CALIFORNIA COASTAL COMMISSION SOUTH CENTRAL COAST AREA 89 SOUTH CALIFORNIA ST., SUITE 200 YOU RA, CA 93001 (30 CA1-0142

# RECORD PACKET CORY WILSON, Governor

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Staff:	SPF-VNT
Staff Report:	2-19-97
Hearing Date:	March 11-14, 1997
Commission Act	

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 5-90-1139-A2

APPLICANT: American Glendale

PROJECT LOCATION: 26848 Pacific Coast Highway, City of Malibu; L. A. County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a 2 story, 7,197 sq. ft. single family residence with 1,100 sq. ft. 4 car garage, 750 sq. ft. guest house, sewage disposal system, tennis court, pool and entry walls with 1050 cu. yds. of grading (525 cu. yds. cut and 525 cu. yds. fill); amended to increase the size of the proposed house from 7,197 sq. ft. to 7,420 sq. ft., reduce the size of the proposed garage from 1000 sq. ft. to 442 sq. ft., reduce the size of the guest house from 750 sq. ft. to 484 sq. ft. and reduce the grading from 1050 cu. yds. to 975 cu. yds. (750 cu. yds. of cut and 225 cu. yds. of fill).

DESCRIPTION OF AMENDMENT: Delete special condition number one

LOCAL APPROVALS RECEIVED: The City of Malibu has given an "Approval in Concept" for the underlying development previously approved.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits 5-89-514 (Robertson), 5-90-1139 (Sea Mesa, LTD.), 5-90-1139-A (Weintraub), 4-96-104 (Login), and 4-96-097 (American Glendale and Robertson).

<u>PROCEDURAL NOTE</u>: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

1) The Executive Director determines that the proposed amendment is a material change,

2) Objection is made to the Executive Director's determination of immateriality, or

3) the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

#### SUMMARY OF STAFF RECOMMENDATION:

The applicant is proposing to delete special condition number one from the original permit. The removal of this condition will not create any adverse visual impacts based on newly received evidence reviewed by the Commission at recent public hearings. The site is not a significant scenic resource from Pacific Coast Highway. As amended, the project will remain consistent with Section 30251 of the Coastal Act. Therefore, staff recommends that the Commission determine that the proposed development with the proposed amendment, subject to the modifications noted below is consistent with the requirements of the Coastal Act.

#### STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

## I. <u>Approval with Conditions</u>

The Commission hereby <u>approves</u> the amendment to the coastal development permit, on the grounds that as modified, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

<u>NOTE:</u> Unless specifically altered by the amendment, all standard and special conditions attached to the previously approved permit remain in effect.

# II. Special Conditions

1. Deleted.

# III. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

#### A. <u>Project Description and Background</u>

The applicant is proposing the deletion of special condition 1 of the coastal development permit 5-90-1139 (Sea Mesa, LTD.), as amended in 5-90-1139-A (Weintraub). This condition currently reads as follows:

# 1. <u>Revised Plans</u>

Prior to the issuance of the coastal development permit, the applicant shall submit revised plans, subject to the review and approval of the Executive Director, which illustrate that the height of the structure does not exceed the horizon line, which is approximately elevation 132 feet. Specifically, the currently proposed structure would need to be reduced in elevation a minimum of 8 feet to accomplish this end.

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This request to delete special condition 1 was processed as an immaterial amendment and was reported to the Commission at the November 1996 Commission hearing. However, within ten working days of the publishing of the notice of the proposed amendment, two objections from neighbors were received in the Commission office. Therefore, pursuant to Section 13166 of the California Code of regulations, the project has been scheduled for a Commission hearing. The two objections submitted by neighbors are included in this staff report as Exhibits 1 and 2.

The original project proposed by Sea Mesa, LTD, the applicant's predecessor in interest, was for the construction of a 7,197 sq. ft. single family residence with a four car garage, 700 sq. ft. guest house, sewage disposal system, tennis court, pool, and entry walls on a blufftop lot seaward of Pacific Coast Highway. A total of 1,050 cubic yards of grading was proposed for the tennis court. The residence was proposed to be set back from the top of the bluff by 60 feet; all other development was proposed to be set back 25 feet from the top of the bluff.

