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CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Hearing Date: 9/9-12/97
Commission Action:
8086A

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 4-97-098

APPLICANT: Hal & Jeri Alden

PROJECT LOCATION: 22160 Pacific Coast Highway, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Construct a 26 sq. ft. deck addition and install three additional wood piles along the seaward portion of an existing deck within the stringline of and oceanfront existing residence. Repair deck and stairway to beach. Site includes an existing two story residence, deck, and garage.

Lot Area	8,640 sq. ft.
Building Coverage	2,760 sq. ft.
Plan Designation	Residential III A
Zoning	2 - 4 du/acre
Project Density	5 du/ acre
Ht abv fin grade; deck	3.5 feet

LOCAL APPROVALS RECEIVED: Project Approval in Concept, City of Malibu, dated 3/28/97.

SUBSTANTIVE FILE DOCUMENTS: Coastal Permit No. 4-96-014, Riley; Coastal Permit No. 4-95-005, Wylly; Limited Geotechnical (Soils) Engineering Investigation, by Southwest Geotechnical, Inc., dated February 14, 1997; Wave Uprush Study, by Pacific Engineering Group, dated March 29, 1997; Letter from State Lands Commission to Mike Barsocchini, dated July 18, 1997, titled, Coastal Development Project Review for Deck Repair and Extension.

SUMMARY OF STAFF RECOMMENDATION: Staff recommends approval of the proposed project with three (3) special conditions addressing the consulting engineer's recommendations, an applicant's assumption of risk, and construction responsibilities and debris removal. The proposed project is a minor addition and repair to an existing oceanfront deck which is located within the stringline of adjacent residences and decks. As such, the project will have no impact on public access or scenic and visual resources.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, 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.

II. Standard Conditions.

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date 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.

III. SPECIAL CONDITIONS:

1. PLANS CONFORMING TO ENGINEER'S RECOMMENDATIONS

Prior to the issuance of the permit the applicant shall submit, for the review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans. All recommendations contained in the "Limited Geotechnical (Soils) Engineering Investigation", by Southwest Geotechnical, Inc., dated February 14, 1997; and the "Wave Uprush Study", by Pacific Engineering Group, dated March 29, 1997 including preliminary foundation design, moisture protection and surface drainage, and new timber must be incorporated into the final plans. All final design and foundation plans must be reviewed and approved by the engineering consultants.

The final plans approved by the consultants 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 a consultant shall require an amendment to the permit or a new coastal permit.

2. ASSUMPTION OF RISK

Prior to issuance of permit, the applicants as landowners shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicants understand that the site may be subject to extraordinary hazard from liquifaction, storm waves, wave run-up, erosion, and flooding, and the applicants agree to assume the liability from such hazards; and (b) the applicants unconditionally waive any claim of liability on the part of the Commission, and agrees to indemnify and hold harmless the Commission, its officers, agents, and employees relative to the Commission's approval of the project for any damage or destruction due to natural hazards.

The document shall run with the land, binding all successors and assigns, and shall be recorded free from prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

3. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL

The applicants shall, by accepting this permit, agree and ensure that the project contractor: (a) not store any construction materials or waste where it may be subject to wave erosion and dispersion; (b) not allow any machinery in the intertidal zone at any time; and (c) remove promptly from the beach any and all debris that results from the construction activities.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The project site is located on the seaward side of Pacific Coast Highway along Carbon Beach between Sweetwater Mesa Road on the west and Carbon Mesa Road on the east. The site is surrounded by existing residences to the west, east and across the Highway to the north. The applicant's property is a 8,640 sq. ft. lot located on the sandy beach between Pacific Coast Highway and the mean high tide. (Exhibits 1 and 2)

The applicants propose to construct a 26 sq. ft. deck addition and install three additional wood piles along the seaward portion of an existing deck within the stringline of an oceanfront existing residence. The remainder of the existing deck is proposed to be repaired including the stairway to beach. The project site includes an existing two story residence and garage. (Exhibit 3)

The project site is designated in the certified Los Angeles County Local Coastal Plan as Residential III A which allows two to four dwelling units per acre. The City of Malibu Interim Zoning Ordinance designates the site as Single Family Residential-M with a minimum lot size of 0.25 acres, or four dwelling units per acre. The proposed project site, at 8,640 sq. ft., is non-conforming as it exceeds these allowable densities at five (5) dwelling units per acre. In addition, the project site is not located in any designated environmentally sensitive habitat area within the Malibu area.

