

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
 89 SOUTH CALIFORNIA ST., SUITE 200
 VENTURA, CA 93001
 641-0142



Filed: 11/15/96
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 Staff: CAREY *BY*
 Staff Report: 2/18/97
 Hearing Date: 3/11-14/97

Th/0a

STAFF REPORT: PERMIT EXTENSION REQUEST

APPLICATION NO: 4-94-145E

APPLICANT: Encinal Holdings

AGENT: James Hamish

PROJECT LOCATION: 32804 Pacific Coast Highway, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Construction of a 3,700 sq. ft., 28 ft. high from existing grade single family residence with 2-car garage, septic system, driveway paving and 100 cu. yds. of grading on a bluff-top lot.

SUBSTANTIVE FILE DOCUMENTS: 4-94-145 (Encinal Bluff Partners), 5-90-1034 (Encinal Bluff Partners)

PROCEDURAL NOTE.

The Commission's regulations provide that permit extension requests shall be reported to the Commission if:

- 1) The Executive Director determines that due to changed circumstances the proposed development may not be consistent with the Coastal Act, or
- 2) Objection is made to the Executive Director's determination of consistency with the Coastal Act.

If three (3) Commissioners object to an extension request on the grounds that the proposed development may not be consistent with the Coastal Act, the application shall be set for a full hearing as though it were a new application. If three objections are not received, the permit will be extended for an additional one-year period.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the extension be granted for the following reasons:

No changed circumstances have occurred since the approval of the coastal permit, therefore, the permit remains consistent with Chapter 3 Policies of the Coastal Act.

FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description.

The applicant proposes to extend the subject permit for the construction of a 3,700 sq. ft., 28 ft. high from existing grade single family residence with 2-car garage, septic system, driveway paving and 100 cu. yds. of grading on a bluff-top lot. The project site is 2.16-acres in size and is located on Pacific Coast Highway in the City of Malibu. Although the proposed project site is 2.16-acres in size, very little of the property is available for building area. To the north and east of the building pad area is a canyon which contains a blue-line stream and has been previously recognized by the Commission as an environmentally sensitive habitat area. South of the building pad is a steep coastal bluff leading to a small beach below. Additionally, there is an existing easement across the property to the west edge of the pad leading to an existing series of stairs which descend to the beach below. Exhibit 1 shows the vicinity of the project site. Exhibits 3 through 7 are the approved project plans.

The subject permit was approved by the Commission in December 1994 subject to 8 Special Conditions of approval. The conditions relate to fuel modification, landscaping, future improvements, geology, drainage, open space, assumption of risk, and wildfire. The Notice of Intent is attached as Exhibit 8. Geologic stability, setbacks from both the coastal bluff and the canyon, and the placement of the proposed septic system were important issues considered by the Commission in its approval of the project. There was much discussion and analysis of evidence regarding the geologic stability of the site. The applicant retained consultants who prepared numerous studies of the project site. Neighboring property owners retained other consultants to prepare studies of the site and rebuttals of the applicant's reports. The City of Malibu reviewed the studies, required additional information from the applicant, and when all issues had been adequately addressed, it issued an approved Geology and Geotechnical Review Sheet. Likewise, the City of Malibu reviewed the proposed septic system for conformance with the City's Health and Plumbing Codes. When it was satisfied that the septic system met all such requirements, it issued an in-concept approval.

Since the permit was approved, the proposed project was foreclosed upon by the lending institution. In October 1995, the permit was transferred to the new owner, Encinal Holdings (Bank of Los Angeles). To date, the Conditions of the permit have not been met, and the permit has not been issued.

The extension request was submitted on November 15, 1996, which is prior to the permit's expiration date. Staff reviewed the request and determined that there were no changed circumstances that affected the consistency of the proposed project with the Coastal Act. Notice of this determination was provided to known interested parties. Subsequently, one letter of objection (Exhibit 9) was received and staff scheduled the extension request for public hearing before the Commission.

B. Background.

Prior to Permit 4-94-145, the Commission considered permit application 5-90-1034 (Encinal Bluffs Partners) for the construction of a 4,000 sq. ft. single family residence with 2-car garage, septic system., revetment at the base of the coastal bluff, and 300 cu. yds. of grading on the same project site. Staff recommended denial of the project based on the project's necessity for a shoreline protective device which would not serve existing or infill development. Additionally, there were remaining issues with regard to the proposed project's setbacks from the coastal bluff and the ESHA area to the north, geologic stability, as well as potential impacts to coastal resources from the location of the proposed septic system.

At the December 1991 Commission hearing, the applicant agreed to withdraw the application to give more time to resolve these issues if the Commission would agree to waive the requirement for approval in Concept from the City of Malibu. The Commission agreed and directed the Executive Director to waive local approval in concept but required the applicant to obtain the City's input with regard to geologic and septic issues.

When the applicant submitted application 4-94-145 in 1994 for development on the subject parcel, staff inquired about the time that had passed since the Commission directed the Executive Director to waive local approvals. The applicant submitted a chronology which listed the steps that the applicant had followed to obtain geology and septic approvals from the City of Malibu. Given that the applicant appeared to have diligently pursued those approvals throughout the pertinent period, staff noted that accepting the application without new local approval in concept would be consistent with the intent of the Commission's previous action. The Commission concurred and approved Permit 4-94-145 subject to the conditions noted above.

C. Objection.

On December 14, 1994, the Commission approved the subject project, finding that, as conditioned, it was in conformance with the Chapter 3 policies of the Coastal Act. With regard to extension requests, Section 13169 of the California Code of Regulations requires that the Executive Director determine whether or not there are changed circumstances that may affect the consistency of an approved project with the Coastal Act. In evaluating this extension request, staff determined there were no changed circumstances affecting the project's consistency. Notice was given all known interested parties of this determination. A written objection to this determination was received on January 17, 1997. The objection letter (without photographic attachments) is shown as Exhibit 9.

The objection letter, filed by Steve Littlejohn, one of the neighboring property owners, states that: "changed circumstances significantly affect and preclude the proposed project's consistency with the California Coastal Act of 1976". The letter in essence makes the following arguments:

- 1) The Coastal Act and regulations require that an application needs to include approval from a local agency before it can be filed and that the City of Malibu has denied in September 1996 a variance approval for a 3,200 sq. ft. residence on the project site.
- 2) Effluent from leach fields that are part of a revised septic system design will daylight into the ESHA area.
- 3) Review of the project site by geologic consultants retained by Mr. Littlejohn indicate a potential problem of geologic instability resulting from the new location of the proposed leach fields.

Staff notes that the project referred to in the letter of objection is not the same project which is the subject of Permit 4-94-145. Mr. Littlejohn's comments pertain to a new project recently considered by the City of Malibu. Mr. Littlejohn provided a copy of the resolution adopted by the City of Malibu for this project. This resolution states that the City considered a site plan review and variance request for a revised project consisting of a 3,204 sq. ft. two-story residence on the subject project site. The variance from City standards was requested to allow the second floor of the structure to occupy 90 % of the area of the first floor where 67% maximum is allowed by the City, to allow the residence and retaining walls to be located a minimum of 5 feet from a 1:1 slope where 25 feet is required; to locate the residence within the 100 foot setback from ESHA areas; and to allow the structure to be constructed on a slope steeper than 2 1/2:1. The City Planning Commission approved these requests and that approval was appealed by Mr. Littlejohn to the City Council. The City Council denied the applicant's revised project in September 1996.

With regard to the septic issue, the City of Malibu Resolution denying the variance for the new project states the following:

...Conservation Policy 1.2.9 requires the City to apply setback requirements to new septic systems to prevent lateral seepage into stream or coastal waters. Because the proposed leach fields do not satisfy these setbacks, the project has the potential to degrade the coastal waters.

It should be noted however, that even though the City denied the variance in part because of the septic system setbacks, the applicant has subsequently received in-concept approval from the City of Malibu Environmental Health Department of a further revised septic system.

Finally, Mr. Littlejohn submitted copies of letters from two geologists regarding the septic system. These letters, which were prepared subsequent to the City's action on the site plan review and variance requests and after the City's in-concept approval of the further revised septic system, raise concerns regarding the location of the revised septic system. They state that it is possible that effluent in that location could infiltrate down to clay layers, where it could migrate laterally to the slope face. This could result in daylighting of effluent and could contribute to slope instability. The letters state that these concerns should be addressed by the applicant's consultants and by reviewing agencies.

D. Analysis.

In reviewing Mr. Littlejohn's assertions, the Commission finds that they do not indicate that there are changed circumstances which would affect the consistency of the approved project with the Coastal Act. Regarding the first assertion, the Commission notes that a coastal development permit may be approved without local approval where appropriate (see 14 California Code of Regulations Section 13053) and this was done in the case of the approval of the subject permit. As noted above, no overall local approval-in-concept was required to be obtained prior to the submission of permit application 4-94-145. The Commission has the discretion to waive such submittal requirements and it did direct staff to accept this application without approval-in-concept from the City of Malibu (although geologic and septic review were required and were submitted). As such, the lack of overall City approval for the proposed project which fact existed at the time of the Commission approval of this permit does not constitute changed circumstances.

The City of Malibu's denial of Site Plan Review 94-065 and Variance 96-014 reflects a different project from that approved by the Commission in Permit 4-94-145. In essence, the City has denied its local approval for a project not yet before the Commission. If and when the applicant would propose to construct a different structure than that previously approved by the Commission, an amendment to Permit 4-94-145 or an entirely new permit

would be necessary, depending on the facts. At such time, the Commission would consider the consistency of the modified project with the policies of the Coastal Act and would consider any actions taken by the City with respect to that project. The fact that the applicant has recently submitted a new and different project to the City of Malibu for its consideration does not call into question the consistency of the different project approved by the Commission in Permit 4-94-145. Furthermore, the fact that the City denied the requested variances from City standards for the modified project does not affect the consistency of the approved project with the Coastal Act.

With regard to the issues of geologic stability and provision of a septic system, staff notes first that these issues have been raised in the context of a different project, not the currently approved project. Too, even if these were issues raised with respect to the subject project, these were issues considered extensively by the Commission in its approval of Permit 4-94-145. While the Commission waived City of Malibu overall approval-in-concept, it required that the applicant obtain from the City review and approval of their geologic consultant's reports as well as their septic system design. These approvals were obtained and were considered by the Commission in its approval of the project. The Commission found that based on the findings of the applicant's consultants, the proposed project site would be stable (although subject to potential wave attack, flooding, and erosion hazards, necessitating the applicant's assumption of the risk of development), consistent with Section 30253 of the Coastal Act and that septic system would not impact coastal resources, consistent with Section 30231 of the Coastal Act.

