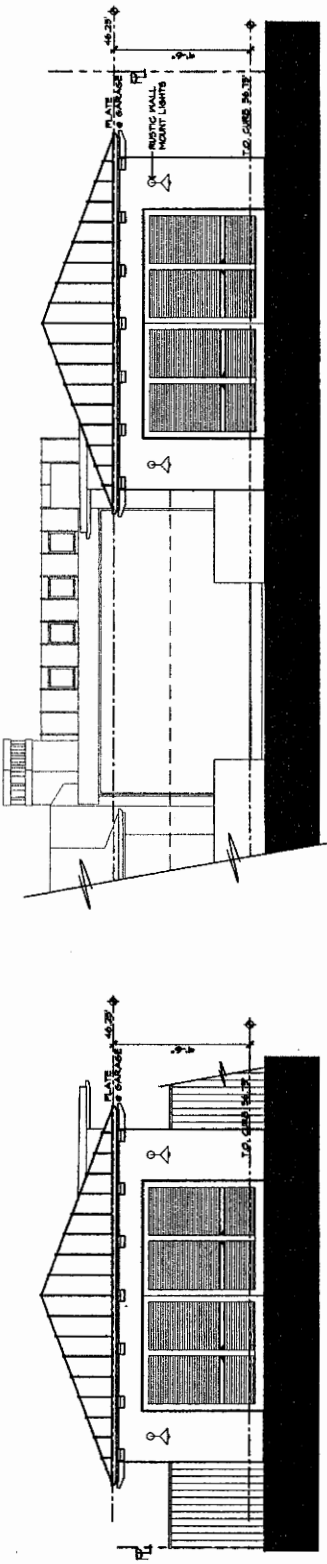
COASTAL COMMISSION
EXHIBIT # 3
PAGE 6 OF 7



A New Home for:
John Whelan
4541. Brighton Rd. Corona Del Mar, CA 92625 (949) 760-1885