The applicants requested a State Lands Commission review of the proposed project relative to its location to state sovereign lands and public easements in navigable waters. The State Lands Commission submitted a letter dated July 18, 1997 addressing these issues. The letter concludes that there is insufficient information to determine whether this project will intrude upon state sovereign lands or interfere with other public rights. In addition, the SLC asserts no claims that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters.

B. Public Access, Seaward Encroachment and Scenic and Visual Quality

Coastal Act Section 30210 states that:

In carry out the requirements of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212(a) provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, where:

- (1) it is inconsistent with public safety, military security needs, or protection of fragile coastal resources,
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Further, 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 of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

All beachfront projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. The Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline. The major access issue in such permits is the occupation of sand area by a structure, in contradiction of Coastal Act policies 30210, 30211, and 30212.

However, a conclusion that access may be mandated does not end the Commission's review. As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with ... the need to protect ... rights of private property owners ..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the U. S. Supreme Court's decision in the case of Nollan vs. California Coastal Commission. In that case, the court ruled that the Commission may legitimately require a lateral access easement where the proposed development has either individual or cumulative impacts which substantially impede the achievement of the State's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate these impacts.

The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access of such projects raises the following issues, among others: potential encroachment on lands subject to the public trusts and thereby physically excluding the public; interference with natural shoreline processes which are necessary to maintain publicly owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability to use thereby causing adverse impacts on public access such as above.

In the case of the proposed project, the construction of a small addition to an existing deck, and the construction of three new pilings, does constitute new development under the Coastal Act. The repair of the existing deck and stairway does not constitute new development. According to the Commission's access records, there are no existing offers to dedicate public access easements recorded on the applicant's property.

Although the proposed project site is located on the sandy beach, all of the proposed development is located landward of the stringline between adjoining properties. Further, the applicants do not propose any shoreline protective devices which could interfere with coastal processes. As such, the proposed project will have no individual or cumulative impacts on public access on the sandy beach seaward of the residence.

In addition, as a means of controlling seaward encroachment of residential structures on a beach to ensure maximum access, protect public views and minimize wave hazards as required by Coastal Act Sections 30210, 30211, 30251 and 30253, the Commission has developed the "stringline" policy to control the seaward extent of buildout in past permit actions. As applied to beachfront development, the stringline limits extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks to a similar line drawn between the nearest corners of adjacent structures and decks.

The Commission has applied this policy to numerous past permits involving infill on sandy beaches and has found it to be an effective policy tool in preventing further encroachments onto sandy beaches. In addition, the Commission has found that restricting new development to building and deck stringlines is an effective means of controlling seaward encroachment to ensure maximum public access as required by Sections 30210 and 30211 and to protect public views and scenic quality of the shoreline as required by Section 30251 of the Coastal Act.

The applicants have submitted a plan with a stringline connecting the existing residences on either side of the project site. The plan indicates that no portion of the proposed development extends beyond the stringline with the adjacent buildings and decks. Therefore, the Commission finds that the proposed project does conform to this setback. As proposed, the addition to this project will not extend new development further seaward than adjacent development, minimizing potential impacts to public access opportunities, public views and the scenic quality along the sandy beach.

And lastly, the Commission reviews the publicly accessible locations along adjacent public roads and the sandy beach where the proposed development is visible to assess visual impacts to the public. The Commission examines the building site and the size of the building. The existing residence and solid wall along Pacific Coast Highway already blocks public views from the highway to the beach and ocean. Although the proposed deck and pile addition and the repair of the deck and stairway may be visible from the public sandy beach, the existing residence blocks inland views from the beach. Moreover, the more scenic inland views of the Santa Monica Mountains as viewed from the water are well above the proposed development. Thus, the proposed addition and remodel will not adversely affect existing public views.

For all of these reasons, the Commission finds that the project would have no individual or cumulative adverse impacts on public access, nor will it adversely affect scenic and visual quality. Therefore, the Commission finds that a condition to require lateral public access is not appropriate and that the project, as proposed, is consistent with Coastal Act Sections 30210, 30211, 30212, and 30251.

C. Beachfront Hazards

Section 30253 of the Coastal Act states, in part, that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. The proposed development is located in the Malibu area, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu area include landslides, erosion, flooding and storm waves. Further, oceanfront sites are also subject to liquefaction, flooding, and erosion from storm waves.