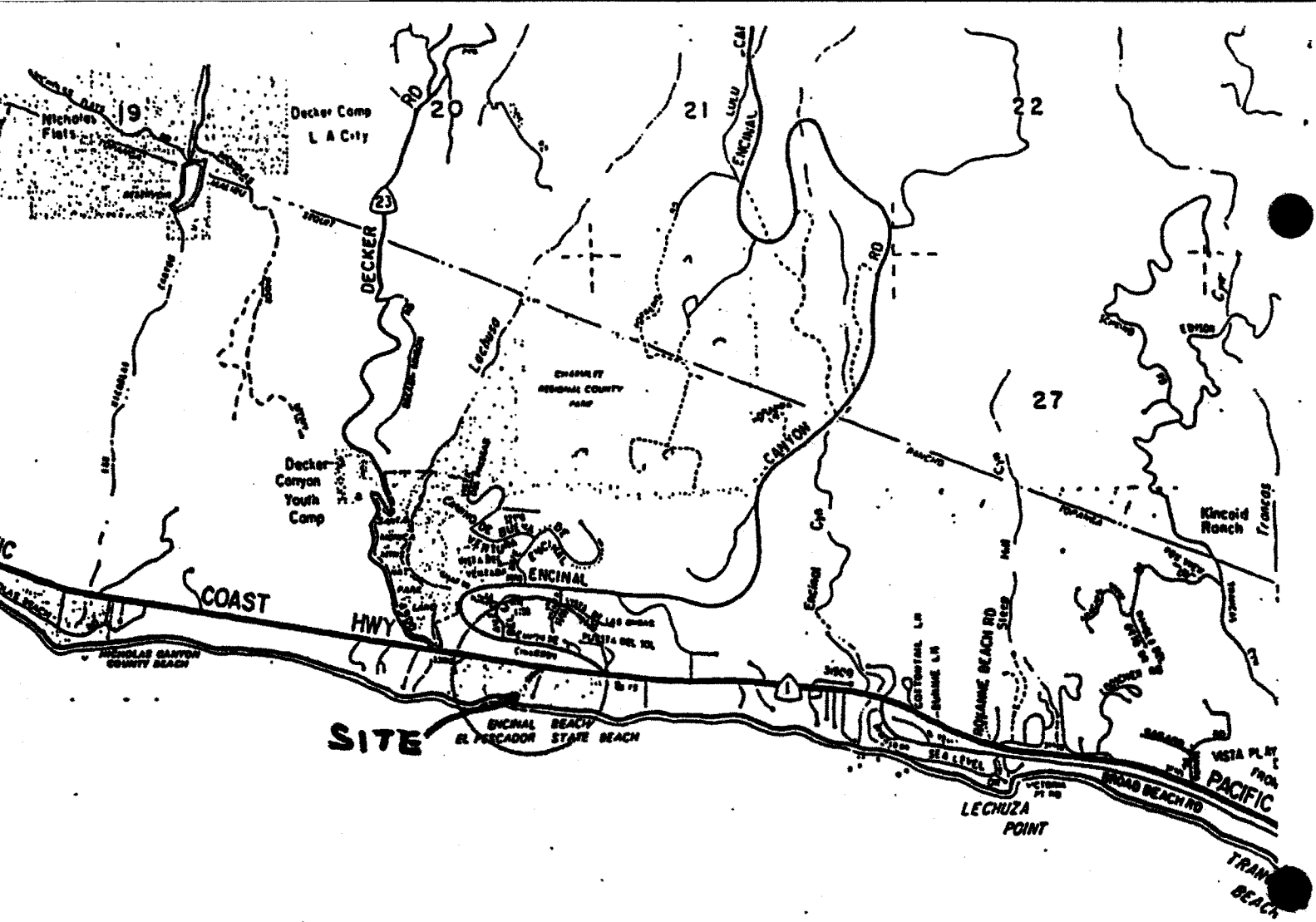
The City of Malibu, in its denial of the site plan review and variances, considered a revised septic system. As noted by Mr. Littlejohn, the City found that the location of the revised leach fields did not meet the City's setback requirements. Subsequent to that denial however, the applicant has received in-concept approval of a further revised septic system configuration. As such, the concerns regarding adequate setbacks have been laid to rest. Again, at such time as the applicant would propose to construct a different septic system than that previously approved by the Commission, an amendment to Permit 4-94-145 would be necessary. At that time, the Commission would consider the consistency of the modified project with the policies of the Coastal Act. The mere submission of a different septic design for the consideration of the City of Malibu does not call into question the consistency of the project approved in Permit 4-94-145 and the design approved there.

Likewise, the two independent geology reviews submitted by Mr. Littlejohn are in regard to the revised septic system design. They recommend that further consideration be given to the potential impacts of the proposed septic system. Such review will be required at such time as the applicant requests approval of an amended project, if that occurs. Evidence of potential geologic instability as it relates to an amended project would be addressed at that time.

D. Conclusion.

The Commission found, in its approval of Permit 4-94-145, that the proposed project was consistent with the Chapter 3 policies of the Coastal Act, and would not prejudice the ability of the City of Malibu to prepare a local coastal program which is consistent with the provisions of the Coastal Act. As discussed above, the objections raised by Mr. Littlejohn's letter do not constitute changed circumstances which could affect the proposed project's consistency with the Coastal Act. Staff has identified no other possible changed circumstances. There have been no changes to the proposed project or the project site which would cause the Commission to find the project no longer consistent with the Coastal Act. The proposed project will not prejudice the ability of the City of Malibu to prepare an LCP which is consistent with the Coastal Act.

Accordingly, the Commission finds that there are no changed circumstances present which have occurred since the approval of the subject permit that may affect the project's consistency with the Coastal Act. Therefore, the Commission grants a one year extension of the coastal development permit.



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EXHIBIT NO. 1
APPLICATION NO. 4-94-145E
VICINITY

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4-94-145E

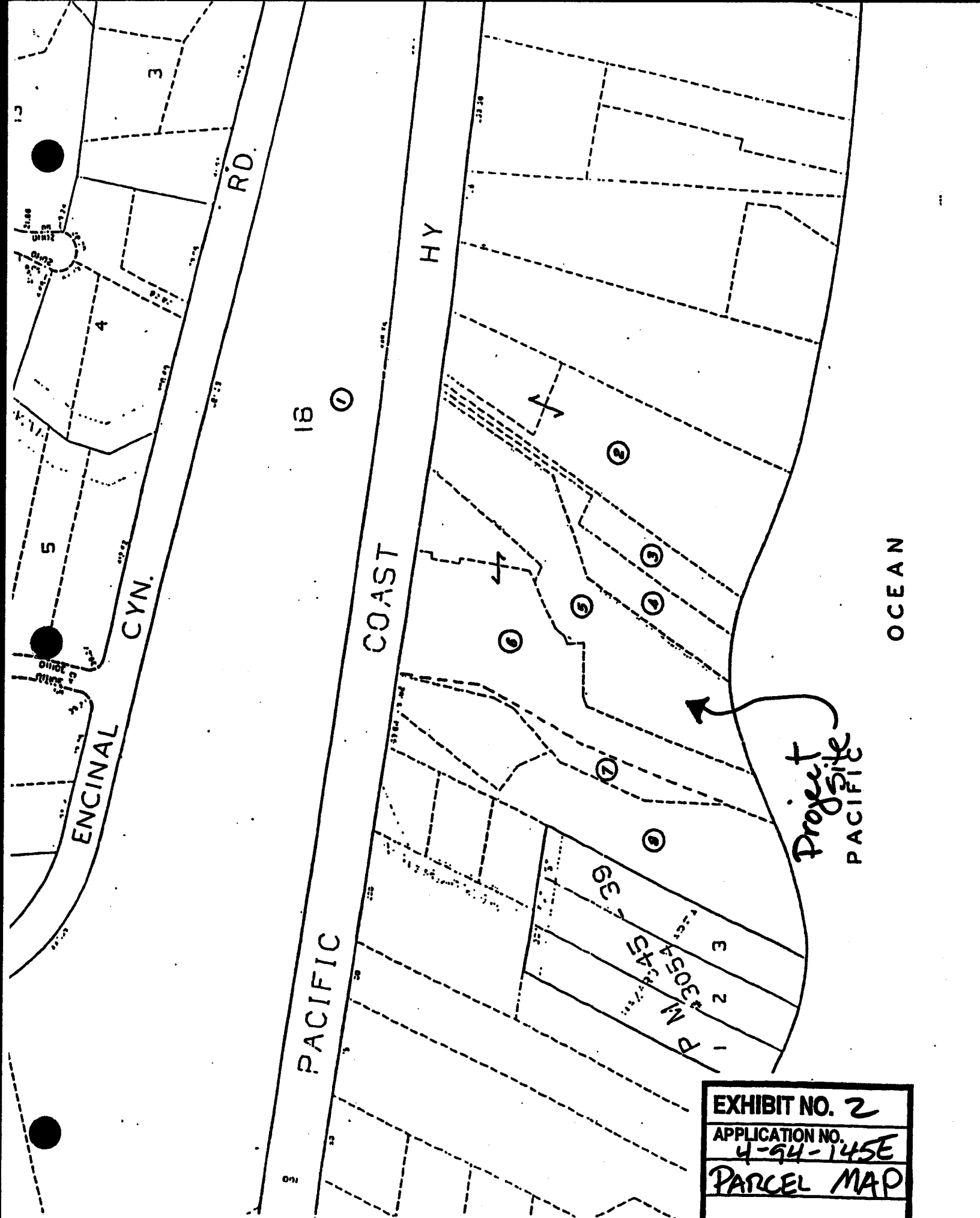


EXHIBIT NO. 2
APPLICATION NO.
4-94-145E
PARCEL MAP



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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