This project was approved by the Commision on March 14, 1991 subject to six special conditions. Those conditions included revised plans limiting the height of the house to the centerline of the frontage road (at the 128 foot elevation), and the linear coverage of the residence to 92 feet to protect the horizon view as seen from Pacific Coast Highway; archaeological resource protection; geologic review of plans; the recordation of an assumption of risk deed restriction and a future improvements deed restriction; and landscaping plans. The permit has not been issued; however, four extensions have been granted and the approval is still valid, as of this date. Finally, the coastal development permit approval was transferred in May of 1995 to the current owner, and applicant, American Glendale, Inc.

In March of 1995, the Commission approved coastal development permit amendment number 5-90-1139-A, which requested a revision to special condition #1 to allow the structure to exceed the horizon line by approximately 8 ft, and modify the approved plans. Specifically, the amendment requested to increase the size of the proposed house from 7,197 sq. ft. to 7,420 sq. ft., reduce the size of the proposed garage from 1000 sq. ft. to 442 sq. ft., reduce the size of the guest house from 750 sq. ft. to 484 sq. ft. and reduce the grading from 1050 cu. yds. to 975 cu. yds. (750 cu. yds. of cut and 225 cu. yds. of fill) (See Exhibits 4-6). Special condition 1 was modified slightly after revised plans were submitted and additional visits to the site by staff were conducted; however, the Commission's intent to keep the residence lower than the centerline of the road was not removed from the condition. All other special conditions remained in effect.

The lot was created under coastal development permit 5-89-514 (Robertson). Coastal development permit 5-89-514 allowed for the subdivision of two parcels, totaling six acres, into four parcels. The subject lot is the easternmost lot of the four lot subdivision as shown in Exhibit 3. The underlying subdivision permit was approved, and subsequently issued, subject to two special conditions which required the mitigation of cumulative impacts and approval of the septic system by the County of Los Angeles Department of Health Services. These four parcels are all located on the coastal bluff, and all remain undeveloped. The underlying application to this amendment, 5-90-1139 (Sea Mesa, LTD) was the first residence proposed on these four lots. One other residence has now been approved by the Commission for development on lot 3 [4-96-104 (Sea Mesa Limited, c/o Login)]. Lots 1 and 2 currently remain undeveloped.

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The 1.6 acre blufftop lot lies between Pacific Coast Highway and Malibu Cove Colony Drive. The bluff descends to the landward side of Malibu Cove Colony Drive. There is a row of residences on the seaward side of malibu Cove Colony Drive. The Pacific Ocean then lies seaward of this row of residences.

## B. Visual Impacts

Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30251 of the Coastal Act mandates that permitted development protect public views to and along the ocean. When the underlying project was first before the Commission, the Commision found that the subject site offered a small view of the ocean while traveling along Pacific Coast Highway. Further up and down the coast views of the ocean exist; however, in other areas along the coast in the immediate vicinity there are no views of the ocean at all from Pacific Coast Highway. Because there was a partial view of the ocean from the subject lot, the Commission found that the protection of the view was significant and should be protected. Recent Commission action has changed the Commission's findings regarding the significance of ocean views as seen from Pacific Coast Highway across the lots involved in the underlying subdivision. In recent permit action on neighboring lots to the immediate west and north, as noted below, the Commission has found that development above the centerline of the road will not create adverse visual impacts and as such is consistent with Section 30251 of the Coastal Act [4-96-104 (Sea Mesa Limited c/o Login) and 4-96-097 (American Glendale and Robertson)]. Based on these permit actions on the neighboring parcel and landward parcel, as detailed below, Commission staff processed this current amendment application, 5-90-1139-A2 (American Glendale) to remove the restriction of the height limit as an immaterial amendment. Two objections to that amendment request were received; however neither objection included any evidence that the proposed project is not consistent with Section 30251 of the Coastal Act. Regardless. pursuant to Section 13166 of the Administrative Regulations, the amendment request has been set for a Commission hearing.

As noted in the preceding section, the two letters of objection are included as Exhibits 1 and 2. The first letter simply requests that the Commission uphold the standards for which the Coastal Act was established. There is no objection to the proposed amended project, based on the Chapter Three Policies of the Coastal Act, in this letter.