The Commission reviews the proposed project's risks to life and property in areas where there are geologic, flood and fire hazards. The Coastal Act recognizes that new development, such as the proposed project, may involve some risk. Coastal Act policies also require the Commission to establish the appropriate degree of acceptable risk for the proposed development and to determine who should assume the risk.

The proposed project is located along Carbon Beach which is a relatively wide beach as observed by staff on site in April 1997. Regarding the hazard, the applicants submitted two reports. The first report is titled: "Limited Geotechnical (Soils) Engineering Investigation", dated February 14, 1997, by Southwest Geotechnical, Inc.; the second report is titled: Wave Uprush Study, dated March 29, 1997, by Pacific Engineering Group. These reports indicate that the development of the property as presently proposed is feasible from a geotechnical engineering standpoint.

Therefore, the applicant's consultants determined that the proposed project site is suitable from a soils and engineering geologic standpoint for construction of the proposed project, provided their recommendations are followed. Condition number one (1) provides for final review and approval by the consulting engineers of the final project design and foundation plans for the project prior to the issuance of the permit.

However, in the area of the site improvements, the site is underlain by beach sand deposits. Due to the loose nature of the sands and potential for high groundwater, the beach deposits are considered subject to liquefaction. Seismic ground shaking, granular cohesionless soils (sands), and high groundwater or perched groundwater conditions are required for liquefaction to occur. According to the applicant's engineer, the subject site has the potential for all three conditions noted above to occur.

Even though the consultants have determined that the project site is feasible for the proposed development, the Commission cannot absolutely acknowledge that the proposed residential development will be safe during all future storms, and from the potential for liquefaction, or be constructed in a structurally sound manner and be properly maintained to eliminate any potential risk to the beach going public. The Commission acknowledges that many of the oceanfront parcels in Malibu, such as the subject property, are susceptible to liquefaction, flooding and wave damage from waves and storm conditions. As an example, past occurrences have resulted in public costs (through low interest loans) in the millions of dollars in the Malibu area

alone. Storms during the winter of 1982-83 caused over six million dollars in damage to private property in Los Angeles County and severely damaged existing bulkheads, patios, decks, and windows along the Malibu coastline.

The applicant may decide that the economic benefits of development outweigh the risk of harm that may occur from the identified hazards. Neither the Commission nor any other public agency that permits development should be held liable for the applicant's decision to develop. Therefore, the proposed project located on a beach front lot subject to tidal influence, is in an area subject to extraordinary potential for damage or destruction from liquifaction, storm waves, wave run-up, erosion, and flooding. The Commission can only approve the project if the applicant assumes the liability from the associated risks. Through the waiver of liability, the applicant acknowledges and appreciates the nature of the natural hazards that exist on this beachfront site that may affect the stability of the proposed development. Condition number two (2) requires the applicants to assume these risks of the proposed residential development from liquifaction, storm waves, wave run-up, erosion, and flooding hazards by waiving all Commission liability.

Lastly, as noted above, the project involves some demolition and construction on a beachfront lot subject to tidal influence. Construction equipment, materials and demolition debris could pose a significant hazard if used or stored where subject to wave contact or situated in a manner that a hazard is created for beach users. Therefore, the Commission finds it necessary to impose condition number three (3) requiring construction responsibilities and debris removal. This condition will ensure that the construction of the proposed project will minimize risks to life and property in this public beach area which is subject to wave hazards.

The Commission finds that only as conditioned to incorporate all recommendations by the applicant's consulting engineers, an applicant's assumption of risk, and a construction responsibilities and debris removal condition will the proposed project be consistent with Section 30253 of the Coastal Act.

D. Local Coastal Program

Section 30604 of the Coastal Act states that:

(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 Chapter 3 (commencing with Section 30200) 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 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 of Malibu's ability to prepare a Local Coastal Program for this area of Malibu that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