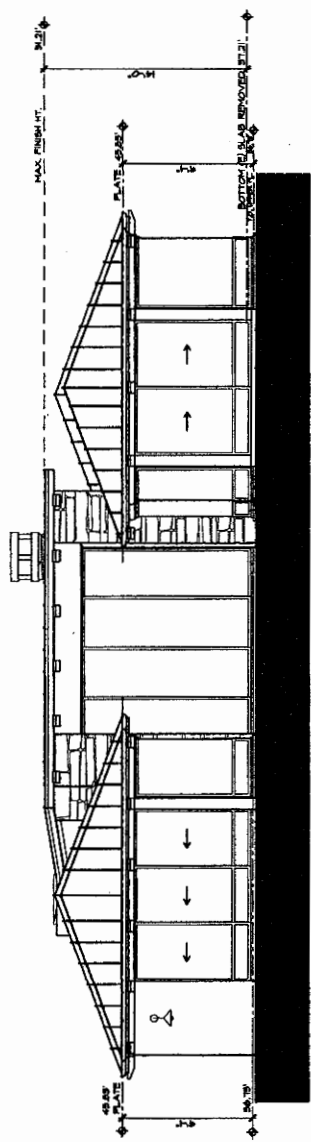
EXTERIOR
ELEVATIONS

7

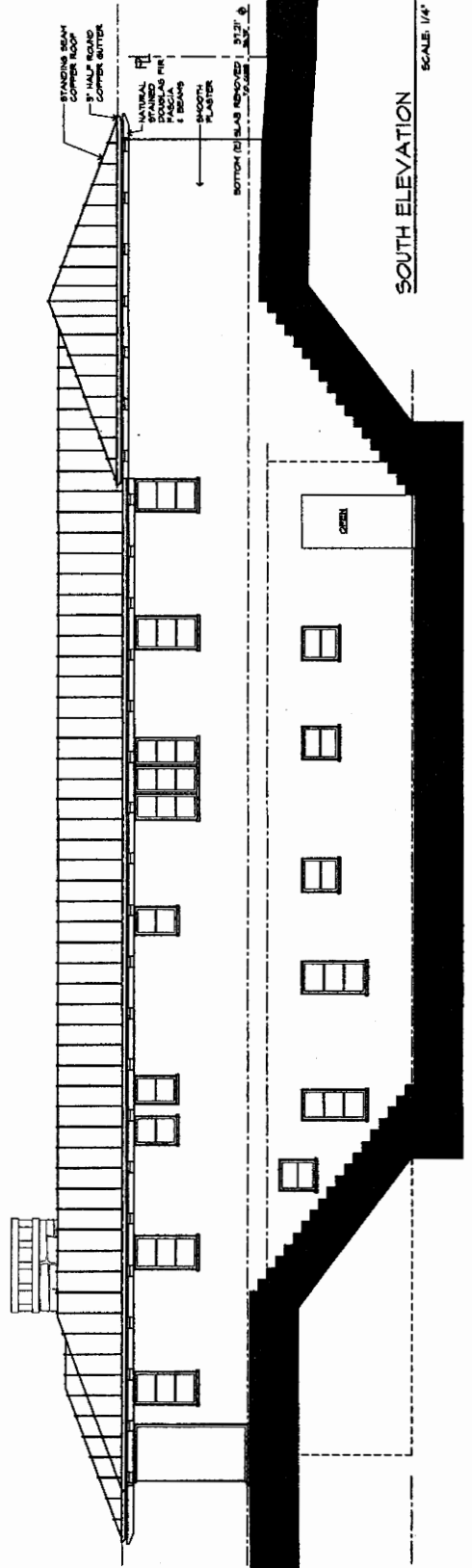


EAST ELEVATION (RIGHT VIEW)
SCALE: 1/4" = 1'-0"

EAST ELEVATION (LEFT VIEW)
SCALE: 1/4" = 1'-0"



WEST ELEVATION
SCALE: 1/4" = 1'-0"



SOUTH ELEVATION
SCALE: 1/4" = 1'-0"

COASTAL COMMISSION

EXHIBIT #: 3
PAGE 7 OF 7

6-2-2018

25003	LEAG. REVIEW
	SUBMIT. LOGIC COMMENTS
	REVISIONS

MJSDesign Group
Landscape Architecture
Planning
Design

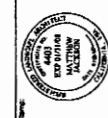
MJD

Company: 15150 E. 15th Ave.
Denver, CO 80231
Tel: 303.751.8888
www.mjdesign.com

studio h
Landscape Architecture
Ertler Design
Group, Inc.
1801 North Lincoln Ave.
Denver, CO 80202
Tel: 303.751.8888

