

From: [Priscilla Rocco](#)
To: [CITY CLERK](#)
Cc: [Priscilla Rocco](#); [Kim Hendricks](#); [Cynthia McDonald](#)
Subject: Respect Your Elders. Listen to the "Regulars"
Date: Tuesday, March 5, 2024 11:54:26 AM

City Council

At the last council meeting, councilwoman Marr *felt compelled* to warn the public that the "regulars" who speak at these meetings make up "less than one-tenth of one percent" of the public, and their comments are no more important than that of the people she meets at Target. Her counterintuitive logic implies that the opinions of "regulars" should be given less weight as our participation is habitual, assuming we've nothing better to do. Ironically, as a candidate she praised these same "regulars" for the months we canvassed to put her on the dais. Is it any wonder we're invested in what she does from that dais!

Point of fact, "regulars" may be small in number but are definitely not like the people you meet in Target. We're former council members and residents who've served on many city committees - the ones you're constantly trying to fill. We put Measure Y and AA on the ballot, made law by 70% of the voters. Some are experts in Fairview Park. Most have decades of institutional knowledge, especially in the lack of city planning in development. And, we ousted the last administration for insulting and ignoring residents. As such, we actually represent a majority of Costa Mesa. These residents count on us to untangle city issues, attend numerous workshops and meetings they can't, and speak for them at these meetings.

We would gladly stay home, but *you don't keep your promises* and you *don't listen*. You overturned Measure Y, but the little affordable housing that will be built won't be inclusive, It'll be segregated to redlined districts. You make a big show of Native American Month, but you defy laws, executive orders, and invite vandals to destroy their ancestral artifacts and lands in Fairview Park. In June 2022, I sent multiple studies, reports, articles, and information warning you and the planning commission what would happen if you let 60 cannabis shops into our small town with no plan in place. Now it's lawsuits, frightened families, and plummeting home prices.

Now, it's the Fairview Development Center. Instead of rolling your eyes

everytime we speak and making imperious pronouncements undermining our credibility, why not save the taxpayers hundreds of thousands of dollars on clueless consultants. Use the "regulars" institutional knowledge and city planning expertise for an advisory council. We may be forceful, passionate, even angry at times, but unlike your advisors, donors, and consultants, our only goal is making our hometown better for all residents, not just the rich.

Priscilla Rocco

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Dear City Council,

I would like to thank you for taking your time to review this case.

I sincerely wish I could address this body to present my side of this case.

This really should not be a fight. The property was and is safe (except for the fire that occurred under the receiver's control). Please see the Declaration of Steve Norris who inspected the property prior to the appointment of a receiver. The property is still sound today.

My only goal since purchasing this property has been to provide as many safe low-income housing units as the City and State would allow.

Some important facts for your consideration:

This property has been inhabited in its current configuration for over 40 years without any issue.

I did not increase the number of units. The appellate court even ruled that this condition existed prior to my ownership.

Many of my tenants came from the OC Housing Authority and the Anaheim Housing Authority. They inspect the units every year.

In 2015 the City's Planning and Building Departments stamped plans showing exactly how the property is today. (See copies in the certified engineer declarations). City also issued building permits for everything that exists on the property and a building inspector inspected the property in 2015. City staff may be telling you these stamped plans and permits do not exist, but I have the originals.

The City's General Plan land use designation and the zoning for this property are in conflict and in such a case the General Plan's land use designation must prevail. The General Plan allows for 9 units on the property even though in 1989 when the last building was built, 12 units were allowed.

The State has new laws including laws requiring the city to approve ADUs and density bonuses that would allow significantly more units than the 14 we are proposing.

Even in The City Attorney stated the entitlements was the reason for the notice of abatement and reason for non-compliance as no other violation was mention or detailed. (See declaration Of Amanda Popp) If the Permits issued in 2015 did not entitle the property as is then our SB-330 application would entitle the property with 14 low-income units.

The City gave me 3 days to abate a condition that has existed without objection for several decades and that the City previously approved through stamped plans stating the property is approved as built.

The Receiver has had over 3 years to entitle the property as per state and local laws and has failed to do so.

The Receiver believes the structures are unsafe because, in his view, only 6 units can exist on the site and is recommending to tear all of the housing on the the property down.

I cannot believe the city agrees this is the highest and best use.

I have had 3 contractors, an engineer, an architect a retired city planner from Anaheim, a land use specialist with Rutan and Tucker, and Steve Sheldon of the Sheldon Group all agree that the structures are sound and rehabilitation is the wise decision.

The Receiver was requested by the City and appointed to rehabilitate the property, but nothing has happened in over 3 years except some 70 police calls, a fire, and vandalism.

I would hope the City Council would want as many safe low-income units as legally possible and as soon as possible.

Why cannot the city review our SB330 plan and provide comments if any corrections are necessary and let us address them. We can have engineered drawings. We can open walls to prove full code compliance. This does not need to be treated differently than any other plan before the Building and Planning Department.

The Receiver's neglect has caused the property to deteriorate into a much worse condition and become a public nuisance. He is objecting to the city considering (or approving) any plan of rehabilitation.

We are respectfully asking the City Council to direct staff and the City's attorneys to work with us on a "win-win" solution that expeditiously and cost effectively rehabilitates and preserves the low-income housing on the property that has served Costa Mesa residents for many decades.

Best regards.

Dennis DAlessio

1 Bradley P. Knypstra (State Bar No. 177901)
brad@khtriallawyers.com
2 Grant Hermes (State Bar No. 291822)
grant@khtriallawyers.com
3 Knypstra Hermes LLP
2731 ½ E Coast Hwy
4 Corona Del Mar, CA 92625
Tel: (949) 432-3802
5 Fax: (949) 432-3803

6 Attorney for Respondent D'Alessio Investments, LLC

7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF ORANGE—CENTRAL JUSTICE CENTER**

10 CITY OF COSTA MESA, a California Municipal
Corporation;

11 Petitioner,

12 v.

13 D'ALESSIO INVESTMENTS, LLC, a Nevada
14 Limited Liability Company; JPMORGAN
15 CHASE BANK, N.A.; and DOES 1 to 25,

16 Respondents.
17

Case No.: 30-2020-01133479

*[Assigned for all purposes to the Hon. Judge
James J. DiCesare, Dept C16]*

**DECLARATION OF STEVE NORRIS, PE,
AIA IN SUPPORT OF RESPONDENT'S
OPPOSITION TO PETITION FOR ORDER
TO ABATE SUBSTANDARD BUILDING
AND APPOINTMENT OF RECEIVER**

[RELATED TO ROA #2]

Hearing:

Date: August 14, 2020
Time: 9:30 a.m.
Dept.: C16

Petition Filed: February 19, 2020
Trial Date: None set

DECLARATION OF STEVE NORRIS, PE, AIA

I, Steve Norris, declare and state as follows:

1. I am a principal in, and owner of, Architectural and Engineering Design Group, which provides forensic services in the areas of architecture, civil engineering, general engineering and building contracting. I have testified as an expert in various courts throughout this state on matters of building design and construction over the past twenty years. During this time, I have also testified on those matters at numerous arbitrations. Except as otherwise stated herein, I have first-hand, personal knowledge of each and all of the facts stated herein, am over the age of 18, am competent, and if called as a witness I could and would competently testify thereto under oath.
2. I am a California Licensed Architect in the State of California, License No: C-30372; Civil Engineer in the State of California, License No. RCE 47672; and General Engineering & Building Contractor in the State of California, License 624109, with over twenty years of experience in Architecture, Engineering and Construction. More details on my background, training, experience, and expertise are contained in my CV, which a true and correct copy of is attached as Exhibit “1”.
3. I have been retained in this case to give my opinions on the condition of the real property located at 1963 Wallace Ave., Costa Mesa, CA 92627 (“Property”), whether any code violations exist as they pertain to the City of Costa Mesa’s (“City”) Code Enforcement Case #22392 letter dated November 27, 2019 (“City Code Violation Letter”), whether there are any substandard building conditions that need to be abated at the Property, and whether this Court should appoint a Receiver for the Property.
4. I have reviewed the following information related to this case and the Property:
 - a. My in person inspection of the Property on or about July 16, 2020;
 - b. The City’s First Amended Petition for Order to Abate Substandard Building and Appointment of Receiver (“Petition”), Notice of the Petition, Declaration of Rene Jimenez in support of the Petition, Declaration of Lois Moy in support of the Petition, Declaration of Eric Beatty in support of the Petition, and Proposed Order for the

1 Petition.

- 2 c. The City Code Violation Letter;
- 3 d. Bradley P. Knypstra’s letter, counsel for D’Alessio Investment, to the City dated
4 January 2, 2020 outlining the building permits, building plans, timeline of the Property
5 since the 1950s to present and the enclosed approved building permits and approved
6 building plans;
- 7 e. Four sets of City approved as built building plans, stamped and signed by the City on
8 June 9, 2015 and June 16, 2015. Attached as Exhibit “2” is a true and correct copy of
9 the as built plans, stamped and signed by the City on June 9, 2015 and June 16, 2015
10 that I received and maintained in the ordinary course of business.
- 11 f. Declarations of tenants at the Property attesting that, among other things, the Property
12 owners have always maintained their respective units and the Property; they have had
13 no issues with the maintenance of their unit or the amenities they are provided; their
14 units have an adequate kitchen, heating, ventilation, climate control, natural and
15 electrical light, plumbing, sinks, and bathrooms; working smoke and carbon monoxide
16 alarms, no insect infestations at the Property, etc. These declarations were from:
- 17 i. Unit A – Jeremie Wilson
- 18 ii. Unit 1 – Todd Dennison
- 19 iii. Unit 2 – Madeliene Molnar
- 20 iv. Unit 101A – Rodrigo Guerra Machado
- 21 v. Unit 202 – Carlos Valdez
- 22 vi. Unit 205 – Erik Ryan Kiesel
- 23 vii. Unit 206 – Kassi Ydris
- 24 viii. Unit 207 – Juraporn Soonthornlipikorn
- 25 ix. Unit 208 – Jared Kasiewicz
- 26 g. Twelve email correspondence chains between D’Alessio Investments and the City from
27 January of 2019 to February of 2020 as follows:
- 28 i. January 30, 2019 between Mr. Knypstra, counsel for D’Alessio Investments and

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- City Code Enforcement Officer Andy Godinez;
- ii. February 4, 2019 from City Code Enforcement Officer Rene Jimenez to Mr. Knypstra;
- iii. February 20, 2019 from Veronica Donovan, counsel for the City to Mr. Knypstra;
- iv. March 25 to March 26, 2019 between Ms. Donovan and Mr. Knypstra;
- v. May 7, 2019 from Mr. Knypstra to City Code Enforcement Officer Mr. Jimenez
- vi. May 13 to May 14, 2019 between Ms. Donovan and Mr. Knypstra
- vii. May 20, 2019 from City Code Enforcement Officer Mr. Jimenez to Mr. Knypstra;
- viii. June 12 to June 24, 2019 between City Code Enforcement Officer Mr. Jimenez, Ms. Donovan, and Mr. Knypstra;
- ix. June 27 to August 5, 2019 between City Code Enforcement Officer Mr. Jimenez, Ms. Donovan, and Mr. Knypstra;
- x. November 14 to November 22, 2019 between Ms. Donovan and Mr. Knypstra;
- xi. December 11, 2019 to January 24, 2020 between Ms. Donovan, Mr. Knypstra, and Mr. Hermes, counsel for D’Alessio Investments;
- xii. January 30 to February 20, 2020 between Ms. Donovan and Mr. Knypstra.