The second letter requests that any consideration of the subject lot also include consideration of the narrow lot located between the subject lot and Pacific Coast Highway. The letter objects to the trees planted on this narrow lot and opposes the construction of a wall on this narrow lot. The trees and wall on this narrow lot have been addressed under a separate permit action and are not a part of this application, as discussed below. This second letter of objection does not raise any objection to the deletion of special condition 1. The Commission concludes that this letter does not object to the proposed project, but rather to a different project for which a determination has already been made.

The subject site is located on a coastal bluff, and is visible from Pacific Coast Highway. The Commission found when approving the underlying coastal development permit that while traveling along Pacific Coast Highway there is a view of the horizon and the ocean across this lot. In order for the construction of a residence to not obstruct that view, a residence could not be built higher than the centerline of Pacific Coast Highway. Thus, the Commission conditioned the project with a restriction on the height and linear frontage of the residence to protect the views of the horizon and ocean from Pacific Coast Highway.

The current applicant submitted an amendment to increase the size of the residence. Included in this revised plan was a change to the building height and the elevation of the finished grade; both were increased by four feet. Thus, the proposed changes would have increased the height of the residence by eight feet. The total height of the residence proposed under 5-90-1139-A (Weintraub) is 28 feet from existing grade. At this height, the residence proposed under 5-90-1139-A (Weintraub) would be at the 140 foot elevation. This proposal was four feet higher than the first proposal. As such, special condition 1 was modified to require that the height of the residence be reduced by eight feet, to a maximum elevation of 132 feet. Should special condition 1 of the permit be deleted, the residence proposed under 5-90-1139-A would be the plan approved.

The applicant asserted at the time that the increase in the height of the residence should be allowed because mature Eucalyptus trees adjacent to the lot already obstruct the view; the City of Malibu approved the proposed height stating that the project would not inhibit the existing views; and finally, based on the current special condition, if applied to all four lots, residences at lots 1 and 2 would only be 8 feet in height in order to protect the view of the horizon. The Commission found no substantiation to these claims at the time. The Commission noted that the trees pre-dated the Coastal Act and as such the Commission had no jurisdiction over their existance; the City's approval did require landscaping to protect the "primary view" (e.g. the adjacent property owner's view of the ocean); and that the development of the lots to the west of the subject parcel would be analyzed when applications were proposed. The Commission found that the original four lot subdivision did not address visual impacts as no grading or structures were proposed; the Commission's practice has been to address such impacts when individual residences or grading are proposed for a project. Thus, the Commission still required the applicant to reduce the residence by eight feet as noted in the revised special condition 1 cited in the preceding section.

Since the Commission's decision on the applicant's amendment, the Commission has conducted an exhaustive review of evidence relative to the view from Pacific Coast Highway in conjunction with a series of public hearings for the proposed residence at the adjacent lot to the west. In coastal development permit application 4-96-104 (Sea Mesa LTD, c/o Login), the Commission approved a 6,016 sq. ft., 28 foot high single family residence with 7,200 cubic yards of grading at the adjacent lot. In this case, the residence was <u>not</u> restricted to the height of the centerline of Pacific Coast Highway, and was <u>not</u> required to protect any views from Pacific Coast Highway. The Commission found that the view of the ocean at that lot, from Pacific Coast Highway, is

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partially blocked due to the inland location of Pacific Coast Highway, other development in the area, and the topography of the area. At this section of highway, the subject properties slope away from the highway; thus, the footprints of the residences will be below the centerline of the road. Moreover, pursuant to the certified visual resource map found in the Malibu Land Use Plan, this section of Pacific Coast Highway was not previously recognized as an area to view the ocean. The Commission further found that the view from the neighboring site was not significant in comparison to other views from nearby locations. Based on these findings, the Commission found that there was no significant view from the neighboring site to be protected. Thus, the neighboring project to the immediate west was not restricted in height.

Subsequent to the approval of 4-96-104 (Sea Mesa LTD), the Commission waived the requirements for a coastal development permit for the construction of a five foot high, 500 foot long block wall with wrought iron on top and landscaping consisting of trees along a narrow strip of land between Pacific Coast Highway and the residential lots subject to this permit and to coastal development permit 4-96-104. This is the project referred to in the second letter of objection. This waiver [4-96-097 (American Glendale and Robertson)] allows for a wall and trees which will inhibit any view from Pacific Coast Highway. The trees are clustered in groups to reduce any visual impact created by the trees. The top of the wall is at approximately the 144 foot elevation; higher than the elevation of the centerline of the road and the proposed residence. However, as the Commission found that the view from the neighboring site was not significant, the placement of a wall was determined to be consistent with Section 30251 of the Coastal Act.