REVISED SITE PLAN

October 24, 1994

TOPOGRAPHIC AERIAL

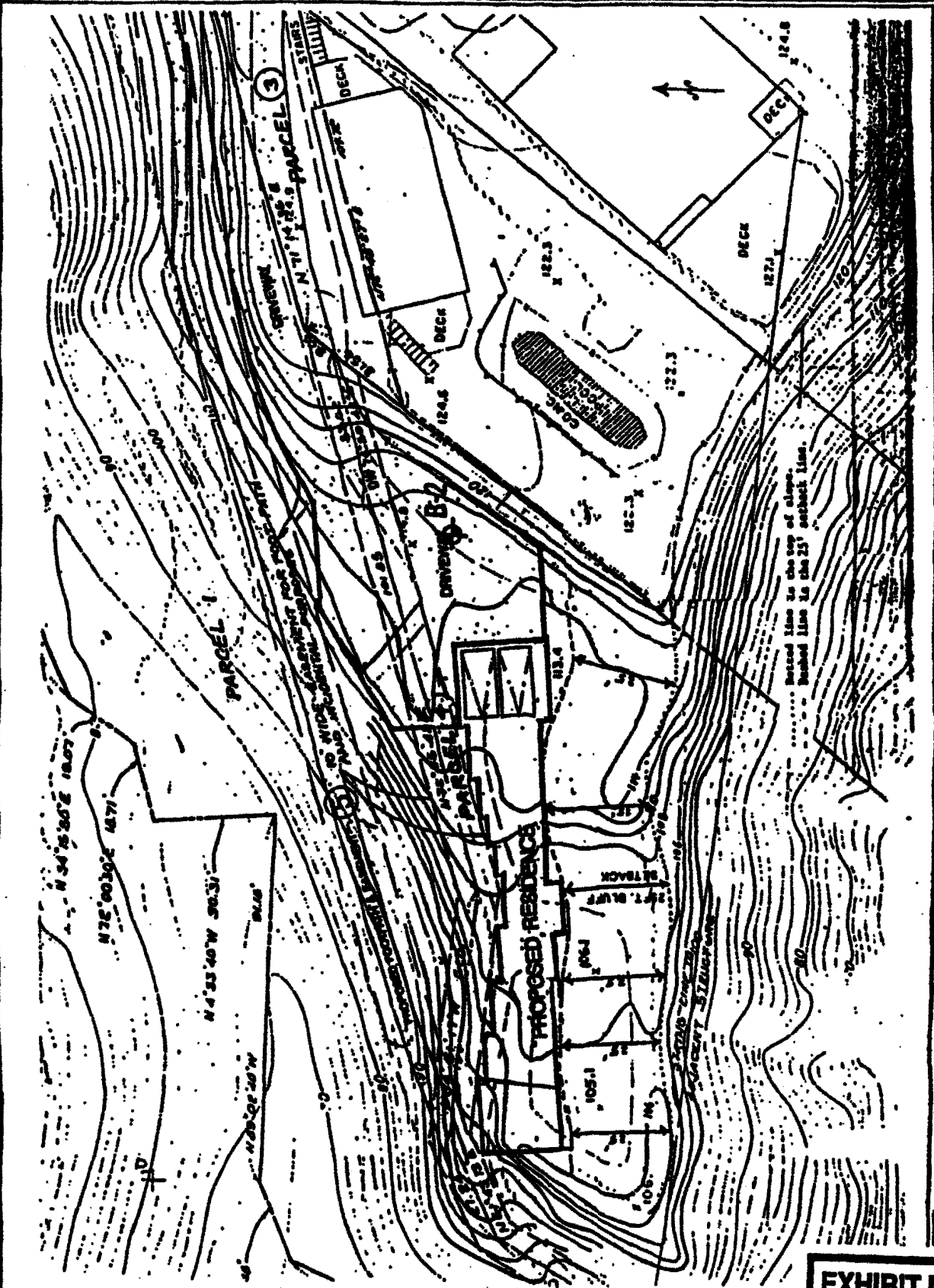
4-94-145

EXHIBIT NO. 3
APPLICATION NO. 4-94-145E
PLOT PLAN

A SINGLE FAMILY RESIDENCE FOR BOWEN BLUFFS PARTNER-2

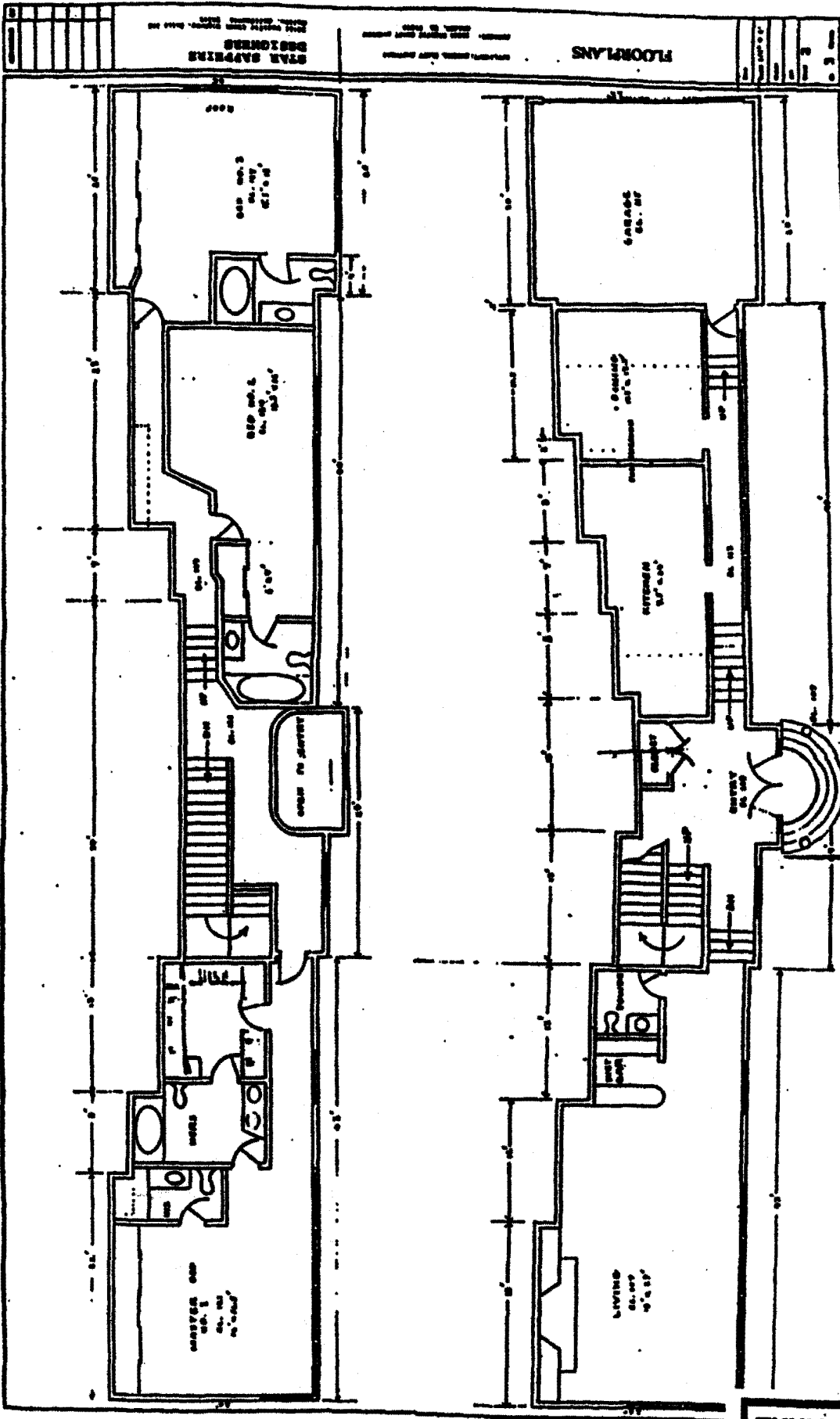
STAN RAPPAPORT
DESIGNER

4-94-145



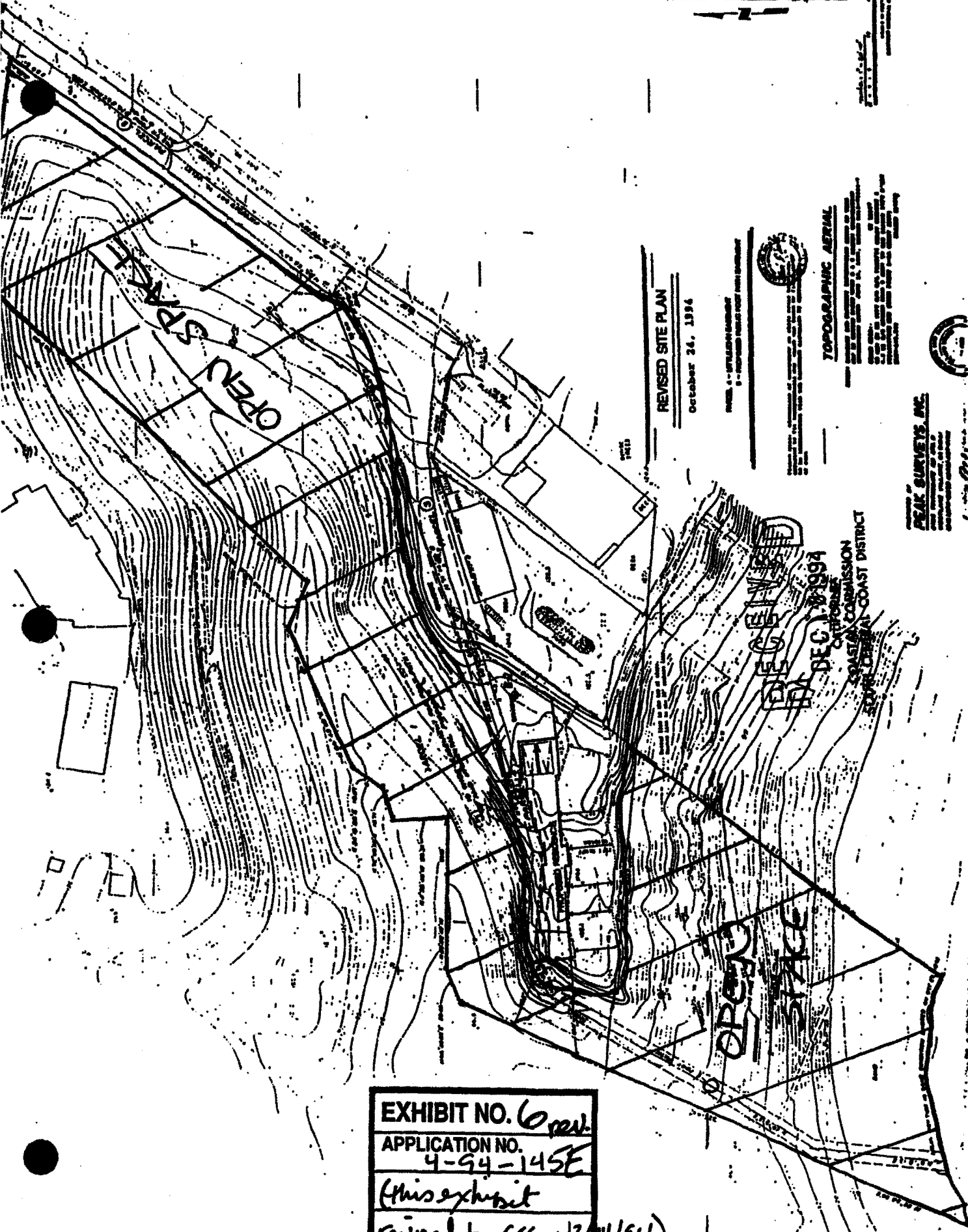
4-94-145

EXHIBIT NO. 4
 APPLICATION NO.
 4-94-145E
 TOPOGRAPHY



4-94-145

EXHIBIT NO. 5
APPLICATION NO.
4-94-145E
FLOOR PLANS



REVISED SITE PLAN
 October 26, 1994



TOPOGRAPHIC AERIAL
 THIS IS A TOPOGRAPHIC AERIAL PHOTOGRAPHIC SURVEY OF THE SITE AND SURROUNDING AREA. THE SURVEY WAS CONDUCTED ON [DATE] AND THE PHOTOGRAPHS WERE DEVELOPED ON [DATE]. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE STANDARDS AND PRACTICES OF THE SURVEYING PROFESSION.

PEAK SURVEYS, INC.
 12700

DEC 1 1994
 COASTAL COMMISSION
 SOUTH OCEAN COAST DISTRICT

EXHIBIT NO. 6 *rev.*
 APPLICATION NO.
 4-94-145E
 (this exhibit
 revised by CCC on 12/14/94)

54-145

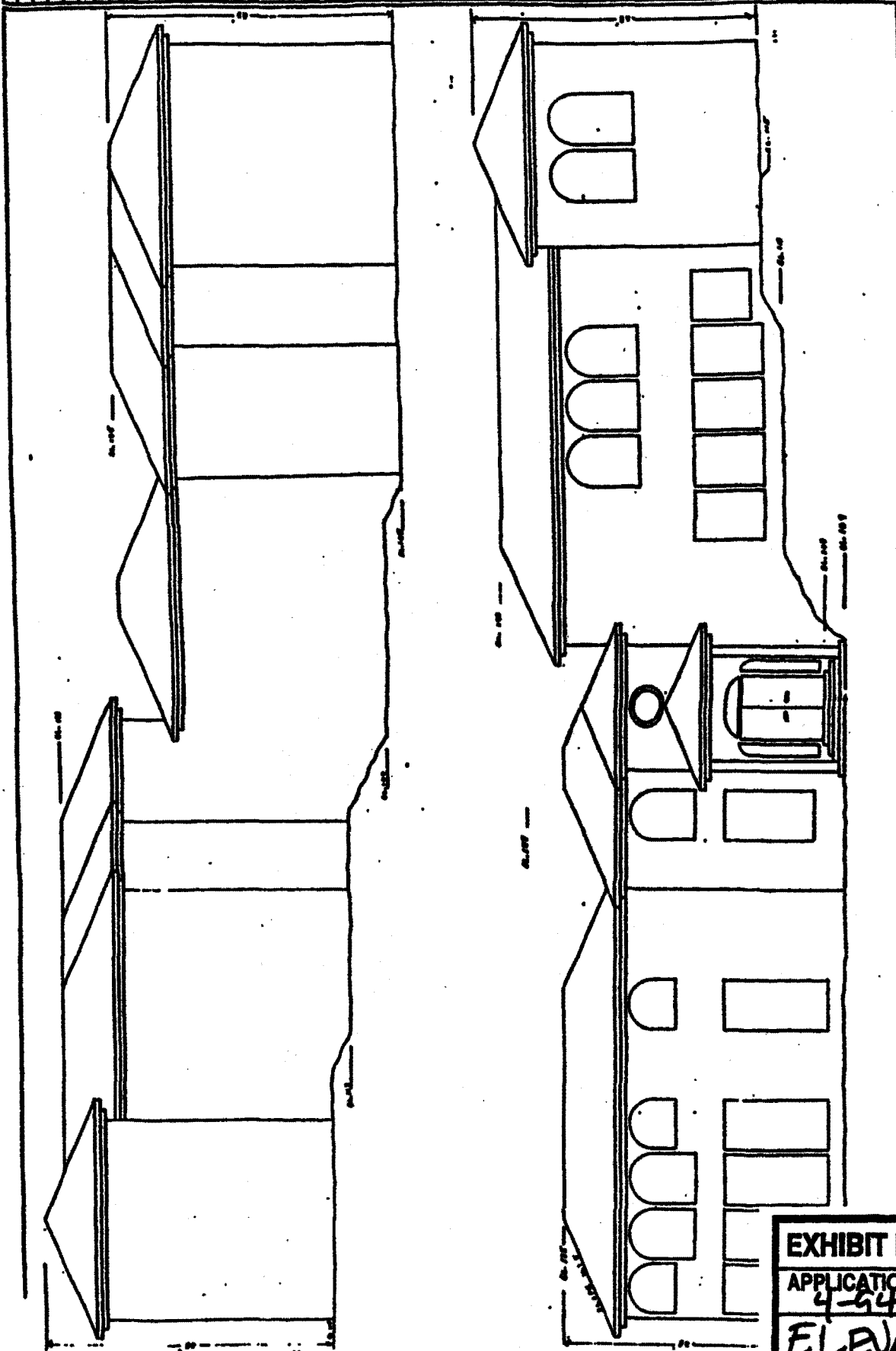


EXHIBIT NO. 7
APPLICATION NO. 4-54-145E
ELEVATIONS

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
19 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641-0142