- h. Declaration of Robert Kehiayan;
- i. Declaration of Sabrina Powelson;

5. Based on my review of the facts of this case, the documents, my inspection of the property, my education, background, training, and experience as an architect, civil engineer, and building contractor, I have developed the following opinions and conclusions:

- a. Overview of the timeline of the Property:
 - i. It is my understanding from reviewing the file and as detailed in Mr. Knypstra’s January 2, 2020 letter to the City and its enclosed approved building permits, the Property was built in 1956 originally was 5 units. In the 1970s additional permits were approved for a total of 9 units. In 1990, additional permits were

1 approved to add an addition 8 units, bringing the total to 17 approved and
2 permitted units at the Property.

3 ii. It is my understanding that in January of 2015, a building permit was pulled to
4 make repairs to the building. Then on June 3, 2015 the City sent a violation
5 notice to D'Alessio Investments indicating it had to obtain a building permit or
6 removal all unpermitted construction. In response, Mr. D'Alessio then brought a
7 complete set of as built plans with some modifications on June 9 and June 15,
8 2015 to the City, the City stamped and approved these plans. The City then
9 issued building permits to Mr. D'Alessio and a building inspector approved the
10 work performed on the Property on June 25, 2015 and July 2, 2015.

11 iii. It is my understanding that the City did not have any issue with the Property
12 until 2019 when a tenant who was evicted through court process reported code
13 violations to the City.

14 b. It is my opinion the Property is a legal nonconforming property permitted to have 17
15 units. A legal nonconforming property is defined as a structure that was legally built
16 according to applicable zoning and building regulations of the time, but has since
17 become noncompliant due to a change in these regulations. It is my custom and practice
18 that when as built plans are presented to a city and they get stamped and approved by
19 the city's building and planning departments, building permits are then approved and
20 issued, and the city's building inspector then signs off on the work performed on the
21 permits, that the property and its improvements are considered legal nonconforming.
22 This is the case for the Property and its improvements as this is documented through the
23 numerous approved building permits since 1956 as well as the as built plans submitted
24 to the City in June of 2015, approved by the City's building and planning department in
25 June of 2015, and signed off by the City's building inspector in June and July of 2015.

26 c. It is my opinion the City's Code Violation Letter fails in all respects to evidence the
27 existence of code violations and fails to identify the specific conditions at the Property
28 that give rise to the numerous, vague, and nonspecific list of code violations.

- 1 i. The City's Code Violation Letter fails to identify applicable codes under which
2 original construction was performed. Code violation citations must be made
3 specific to the applicable code at the time the construction was performed.
4 Generally speaking, there is no requirement for an owner to upgrade or retrofit
5 their property every time a new building code is issued. As I have opined, the
6 Property and its improvements are considered legal nonconforming meaning at
7 the time they were built or added to the Property, they were legal according to
8 the applicable codes at that time. As a result, the City's Code Violation Letter is
9 insufficient to prove any code violations exist.
- 10 ii. The City's Code Violation Letter cites numerous code violations, but fails to
11 provide specifics with regard to the conditions that exist at the Property giving
12 rise to these respective code violations. Without knowing the conditions that
13 exist at the Property due to the lack of specificity correlating these conditions to
14 the applicable code violations, the property owner is precluded from addressing
15 the City's concerns.
- 16 iii. The City's Petition purports to provide photographic evidence of the numerous
17 code violations, but in most cases the City's has simply provided photographs of
18 the tenant's use, storage, and housekeeping of their respective units, which are
19 all items specifically unrelated to the overall maintenance of the Property.
- 20 iv. The City's Code Violation Letter cites a laundry list of code violations, but
21 these code violations are based on the living habits of the tenants as opposed to
22 actual conditions of the Property.
- 23 v. These shortcomings, coupled with the lack of specifics in the City's Code
24 Violation Letter and the City's failure to reference specific codes in place at the
25 time the Property and its improvements were originally built preclude the
26 property owner from specifically addressing the City's concerns.
- 27 d. It is my opinion the City has failed/refused to provide clarity on the items listed in its
28 Code Violation Letter and unreasonably refused to meet with and provide the property

1 owner a reasonable period of time to fix any concerns or issues the City has with the
2 Property.

- 3 i. In my experience in dealing with a city's planning and code enforcement
4 departments, that the city wants and encourages property owners to meet with
5 them to informally resolve any issues the City has with a property prior to
6 seeking legal intervention.
- 7 ii. In my experience when actual code violations exist, a city will provide a list of
8 these violations to the property owner and identify with specificity the condition
9 at the property that causes of code violation. This is typically done by providing
10 either the exact location of the condition at the Property, the specific unit
11 number and area within the unit where the condition exists, and/or providing
12 photographic evidence of the condition. The city provides this information to
13 the property owner in order to identify the exact condition that needs to be
14 remedied and to provide the property owner with sufficient information to do
15 so.
- 16 iii. If the property owner has and uncertainty or there is ambiguity with the
17 conditions giving rise to the code violations, cities welcome the property owner
18 to meet with them so the planning and code enforcement departments can
19 identify and point out the exact conditions that need to be fixed.
- 20 iv. Once the property owner has sufficient information to identify the conditions
21 the city has issue with, the city then provides the property owner a reasonable
22 time period to fix these conditions.
- 23 v. I have reviewed the emails and correspondence between the City and D'Alessio
24 Investments. It is my opinion the City's Code Violation Letter fails to provide
25 the required specificity to allow the property owner to ascertain the conditions
26 at the Property that need to be fixed. After receiving the Code Violation Letter,
27 the property owner requested multiple times to be provided with further
28 information about the conditions, the exact location of the conditions at the

1 property, and which of the 17 units contained the conditions. The property
2 owner provided the City with a copy of the approved building permits, the
3 stamped and approved as built building plans from 2015, and requested multiple
4 times to meet with the City and inspect the Property to figure out what
5 conditions the City has issues with.

6 vi. Despite the City receiving all this information from the property owner, the City
7 failed/refused to meet with the property owner to provide further evidence and
8 clarification of the specific conditions causing the code violations.

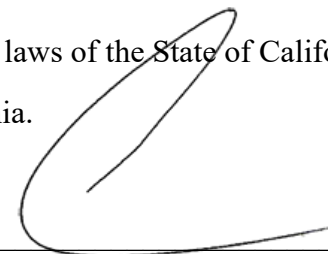
9 vii. In my opinion, the City's actions were unreasonable and did not provide the
10 property owner a reasonable opportunity or reasonable time period to fix any of
11 the code violations.

12 e. Based on the evidence presented by the City in its Petition, it is my opinion the City has
13 failed to show there exists specific substandard building conditions at the Property that
14 need to be abated and has failed to show the need for a Receiver to be appointed. The
15 Property is considered legal nonconforming and the City's Code Violation Letter and
16 the evidence provided in the support of the Petition fail to provide sufficient detail to
17 identify the specific conditions at the Property that result in code violations based on
18 the applicable codes in existence at the time of the original construction. This
19 information is necessary to allow D'Alessio Investments a reasonable opportunity and
20 time to fix any actual issues at the Property. Further, a Receiver for the Property is
21 unnecessary as the property owner has been willing and able to remedy any code
22 violations and issues with the City; however, due to the vague and non-specific code
23 violations listed in the City's Code Enforcement Letter and the City's failure and
24 refusal to meet with the property owner and inspect the property despite repeated
25 attempts and requests, the City has failed to give the property owner a reasonable
26 opportunity and period of time to abate any substandard building conditions and a
27 Receiver should not be appointed.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in San Marcos, California.

Dated July 24, 2020 by:



Steve Norris

EXHIBIT “1”

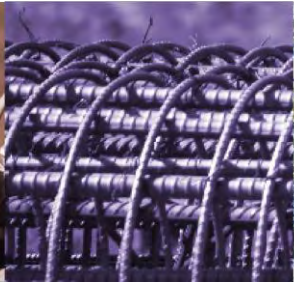
CIVIL
ENGINEERING

GEOTECHNICAL
ENGINEERING

STRUCTURAL
ENGINEERING

ARCHITECTURE

CONSTRUCTION



Steven B. Norris, PE, AIA

*Retained as an expert over 200 times, Deposed over 100 times
Provided testimony in court trial or binding arbitration over 20 times.*

**FORENSIC ANALYSIS
WATERPROOFING SYSTEMS
BUILDING ENVELOPE
STANDARDS OF CARE
COST ESTIMATES
CONSTRUCTION DEFECT
PROJECT DELAY
CONTRACT TERMINATION
DRAINAGE
STORM WATER POLLUTION
FLOODING
HYDROLOGY ANALYSIS
EROSION CONTROL
GRADING PLANS
SEPTIC LAYOUTS
SUBDIVISIONS SLOPE
STABILITY ANALYSIS
GROUNDWATER ANALYSIS
SEISMIC HAZARD REPORTS
SETTLEMENT ANALYSIS
DESIGN DEVELOPMENT
RETAINING WALL
FOUNDATION DESIGN
WOOD DESIGN
STEEL DESIGN
CONCRETE DESIGN
DEEP FOUNDATION SYSTEMS
EARTHQUAKE ANALYSIS
RETAINING WALLS
IMMINENT COLLAPSE
WATER INTRUSION
FIRE WALLS
EGRESS ADA
DETAILING**

Professional Registrations:

CALIFORNIA

Licensed Architect C-30372, AIA
Certified Access Specialist# 356
Registered Civil Engineer RCE 47672
Registered Geotechnical Engineer GE 2590
Certified Engineering Geologist EG 2263
Registered Geologist RG 7331
Certified Hydrogeologist HG 908
General Engineering Contractor License # 624109
General Building Contractor License # 624109

HAWAII Licensed Architect # 12825

OKLAHOMA Professional Engineer PE #25211

Mr. Norris has over twenty years experience in the fields of Architecture; Civil, Structural and Geotechnical Engineering; Geology; and Construction. He utilizes a multidiscipline approach to characterize impacted improvements, and formulate a realistic scope of repair.

Projects include; forensic evaluation of low to high rise residential buildings, high end residential homes, commercial structures, HOA maintained facilities (including slopes, buildings and components of buildings), public works improvements, work site accidents and building collapse.

Mr. Norris has been Engineer of record for numerous large scale community reconstruction projects which provide direct experience into the realities of unforeseen conditions and reconstruction costs. His prior work includes; assessment and characterization of structural systems (wood, steel and concrete structures); waterproofing systems, hydrogeology & groundwater, hydrology and surface water flow modeling, flooding, geotechnical & geological evaluation, landslides, fire damage, and construction standards of care.

Mr. Norris has qualified as an expert in courts in the Counties of San Diego, Riverside, Orange, Los Angeles and San Bernardino and testified in binding arbitration in the County of Santa Barbara. Areas of trial testimony have been provided in the fields of Architecture; Civil, Geotechnical, Structural Engineering; Hydrogeology and Cost Estimating. Trials have included claims regarding Architectural Detailing & As Built Construction, landslides, building settlement, water intrusion (at building envelope & subterranean), retaining wall failure, soil compaction, grading, site drainage, hydrology studies, runoff containment & filtration, civil design, slab vapor emission, deck waterproofing, concrete analysis, structural design analysis, fire damage, earthquake damage, reconstruction costs and septic system failure.