PROJECT:
WHELEN RESIDENCE
4841 BRIGHTON RD.
CORONA DEL MAR, CA 92625

CLIENT:
JOHN WHELEN
541 BRIGHTON RD.
CORONA DEL MAR, CA 92625

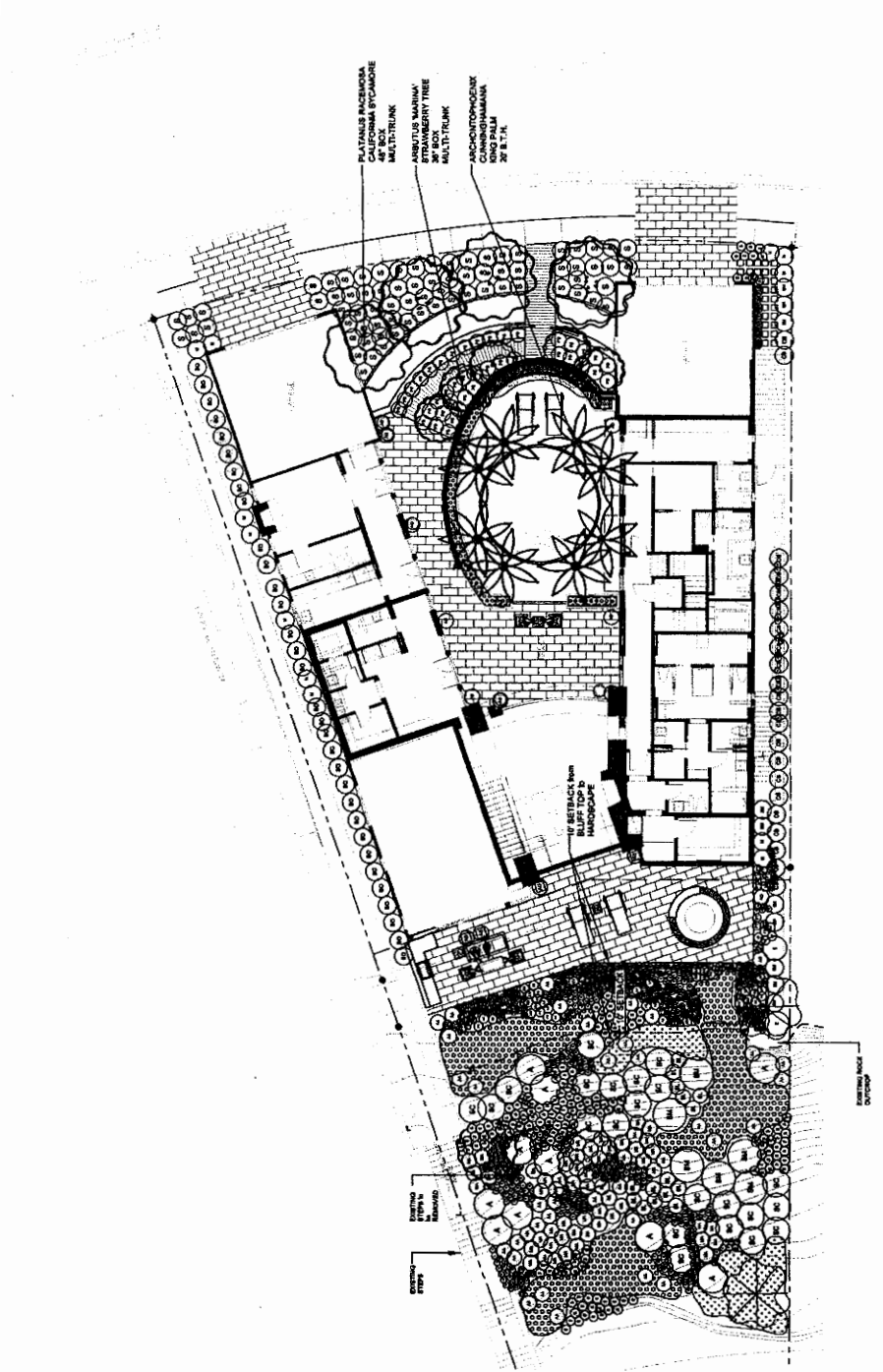


JAN No. 1246
Drawn By: JH
Checked By:
Date: 8.25.13
Scale: 1/8" = 1'-0"
Title:
PLANTING PLAN
LP-1
SCALE: 1/8" = 1'-0"
DATE: 8.25.13