The circumstances on the subject lot are identical to the lot subject to 4-96-104. The two lots are adjacent to each other, have similar topography and offer the same, partial, insignificant view of the ocean. The Commission's previous findings regarding the scenic resources of this site did not include the evidence submitted for the project at the neighboring site. The Commission finds that, as with the neighboring lot, there is <u>not</u> a significant view which must be protected. Moreover, the small lot fronting the subject lot has been approved for a five foot high wall and landscaping, which includes trees. The development approved on the narrow lot landward of the subject lot will be higher than the elevation of the centerline of the road and does not allow for a view of the horizon. Thus, there is no significant view of the ocean from Pacific Coast Highway across the applicant's property. Finally, the letters of objection submitted by neighbors do not provide any evidence that the proposed development is inconsistent with the Chapter Three policies of the Coastal Act. Therefore, the Commission finds that the proposed amendment to delete special condition 1 is consistent with Section 30251 of the Coastal Act. All other conditions of the permit shall remain in effect.

# C. Local Coastal Program

Section 30604(a) of the Coastal Act states:

(a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200 of the division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

## G. <u>CEOA</u>

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The proposed project, as modified, is consistent with the applicable polices of the Coastal Act. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the proposed permit, as modified, is found consistent with CEQA and the policies of the Coastal Act.

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26902 Malibu Cove Colony Dr. Malibu, Ca. 90265 Nov. 11,1996

California Coastal Comm. 89 So.California St. # 200 Ventura, Ca. 93001

Dear Sirs:

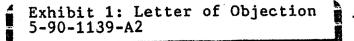
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I am in receipt of the notice of the proposed permit amendment  $\frac{# 5-90-1139A2}{$  and am impelled to respond by <u>objecting</u> to the granting of this request on many levels.

Please do uphold the standards for which the Coastal Commission was established. Thank you for your attention and consideration of my request.

Yours trul Sandra Radoff-Bern



LAW OFFICES

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\* ALSO ADMITTED IN N.Y.

\* ALED ADMITTED IN BRITISH COLUMBIA TA PROFESSIONAL CORPORATION

November 12, 1996

#### VIA FACBIMILE - (805) 641-1732

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California Coastal Commission South Central Coast Area 89 South California Street, Suite 200 Ventura, California 93001

Attention: Ms. Rebecca Richardson

Re: Application No. 5-90-1139A2

Dear Ms. Richardson:

As you know, I represent James and Vicki Iovine. The Iovines recently received a notice of proposed permit amendment dated October 31, 1996, which requests written objections, if any, within ten working days of the date of the notice. (Since Monday was a legal holiday, we believe this response is timely until November 15th.) Pursuant to your telephone conversation this morning with our consultant, Mr. Kimbrough, we learned that there is a Coastal Commission hearing on this matter in San Diego today. However, please be advised that the Iovines have received no notice of any hearing and therefore reserve their right to object and oppose any decisions made at the hearing.

We have been requested by the Iovines to respond to the application for permit amendment filed by American Glendale c/o Richard Weintraub ("Applicant") in the above-captioned matter.

The Iovines own a parcel of property at 26907 Pacific Coast Highway ("PCH"), located across the highway from the Applicant's lots. The Applicant owns two (2) lots. The lot for which the subject permit is sought is 26848 PCH, APN Number 4460-23-10 ("Lot However, the Applicant also owns the small pie shaped lot 010"). (see attached), designated APN Number 4460-23-005. ("Lot 005"). Lot 005 is appurtenant to Lot 010 and must be crossed to enter Lot 010.

> Exhibit 2: Letter of Objection 5-90-1139-A2

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Any consideration of development of Lot 010, must also include consideration of Lot 005.