CURRENT EMPLOYMENT

PRINCIPAL ENGINEER: Caltech Engineering, Inc., DBA Engineering Design Group, A&E Construction Forensics, San Marcos, CA-Geotechnical, structural, civil engineering consultants for custom, residential, and light commercial construction.

PRESIDENT & RMO: The Bryant/Norris Company, Inc., San Marcos, CA - General Engineering and Building Contractor.



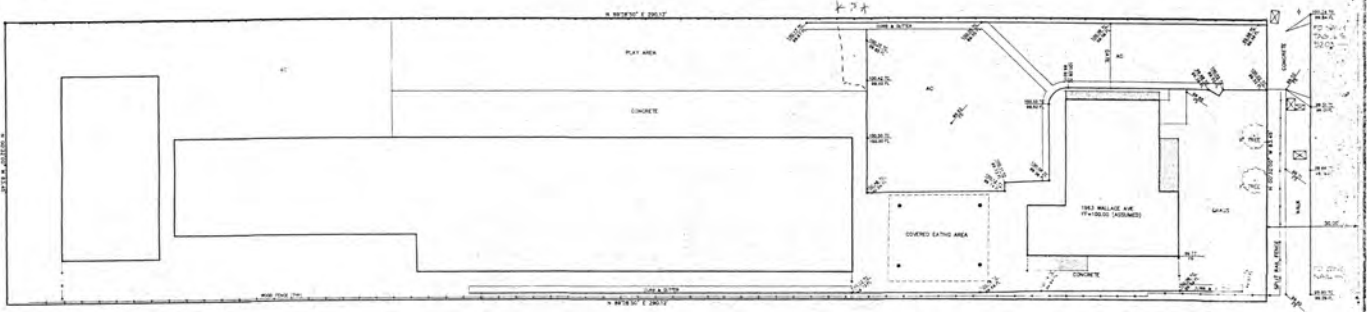
designgroupca.com
aeforensics.com

**BS Engineering
MBA Finance**

EXHIBIT “2”



SCALE: 1" = 10'



SITE PLAN

APPROVED FOR CONSTRUCTION BY THE CITY OF COSTA MESA
 12/13/1986
 BY: [Signature]
 TITLE: [Signature]

FOCUS
 1465 MALLACE AVENUE
 COSTA MESA, CA

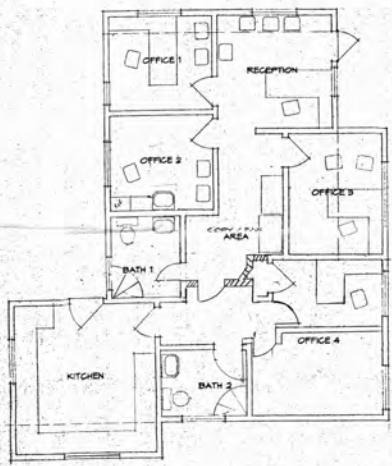
Erion S. Jeannette & Associates, Inc.
 ARCHITECTS

TITLE SHEET
 INFORMATION
 & SITE PLAN

LEGAL OWNER	DESIGN DATA	SQUARE FOOTAGE CALCULATIONS	CONSULTANTS	SHEET INDEX	SYMBOLS LEGEND	VICINITY MAP	
P.O.C.I.S. SANDER BORDON 1965 MALLACE AVE. COSTA MESA, CA 92627 (714) 441-1213		EXISTING 124,978 SF NEW 130,281 SF TOTAL 255,259 SF	SURVEYOR/CIVIL: ALPINE CONSULTANTS 23011 MOULTON PKWY #3-12 LAGUNA HILLS, CA 92653 (714) 885-8008	STRUCTURAL: FARHAD HANSHAD 1401 E GARNSIE AVE STE. 3J SANTA ANA, CA 92709 (714) 281-8111	A-1 TITLE SHEET INFORMATION & SITE PLAN A-2 FLOOR PLAN A-3 EXTERIOR ELEVATIONS	F.S. - Finished Surface F.G. - Finished Grade F.L. - Flow Line F.F. - Finished Floor T.C. - Top of Curb T.G. - Top of Grade T.P. - Top of Planter T.R. - Top of Railing T.S. - Top of Slope T.A. - Top of Wall B.R. - Back of Rail C.C. - Column Cap N.G. - Natural Grade N.W. - New E.N.G. - Existing Natural Grade D.F. - Drainage Flow DO NOT SCALE DRAWINGS	
LEGAL DESCRIPTION PROJECT ID: TRACT #12, LOT 20 AREA: COSTA MESA CITY: COSTA MESA COUNTY: ORANGE							

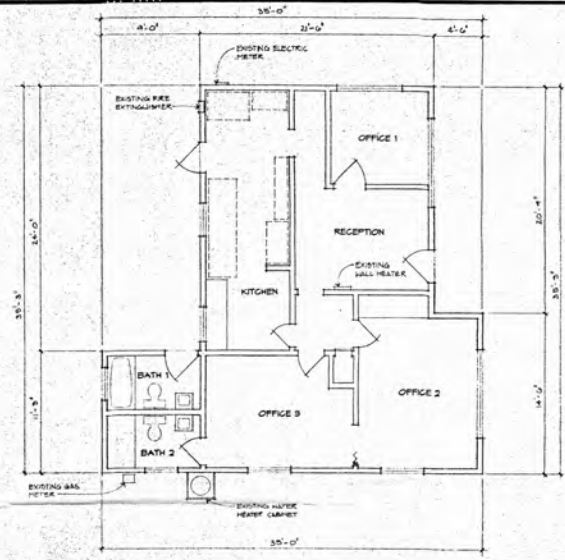
DEC 9 1986

Date: _____
 Author: _____
 Designer: _____
 Checker: _____
 Drawn by: _____
 Job No. 86-012
 Scale: AS SHOWN
 SHEET NO. 06012
 TOTAL SHEETS 06012



PROPOSED PLAN

EXISTING
 WALLS
 NEW
 SCALE 1/4" = 1'-0"

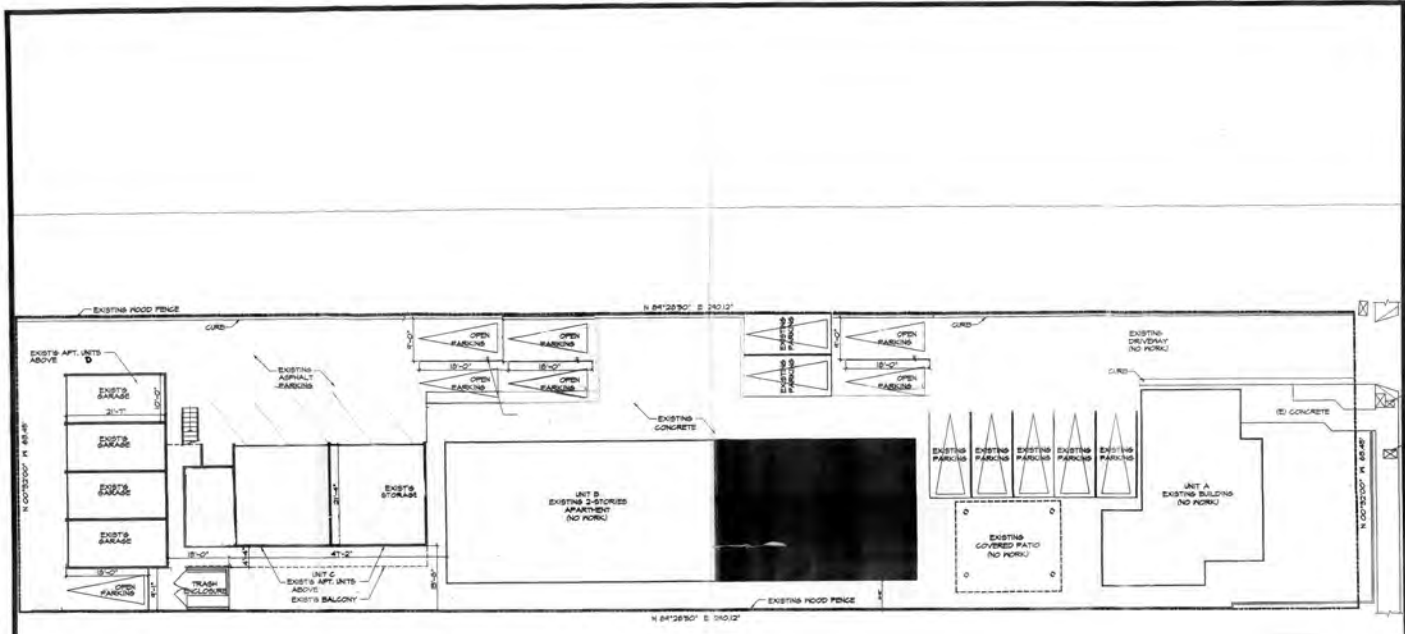


AS-BUILT PLAN

SCALE 1/4" = 1'-0"

P.O.C.I.S.
 1968 AVENUE
 COSTA MESA, CA

DEC 04 1985



SITE PLAN

SCALE 1/8" = 1'-0"

NOTES

- EXISTING STRUCTURE
- STRUCTURE TO BE RE-DEVELOPED

LEGAL OWNER	CONSULTANTS	DESIGN DATA	SHEET INDEX	VICINITY MAP
<p>1965 MALLACE AVE COSTA MESA, CA 92627 CONTACT:</p> <p>LEGAL DESCRIPTION</p> <p>PROJECT ID: TRACT #12, LOT 28 APN: 10-10-0000 AREA: 0.0000 AC CITY: COSTA MESA COUNTY: ORANGE</p> <p>SYMBOLS LEGEND</p> <p>P.S. - Finished Surface T.S. - Top of Slope P.F. - Finished Grade T.P. - Top of Pave P.L. - Plan Line B.P. - Back of Post P.P. - Finished Floor C.C. - Column Cap T.C. - Top of Core N.S. - Natural Grade T.S. - Top of Slope INV. - Invert T.P. - Top of Pave (D) - Existing Natural T.A. - Top of Rating T.D.B. - Top of Shading - Drainage Plan DO NOT SCALE DRAWINGS</p>		<p>CITY: COSTA MESA ZONE: R2 - RD (R2-CP) CODE: 2001 C86 USE: RESIDENTIAL CONSTRUCTION TYPE: V N OCCUPANCY: N-2-314 SETBACKS: FRONT: 20'-0" REAR: 20'-0" SIDE: 20'-0" MAXIMUM HEIGHT: 2 STORIES 30'-0" MAX. UNITS: 1 - 2 BEDROOM 2 - 3 BEDROOMS 3 - 2 BEDROOMS 4 - 2 BEDROOMS PARKING: 19 OPEN, 4 GARAGES REQUIRED PARKING: 0</p> <p>SQUARE FOOTAGE CALCS.</p> <p>LOT SIZE: 10,419 S.F. REDEVELOP: 2,800 S.F.</p>	<p>T1 - INFORMATION & SITE PLAN A-3 - AS-BUILT FLOOR PLAN A-4 - 2nd FLOOR PLAN SEE C-1</p>	<p>VICINITY MAP</p> <p>PROJECT LOCATION</p>