COASTAL COMMISSION SUBMITTAL

SYMBOL	NAME	SIZE	QTY.	COMMENTS
1	ADONIS BACCHERA	2 GAL	18	
2	ADONIS BACCHERA	18 GAL	1	
3	ADONIS BACCHERA	18 GAL	11	
4	ADONIS BACCHERA	18 GAL	5	
5	ADONIS BACCHERA	18 GAL	3	
6	ADONIS BACCHERA	9 GAL	1	
7	ADONIS BACCHERA	9 GAL	1	
8	ADONIS BACCHERA	18 GAL	32	
9	ADONIS BACCHERA	2 GAL	18	
10	ADONIS BACCHERA	1 GAL	11	
11	ADONIS BACCHERA	1 GAL	11	
12	ADONIS BACCHERA	1 GAL	11	
13	ADONIS BACCHERA	1 GAL	11	
14	ADONIS BACCHERA	1 GAL	11	
15	ADONIS BACCHERA	1 GAL	11	
16	ADONIS BACCHERA	1 GAL	11	
17	ADONIS BACCHERA	1 GAL	11	
18	ADONIS BACCHERA	1 GAL	11	
19	ADONIS BACCHERA	1 GAL	11	
20	ADONIS BACCHERA	1 GAL	11	
21	ADONIS BACCHERA	1 GAL	11	
22	ADONIS BACCHERA	1 GAL	11	
23	ADONIS BACCHERA	1 GAL	11	
24	ADONIS BACCHERA	1 GAL	11	
25	ADONIS BACCHERA	1 GAL	11	
26	ADONIS BACCHERA	1 GAL	11	
27	ADONIS BACCHERA	1 GAL	11	
28	ADONIS BACCHERA	1 GAL	11	
29	ADONIS BACCHERA	1 GAL	11	
30	ADONIS BACCHERA	1 GAL	11	
31	ADONIS BACCHERA	1 GAL	11	
32	ADONIS BACCHERA	1 GAL	11	
33	ADONIS BACCHERA	1 GAL	11	
34	ADONIS BACCHERA	1 GAL	11	
35	ADONIS BACCHERA	1 GAL	11	
36	ADONIS BACCHERA	1 GAL	11	
37	ADONIS BACCHERA	1 GAL	11	
38	ADONIS BACCHERA	1 GAL	11	
39	ADONIS BACCHERA	1 GAL	11	
40	ADONIS BACCHERA	1 GAL	11	
41	ADONIS BACCHERA	1 GAL	11	
42	ADONIS BACCHERA	1 GAL	11	
43	ADONIS BACCHERA	1 GAL	11	
44	ADONIS BACCHERA	1 GAL	11	
45	ADONIS BACCHERA	1 GAL	11	
46	ADONIS BACCHERA	1 GAL	11	
47	ADONIS BACCHERA	1 GAL	11	
48	ADONIS BACCHERA	1 GAL	11	
49	ADONIS BACCHERA	1 GAL	11	
50	ADONIS BACCHERA	1 GAL	11	
51	ADONIS BACCHERA	1 GAL	11	
52	ADONIS BACCHERA	1 GAL	11	
53	ADONIS BACCHERA	1 GAL	11	
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56	ADONIS BACCHERA	1 GAL	11	
57	ADONIS BACCHERA	1 GAL	11	
58	ADONIS BACCHERA	1 GAL	11	
59	ADONIS BACCHERA	1 GAL	11	
60	ADONIS BACCHERA	1 GAL	11	

SYMBOL	NAME	SIZE	QTY.	COMMENTS
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6	ADONIS BACCHERA	9 GAL	1	
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11	ADONIS BACCHERA	1 GAL	11	
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16	ADONIS BACCHERA	1 GAL	11	
17	ADONIS BACCHERA	1 GAL	11	
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29	ADONIS BACCHERA	1 GAL	11	
30	ADONIS BACCHERA	1 GAL	11	
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33	ADONIS BACCHERA	1 GAL	11	
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35	ADONIS BACCHERA	1 GAL	11	
36	ADONIS BACCHERA	1 GAL	11	
37	ADONIS BACCHERA	1 GAL	11	
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55	ADONIS BACCHERA	1 GAL	11	
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58	ADONIS BACCHERA	1 GAL	11	
59	ADONIS BACCHERA	1 GAL	11	
60	ADONIS BACCHERA	1 GAL	11	



GENERAL PLANTING NOTES:

1. LANDSCAPE ARCHITECT TO APPROVE ALL PLANT MATERIAL NOT LESS THAN 1 WEEK PRIOR TO ANTICIPATED PLANTING DATE.
2. CONTRACTOR TO COORDINATE APPROVALS. CONTRACTOR SHALL REMOVE ALL GRASS, STUBS, TAGS AND RIBBONS.
3. LANDSCAPE CONTRACTOR SHALL MAINTAIN PROPER DRAINAGE AND DIRECT ALL WATER SO AS TO PREVENT STANDING WATER.
4. CONTRACTOR SHALL GUARANTEE BIRCHES FOR 8 MONTHS. PLACEMENT PRIOR TO INSTALLATION.
5. LANDSCAPE ARCHITECT SHALL APPROVE PLANT MATERIAL.
6. ANY PLANTING SHOWN ON THE PLAN OR EXISTING IN THE FIELD THAT CONTRACTOR DEEMES UNDESIRABLE OR UNWARRANTED TO THE ATTENTION OF THE LANDSCAPE ARCHITECT SHALL BE REMOVED. FAILURE TO DO SO MAY RESULT IN THE CONTRACTOR TO REMOVE OR RELOCATE PLANT MATERIAL.

NOTE:

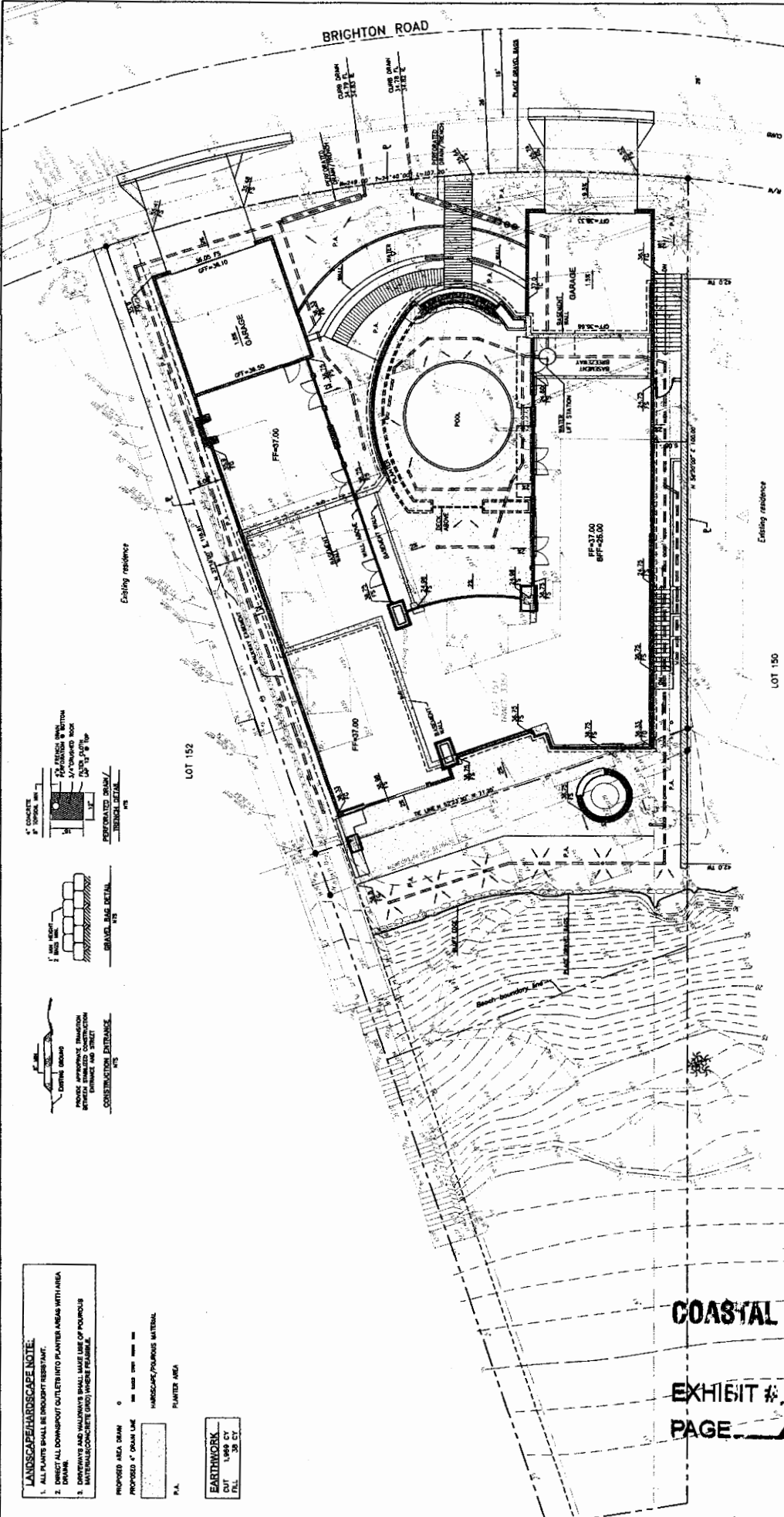
ALL SHRUBS TO BE APPROVED BY LANDSCAPE ARCHITECT.
ALL PLANTS ARE NON-INVASIVE AND LOW WATER CONSUMPTIVE.
PLANTS ARE BROUGHT TO THE PROJECT TO BE INSPECTED BY THE ARCHITECT. THE CONTRACTOR SHALL MAINTAIN PROPER DRAINAGE AND DIRECT ALL WATER SO AS TO PREVENT STANDING WATER.
MOISTURE CONTROL EXISTING.
CONTRACTOR TO INSTALL LATE MESH FABRIC ON ENTIRE SLOPE.