Date: July 11, 1995

Permit Application No. 4-94-145



NOTICE OF INTENT TO ISSUE PERMIT

On December 14, 1994, the California Coastal Commission granted to:
Encinal Bluff Partners Permit 4-94-145, subject to the attached conditions, for
development consisting of:

Construction of 3,700 sq. ft., 28 ft. high from existing grade single family
residence with 2-car garage, septic system, driveway paving and 100 cu. yds. of
grading on a bluff-top lot. more specifically described in the application file in
the Commission offices.

The development is within the coastal zone in Los Angeles County at
32804 Pacific Coast Highway, City of Maliby.

The actual development permit is being held in the Commission office until
fulfillment of the Special Conditions 1,2,3,4,5,6,7,8, imposed by the Commission.
Once these conditions have been fulfilled, the permit will be issued. For your
information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on January 2, 1994.

PETER DOUGLAS
Executive Director

By: Barbara Carey
Coastal Program Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California
Coastal Commission determination on Permit No. 4-94-145, and fully understands its
contents, including all conditions imposed.

_____ Date

_____ Permittee

Please sign and return one copy of this form to the Commission office at the above
address.

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EXHIBIT NO. 8
APPLICATION NO. 4-94-145E
Notice of Intent

NOTICE OF INTENT TO ISSUE PERMIT

Page 2 of 5
Permit Application No. 4-94-145

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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. 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.
7. 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.

SPECIAL CONDITIONS:

1. Fuel Modification Plan.

Prior to issuance, the applicant shall submit, for the review and approval of the Executive Director, a fuel modification plan for the project site, prepared by a licensed landscape architect, and approved by the Los Angeles County Fire Department. Said plan shall show the radii of any required fuel modification zones along with notations showing what work is required in each zone (i.e. clearing, trimming, removal of dead vegetation), what plants are prohibited, etc. Vegetation clearance within the riparian corridor of the stream channel shall be minimized to the greatest extent feasible and shall be limited to hand clearance and thinning only.

2. Landscaping and Erosion Control Plan

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NOTICE OF INTENT TO ISSUE PERMIT

Page 3 of 5
Application No. 4-94-145

Prior to issuance of permit, the applicant shall submit landscaping and erosion control plans prepared for review and approval by the Executive Director. The plans shall incorporate the following criteria:

- (a) All graded and disturbed areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. To minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist primarily of native, drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended Native Plant Species for Landscaping Wildland Corridors in the Santa Monica Mountains, dated January 20, 1992. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (b) All disturbed riparian areas on the subject site shall be revegetated with native, riparian plant species which minimize fuel load consistent with the requirements of the Los Angeles County Fire Department for fuel modification. Plant species, size and spacing shall be shown on the approved fuel modification plan for the site required by 1 above.
- (c) Should grading take place during the rainy season (November 1 - March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations and maintained through the development process to minimize sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location.

3. Future Improvements/Maintenance

Prior to issuance of permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that Coastal Commission permit 4-94-145 is only for the proposed development and that any future additions or improvements to the property, including clearing of vegetation and grading, will require a permit from the Coastal Commission or its successor agency. The deed restriction shall specify that clearance of vegetation up to 50 feet outward from the approved residence and selective thinning of vegetation within a 200 foot radius of the approved residence as required by the Los Angeles County Fire Department is permitted and shall not require a new permit. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

4. Plans Conforming to Geologic Recommendation

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NOTICE OF INTENT TO ISSUE PERMIT

Page 4 of 5
Application No. 4-94-145

All recommendations contained in the Geotechnical Site Investigation, dated 9/18/89, Geotechnical Update Report, dated 2/15/91, Response to Engineering Geologic Review, dated 6/27/91, Alternative Bluff Toe Protection, dated 11/26/91, Update Report, dated 5/28/92, Response to Geologic and Geotechnical Reviews by City of Malibu, dated 10/15/92, Fault Investigation, dated 2/10/94, and Bluff Retreat Report, dated 7/6/94, all prepared by Gorian and Associates shall be incorporated into all final design and construction including foundations, grading and drainage. All plans must be reviewed and approved by the consultants. Prior to the issuance of permit the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

5. Drainage and Erosion Control Plans

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a run-off control plan designed by a licensed engineer which collects run-off from the building pad, roof, patios, pool deck and all impervious surfaces and directs it to drainage structures that conveys it offsite in a non-erosive fashion. Should the project drainage structures fail or result in any erosion, the applicant/landowner shall be responsible for any necessary repairs and restoration.

6. Open Space Deed Restriction

Prior to issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which provides that the portion of the applicant's property generally depicted on Exhibit 6 will be precluded from future development and preserved for open space and habitat protection. The restriction shall restrict the applicant or his successor interest from grading, landscaping and vegetation removal (except that required under Special Condition 1 above). The septic trenches, drainage devices, riparian revegetation activities, bluff stairway and associated access easement are allowable uses within the restricted area. The document shall run with land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest.

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NOTICE OF INTENT TO ISSUE PERMIT

Page 5 of 5
Application No. 4-94-145

7. Applicant's Assumption of Risk.

Prior to issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from storm waves, erosion or flooding and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest.

8. Wild Fire Waiver of Liability

Prior to the issuance of the coastal development permit, the applicants shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

**STEVE LITTLEJOHN
CONSTRUCTION COMPANY**

January 16, 1997

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JAN 17 1997

Jack Ainsworth, Malibu Supervisor
California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, CA 93001

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

RE: Application NO. 4-94-145-E1
32804 PACIFIC COAST HIGHWAY, CITY OF MALIBU,
COUNTY OF LOS ANGELES

Dear Mr. Ainsworth:

Thank you for speaking with me on December 27, 1996 concerning the pending Request For Extension of the above-referenced permit. For the reasons discussed below, I must respectfully object to the extension on the grounds that changed circumstances significantly affect and preclude the proposed project's consistency with the California Coastal Act of 1976.

It is my understanding from reading the Coastal Act and its regulatory guidelines, that when development for which a Coastal Permit is required also requires a permit from one or more cities, a permit application may not be accepted for filing by the Executive Director "unless all such governmental agencies have granted at a minimum their preliminary approvals for said development", including "all required variances, except minor variances..." (Section 13052 of Title 14 of the California Code of Regulations). The City of Malibu has now denied the variance request submitted for this developer's project, with a finding that the sought after variances would "be detrimental to the public interest, safety, health or welfare, and... detrimental or injurious to the property or improvements in the same vicinity and zone in which the property is located..." Specifically, the applicant's request for a variance from the City's minimum 25 foot setback was held to "be contrary to or [in] conflict with the general purposes and intent of the Interim Zoning Ordinance (IZO), and to the goals, objectives and policies of [Malibu's] General Plan". The City also determined that the applicant's reduced setbacks from "unstable bluffs, two (2) ESHA's, and a blueline stream, would be detrimental to the public's health, safety and welfare and the safety of the proposed structure's occupants".

Attached to this letter is a copy of Resolution No. 96-074 of the Malibu City Council, dated September 30, 1996 (see exhibit #1). As you can see, the City Council made express findings that the only buildable portion of the site -- comprising a pad of roughly 6,200 sq.ft. -- could not accommodate the 3,204 sq.ft., 2 story residence

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-1-

23852 PACIFIC COAST HIGHWAY · SUITE 296 · MALIBU, CALIFORNIA ·
OFFICE (310) 456-3502 · FAX (310) 456-2978 · PAGER (213) 460-1885 · HOME OFFICE
LICENSE #379106

EXHIBIT NO. 9
APPLICATION NO. 4-94-145E
Letter of Objection

proposed by this applicant. The Resolution declares that the proposed residence (which was considerably smaller than the 3,700 sq.ft. dwelling approved by the Commission) would:

"allow... Over-development of a relatively unstable and constrained property. In addition, Conservation Policy 1.2.9 requires the City to apply setback requirements to new septic systems to prevent lateral seepage into stream or coastal waters. Because the proposed leachfields [for the instant project] do not satisfy the setbacks, the project has a potential to degrade the coastal waters".

Without a doubt, changed circumstances affect this project's consistency with the California Coastal Act. The applicant does not have a preliminary approval from the City of Malibu for the project described in this Coastal Permit Application. Indeed, even a smaller dwelling has been determined to be unacceptable, as long as the applicant continues to insist upon siting the structure too close to geologically unstable cliffs. Given the geological evidence and findings of the Malibu City Council, and the considerable evidence and findings relating to prospective degradation of coastal waters and adjacent blueline streams, I find it impossible to comprehend how this proposal could be found consistent with the Coastal Act.

Let me briefly elaborate upon the hydro-geotechnical aspects of this project and its proposed septic systems leachfields, as well as recent findings by experts that there will be "daylighting" of effluent on the steep slopes that concurrently provide lateral and subjacent support for my driveway (which is the only means of access that I have to my home).

Leachfields causing public safety problems by destabilizing slopes:

After reviewing the letter dated January 14, 1997 from Donald B. Kowalewsky, former City of Malibu and Los Angeles County Geologist (see exhibit #2), and the letter dated January 9, 1997 from Clayton R. Masters, E.G. of Earth Systems Consultants, former geologist consultant for the City of Malibu (see exhibit 3), you will see that the types of soils that are adjacent to the slopes by the leachfields will be destabilized by the constant addition of water. Remember that a roadway is also next to these slopes which is also being destabilized. As of yet, the applicants have not had any geologic studies in this area other than a percolation test.

Leach affluent will "daylight" in ESHA:

At the City Council meeting on September 9, 1996 (where the applicant's approval in concept was denied),

we heard the applicant's own geologist, Scott Simmons of Gorian and Associates (see exhibit #4) admit that leachfields installed adjacent to such slopes would cause effluent to "daylight". He thought that such a situation would be satisfactory because the effluent would be absorbed by plants or evaporate! What happens when it rains like it has this year? Again, if you refer to the letters from my two geologists (exhibit #3 and #4), you will also find that they feel that effluent will "daylight" on the slopes.

Project has changed and has not received local approval:

In December 1994, the California Coastal Commission granted a permit for a structure that was located in a different spot on the building pad and is quite different in design from what the applicant's were presenting to the City of Malibu in July and September 1996 (see exhibit #5). If you review the history on this parcel, you will find the unusual granting of a conditional withdrawal in December 1991, that allowed local approval to be overlooked. Does it seem reasonable that such a condition should apply no matter how often the applicant's present a new design? In light of the fact that the Malibu City Council denied the approval in concept on September 9, 1996 due to their numerous concerns regarding this project, I would hope not.

Sincerely,



Steve Littlejohn

SL:ng

cc: G. Greg Aftergood, Esq.