Date: _____

Revision: _____

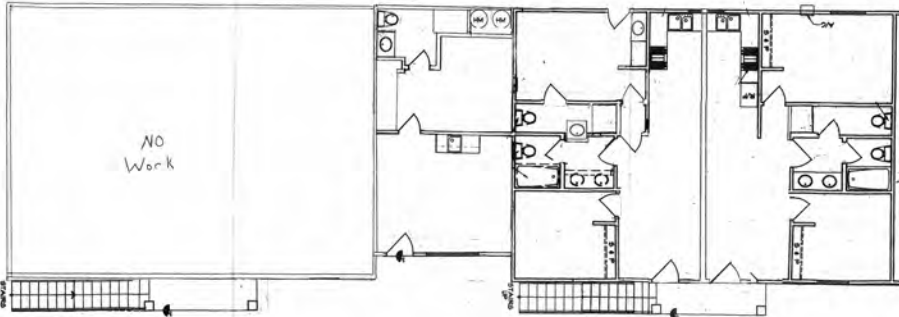
Revision: _____

Revision: _____

Job No.: _____

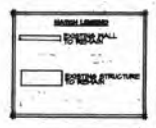
T1

10/1/19



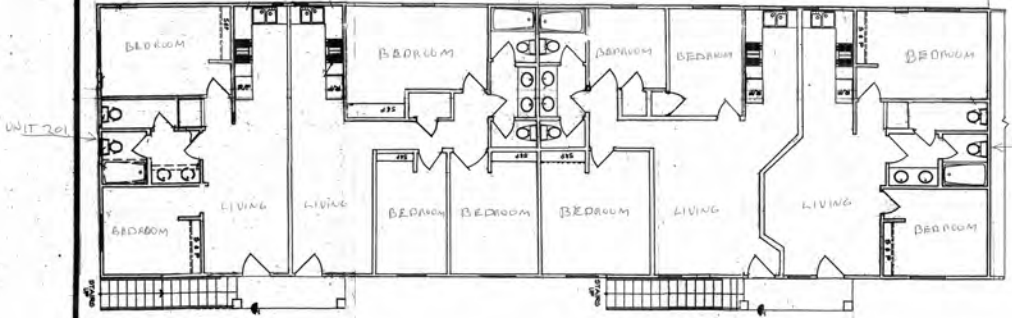
AS-BUILT 1st FLOOR PLAN

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



1988 WALLACE AVE
COSTA MESA, CA

DRAWN BY
VICTOR JASINY
949-992-5577



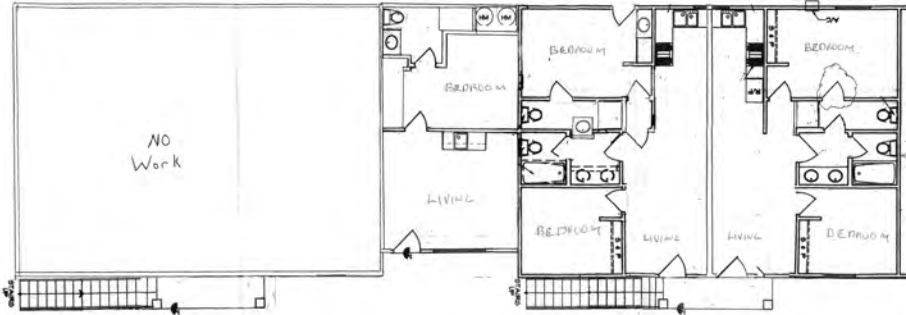
AS-BUILT 2nd FLOOR PLAN

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

AS-BUILT FLOOR PLAN

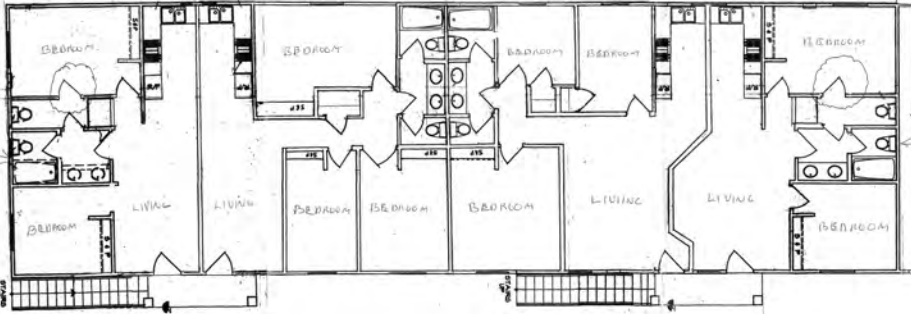
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Revision:	
Revision:	
Revision:	
Job No.:	

A1



NEW-BUILT 1st FLOOR PLAN

SCALE 1/4" = 1'-0"



NEW-BUILT 2nd FLOOR PLAN

SCALE 1/4" = 1'-0"



1888 WALLACE AVE.
COSTA MESA, CA

DRAWN BY
VICTOR JASNY
949-922-5577

NEW-BUILT FLOOR PLAN

Date: _____
Revision: _____
Revision: _____
Revision: _____
Job No: _____

A1

1885 WALLACE AVE.
COSTA MESA, CA

DRAWN BY
VICTOR JASNY
949-922-3577

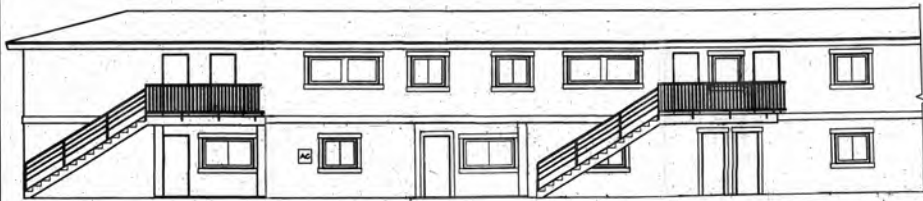
AS-BUILT
& EXTERIOR ELEVATIONS

Date

A3

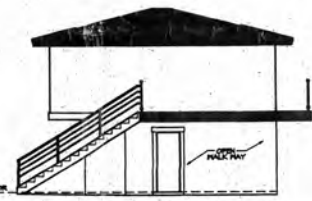
LEGEND

- EXTERIOR WALL
- EXTERIOR STRUCTURE



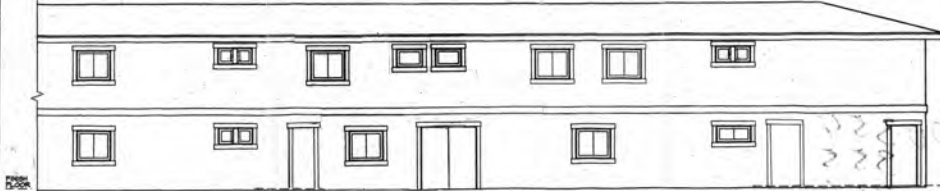
AS-BUILT NORTH ELEVATION
NO CHANGE TO ELEVATION

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



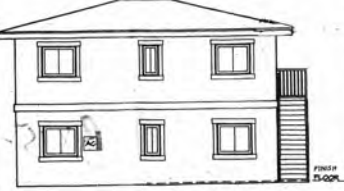
AS-BUILT WEST ELEVATION
NO CHANGE TO ELEVATION

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



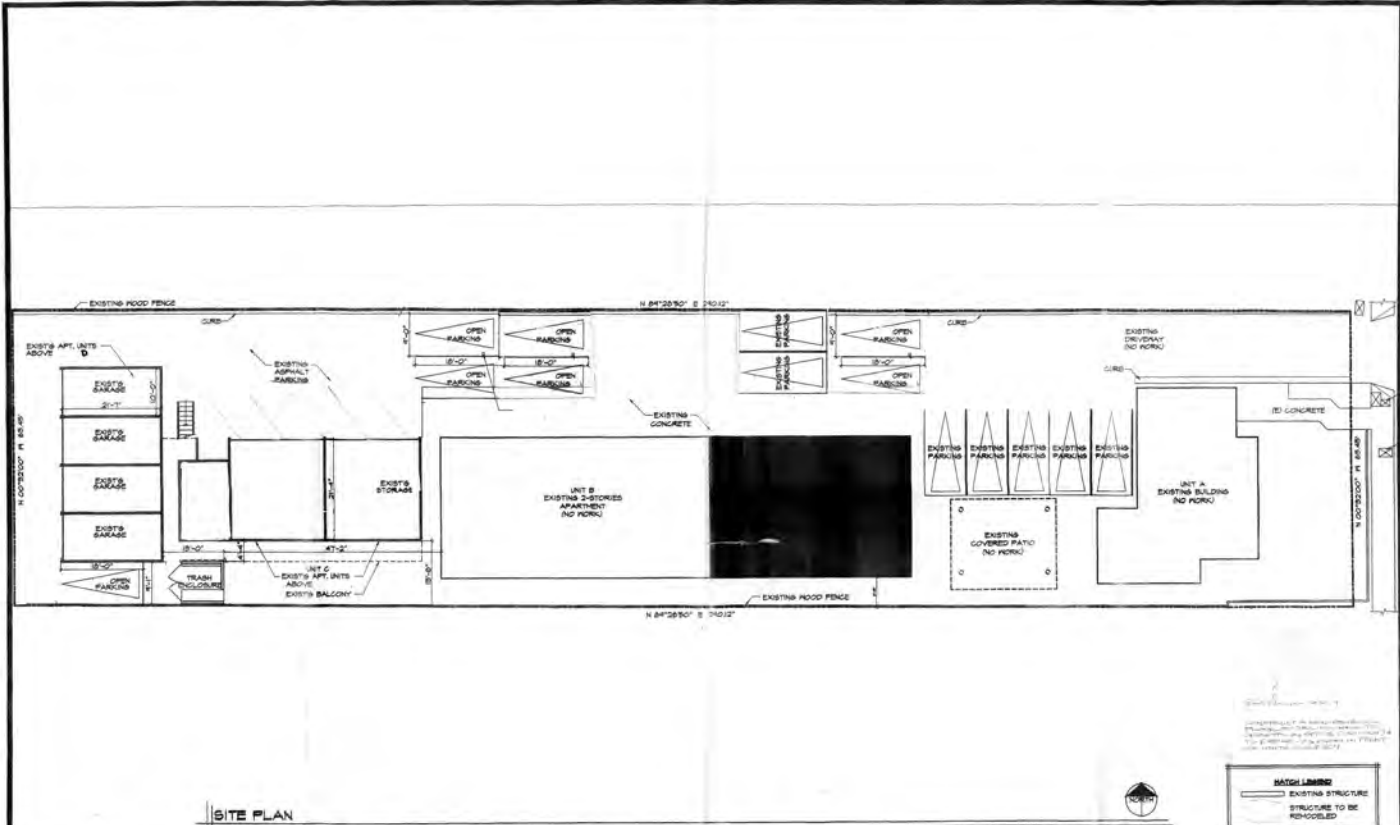
AS-BUILT SOUTH ELEVATION
NO CHANGE TO ELEVATION

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



AS-BUILT WEST ELEVATION
NO CHANGE TO ELEVATION

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



SITE PLAN

LEGAL OWNER	1665 WALLACE AVE COSTA MESA, CA 92627 CONTACT
LEGAL DESCRIPTION	PROJECT ID: TRACT 812 LOT 28 A.P. NUMBER: _____ AREA: _____ CITY: COSTA MESA COUNTY: ORANGE
SYMBOLS LEGEND	<ul style="list-style-type: none"> P.S. - Finished Surface P.F. - Finished Grade P.L. - Plan Line P.F. - Finished Floor T.C. - Top of Core T.S. - Top of Slab T.P. - Top of Paving T.O.S. - Top of Shading T.S. - Top of Slope T.A. - Top of Asst C.C. - Column Cap N.S. - Natural Grade I.S. - Invert B.S. - Existing Natural Grade S.P. - Storage Pit <p>DO NOT SCALE DRAWINGS</p>