COASTAL COMMISSION

EXHIBIT #: 4

PAGE 1 OF 1

BRIGHTON ROAD

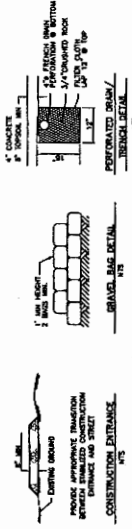


LANDSCAPE/HARDSCAPE NOTE:

- ALL PLANTS SHALL BE BROUGHT FROM THE AREA.
- DIRECT ALL DOWNSPUT OUTLETS INTO PLANTER AREAS WITH AREA DRAIN.
- DRIVEWAYS AND WALKWAYS SHALL MAKE USE OF POROUS INTERLOCKING CONCRETE DRIVE/WALKWAY SURFING.

PROPOSED AREA DRAIN
 4" DIA. DRAIN LINE
 HARDSCAPE/POROUS MATERIAL
 PLANTER AREA

EARTHWORK
 CUT 1/8" = 1'-0"
 FILL 1/16" = 1'-0"

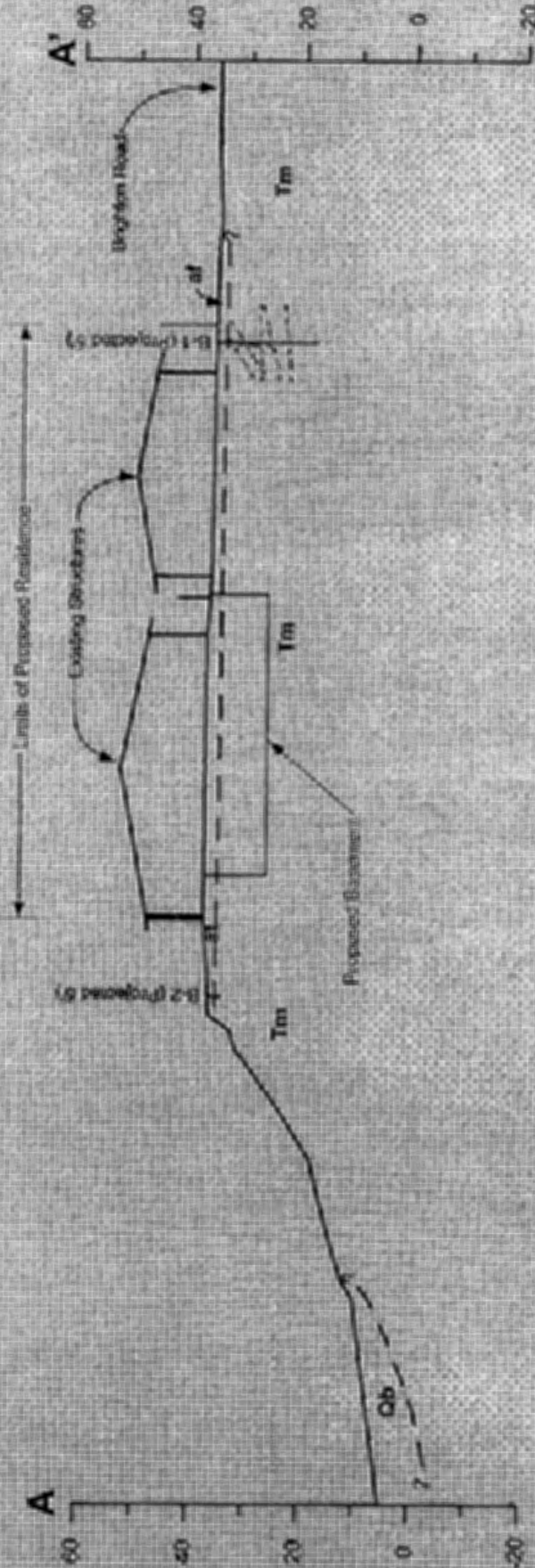


COASTAL COMMISSION

EXHIBIT # 5
 PAGE 1 OF 1

PROJECT: 4541 BRIGHTON ROAD NEWPORT BEACH, CALIFORNIA		SHEET: C2
LEGAL DESCRIPTION: LOT 181 OF TRACT 2387		LEGAL DESCRIPTION: LOT 181 OF TRACT 2387
SELLER: THOMAS M. RUIZ 114486-1088		BUYER: LOS MECHAMICOS 4541-76 133 382 MAYWOOD ADAPTED 1982
DESIGNED BY: THOMAS M. RUIZ CIVIL ENGINEER 4541 BRIGHTON RD. COSTA MESA, CA 92626 (714) 771-1488		APPROVED BY: CIVIL ENGINEER 4541 BRIGHTON RD. COSTA MESA, CA 92626 (714) 771-1488
DATE: 7/1/73		DATE: 7/1/73

NOTE →



EXPLANATION

- af Artificial Fill
- Ob Beach Deposits
- Tm Bedrock/Moisture Formation
- ?--- Approximate Geologic Contact, Queried Where Uncertain



PETRA GEOTECHNICAL, INC.
 4500 Highway 100, Suite 100
 Columbia, Maryland 21046
 Phone: 410-326-1800
 Fax: 410-326-1801