The Iovines hereby object to and oppose the permit amendment unless consideration is given to the negative view impact caused by the landscaping on Lot 005. Lot 005 was landscaped by the Applicant in the first quarter of 1995 with non-indigenous clive trees, without permits from the Coastal Commission or approval of the City of Malibu. We have reason to suspect that the Applicant intentionally landscaped prior to requesting permits and possibly misrepresented the origin of these trees in its requests to the Coastal Commission, as well as to the City of Malibu, by suggesting that the trees were indigenous to Lot 005.

We recently obtained a copy of a Coastal Development Permit Waiver-de-Minimis, which was issued to Applicant on July 31, 1996, for Lot 005, without any hearing or notice whatsoever. We are concerned that this waiver may have been issued by the Coastal Commission based on inaccurate or misleading information, including information regarding the view impact of the wall and the landscaping.

The choice of trees planted by the Applicant as well as the wall built directly impact on the view corridor to the Malibu coastline. We assert that the poorly chosen trees planted by the Applicant cause a barrier and significant view degradation of the ocean. The trees, in particular, exceed the horizon line by more than eight feet, and if no condition is imposed by the Coastal Commission for the replacement or at least the pruning of the trees, all views to the ocean will be obliterated.

The Coastal Commission is obligated to preserve the visual integrity of the Malibu coastline for the benefit and enjoyment of all Californians. We submit that the Coastal Commission has the duty and authority to address the requirements of LUP Policy 130 with respect to landscaping as well as other structures. It would be directly contrary to the policies and standards set forth in the LCP LAW OFFICES WOLF, RIFKIN & SHAPIRO, LLP

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to sanction such an inconsistent and potentially disruptive use of the subject property. It is incumbent upon the Coastal Commission to protect the visual quality of the coastline consistent with Section 30251 of the California Coastal Act.

We thank you for this opportunity to comment and look forward to talking to you more about this important issue.