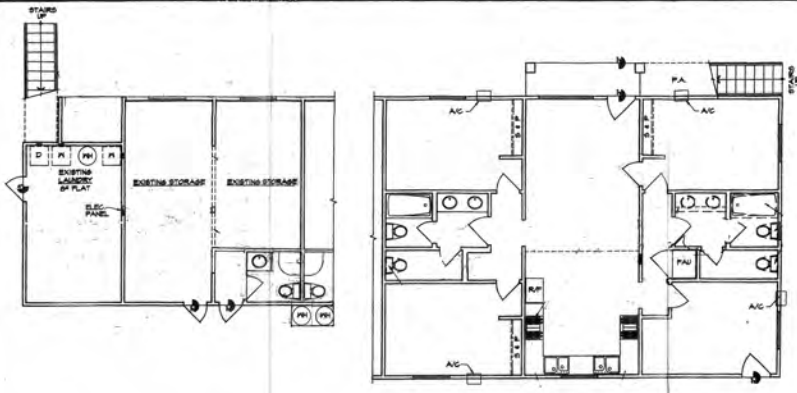
CONSULTANTS	
--------------------	--

DESIGN DATA	CITY: COSTA MESA ZONE: R2 - 10' RES-OPT CODE: 2001 CBC USE: RESIDENTIAL CONSTRUCTION TYPE: V-3 OCCUPANCY: R-2.3.1 SETBACKS: FRONT: 30'-0" REAR: 9'-0" SIDE: 30'-0" MAXIMUM HEIGHT: 3 STORIES, 30'-0" MAX. UNITS: 1 - 3 BEDROOM 2 - 2 BEDROOMS 3 - 2 BEDROOMS 31 - 2 BEDROOMS PARKING: 18 OPEN, 4 GARAGES REQUIRED PARKING: 0
SQUARE FOOTAGE CALCS.	LOT SIZE: 1548 S.F. REMODEL: 246 S.F.

SHEET INDEX	T1: INFORMATION & SITE PLAN A-3: AS-BUILT FLOOR PLAN A-4: 2nd FLOOR PLAN 206 C-3
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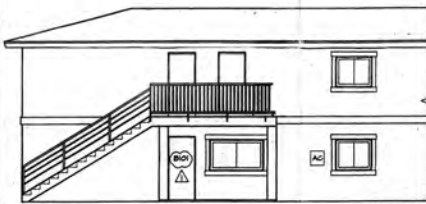
Code:	
Revision:	
Revision:	
Revision:	
Revision:	
Job No.:	



AS-BUILT FIRST FLOOR PLAN

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

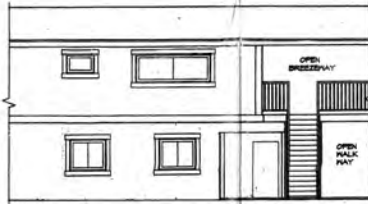
	HATCH LINE: EXTERIOR WALL
	HATCH LINE: EXTERIOR STRUCTURE



AS-BUILT NORTH ELEVATION

NO CHANGE TO ELEVATION

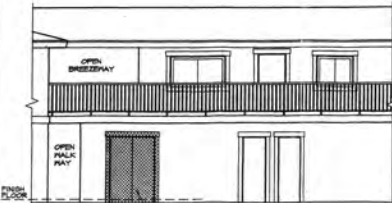
SCALE: 1/4" = 1' - 0"



AS-BUILT WEST ELEVATION

NO CHANGE TO ELEVATION

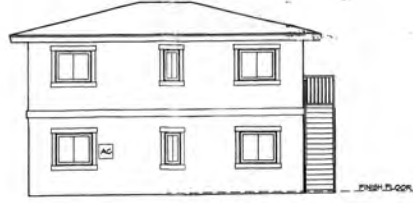
SCALE: 1/4" = 1' - 0"



AS-BUILT SOUTH ELEVATION

NO CHANGE TO ELEVATION

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



AS-BUILT WEST ELEVATION

NO CHANGE TO ELEVATION

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

	Date: _____
	Revision: _____
	Revision: _____
	Job No: _____

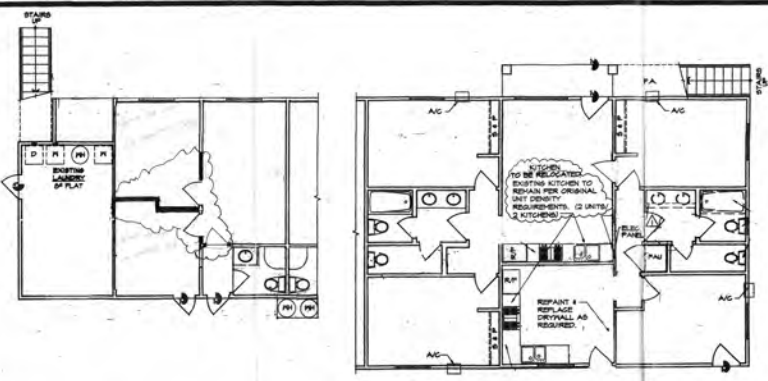
1848 N. FOCUS
 1848 N. FOCUS AVE.
 COSTA MESA, CA

DRANN BY
 VICTOR JHSNY
 949 922-3587

NEW-BUILT FLOOR PLAN
 & EXTERIOR ELEVATIONS

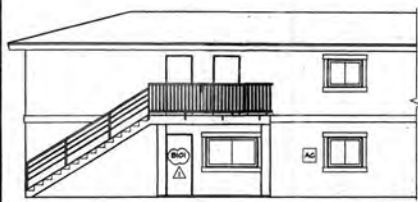
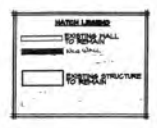
Client	
Architect	
Engineer	
Date	

A-1



AS-BUILT FIRST FLOOR PLAN

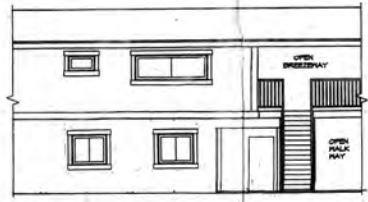
SCALE: 1/4" = 1' - 0"



AS-BUILT NORTH ELEVATION

NO CHANGE TO ELEVATION

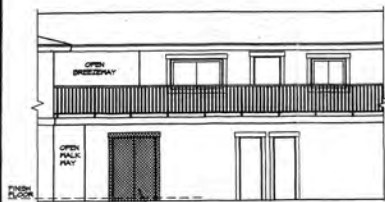
SCALE: 1/4" = 1' - 0"



AS-BUILT WEST ELEVATION

NO CHANGE TO ELEVATION

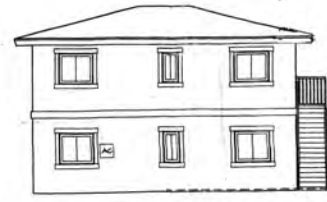
SCALE: 1/4" = 1' - 0"



AS-BUILT SOUTH ELEVATION

NO CHANGE TO ELEVATION

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



AS-BUILT WEST ELEVATION

NO CHANGE TO ELEVATION

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

PROOF OF SERVICE

1 STATE OF CALIFORNIA)
2) SS
3 COUNTY OF ORANGE)

4 I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to
5 the within action, my business address is 2731 1/2 E Coast Hwy, Corona Del Mar, CA 92625.

6 On July 29, 2020, I served the foregoing document(s):

7 **DECLARATION OF STEVE NORRIS, PE, AIA IN SUPPORT OF RESPONDENT’S**
8 **OPPOSITION TO PETITION FOR ORDER TO ABATE SUBSTANDARD BUILDING AND**
9 **APPOINTMENT OF RECEIVER**

10 on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope
11 addressed as follows:

11 Amanda A. Pope
12 Veronica R. Donovan
13 Jones & Mayer
14 3777 North Harbor Boulevard
15 Fullerton, CA 92835

Attorney for Petitioner:
City of Costa Mesa

aap@jones-mayer.com
vrd@jones-mayer.com

14 John M. Sorich
15 Mariel Gerlt-Ferraro
16 Matthew S. Henderson
17 Parker Ibrahim & Berg LLP
18 695 Town Center Drive, 16th Floor
19 Costa Mesa, California 92626

Attorney for Respondent:
JPMorgan Chase Bank

John.Sorich@piblaw.com
Mariel.Gerlt-Ferraro@piblaw.com
Matthew.Henderson@piblaw.com

20 [X] I certify that the above-referenced document(s) were served electronically on the parties listed
21 herein at their most recent known email address or email of record by submitting an electronic
22 version of the document(s) to One Legal, LLC, through the user interface at
23 www.onelegal.com (designated electronic filing service provider).

24 [X] I declare under penalty of perjury under the laws of the State of California that the foregoing is
25 true and correct.

26 Executed on July 29, 2020, Corona Del Mar, CA.

27 
28 _____
Grant Hermes

1 **JONES & MAYER**
Amanda A. Pope, SBN 273307
2 Veronica R. Donovan, SBN 298964
3 3777 North Harbor Boulevard
Fullerton, CA 92835
4 Telephone: (714) 446-1400
Facsimile: (714) 446-1448
5 Email: aap@jones-mayer.com
vrđ@jones-mayer.com

6 Attorneys for Petitioner, City of Costa Mesa
7 *In re: 1963 Wallace Ave., Costa Mesa, California*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

11 CITY OF COSTA MESA, a California
12 Municipal Corporation,

13 Petitioner,

14 vs.

15 D’ALESSIO INVESTMENTS, LLC, a
Nevada limited liability company;
16 JPMORGAN CHASE BANK, N.A.; and
DOES 1-25,

17 Respondents.

Case No. 30-2020-01133479-CU-PT-CJC

Hon. David A. Hoffer
Department C16

**PETITIONER CITY OF COSTA MESA’S
RESPONSE TO RESPONDENT
JPMORGAN CHASE BANK, N.A.’S
MOTION TO MODIFY INJUNCTION**

(RELATED TO ROA 358)

Date: April 24, 2023
Time: 1:30 P.M.
Dept.: C16

20 ///

28 ///

EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT CODE SECTION 6103

1 Petitioner CITY OF COSTA MESA (“City”) hereby submits its Response to the Motion to
2 Modify Injunction to Permit Foreclosure of Real Property, or, in the Alternative, To Instruct the
3 Receiver to Pursue a Sale of The Real Property (“Motion”) filed by Respondent JPMORGAN
4 CHASE BANK, N.A. (“Chase”).

5 I. INTRODUCTION

6 The real property that is the subject of this case and Chase’s Motion is 1963 Wallace
7 Avenue, Costa Mesa, California (“Property”) and is owned by Respondent D’Alessio Investments,
8 LLC (“D’Alessio”). In this matter, the Court has appointed Eric P. Beatty, Esq. as the Court’s
9 receiver (“Receiver”) over the Property. It is undisputed that the Receiver is in possession and
10 control of the Property and all parties are subject to the Court’s order appointing the Receiver dated
11 November 5, 2021, which includes an injunction against foreclosure by Chase (“Appointment
12 Order”).

13 While the City does not dispute the facts presented by Chase in its Motion regarding
14 D’Alessio’s default on mortgage obligations to Chase, the City would like to clarify the status of
15 the Property for the Court and provide the Court with the City’s position regarding potential
16 foreclosure or sale.