ENCLOSURES

- A) Letter from Clayton R. Masters of Earth Systems Consultants, dated June 27, 1996.
- B) My letter dated June 18, 1996 to the City of Malibu Planning Department.
- C) My letter to Joyce Parker dated July 23, 1996.
- D) Various photographs taken of the site.

RESOLUTION NO. 96-074

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU DENYING SITE PLAN REVIEW NO. 94-065 AND OVERTURNING THE PLANNING COMMISSION APPROVAL TO CONSTRUCT A 25.5-FOOT TALL 3,204 SQUARE FOOT TWO-STORY RESIDENCE; AND DENYING VARIANCE NO. 96-014 TO ALLOW THE SECOND FLOOR TO BE 90% OF THE AREA OF THE FIRST FLOOR, TO ALLOW THE RESIDENCE AND RETAINING WALLS TO BE LOCATED A MINIMUM OF 5 FEET FROM 1:1 SLOPES, TO LOCATE THE RESIDENCE WITHIN 100 FOOT ESHA SETBACKS, TO ALLOW THE STRUCTURE TO BE CONSTRUCTED ON A SLOPE STEEPER THAN 2 ½:1

The City Council of the City of Malibu does hereby Find, Order, and Resolve as follows:

Section 1. Application - On October 26, 1995, an application for Site Plan Review No. 94-065 was duly filed by the Bank of Los Angeles to construct a 3,814 square foot two-story residence with a maximum roof height of 26 feet (with a pitched-roof) and will be located on a 2.2 acre vacant parcel. An application for Variance No. 96-014 was also filed to allow the second floor to be 100% of the area of the first floor where 67% is the maximum allowed; to allow the residence and retaining walls to be located a minimum of 5 feet from a 1:1 slope where 25 feet is required and to locate the residence 18.75 feet from a coastal bluff where 25 feet is required; to locate the residence within the required 100 foot setback from Environmentally Sensitive Habitat Areas (ESHA); and to allow the structure to be constructed on a slope steeper than 2 ½:1.

Section 2. Planning Commission Public Hearing - On July 1, 1996, the Planning Commission conducted a duly noticed public hearing regarding the subject negative declaration, variance and site plan review applications. The public hearing was continued open to July 15, 1996 to permit the applicant to revise certain elements of the project. The revised project was as follows:

A Site Plan Review application to allow the construction of a 3,204 square foot two-story residence on the subject property with a maximum roof height of 25.5 feet (with a pitched-roof) and will be located on a 2.2 acre vacant parcel. An application for Variance No. 96-014 to allow the second floor to be 90% of the area of the first floor where 67% is the maximum allowed; to allow the residence and retaining walls to be located a minimum of 5 feet from a 1:1 slope where 25 feet is required; to locate the residence within the required 100 foot setback from Environmentally Sensitive Habitat Areas (ESHA); and to allow the structure to be constructed on a slope steeper than 2 ½:1.

Based on these revisions, the Planning Commission approved Site Plan Review No. 94-065, Variance No. 96-014, and Negative Declaration No. 96-004.

Section 3. Appeal - On July 23, 1996, the decision of the Planning Commission was appealed by Mr. Steve Littlejohn to the City Council within the required 10-day appeal period.

Section 4. City Council Public Hearing - On September 9, 1996, the City Council held a duly noticed public hearing regarding an appeal of the Planning Commission's decision to approve a site plan review, variance and negative declaration application.

Section 5. Variance Findings - Having heard all oral and written testimony and considered all relevant evidence and argument, the City Council, in accordance with Section 9465 of the Municipal Code, hereby denies the variance application without prejudice and approves the Littlejohn appeal of the Planning Commission decision based on the following findings:

1. To allow the second floor to be 90% of the area of the first floor where 67% is the maximum allowed:
 - a) There are no special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance deprives such property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification in that site is absent of any topographical constraint which would restrict the applicant's ability to design a second story which satisfies the City's 67% rule.

2. To allow the residence and retaining walls to be located a minimum of 5 feet from 1:1 slopes where 25 feet is required:
 - a) The granting of the variances as requested will be detrimental to the public interest, safety, health or welfare, and will be detrimental or injurious to the property or improvements in the same vicinity and zone in which the property is located in that:
 - 1) the size of the proposed residence and its relation to the many topographical and environmental constraints located around the residence, including unstable bluffs, two (2) ESHAs, and a blue line stream, would be detrimental to the public's health, safety and welfare and the safety of the proposed structure's occupants; and 2) The

60626

structure's proposed setback from the edge of the inland (north) bluff, at only 5 feet, is not great enough to further secure the public's health, safety and welfare.

- b) The granting of such variance will be contrary to or conflict with the general purposes and intent of the Interim Zoning Ordinance (IZO), and to the goals, objectives and policies of the General Plan in that Land Use Policy 1.5.1 of the General Plan requires the City to scrutinize proposed development for any potential, individual, or cumulative adverse environmental impact, in addition to those impacts that are peculiar to development otherwise consistent with the General Plan. Because the proposal would permit the construction of a 3,204 square foot two-story residence (1,681 square feet on the ground floor) on a 2.2 acre parcel with a level building area of approximately 6,205 square feet, it was determined that the proposed project would allow an overdevelopment of a relatively unstable and constrained property. In addition, Conservation Policy 1.2.9 requires the City to apply setback requirements to new septic systems to prevent lateral seepage into stream or coastal waters. Because the proposed leach fields do not satisfy these setbacks, the project has the potential to degrade the coastal waters.

3. To locate the residence within 100-foot Environmentally Sensitive Habitat Area (ESHA) setbacks:

- a) The granting of such variance will be contrary to or conflict with the general purposes and intent of the Interim Zoning Ordinance (IZO), and to the goals, objectives and policies of the General Plan in that the proposal would involve the construction of a new 3,204 square foot two-story residence on a 6,205 square foot relatively level pad surrounded by bluffs to the north, south, and west. The coastal bluffs to the south and west and the significant coastal canyon to the north are geologically unstable land formations with signs of active erosion and surficial slumping on all three bluff slopes. According to Land Use Policy 1.3.2 of the General Plan, the City shall require proposed development to avoid geologic safety hazards created by development. Given the size of the proposed residential structure in relation to these unique land forms, granting of the variance would allow an overdevelopment of a relatively unstable and constrained property.

4. To allow the residence to be constructed on a slope steeper than 2 ½:1:

70626

- a) The granting of such variance will be contrary to or conflict with the general purposes and intent of the Interim Zoning Ordinance (IZO), and to the goals, objectives and policies of the General Plan in that the proposed variance request is contingent on obtaining several other variance approvals. It has been determined that the project violates Land Use Policy 1.3.1, 1.5.1, and Conservation Policy 1.2.9 of the General Plan and, therefore, the proposed variances cannot be supported. Because the other variances cannot be supported since they are contrary to or conflict with the general purposes and intent of the General Plan and IZO, this variance request will need to be reevaluated once a revised project is submitted for consideration.

Section 6. Site Plan Review Findings - Having heard all oral and written testimony and considered all relevant evidence and argument, the City Council, in accordance with Section 9423 (D) of the Municipal Code, hereby denies the site plan review application without prejudice and finds as follows:

- a) The project is inconsistent with the General Plan in that the proposed residence is contingent on obtaining several variance approvals. Because the variances can not be supported since they are contrary to or conflict with the general purposes and intent of the General Plan and IZO, the residence will need to be redesigned and, therefore, reevaluated in terms of its compliance with the required site plan review findings.

Section 7. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 30th day of September, 1996

JOHN HARLOW, Mayor

ATTEST:

LISA POPE, Deputy City Clerk

8 of 26

Resolution No. 96-074
City Council Agenda Resolution
September 30, 1996
Page 5

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 96-074 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 30th day of September 1996, by the following vote:

AYES:

NOES:

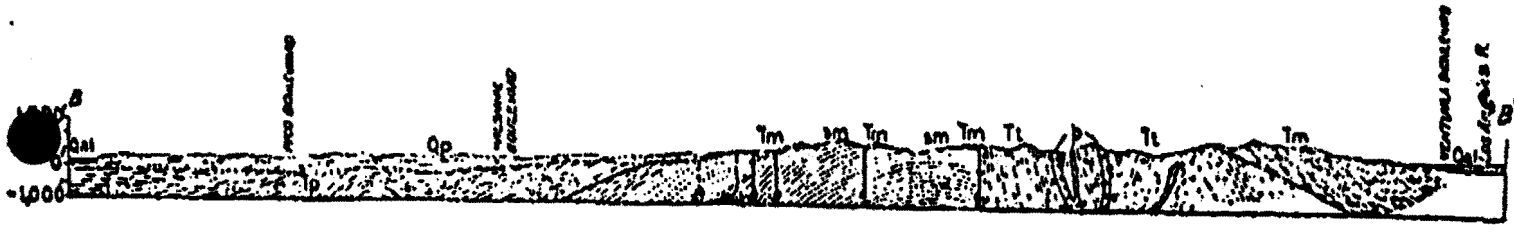
ABSENT:

ABSTAIN:

LISA POPE, Deputy City Clerk

Interested parties may petition the court for judicial review of this decision. Pursuant to Code of Civic Procedure Section 1094.6 and Malibu Municipal Code Section 1500, any such petition must be filed no later than the 90th day from the 9th day of September, 1996, the date in which this decision became final.

90/26



Donald B. Kowalewsky

ENVIRONMENTAL &
ENGINEERING GEOLOGY

January 14, 1997
Job #91111A4.001

Mr. & Mrs. Steve Littlejohn
32802 Pacific Coast Highway
Malibu, CA 90265

SUBJECT: Engineering geologic review of proposed revision to septic system for 32804 Pacific Coast Highway, Malibu, California.

I have previously reviewed this project December 8, 1994. It is my understanding that this project is again to be presented to the California Coastal Commission. Since my last review in 1994, additional reports and a septic system design location have been provided. Earlier this year I attended a Malibu City Council hearing regarding this project in which the feasibility of the proposed project was considered. In that meeting the City Council denied the project. Several concerns were raised, including slope stability along the coastal bluff to the south which has recently active landslides and the steep slope descending toward the creek channel to the north where the house foot print was within 11 feet of a recently active landslide.

The City Council also denied the project because of the non-conforming, potentially hazardous, location and design of the proposed septic system. A leach field was proposed adjacent to a steep, 40+ foot high, descending slope along the west side of the driveway near the intersection with Pacific Coast Highway. At that proposed location, the leach field was within 50 feet of the creek bed and even closer to the creek bank. That setback did not conform to Health Department requirements.

10 of 26

Littlejohn

Job #91111A4.001

PAGE # 2

Subsequent to the City hearing, it is my understanding that the leach field location was modified to meet the requirement for a 50 foot setback from the stream. However, other valid concerns were not addressed. The proposed leach field is also located near the top of a 1½:1 to 1:1 slope that locally nears vertical in the lower 10 to 15 feet. No subsurface exploration or soil testing has been performed to allow for an analysis of the effect of introducing water into that slope or the potential for effluent to seep from the face of that slope.

In the City Council hearing, the project consultant, Scott Simmons of Gorian & Associates, Inc., made several statement that need clarification.

1. He stated "We've done numerous engineering analysis since 1989 to evaluate the stability of both the coastal side of the bluff and the north side of the bluff, and we've come out with factors of safety, safety in excess of the minimum 1.5". In other words he is stating that their analysis shows the slopes to be stable. Obviously there is a problem with their analyses since there are recently active landslides on both the south facing coastal bluff and the north facing slope.
2. In a statement regarding sewage effluent, he stated that "Eventually, it may reach the slope face, however, a majority of the effluent will either be evaporated to the air or be picked up by plants on the slope." He admitted effluent will reach the slope face. The County of Los Angeles will not approve a project if effluent will migrate to the face of a slope and I believe the City of Malibu is of the same opinion. Logically, any jurisdiction should not allow daylighting of sewage effluent, for both health reasons and because saturation of a portion of a slope decreases slope stability.