Very truly yours,

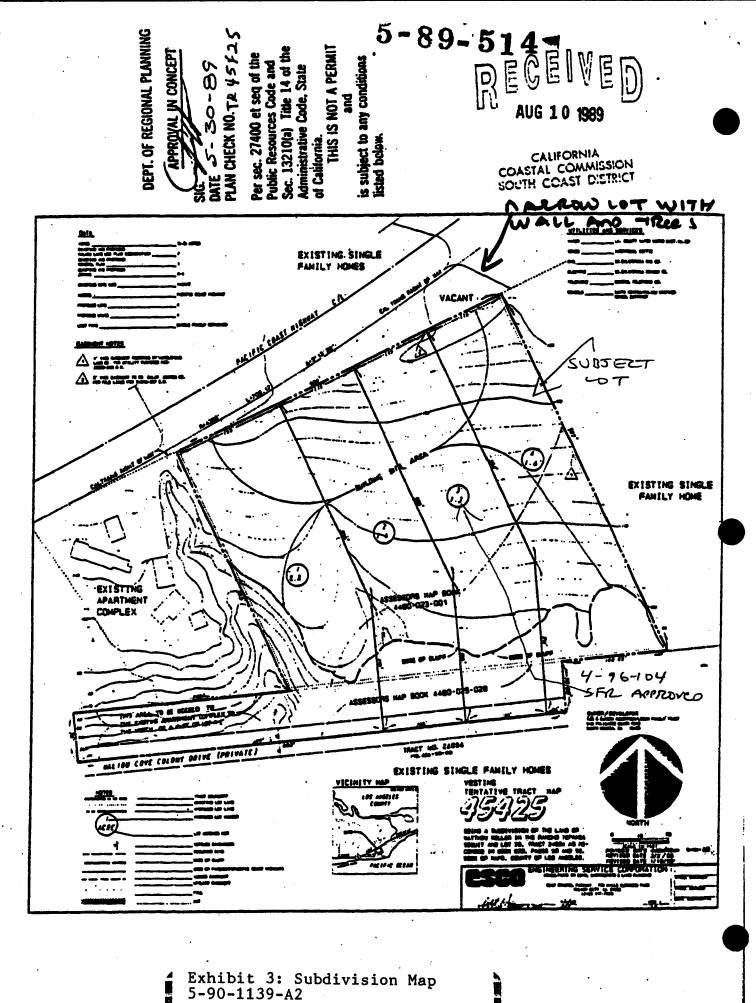
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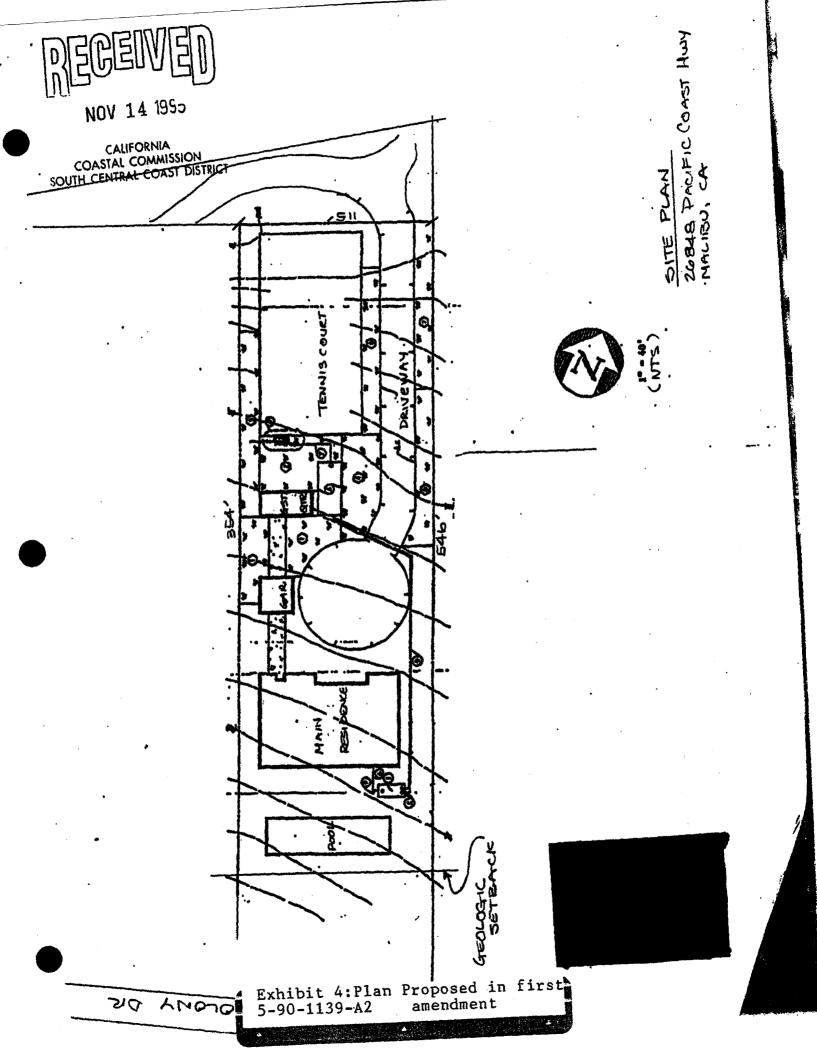
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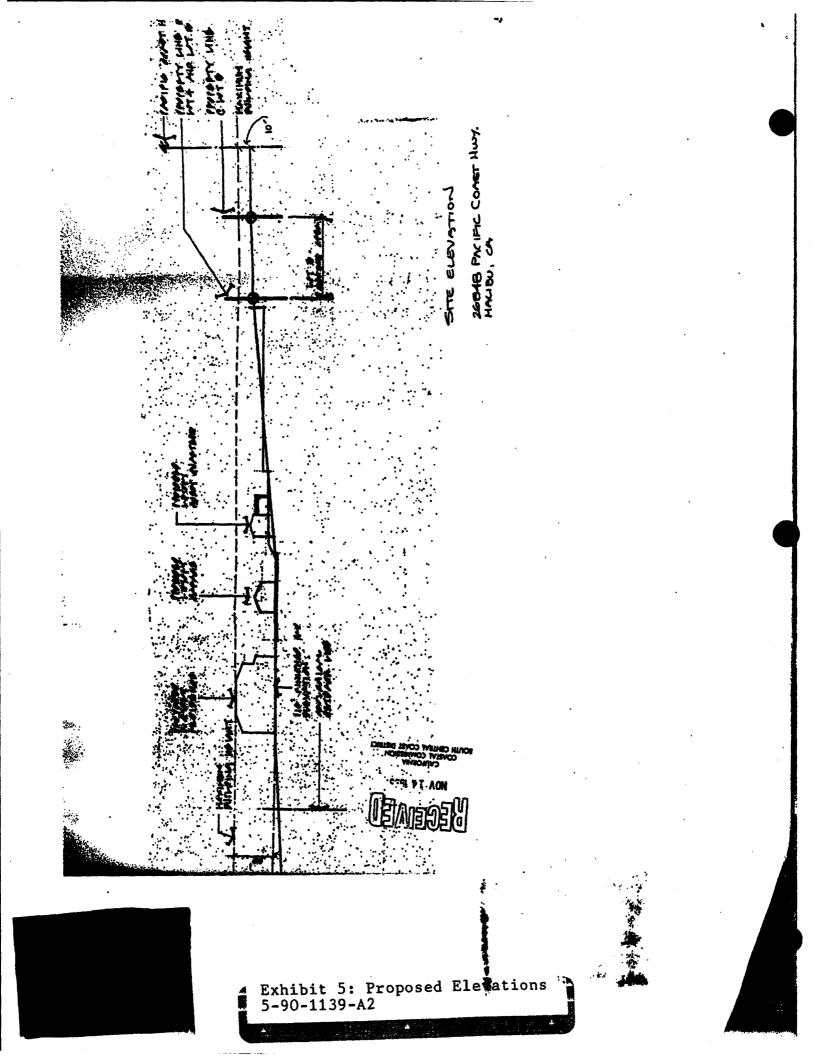
cc: Mr. & Mrs. J. Iovine Mr. Michael Kimbrough