17 II. LEGAL ANALYSIS

18 **A. The Court Should Deny Chase’s Foreclosure Request Because There is no Need to Re-** 19 **Litigate the Appointment Order and the Need for the Receiver to Rehabilitate the** 20 **Property Still Exists.**

21 The Property is still in violation, still presents a health and safety risk and therefore, the
22 need for the Receiver still exists. While the tenants have been relocated, a vacant property can still
23 be substandard and in violation of law. Here, the previously submitted evidence before this Court
24 shows the Property is still replete with numerous violations of State law and the City’s municipal
25 code and the building itself is still substandard and substantially dangerous to warrant a receiver
26 under Health and Safety Code sections 17980.6 and 17980.7. Given the lack of legal entitlements
27 for all of the units still existing upon the Property, confirmed by the City and the Receiver in
28 multiple previous Court filings, the existence of the Property in its current state is itself illegal.

1 Even if the Court grants the relief requested in the Motion, as a foreclosing lender here,
2 Chase still takes title to the Property subject to the receivership and Receiver's priority lien. A
3 foreclosure does little more than change the name of the owner on title – it has no practical effect
4 and is not the best solution to move this litigation forward and ultimately cure the violations
5 plaguing the Property.

6 While there existed no statutory basis to require an injunction against foreclosure, the Court
7 exercised its broad equitable discretion to issue such an injunction in the Appointment Order and
8 can continue to exercise its discretion to keep the injunction and terms of the Appointment Order
9 in place. Should the Receiver have to spend receivership estate funds on the foreclosure process,
10 it delays and distracts from the ultimate goal and purpose of the current receivership and requires
11 the Receiver to spend time and resources otherwise earmarked for compliance and rehabilitation.
12 The Appointment Order specifically charges the Receiver with the duty to bring the Property into
13 compliance with the law and correct all existing violations and that should remain the goal of this
14 receivership action regardless of how that is ultimately accomplished.

15 A foreclosure in this case is not realistic because it does not solve the problem regarding
16 the need to bring the Property into compliance. A foreclosure by Chase merely changes title
17 ownership because the Receiver stays in possession and control of the Property. A foreclosure does
18 not equate to compliance and the Motion presents no proposed rehabilitation plan, timeline or cost
19 estimate from Chase once it becomes the owner so the City cannot discern what Chase intends to
20 do to bring the Property into compliance and should not have to wait for a new owner to figure that
21 out when the Court's own Receiver is already in the complicated process of doing so for this
22 Property, especially the entitlements issue.

23 The City filed this receivership action on February 10, 2020, and the Receiver's work,
24 underway since then, should not be delayed for foreclosure because doing so does not serve the
25 interests of the City or other litigants. Even after a foreclosure, the Property remains substandard
26 and uninhabitable and, as previously litigated and ruled upon by the City, is not legally entitled for
27 the number of units currently existing thereon. The analysis that is likely to come next from the
28 Court's Receiver is (1) what legally can be done with the Property and (2) which plan makes the

1 most financial sense given the interests of all parties (i.e., full rehabilitation, demo, sale, etc.) It is
2 likely the Receiver may recommend sale and if so, a foreclosure can be avoided and Chase's
3 mortgage will get paid from any available sale proceeds. While a foreclosure does little more than
4 change ownership, in reality it provides no assurances for the City, but a sale of the Property by the
5 Receiver would provide a route towards compliance, especially if the Receiver determines
6 rehabilitation is not viable.

7 **B. The City Does Not Necessarily Object to the Alternative Relief Sought in the Motion**
8 **Regarding the Sale of the Property.**

9 In its Motion, Chase requests alternative relief seeking Court instructions for the Receiver
10 to pursue a sale of the Property. The City does not necessarily outright reject the concept of a
11 proposed sale with certain conditions. Since the City initiated this receivership action to ensure the
12 Property was brought into compliance with the law, and at present it remains in violation, the City
13 would require any proposed buyer enter into a compliance agreement that sets forth specific
14 deadlines to obtain permits from the City to potentially rehabilitate the Property (if viable) or more
15 than likely demolish the Property. This is common in "as-is" sales of receivership properties for
16 cities to ensure the new buyer does what the City (and the Court) were expecting the Receiver to
17 do to ensure compliance. This remedy also makes sense for all parties because it is presumably the
18 best and most cost-effective way to obtain compliance and conclude the litigation.

19 The City would also request further Court clarification or approval of a rehabilitation plan
20 to know if the Receiver would sell the Property demolished (which would result in compliance) or
21 if the proposed buyer would be expected to carry out that work, or any other work, to ensure full
22 compliance with the City's Notice to Abate, under the Receiver's supervision.

23 **III. CONCLUSION**


24 For these reasons stated above, the City respectfully requests that this Court deny Chase's
25 request for relief from the injunction against foreclosure. If the Court is inclined to grant the
26 alternative relief instructing the Receiver to sell the Property, the City does not object (subject to
27 certain conditions and further orders of the Court). If such a sale is ordered, the City reserves the
28

1 right to further brief the City’s position for the Court depending upon the facts, circumstances and
2 evidence that may come before the Court on that specific issue.

3 Dated: April 11, 2023

JONES & MAYER

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By: 

Amanda A. Pope, Esq.
Veronica R. Donovan, Esq.
Attorneys for Petitioner
City of Costa Mesa

PROOF OF SERVICE

1
2 **STATE OF CALIFORNIA**)
3 **COUNTY OF ORANGE**) ss.

4 I am employed in the County of Orange, State of California. I am over the age of 18 and not a
5 party to the within action. My business address is 3777 North Harbor Blvd. Fullerton, CA 92835. My
6 electronic address is: cjl@jones-mayer.com.

7 On **April 11, 2023**, I served the foregoing document(s) described as **PETITIONER CITY OF**
8 **COSTA MESA'S RESPONSE TO RESPONDENT JPMORGAN CHASE BANK, N.A.'S MOTION**
9 **TO MODIFY INJUNCTION**, on each interested party listed on the **attached service list** as follows.

10 _____ (VIA MAIL) I placed the envelope for collection and mailing, following the ordinary business
11 practices.

12 I am readily familiar with Jones Mayer's practice for collection and processing of
13 correspondence for mailing with the United States Postal Service. Under that practice, it would
14 be deposited with the United States Postal Service on that same day with postage thereon fully
15 prepaid at La Habra, California, in the ordinary course of business. I am aware that on motion of
16 the parties served, service is presumed invalid if postal cancellation date or postage meter date is
17 more than one day after date of deposit for mailing affidavit.

18 _____ (VIA OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided
19 by an overnight delivery carrier and addressed to the persons at the addresses on the attached
20 service list. I placed the envelope or package for collection and overnight delivery in the
21 overnight delivery carrier depository at Fullerton, California to ensure next day delivery.

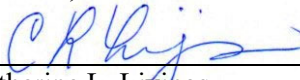
22 _____ (VIA MESSENGER SERVICE) I served the documents by placing them in an envelope or
23 package addressed to the persons at the addresses listed above and providing them to a
24 professional messenger service for service.

25 _____ (VIA FACSIMILE) Based on an agreement of the parties to accept service by fax transmission,
26 I faxed the documents to the persons at the fax numbers listed on the attached service list. No
27 error was reported by the fax machine that I used.

28 X (VIA ELECTRONIC SERVICE) By electronically transmitting the document(s) listed above to
the e-mail address(es) of the person(s) set forth in the attached service list. See Rules of Court,
Rule 2.251 and CCP §1010.6.

(VIA ELECTRONIC SERVICE): Pursuant to the Orange County Superior Court eFiling
mandate, I caused the above to be served to the listed addressee(s) via One Legal e-serve. See
California Rules of Court rule 2.251(b)(1)(B) (*by efileing the document, you agree to accept
electronic service at the electronic service address you provided*) and 2.251(c).

I declare under penalty of perjury under the laws of the State of California that the foregoing is
true and correct. Executed on **April 11, 2023**, at Fullerton, California.

25 
26 _____
27 Catherine L. Livings
28

City of Costa Mesa v. D'Alessio Investments
Case No. 30-2020-01133479-CU-PT-CJC
Re: 1963 Wallace Ave, Costa Mesa, CA

PROOF OF SERVICE LIST

Attorney for Respondent, D'Alessio Investments LLC: - BY EMAIL ONLY

Catherine J. Rowlette, Esq.
Nassie Law, APC
3972 Barranca Pkwy, Ste J301
Irvine, CA 92606
Telephone: 949-757-1450
Facsimile: 949-265-9041
Email: catherine@nassierowlette.com

Attorney for Respondent, JPMorgan Chase Bank: - BY EMAIL ONLY

Bryant Delgadillo
Matt Henderson
PIB LAW
695 Town Center Drive, 16th Floor
Costa Mesa CA 92626
Telephone: 714-361-9604
Email: Bryant.Delgadillo@piblaw.com
Matthew.Henderson@piblaw.com

Court-Appointed Receiver: - BY EMAIL ONLY

Eric Beatty, Esq.
Court Appointed Receiver
123 E. 9th St, Ste 210
Upland, CA 91786
Telephone: 909-243-7944
Facsimile: 909-243-7949
Email: epb@epblegal.com
jn@epblegal.com
ak@epblegal.com

March 5, 2024

VIA E-MAIL

Mayor and Honorable Members of the City
Council for the City of Costa Mesa

Re: Written Public Comment for the March 5, 2024 City Council Meeting
Closed Session Agenda Item #5
CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
City of Costa Mesa v. D'Alessio (1963 Wallace Ave.)
Orange County Superior Court Case No. 30-2020-01133479

To the Mayor and Honorable Members of the City Council:

As you know, my office represents D'Alessio Investments LLC ("my client"), the owner of the property located at 1963 Wallace Avenue in the City of Costa Mesa (the "Property"), which is the subject of the receivership action you will have the opportunity to discuss at tonight's meeting as Closed Session Agenda Item #5. We previously submitted a detailed letter on this litigation for your January 16, 2024 meeting, a copy of which is enclosed for ease of reference. We wanted to provide you with a brief update of what has occurred since your January 16th meeting.

On February 13, 2024, City staff, a representative from the Receiver's office, and my client did a site inspection of the Property. My client brought several planning and construction professionals to assess the condition of the structures, including David See (a retired Planning Services Manager for City of Anaheim), Steve Sheldon (a land use consultant from the Sheldon Group), Steve Cederquist (a construction expert who has attended all three inspections of the Property), and George Gehron (a court-approved construction expert). Although the condition of the Property has deteriorated significantly since the Receiver took it over, **all of these planning and construction professionals agree that the structures are salvageable.**

We hope the City Council will agree that the current condition of the Property is not acceptable. My client is solution-oriented. He has presented the City with at least two proposals that will rehabilitate the housing on the Property quickly and cost-effectively. The receivership action has been ongoing for more than four years with no end in sight. This is a drain on both the City's and my client's time and resources. Settlement could improve the condition of the Property much faster than protracted litigation and would help the City meet its housing goals. We hope the City Council will agree and will direct its legal counsel to work with us on a sensible settlement.

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We continue to welcome the opportunity to discuss this matter further and provide any information or documentation you need.

Respectfully submitted,

RUTAN & TUCKER, LLP

A handwritten signature in black ink, appearing to read "Alisha Patterson", written in a cursive style.

Alisha Patterson

AP

Enclosure: January 16, 2024 Letter to City Council

cc: Kim Barlow, City Attorney
Krista MacNevin Jee, Esq.
Amanda Pope, Esq.