The reason the septic system was moved away from the house location to the current position near Pacific Coast Highway was the potentially adverse effect on the currently unstable slopes near the building site. By moving that system, other slopes will be adversely affected.

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Littlejohn

Job #91111A4.001

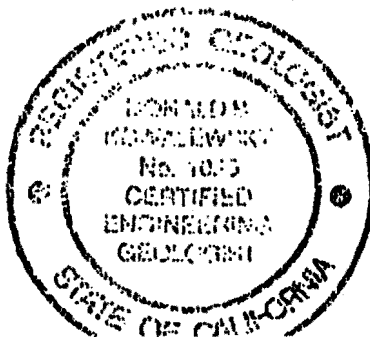
PAGE # 3

In a December 30, 1996 letter, Scott Simmons stated that the leaching area is lithologically similar to the bluff area. This statement was made without deep subsurface exploration or any detailed field mapping. If it is similar to the bluff area, then his following statement, "The beds are nearly horizontal and contain no weak clay layers that could contribute to a slope failure" is in error. Both of Gorian's borings encountered several clay rich layers. As an example, Boring B-1 described "Reddish brown sandy clay" between 36 and 38 feet. Their boring B-2 describes the zone between 14 feet and 24 feet as "Reddish brown sandy-gravelly clay and light brown sandy-gravelly clay and light brown silt to clayey fine to coarse sand (moist, dense) interlayered to graded; clay dominates. Very tight/firm. Becomes more sandy with depth". Numerous other clay zones were also noted. As a consequence, it is probable that effluent will infiltrate down to those clay layers then migrate nearly horizontally to the slope face where the saturated clays will cause the slope to fail, in a manner similar to the existing, active landslides below the proposed building site.

SUMMARY

The underlying earth materials consist of stratified non-marine terrace deposits consisting of relatively sandy to gravelly layers interbedded with clayey layers. This stratigraphy can result in lateral migration of effluent with seepage on the slope face. Seepage from the slope face may be a health hazard and certainly will decrease stability of that slope.

I previously prepared several geologic reviews of this proposed project. Concerns raised in those documents are still valid in addition to the concern regarding the proposed sewage disposal method. Any reviewing agency should be made aware of the problems involved with development of this site and the potential adverse effects that development could have on neighboring properties and the overall environment.



Donald B. Kowalewsky
 Donald B. Kowalewsky
 Certified Engineering Geologist 1025

12 of 26


Earth Systems Consultants
Southern California
Buena Engineers Division

 79-811B Country Club Drive
 Bermuda Dunes, CA 92201
 (619) 345-1588
 (619) 328-9131
 FAX (619) 345-7315

January 9, 1997

 SG-6159-P1
 97-01-719

 Steve Littlejohn
 23852 Pacific Coast Highway, #296
 Malibu, California 90265

Subject: Geologic Comments Concerning the Coastal Commission Extension
**Project: 32804 Pacific Coast Highway
 Malibu, California**

As the City Geologist for the City of Malibu, I reviewed numerous reports, plans and maps for the subject property located at 32804 Pacific Coast Highway, Malibu, California. During that time I also prepared four review sheets for the subject property. In those review sheets, I voiced concerns over several issues and believe those concerns remain valid. Two major areas of concern include the impact of an on-site sewage disposal system on the subject property and adjacent properties, and the overall stability of the site which will be influenced by the bluff retreat rate and top-of-slope setbacks established by the project's consultants.

The impact of an on-site sewage disposal system should be fully evaluated prior to any further approvals for this site, as it appears that effluent may daylight on nearby slopes and contribute to the general instability of the slopes. Prior to finalization of this letter, I received and reviewed the attached Malibu City Council Verbatim Transcription. This transcription presents a portion of the proceedings from the September 9, 1996, Malibu City Council hearing concerning the subject property. In the transcription, Mr. Scott Simmons, the engineering geologist of record for the project, stated that effluent may reach the slope face where it will either evaporate or be absorbed by plants. While it is true that the effluent can evaporate or be absorbed by plants, the effluent also can oversaturate the earth units at the slope face and contribute to the continued instability of the slopes. Additionally, in a well-designed and properly functioning sewage disposal system, effluent does not daylight on a slope face. The migration of effluent to the slope face may occur on this site due to very permeable terrace deposits overlying relatively impermeable bedrock. As the effluent percolates downward, through the terrace deposits, it will reach the contact with the impermeable bedrock and migrate laterally until it reaches the slope face.

The second major area of concern is the overall stability of the proposed development which will be influenced by the bluff retreat rate and top-of-slope setbacks. A bluff retreat rate of two to three inches per year was established by the consultants of record, based on a review of aerial photographs and topographic maps spanning a 32 year period. This is a very limited time span and as such, I requested that an adequate factor of safety be applied to the estimated rate for design purposes. Apparently, a bluff retreat rate of 4 inches per year has been utilized to design the currently proposed 25 foot setback from the oceanside cliff. The City of Malibu and the California Coastal Commission should discuss and decide whether or not to accept the currently estimated bluff retreat rate and applied factor of safety. The top-of-slope setbacks established for the north side (or creekside) of the bluff appear to be inadequate to ensure the safety of the proposed developments. The northwest corner of the proposed single-family residence is located 11 feet from the top of slope and the driveway turnaround is only 5 feet from the top of the slope.

13 of 26

The geotechnical/geological consultant for this project has stated that the sloughing on the creekside of the bluff is due to water overtopping the slope. However, the failures on this slope appear to be due to erosion of the toe of the slope by the creek and subsequent landsliding or surficial failure. Landslides and/or surficial failures exist on both the oceanside and the creekside of the bluff. In the attached transcripts, Mr. Simmons states that their engineering analyses for the slopes have established that the slopes are stable (a factor of safety in excess of 1.5). However, as there are active failures on these slopes, the slopes are not stable and the strength parameters and topographic profiles utilized in their analyses should be reviewed.

To reiterate, the impact of the sewage disposal system on the stability of the on-site and off-site slopes should be evaluated by the geotechnical consultant of record. Based on the limited data available to establish a bluff retreat rate for this site, the City of Malibu and the California Coastal Commission should determine whether or not an adequate factor of safety has been applied to the estimated bluff retreat rate used to establish a setback from the top of the oceanside bluff. The adequacy of the top-of-slope setbacks to protect the proposed development should be further evaluated. Additional slope stability analyses that more closely models the existing topographic profile and soil strengths should be performed.

If you have questions or if I can be of further service please call at (619) 345-1588

Sincerely,
EARTH SYSTEMS CONSULTANTS
Southern California



Clayton R. Masters, E. G.
Senior Geologist

Letter/pc

Copies: 2/Mr. Steve Littlejohn
1/BD File
1/VTA Vile



14 of 26

MALIBU CITY COUNCIL
VERBATIM TRANSCRIPTION
SEPTEMBER 9, 1996
HUGHES RESEARCH LABORATORIES

Scott Simmons

My name is Scott Simmons, I'm a project engineering geologist. I'm at 766 Lakefield Road, Westlake Village, California. A few items here. We've done numerous engineering analysis since 1989 to evaluate the stability of both the coastal side of the bluff and the north side of the bluff, and we've come out with factors of safety, safety in excess of the minimum of 1.5. Yes, there has been erosion going on on both sides of the bluff. We feel that development of this site will vastly improve the drainage which will significantly reduce the erosion of both sides of the bluff. We have established estimated bluff retreat rates for both the coastal side of the bluff and the north side of 2 inches and 1 inch approximately per year respectively for the coastal and north side. With the issue of effluent daylighting on the side of the slope adjacent to the driveway, the bottom of the proposed leachline trench is going to be some eight feet below the surface. It will be set back a minimum of 15 feet from the slope face per City standards. Any effluent based on percolation rates, which were quite fast, will migrate down. Eventually, it may reach the slope face, however, a majority of the effluent will either be evaporated to the air or be picked up by plants on the slope. We don't -- the materials are very similar to materials on the building site, and the slope is less steep and not nearly as high as the coastal side where we had adequate factors of safety for gross stability. So we feel that the area of the leachline trenches will not present a stability problem.

I certify that this transcript is an transcript of a portion of the proceedings before the Malibu City Council on September 9, 1996, in regards to an appeal of Planning Commission for Site Plan Review No. 94-065, Variance No. 96-014 and Negative Declaration No. 96-004, 32804 Pacific Coast Highway (Bank of America-Steve Littlejohn appellant).

Executed this 7th day of January, 1997.

Lisa Pope

Lisa Pope
Recording Secretary
City of Malibu
23555 Civic Center Way
Malibu, California 90265

150626

MALIBU CITY COUNCIL
VERBATIM TRANSCRIPTION
SEPTEMBER 9, 1996
HUGHES RESEARCH LABORATORIES

Scott Simmons

My name is Scott Simmons, I'm a project engineering geologist. I'm at 766 Lakefield Road, Westlake Village, California. A few items here. We've done numerous engineering analysis since 1989 to evaluate the stability of both the coastal side of the bluff and the north side of the bluff, and we've come out with factors of safety, safety in excess of the minimum of 1.5. Yes, there has been erosion going on on both sides of the bluff. We feel that development of this site will vastly improve the drainage which will significantly reduce the erosion of both sides of the bluff. We have established estimated bluff retreat rates for both the coastal side of the bluff and the north side of 2 inches and 1 inch approximately per year respectively for the coastal and north side. With the issue of effluent daylighting on the side of the slope adjacent to the driveway, the bottom of the proposed leachline trench is going to be some eight feet below the surface. It will be set back a minimum of 15 feet from the slope face per City standards. Any effluent based on percolation rates, which were quite fast, will migrate down. Eventually, it may reach the slope face, however, a majority of the effluent will either be evaporated to the air or be picked up by plants on the slope. We don't -- the materials are very similar to materials on the building site, and the slope is less steep and not nearly as high as the coastal side where we had adequate factors of safety for gross stability. So we feel that the area of the leachline trenches will not present a stability problem.

I certify that this transcript is an transcript of a portion of the proceedings before the Malibu City Council on September 9, 1996, in regards to an appeal of Planning Commission for Site Plan Review No. 94-065, Variance No. 96-014 and Negative Declaration No. 96-004, 32804 Pacific Coast Highway (Bank of America-Steve Littlejohn appellant).

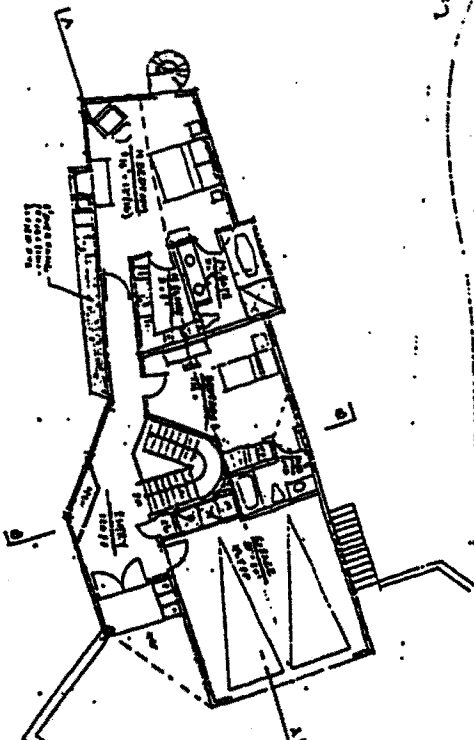
Executed this 7th day of January, 1997.