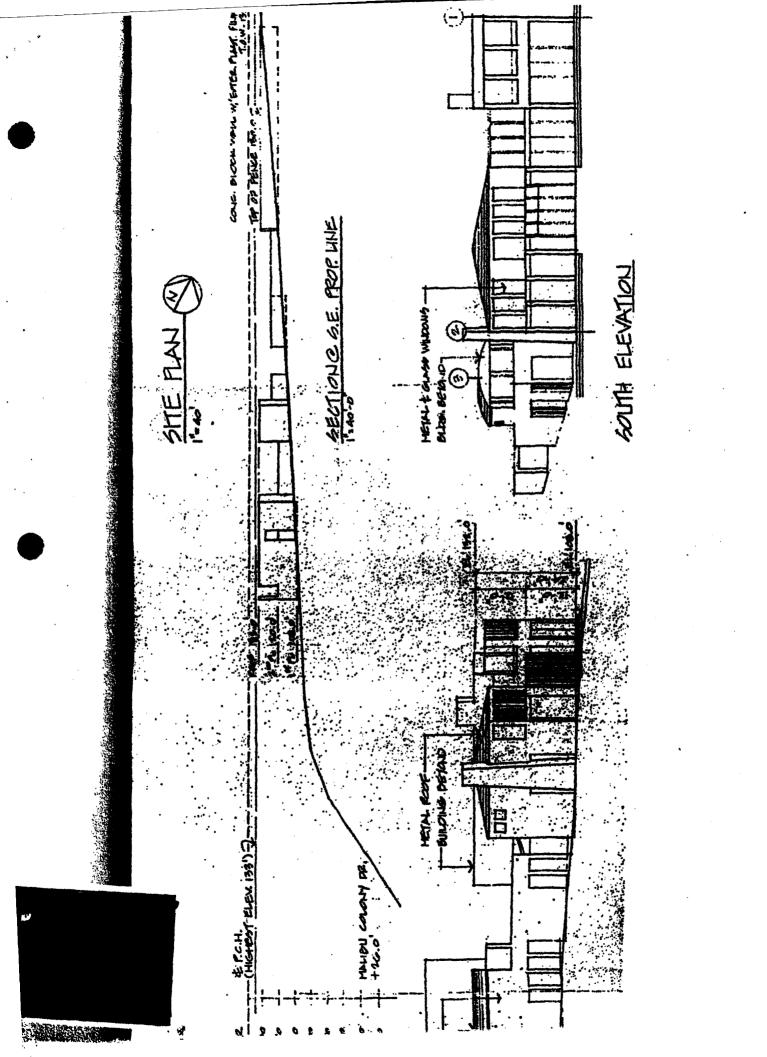
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