January 16, 2024

VIA E-MAIL

Mayor and Honorable Members of the City
Council for the City of Costa Mesa

Re: Written Public Comment for the January 16, 2024 City Council Meeting
Closed Session Agenda Item #4
CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
City of Costa Mesa v. D'Alessio (1963 Wallace Ave.)
Orange County Superior Court Case No. 30-2020-01133479

To the Mayor and Honorable Members of the City Council:

D'Alessio Investments, LLC ("my client") recently retained me to provide legal advice on the entitlement and development options for their property located at 1963 Wallace Avenue in the City of Costa Mesa (the "Property"). By way of background, I have been a land use and municipal law specialist with Rutan & Tucker, LLP for more than a decade. I am deeply familiar with the State of California's housing laws, which as I am sure you are aware, have changed significantly over the past five years. With Nassie Rowlett, we are also counsel in the above-entitled receivership action.

As discussed in more detail below, my client's Property has been the subject of the above-referenced receivership action for almost four years. The court-appointed Receiver (Eric P. Beatty, Esq.) has had full physical possession of the Property since November of 2021. Before the Receiver took control of the Property, my client's tenants were almost exclusively low-, very low-, and extremely-low income households, many of whom have school-aged children. My client charged below-market rent that these families could afford. Because many of the households received Section 8 subsidies administered by the Orange County Housing Authority and Anaheim Housing Authority, these agencies regularly inspected my client's Property to confirm habitability. Approximately seven months after the Receiver took full physical possession of the Property, he terminated all of my client's tenants' leases and forced them to move out. Under the Receiver's care, the units have now been vacant for more than a year and a half and have become magnets for trespassing, squatting, vandalism, and arson. The condition of the Property today is far worse than it was under my client's care. Nevertheless, the existing housing on the Property is salvageable.

Over my client's objections, the Receiver is currently seeking Court approval to demolish all of the housing on the Property. The forced demolition of this housing violates the letter and intent of the Housing Crisis Act of 2019 (Gov. Code § 66300.6), the Housing Element Law (Gov. Code § 65583.2(g)(3)), the Housing Accountability Act (SB 330) (Gov. Code § 65589.5), the

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State’s Receivership Law (Health & Saf. Code § 17980(c)), the vested rights doctrine, and Policy 3D of the City’s recently-adopted 6th Cycle 2021-2029 Housing Element Update.¹

In contrast, my client has presented the City with two proposals that would use recently-adopted State housing laws to resolve any alleged discrepancy in the number of units permitted on the Property and rehabilitate and preserve the Property’s existing housing. My client’s preferred proposal would provide three (3) deed-restricted units that would be offered at rents affordable to qualified low-income households. The Receiver has repeatedly directed the City to disregard my client’s submittals.

It is difficult to imagine that, in the midst of a housing crisis, the City Council would prefer a vacant lot to a solution that would quickly and cost-effectively rehabilitate the Property’s existing housing. The City is under no obligation to support or submit to the Receiver’s demolition proposal. To the contrary, permitting the Receiver to demolish habitable housing with no plan to replace the units will put the City in legal jeopardy under the current housing laws. We respectfully request the City Council direct its legal counsel to go on record in the receivership action opposing the Receiver’s request for Court-approval to demolish the housing on my client’s Property and, instead, work with my client to explore options to rehabilitate the existing housing.

Background on the Property

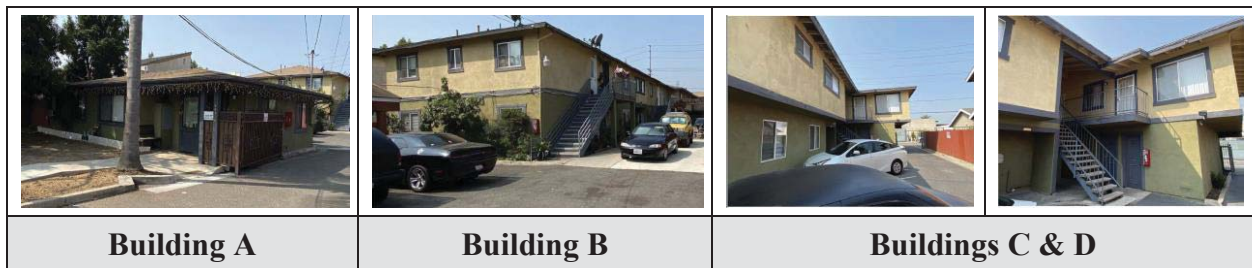
My client’s Property is a multifamily development on an approximately 0.42 acre site located at 1963 Wallace Avenue in Costa Mesa (APN 422-271-10). The Property is developed with four buildings — a single family residence built in 1956 (“Building A”), an apartment building built originally built in 1956 and modified in 1991 (“Building B”), and two duplexes built in 1978 (“Building C” and “Building D”).

¹ On the question of whether the Receiver’s proposal to demolish of all of the housing on my client’s Property complies with State housing laws, we have requested technical assistance from the Housing Accountability Unit (“HAU”) of California’s Department of Housing and Community Development (“HCD”).

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Aerial from Google Maps²



Background on the Receivership Action

Since August of 2020, the Property has been subject to a Court-ordered receivership in a civil action titled *City of Costa Mesa v. D’Alessio Investments, LLC*, Orange County Superior Court Case No. 30-2020-01133479 (the “Receivership Action”). Filed February 20, 2020, the Receivership Action has been ongoing for nearly four years. The Receiver was granted full physical possession of the Property on November 17, 2021. Effective May 31, 2022, the Receiver terminated all of my client’s tenants’ leases, and he forced all of the tenants (who were primarily low-income families, many with school-aged children) to leave by the end of June of 2022. The units on the Property have been vacant ever since.

The central dispute in the Receivership Action revolves around how best to reconcile an alleged discrepancy between the number of dwelling units permitted and the number of dwelling units that currently exist on the Property. The City and Receiver contend that the Property is entitled and permitted for only nine (9) dwelling units.³ Before my client purchased the Property,

² Google Maps identifies the Property as the “Orange Coast Interfaith Shelter.” It was a homeless shelter at one time, but it is not anymore.

³ This is memorialized in the Receiver’s First Report, dated September 28, 2020 and filed with the Court on September 29, 2020. (See pp. 3:11 & 5:9-10.)

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prior owners added eight (8) dwelling units. The envelopes of the buildings have not changed since they were originally constructed. The units were added by dividing some of the existing dwelling units. The City's public records confirm the prior owners obtained City permits for the additional units, but the City now disputes that the permits it previously issued remain valid.

My client has proposed a sensible, cost-effective solution to resolve this alleged discrepancy. As discussed in more detail later in this letter, my client has submitted (or attempted to submit) two plans that would rehabilitate the existing buildings and provide a path forward to retroactively permit the seventeen units (or at least as many units as are allowed under the City's current land use regulations and State housing laws).

The Receiver, in contrast, has "directed the City to take no action with respect to [my client's] application"⁴ and has requested Court-approval to demolish all of the existing housing so the Property can be redeveloped. The Receiver's request is currently pending. The City has taken the position that, post-demolition, the Property cannot have more than six (6) units if it is redeveloped,⁵ which is significantly lower than the density permitted by the City's General Plan land use designation (see "Maximum Residential Density for the Property" section below).

Displacement of Low-, Very Low-, and Extremely Low-Income Tenants

As noted above, effective May 31, 2022, the Receiver terminated all of my client's tenants' leases and forced the fifteen households to move out.⁶ Of those fifteen households, at least two qualified as low-income, at least ten qualified as very low-income, and at least one qualified as

⁴ This is memorialized in a letter the Receiver sent to my client's litigation counsel (Catherine Rowlett) and land use consultant (Steve Sheldon) on or about July 21, 2023.

⁵ This is memorialized in a letter the City's legal counsel (Jones Mayer Law) sent to the Receiver on or about January 19, 2022. (See p. 3, Response to Question #15.)

⁶ In the Receivership Action, the City and Receiver claim the Property had Building Code violations that were threats to health and safety, but there is documentation to the contrary — (1) many of my client's tenants signed declarations disputing the Receiver's characterization of the condition the Property; (2) because many of the tenants relied on Section 8 subsidies, their units needed to pass routine inspections by the Anaheim Housing Authority and the Orange County Housing Authority to confirm habitability; and (3) the Receiver had full physical custody of the Property for at least six months before he forced my client's tenants to move out, which undermines his contention that their units were not habitable. Ultimately, the Code violations the City and Receiver identified were easily fixable and did not require permanent displacement of tenants (e.g., insect infestation in some units, cracked tiles, worn finishes, and water damage). (See Receiver's First Report, dated September 28, 2020 and filed with the Court on September 29, 2020, pp. 8:19 – 9:16.)

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extremely low-income⁷ (as determined by HCD). (See Receiver’s Relocation Assistance Plan, dated April 13, 2022 and filed with the Court April 14, 2022, pp. 2:26 – 3:3 & Exhibit G].) As shown in the table below, the rent my client was charging was significantly below fair market rent:

Unit #	Unit Size	Tenant’s Income Level	Tenant’s Household Size	2022 FMR in Orange County	Comparable Rent in Proximity	Rent Charged By My Client
101	2 bd./1 ba.	Very Low	5-person	\$2,324	\$2,800	\$1,650
102	1 bd./1 ba.	Ext. Low	4-person	\$1,905	\$2,200	\$1,400
103	2 bd./1.5 ba.	Very Low	4-person	N/A	\$2,900	\$1,600
104	2 bd./1 ba.	Very Low	4-person	\$2,324	\$2,800	\$1,725
105	1 bd./1 ba.	Very Low	2-person	\$1,905	\$2,200	\$1,100
106	1 bd./1 ba.	Very Low	2-person	\$1,905	\$2,200	\$1,450
107	2 bd./1.5 ba.	Unknown	2-person	N/A	\$2,900	\$2,300
201	2 bd./1 ba.	Very Low	2-person	\$2,324	\$2,800	\$1,600
202	3 bd./1 ba.	Very Low	5-person	\$3,227	\$3,200	\$2,200
204	2 bd./1 ba.	Very Low	4-person	\$2,324	\$2,800	\$1,800
205	2 bd./1.5 ba.	Low	2-person	N/A	\$2,900	\$1,600
206	Studio	Low	1-person	\$1,716	\$1,800	\$500
207	Studio	Unknown	2-person	\$1,716	\$1,800	\$1,150
208	2 bd./1 ba.	Very Low	3-person	\$2,324	\$2,800	\$1,700
A	Studio	Very Low	1-person	\$1,716	\$1,800	\$700

Eight of the displaced households had school-aged children. Three had children with special needs. The Property’s seventeen units have been vacant ever since.

Destruction of Housing Through Neglect

Under the Receiver’s stewardship (which began with full physical possession on November 17, 2021), the condition of the Property has deteriorated rapidly and continues to worsen. Over the past year and a half, the vacant buildings have become magnets for trespassing, squatting, vandalism, looting, and arson. See before and after photographs below.

⁷ Two of the seventeen units were vacant, and two of the fifteen households declined to provide information about their income.

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BEFORE: Property Prior to January 25, 2022

NOTE: These photographs were taken by the Receiver shortly after he took over physical possession of the Property from my client and at least four months before the Receiver forced my client’s tenants to vacate their units.