Lisa Pope

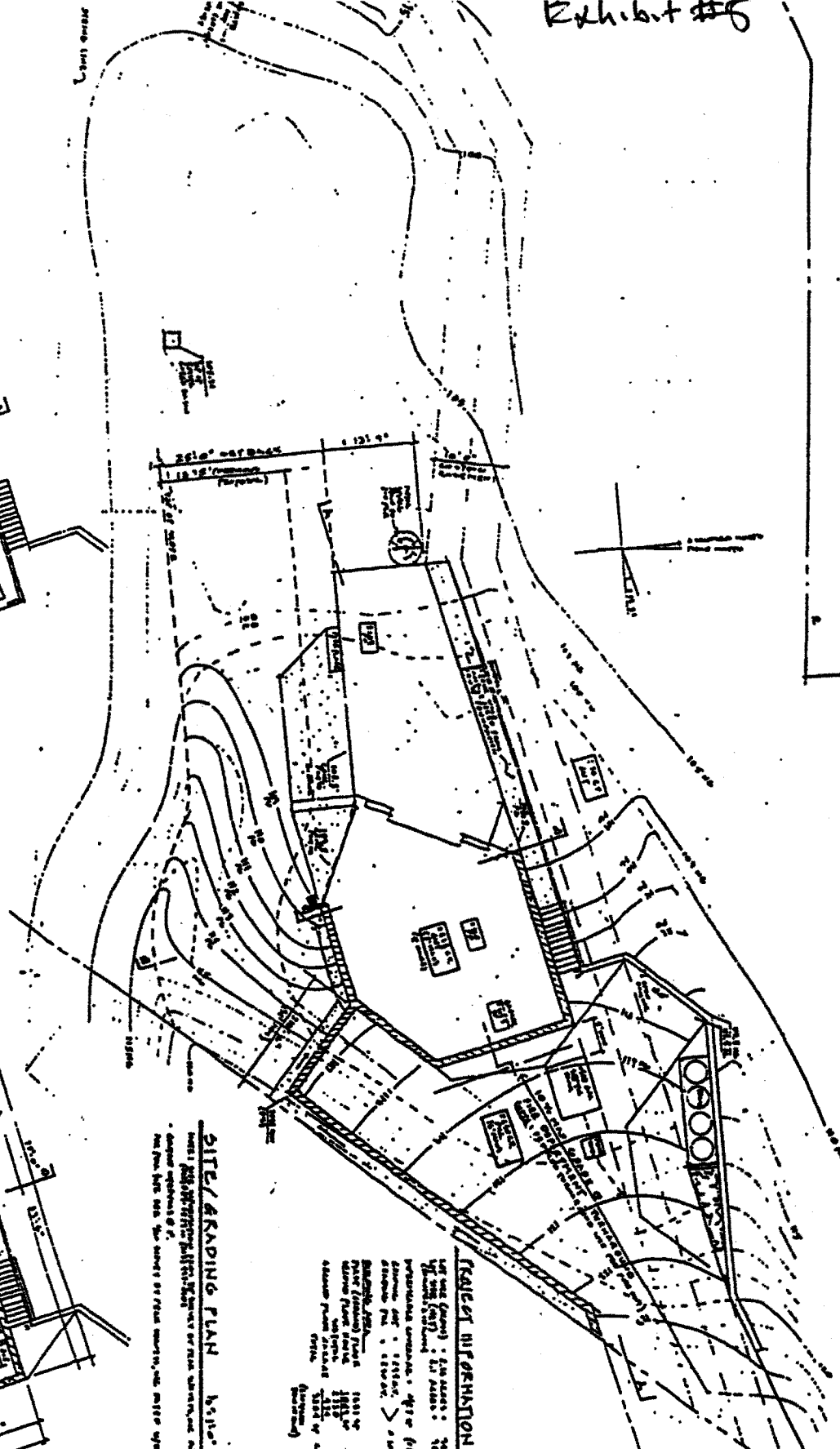
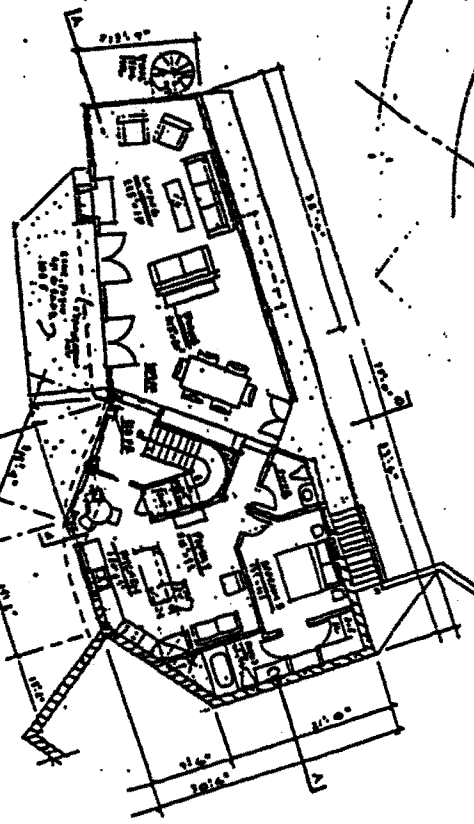
Lisa Pope
Recording Secretary
City of Malibu
23555 Civic Center Way
Malibu, California 90265

160626

SECOND FLOOR PLAN 123'0" x 41'0" GARAGE, 115'0" x 11'0"



FIRST FLOOR PLAN 131'0" x 41'0"



SITE/GRADING PLAN 131'0" x 41'0"
 SHALL BE SUBMITTED WITH PERMITS OR WITH GRADING AND EROSION CONTROL PLAN.
 ALL DIMENSIONS ARE TO THE CENTER OF FOOT PRINTS, UNLESS NOTED OTHERWISE.

PROJECT INFORMATION
 Lot Area: 34,912 sq. ft.
 Building Area: 1,681 sq. ft.
 Garage Area: 1,045 sq. ft.
 Total Area: 27,186 sq. ft.

Agenda Item 32
 Page 14 of 107

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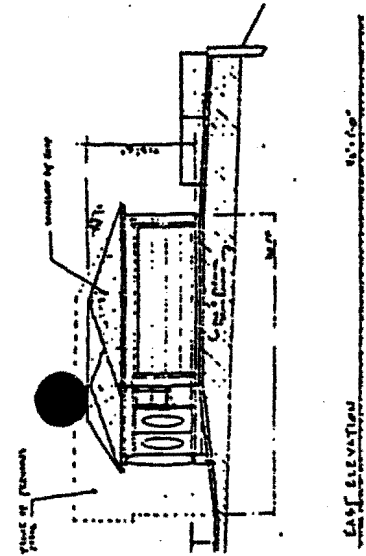
NO. 1	DATE 05/15/18	BY G.A.C.
NO. 2	DATE 05/15/18	BY G.A.C.
NO. 3	DATE 05/15/18	BY G.A.C.

gloria a. cohen architect
 3280 Pacific Coast Hwy - Malibu, CA 90265
 Tel: 310.316.1111

single family residence
 3280 Pacific Coast Hwy - Malibu, CA 90265

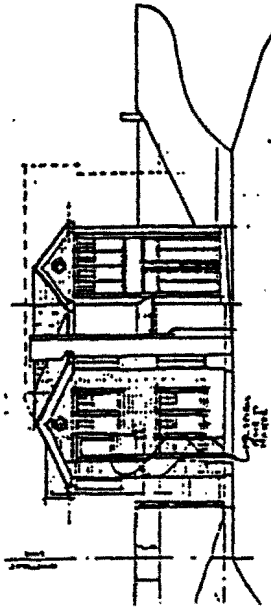
site/grading plan
 floor plans
REVISIONS

NO.	DATE	DESCRIPTION



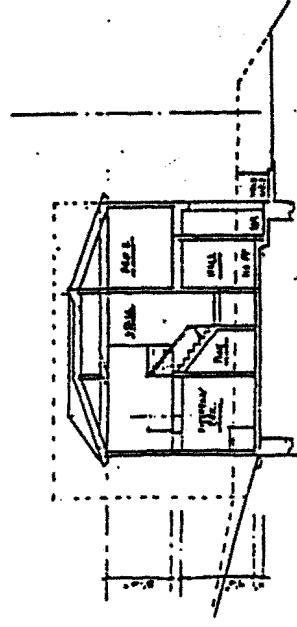
EAST ELEVATION

1/2" = 1'-0"



WEST ELEVATION

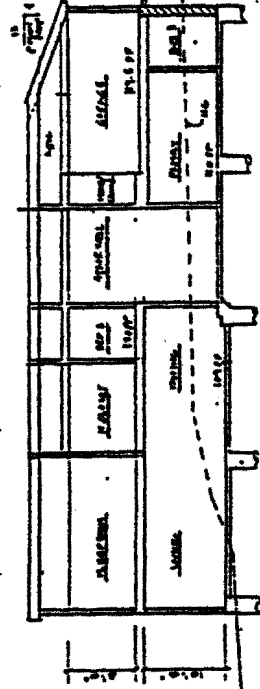
1/2" = 1'-0"



SECTION B-B

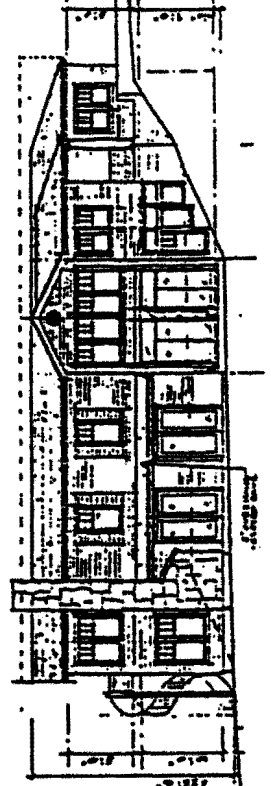
1/2" = 1'-0"

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SECTION A-A

1/2" = 1'-0"

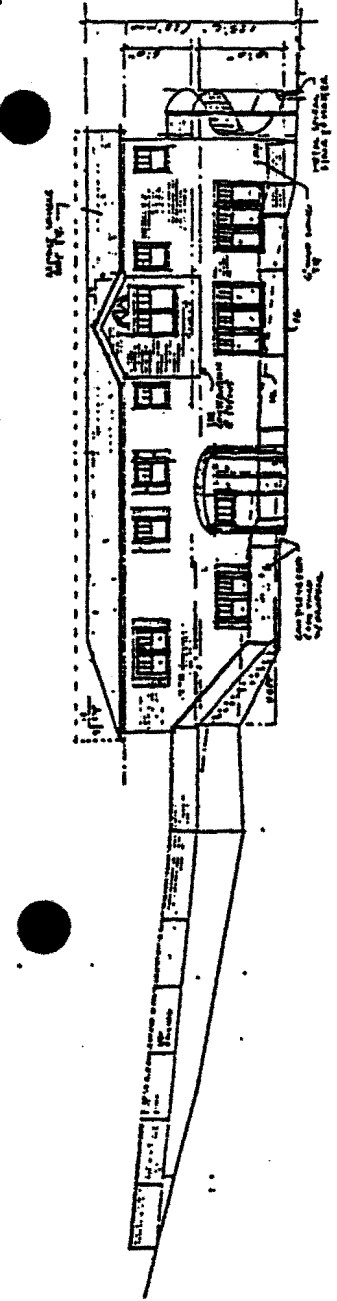


SOUTH ELEVATION

1/2" = 1'-0"

NORTH ELEVATION

1/2" = 1'-0"



Agenda Item 32
Page 15 of 107

sections

Single family residence

ORLANDO CONTRACT

SECTION A

DATE OF ISSUE

NO. 0111

2

SECTION B-B

DATE OF ISSUE

NO. 0111

2

SECTION C-C

DATE OF ISSUE

NO. 0111

2

Enclosure A

**Earth Systems Consultants****Southern California****Soona Engineers Division**

79-811B Country Club Drive
Bermuda Dunes, CA 92201
(619) 345-1588
(619) 328-9131
FAX (619) 345-7315

June 27, 1996

SG-6159-P1
96-06-761

Steve Littlejohn
23852 Pacific Coast Highway, #296
Malibu, California 90265

Subject: Geologic Review of Selected Documents

**Project: 32804 Pacific Coast Highway
Malibu, California**

As you requested, I have reviewed the City of Malibu documents concerning the property located at 32804 Pacific Coast Highway Malibu, California. During my tenure as City Geologist at the City of Malibu, I reviewed many of these documents and prepared four review sheets for the subject property.