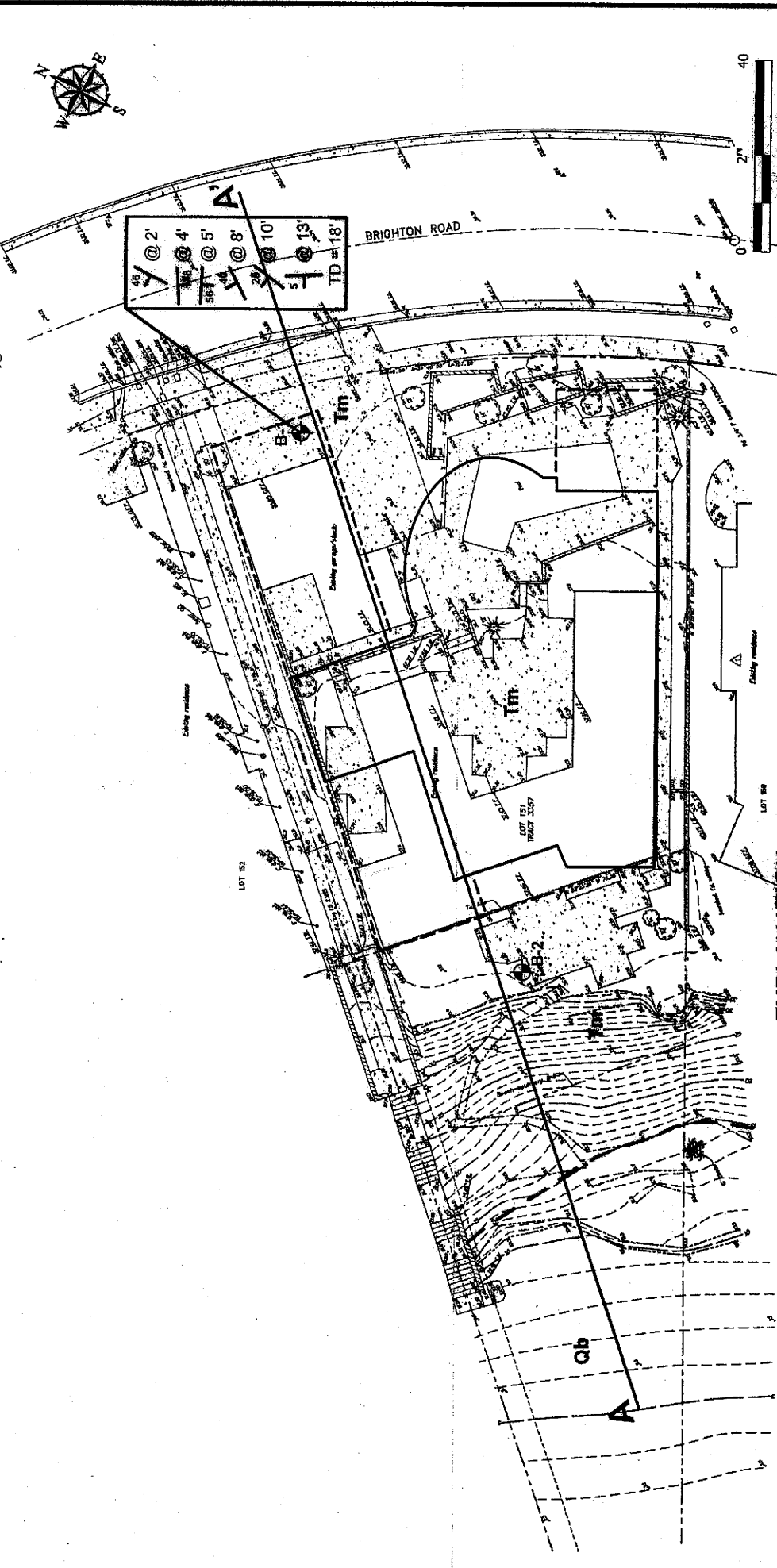
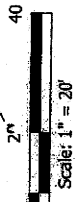
GEOLOGIC CROSS SECTION A-A'

Project: Brighton Road
 Location: Brighton Road
 Date: March 2013
 Drawn By: [Name]
 Scale: 1" = 20'

Figure 3

COASTAL COMMISSION

EXHIBIT # b
 PAGE 1 OF 2



EXPLANATION

- Qb Beach Deposits
- Tm Bedrock; Monterey Formation
- Geologic Contact
- A-A' Location of Geologic Cross Section
- B-2 Approximate Location of Exploratory Boring
- Approximate Footprint of Proposed Structure
- Dashed - At Grade; Solid - Basement

PETRA GEOTECHNICAL, INC.
 CONSULTING ENGINEERS
 1000 S. GARDEN AVENUE, SUITE 100
 COSTA MESA, CALIFORNIA 92626

BOREHOLE LOCATION MAP
 The Whelan Residence - 4541 Brighton Road
 Corona del Mar

DATE: March, 2013
 DWG BY: S/W
 J.N.: 12-315
 SCALE: 1" = 20'

Figure 2

COASTAL COMMISSION

EXHIBIT # 6
 PAGE 2 OF 2

Base Map: Total Boring (20 2)