AFTER: Property on November 1, 2023

NOTE: These photographs were taken by my client’s manager/owner approximately two years after the Receiver took full physical possession of the Property and approximately 1.5 years after the Receiver forced my client’s tenants to vacate their units.



The City agrees. On or about October 16, 2023, the City’s legal counsel sent the Receiver a letter expressing concern about the “numerous calls for service” to the Property “[s]ince July 2022” ranging in type from “trespassing to transient activity.”

Efforts to Negotiate a Resolution to this Matter

After receiving a copy of the City’s October 16, 2023 letter about the deteriorated condition of the Property and high volume of calls for service under the Receiver’s care, my client and I renewed our efforts to negotiate a sensible, “win-win” resolution of the Receivership Action that would allow the existing structures on the Property to be rehabilitated quickly and cost-effectively.

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On November 9, 2023, the City’s legal counsel told us they would not discuss my client’s rehabilitation plans until he provided proof of \$2 million in financing to complete the work.⁸ My client provided the proof of funds the next day. Since that time, we have made numerous requests to discuss these proposals with the City’s legal counsel, professional planning staff, and the Receiver, but have not made any meaningful progress towards resolution. Despite numerous requests, we have no date on calendar for a call or meeting to discuss resolution of this matter.

Meanwhile, the Receiver has maintained his request for Court-approval to demolish all of the existing housing on the Property which is still pending review by the Court. The City’s legal counsel told us the City does not object to the Receiver’s request. To our knowledge, the City has not changed its position that, post-demolition, the Property cannot have more than six (6) units when it is redeveloped, which, as discussed in the next section, is significantly lower than the density permitted by the City’s General Plan land use designation. As a practical reality, redevelopment of the Property with only six (6) units will virtually guarantee that none of the units will be offered for sale or rental at affordable levels.

Maximum Residential Density for the Property

The Property’s General Plan land use designation is “High Density Residential,” which currently allows residential development at up to twenty (20) dwelling units per acre. ([Land Use Element](#), pp. LU-25 [Land Use Map] & LU-27 [Land Use Density & Intensity Summary].) Under this land use designation, the 0.42 acre Property could accommodate up to nine (9) base dwelling units.⁹ With a fifty percent (50%) density bonus, the Property could accommodate up to fourteen (14) total units (i.e., nine [9] base units and five [5] density bonus units). (Gov. Code § 65915(f)(1)-(2).) With accessory dwelling units (ADUs), the Property could accommodate up to twelve (12) total units (i.e., nine [9] primary dwelling units and three [3] ADUs). (Gov. Code § 65852.2(e)(1)(C).)

⁸ Although it is not clear how the Receiver arrived at this number, this was the his estimate of how much it would cost to rehabilitate the existing structures. My client obtained quotes from a reputable contractor who indicated the cost of the work for either rehabilitation plan would not exceed \$75,000.

⁹ The Property is in the City’s “R2-HD - Multiple Family Residential, High Density” zoning district (see [Zoning Map](#)), which allows development at a lower density — “The maximum density allowed is 3,000 square feet per dwelling unit, which equals 14.52 dwelling units per gross acre.” (Costa Mesa Municipal Code [“CMMC”] [§ 13-20\(c\)](#).) To the extent the General Plan and Zoning Code conflict, the General Plan must prevail. (Gov. Code Gov. Code § 65589.5(j)(1); see also Gov. Code § 65915(o)(6); see generally Gov. Code § 65860.)

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My Client's Proposals Would Rehabilitate and Preserve Existing Housing

My client has presented the Receiver and the City with two alternate proposals for his Property that would rehabilitate and preserve the existing structures and retain the number of units allowed under the City's General Plan land use designation and the State's housing laws.

SB 330 Plan: My client's first proposal relies on the State's Density Bonus Law (Gov. Code § 65915). It would preserve fourteen (14) of the Property's seventeen (17) existing units. Of those fourteen (14) units, nine (9) would be base units (permitted by the General Plan's "High Density Residential" land use designation), and five (5) would be density bonus units. To qualify for a fifty percent (50%) density bonus, three (3) of the fourteen (14) units would be low-income units. (Gov. Code § 65915(f)(1).) A licensed contractor indicates the cost of implementing this plan would not exceed \$30,000. My client has provided the City and Receiver with proof of financing for \$2 million. My client submitted a preliminary application to the City's Planning Department on July 14, 2023. On July 21, 2023, the Receiver sent my client's litigation counsel and land use consultant a letter informing them that he had "directed the City to take no action with respect to the subject unauthorized application."

ADU Plan: My client's second proposal relies on the State's ADU Law (Gov. Code § 65852.2). It would preserve twelve (12) of the Property's seventeen (17) units. Of the twelve (12) units, nine (9) would be primary dwelling units and three (3) would be ADUs. (Gov. Code § 65852.2(e)(1)(C).) A licensed contractor indicates the cost of implementing this plan would not exceed \$75,000. Again, my client has provided the City and Receiver with proof of financing for \$2 million.

The Receiver has consistently declined to consider (or even discuss) either proposal, nor any other plan that would preserve and retain affordable housing. He has directed the City to disregard my client's submittals and to decline my client's requests for calls or meetings to explore these options.

Demolition of the Housing Violates Numerous State Housing Laws

As noted above, the forced demolition of my client's dwelling units is not consistent with the letter nor intent of the Housing Crisis Act of 2019 (Gov. Code § 66300.6), the Housing Element Law (Gov. Code § 65583.2(g)(3)), the Housing Accountability Act (SB 330) (Gov. Code § 65589.5), the State's Receivership Law (Health & Saf. Code § 17980(c)), the vested rights doctrine, and Policy 3D of the City's recently-adopted 6th Cycle 2021-2029 Housing Element Update.

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- The **Housing Crisis Act of 2019**¹⁰ requires agencies to preserve their existing housing stock or, if preservation is not possible, to ensure replacement of demolished units. Specifically, it states “an affected city [which includes Costa Mesa] ... shall not approve a housing development project that will require the demolition of one or more residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished.” (Gov. Code § 66300.6(a).) Where, as here, proposal includes demolition of “protected units,”¹¹ the City must make the heightened findings set forth in Government Code Section 66300.6(b). The City has not (and cannot) made these findings here, and the Receiver’s demolition proposal does not call for replacement of any of the demolished units.
- The State’s **Housing Element Law** requires replacement of units that are or were occupied by low- or very low income tenants (as is the case here). Specifically, it states “sites that currently have residential uses, or within the past five years have had residential uses that have been vacated or demolished, that are or were ... occupied by low- or very low income households, shall be subject to a policy requiring the replacement of all those units affordable to the same or lower income level as a condition of any development on the site.” (Gov. Code § 65583.2(g)(3).) Again, the Receiver has documented that at least thirteen (13) of my client’s units were occupied by low-, very low-, and extremely low-income households with in the past five years, but his demolition plan does not call for the replacement of any units.
- Even if the housing on the Property were “substandard” (which my client disputes), the State’s **Receivership Law** requires that “[t]he owner shall have the choice of repairing or demolishing.” (Health & Saf. Code § 17980(c)(1).) If the property owner declines to choose or cannot or will not bring the property into compliance, the Receivership Law requires the enforcement agency (in this case, the City) to “give preference to the repair of the building whenever it is economically feasible to do so without having to repair more than 75 percent of the dwelling, as determined by the enforcement agency, and shall give full consideration to the

¹⁰ This Act was recently amended through the enactment of AB 1218 (effective January 1, 2024), but substantially similar requirements were previously codified in Section 66300(d) of the California Government Code.

¹¹ The Housing Crisis Act of 2019 defines “protected units” to include “[r]esidential dwelling units that are or were rented by lower or very low income households within the past five years” (Gov. Code § 66300.5(h)(3).) As discussed above, my clients’ former tenants were almost exclusively low-, very low-, and extremely low-income households.

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needs for housing as expressed in the local jurisdiction's housing element." (Health & Saf. Code § 17980(c)(2).) Here, the Receiver rejected my client's election to repair the housing and have not complied with the State mandate to "give preference" to repair (over demolition).

- The Receiver's demolition plans are inconsistent with **Program 3D of the City's 6th Cycle 2021-2029 Housing Element Update**. (See Housing Element Update, [Chapter 4](#), Program 3D, pp. 4-16 – 4-17.) My client's Property is part of the City's Mesa West Residential Ownership Overlay, which generally calls for development of "new owner-occupied condominium and clustered homes." ([Overlay](#), Strategy D1, p. 1.) However, to prevent "displacement of long-term tenants and to preserve the existing housing stock on the west side," Program 3D of the City's Housing Element Update calls for removal of the Mesa West Residential Ownership Overlay in its entirety. (See Housing Element Update, [Chapter 4](#), Program 3D, p. 4-16.) The Receiver's plan is not consistent with Program 3D. He has already displaced long-term tenants, and his plans to demolish the existing housing will do the opposite of "preserve the existing housing stock on the west side."
- As noted above, the City's public records confirm the prior owners obtained City permits for the additional units, but the City now disputes that the permits it previously issued remain valid. The City's disavowal of its previously issued permits violates the **vested rights doctrine**. Once a land use entitlement is approved and the rights granted by the entitlement are exercised (as was the case here), they become "vested" and a municipality's power to revoke or extinguish them is limited. (*Bauer v. City of San Diego* (1999) 75 Cal.App.4th 1281, 1294-1297 ["City could not properly deem Bauer's grandfathered rights automatically terminated without providing Bauer with an opportunity to be heard"].) At a minimum, due process requires notice and a hearing to revoke, extinguish, and/or void the rights the City granted through issuance of permits. (*Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1526 [when a property owner's right is "legitimately acquired or is otherwise vested," City cannot extinguish that right through "administrative extinction"].) That did not occur here.
- Contrary to the intent of the **Housing Accountability Act (SB 330)**, the demolition of my client's housing does not give "adequate attention to the economic, environmental, and social costs of decisions that result in ... reduction in density of housing projects." (Gov. Code § 65589.5(a)(1)(D).) Moreover, contrary to SB 330's streamlined review requirements (e.g., Gov. Code § 65589.5(j)(2)(A)(i)), the City (at the direction of the Receiver) have refused to process the housing development application my client submitted pursuant to SB 330. My client's SB 330 application should have been "deemed complete" by operation of law when it

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was submitted on July 14, 2023. (Gov. Code § 65589.5(j)(5).) Because the City does not have a certified Housing Element, the City should not be able to deny my client's application for a housing development project (to rehabilitate and preserve the existing housing) on the basis that it is purportedly inconsistent with the City's "zoning ordinance or general plan land use designation." (Gov. Code § 65589.5(d)(2)(A).)

Need for HCD Technical Assistance

In the midst of a Statewide housing crisis, it is senseless and egregiously wasteful for housing that could quickly, easily, and cost effectively be rehabilitated to sit vacant for over a year and half and ultimately be demolished. At great personal expense, my client has vigorously opposed the City's and Receiver's efforts to forcibly redevelop his Property and has presented two proposals that would preserve desperately needed housing through rehabilitation of the existing structures. One of the proposals would result in three, deed restricted units that are affordable to low-income households.

We hope the City Council will agree and direct its legal counsel to work with us on a "win-win" solution that will bring this litigation to an end and further the City's housing goals. We would welcome the opportunity to discuss this matter further and provide any information or documentation you need.

Respectfully submitted,

RUTAN & TUCKER, LLP



Alisha Patterson

AP

cc: Kim Barlow, City Attorney
Krista MacNevin Jee, Esq.
Amanda Pope, Esq.