During the submittal and review process several issues were raised. Some issues were satisfactorily answered and some responses were delayed and were to be answered at a later time. However, to fully demonstrate the geologic feasibility of the project, I believe that all outstanding questions and concerns raised in the Geologic Review Sheets should be answered.

As stated in the Geologic and Geotechnical Review Sheet, dated April 27, 1994, the location and type of sewage disposal system to be utilized on-site was redesigned. Both the City of Malibu Geotechnical Engineer and myself were concerned as to the impact that this would have on the stability of both on-site and off-site properties. Apparently this concern has still not been addressed. It is my belief that the impact of adding effluent to this steep hillside should be evaluated prior to any further approvals of the project.

A second major area of concern includes the estimated bluff retreat rate. The two to three inches per year as established by the consultants of record was based on a review of aerial photographs and topographic maps spanning a 32 year period. This is a very limited time span and as such, I requested that an adequate factor of safety be applied to the estimated rate for design purposes. Apparently, this was not done as the current design utilizes the three inches per year bluff retreat rate to design the 18.75 foot setback.

To reiterate, the impact of the sewage disposal system on the stability of the slope should be evaluated by the geotechnical consultant of record. In addition, based on the limited data available to establish a bluff retreat rate for this site, an adequate factor of safety should be applied to the estimated three inches per year bluff retreat rate used to establish a setback from the top of the bluff.

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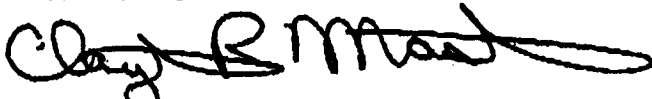
June 27, 1996

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SG-6159-P1
96-06-761

If you have questions or if I can be of further service please call at (619) 345-1588

Sincerely,
EARTH SYSTEMS CONSULTANTS
Southern California



Clayton R. Masters, E. G.
Senior Geologist

pc/Letter

Copies:

2/Mr. Steve Littlejohn

1/CM

1/VTA File

20 926

Enclosure B

STEVE LITTLEJOHN CONSTRUCTION COMPANY

June 18, 1996

The Planning Dept.
City of Malibu
23555 Civic Center Way
Malibu, CA 90265

RE: SITE PLAN REVIEW 94-065 FOR 32804 PACIFIC COAST HWY.

Planning Dept:

I've reviewed the file on this application and have come to the realization that the approval of it: (a) goes against a mountain of unanswered geologic questions, (b) sets a wholly inappropriate precedence that will seriously undermine the local Malibu Land Use Plan, (c) Impacts our view shed, (d) Impacts our easement to the beach.

TOPIC A: GEOLOGY

It appears that Mr. Clay Masters, the city geologist consultant that reviewed this project at a private meeting along with Norm Haynie, James Guerra, Greg Silvers (see geologic review sheets dated 9/8/92, 11/19/92, 4/27/94, and 7/22/94), was asked to stop his questioning and issue an approval. As stated in his 7/22/94, Page 1, review sheet as to why the applicants no longer needed to answer the geologic questions that he had posed at this stage, one can only find that these questions are being deferred until the planning and building Department review stages. It's precisely this type of action that allows problematic projects to gain momentum early on. It appears that I am not alone with my views on this project. Please review what Marti Witter wrote in his IERB resolution 95-006 on 11/1/95.

Because of this preliminary geologic approval, I now find that my arguments are met with "all of this has been resolved and is approved by the city geologist". Unfortunately, if you review all the files, this is far from the truth. Look ahead 10 to 60 years, maybe even tomorrow. All it would take is several years of heavy rain or a major rupture of the Malibu coastal fault, which lies approximately 400 to 1,500 feet north of this site, and 10 to 15 feet of the ocean facing bluff could drop off as in the LA Times photo I've enclosed. In the meantime, the heavy rains cause the relocated blue line stream to swell, which cuts into the toe of the denuded slope (which are 1:1 in many areas) and again, more land falls off on the other side of this spur ridge site!

21926

-1-

The result of all this is that a home will be standing on stilts! It seems that the only true geologic concern is if the house can stand up no matter what the land around it does. Is this reasonable?

The following is a list of further geologic concerns;

- 1) The bluff retreat rate was established by the Gorian report dated 2/15/91. It mentions on Page 4 that it used air photos from 1952, 1959, 1977, and 1989 to determine a bluff retreat rate of 8 feet in 37 years. When you actually look at the scales of the photos, (see last page of this report), 1952, 1" = 1670' ±; 1959, 1" = 1670' ±; 1977, 1" = 2000'; 1989, 1" = 20', you realize that you have a scale of approximately 1" = 1/3 of a mile and you are trying to measure 3"! This study has led to the absurdity that 18-3/4 ft. is the 75 year useful life of this project!
- 2) Since the blue line stream has moved and is now closer to the toe of the slope below the project site (see Gorian, 5/28/92), how can the retreat rate possibly be measured here? Also, as pointed out in the draft IERB resolution 95-006, 11-1295 on page 3, even though the above point has been raised, neither Gorian, the consulting geologist, or the city geologist have dealt with it. Why not?
- 3) A leachfield has been approved by the City Health Dept. that is located up the driveway (approx. 250 to 300 feet away from the studied site). The only geologic work that has been performed is that of a percolation study. As you can see from the enclosed photo, the hillside site is adjacent to a cliff area. Why isn't a geologic stability study being required prior to planning stage approval? This only gives the project further momentum. Please require this work to be done now. My neighbor and I may lose our driveway if this area is unstable and the addition of a constant water supply is all the catalyst it needs to cause a landslide. Page 2 of the original Gorian report, 9/18/89, states "the recommendations should not be extrapolated to other areas, or used for other facilities without consulting Gorian & Assoc. Inc". To date, this has not been done.
- 4) The driveway will need to be 20 feet wide. Just north of my home, the drive is 10-12 feet wide. Be on notice that more retaining walls will need to be constructed. All on deep pile foundations I assume.
- 5) The fire dept. turnaround (slabs and walls) will need to be constructed on deep pile foundations.

220626

- 6) Look at the topographical survey done on the property. Notice that if a seaward protective device must be constructed to protect the structure (and yard), where it's most needed will be on my property. Will they sue me to allow this if I don't want the device on my property? Will the device also cause our beach to turn into rock with no sand and cause our bluff and my neighbors bluff to retreat at a faster rate? At minimum, a wave action study should be required to determine what would happen to our property if a sea wall is built in the future.
- 7) The proposed house was staked out by Peak Surveys on 6/13/96. I noticed that from my property line wall (which is the property line) to the south east corner stake (#235) of the house is approximately 12 feet when 14 feet is required. But, more alarming, is that due to an approximate 20 foot wide landslide in the past that makes a dished-out line (not the straight 75 year, 18-3/4 foot line drawn on the plot map) as the top of the bluff, that the south east corner of the living room (stake #251) is approximately 13 feet from the bluff edge! This house, as staked out, doesn't conform to the standards or variances being set! Simply, you cannot approve it like this!

TOPIC B: LAND USE ISSUES

The ink has just dried on the Local Malibu Land Use Plan, and the Planning Dept. wishes to set wholly inappropriate prescience by granting the following variances. Is this what Malibu needs to do to itself?

- 1) Less than a 25 foot setback on the ocean facing bluff (a 75 year useful life was determined to be 18.75 ft).
- 2) Allow the house to be within 8 feet of a 1:1 slope on the north side.
- 3) Allow the Fire Dept. turn around to be constructed literally "over the edge" (on a slope steeper than 2-1/2:1).
- 4) One hundred percent of the 1st floor are to be 2nd floor area too!

All of which allows a 3800 sq. ft., 4 bedroom home to bulge over this substandard site. As it was explained to me, due to the constraints of this site, all these variances are to be approved because the applicants might suffer. Why couldn't a small beach home be designed that fits the site? In short, greed has now become a larger factor than geologic concerns. Please realize that with such a large house, the needs for shoreline and stream

STEVE LITTLEJOHN
CONSTRUCTION COMPANY

July 23, 1996

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JUL 23 1996
CITY OF MALIBU

Joyce Parker, Planning Director
City of Malibu
23555 Civic Center Way
Malibu, CA 90265

RE: Variance No. 96-014, Site Plan Review No. 94-065
32804 Pacific Coast Hwy, Malibu

Dear Ms. Parker:

We hereby appeal the Malibu Planning Commission's July 15, 1996 approval of the above-referenced project entitlements. We believe that the Planning Commission erred in approving the applicant's variance request as it relates to Municipal Code Section 9303(A)(6)(e) [which requires all structures to be set back at least 25 feet from the top of a 1:1 inland or coastal bluff], because the proposed setback from inland bluffs on the site is not great enough to secure and protect the public's health, safety and welfare. Similarly, the variance is consistent with the goals, objectives and policies of Malibu's General Plan, and will be detrimental and injurious to our property (which is located immediately to the site).

Among the specific elements of this project to which we take exception are the following:

- A. The size of the proposed dwelling is still too large given the serious topographical and environmental limitations of the site. There is an inadequate setback from the inland coastal bluffs. No showing has been made that such setback - a portion of which is as close as six (6) feet from the edge of a steep, eroding cliff that plummets into an ESHA and blue-line stream - will yield a 75-year useful life. While a useful life calculation was performed for the ocean facing bluff, it was not done for the inland facing bluffs. And Malibu's Municipal Code does not distinguish between the two. Thus, a 75-year useful life calculation should have been performed for the inland bluff adjacent to the proposed house (as well as the inland bluff adjacent to the applicant's proposed leach fields, as discussed below).
- B. The applicant should have been required to apply for a variance relative to its proposed installation

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the wrong message to others who will seek developmental entitlements for marginally buildable sites. Staff has conceded that the buildable portion of this lot only yields a house of roughly 2,400 square feet under Malibu's General Plan Guidelines. That is all the applicant should be allowed to build on the site.

H. Approval of the Site Plan Review is likewise inappropriate under Malibu's Municipal Code because the project is inconsistent with the General Plan absent obtaining all the requested variance approvals. Because such variances cannot properly be supported by substantial evidence, and are contrary to and conflict with the general purposes and intent of Malibu's General Plan and the IZO, the residence must be redesigned.

We would also like to incorporate the comments of Commissioner Hasse, offered at the conclusion of the hearing, in support of our appeal.

Sincerely,



Steve Littlejohn

SLng

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250626

protective devices increase as the yard shrinks to begin with. Along with "the house on stilts" will be a nice gunited "riparian" habitat and beach boulders instead of beach.

TOPIC C: VIEW IMPACT

A flat roof design that will be lowered by 3 or 4 feet would significantly reduce the impact on my view, not only from my 2nd floor view (this project is dead center in front of me), but from my neighbor, Tom Hennessey's house as well. It would be greatly appreciated.

TOPIC D: EASEMENT TO BEACH

A cantilevered walkway should be required to be built off the deep pile foundation in the areas of my beach access easement where the house will prevent further movement of this easement as the bluff retreats.

In addition, we wish the applicant would recognize that we have a legal easement to the beach where we claim it is. To date, we have only received claims that the easement has eroded away and exists no more.

I wish to conclude this letter with a quote from my own letter to you dated 11/17/94, P4. "I would like to conclude with a thought. Is the City of Malibu afraid to do what is right to stop the building on a sight that my consulting geologist, Donald B. Kowalewsky, and the reviewing city geologist, Clay Masters, feel is inappropriate, or is it better to allow a house to be built when such problems could occur in the future and become larger and more costly?"

This property should be recognized as the hazard it is. Your preliminary approvals may now allow the property to be sold at this stage to another party, and upon further study, they could potentially feel misled by the City of Malibu for giving such a premature approval and ignoring the reports of their own geologists.

Sincerely,

Steve Littlejohn

SL:ng

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