E. California Environmental Quality Act

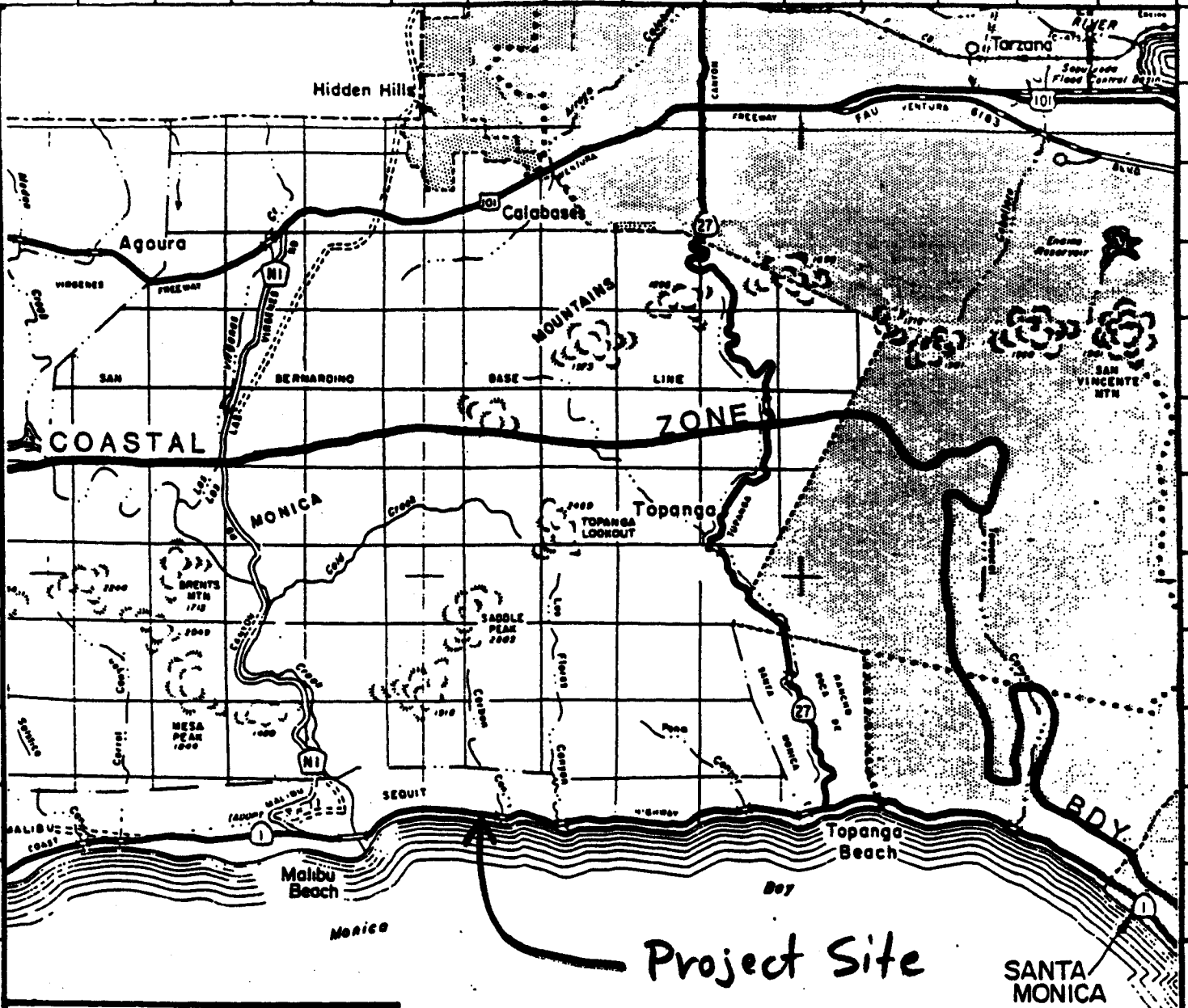
The Coastal Commission's permit process has been designated as the functional equivalent of CEQA. Section 13096(a) of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of 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 that would substantially lessen any significant adverse impacts that the activity may have on the environment.

As discussed above, the proposed project has been mitigated to incorporate all recommendations by the applicant's consulting engineers, an applicant's assumption of risk, and a construction responsibilities and debris removal condition. As conditioned, there are no mitigation measures available, beyond those required, which would lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, and is found consistent with the requirements of CEQA and the policies of the Coastal Act.

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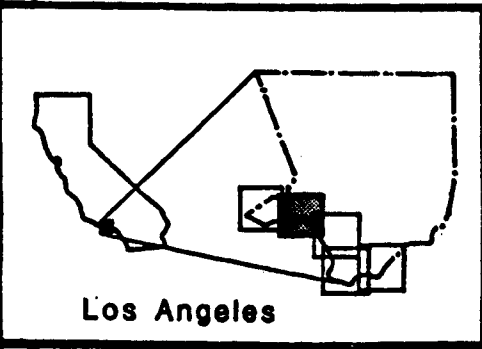
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Project Site

SANTA MONICA



Los Angeles

EXHIBIT NO. 1
APPLICATION NO. 4-97-098
Project
Location

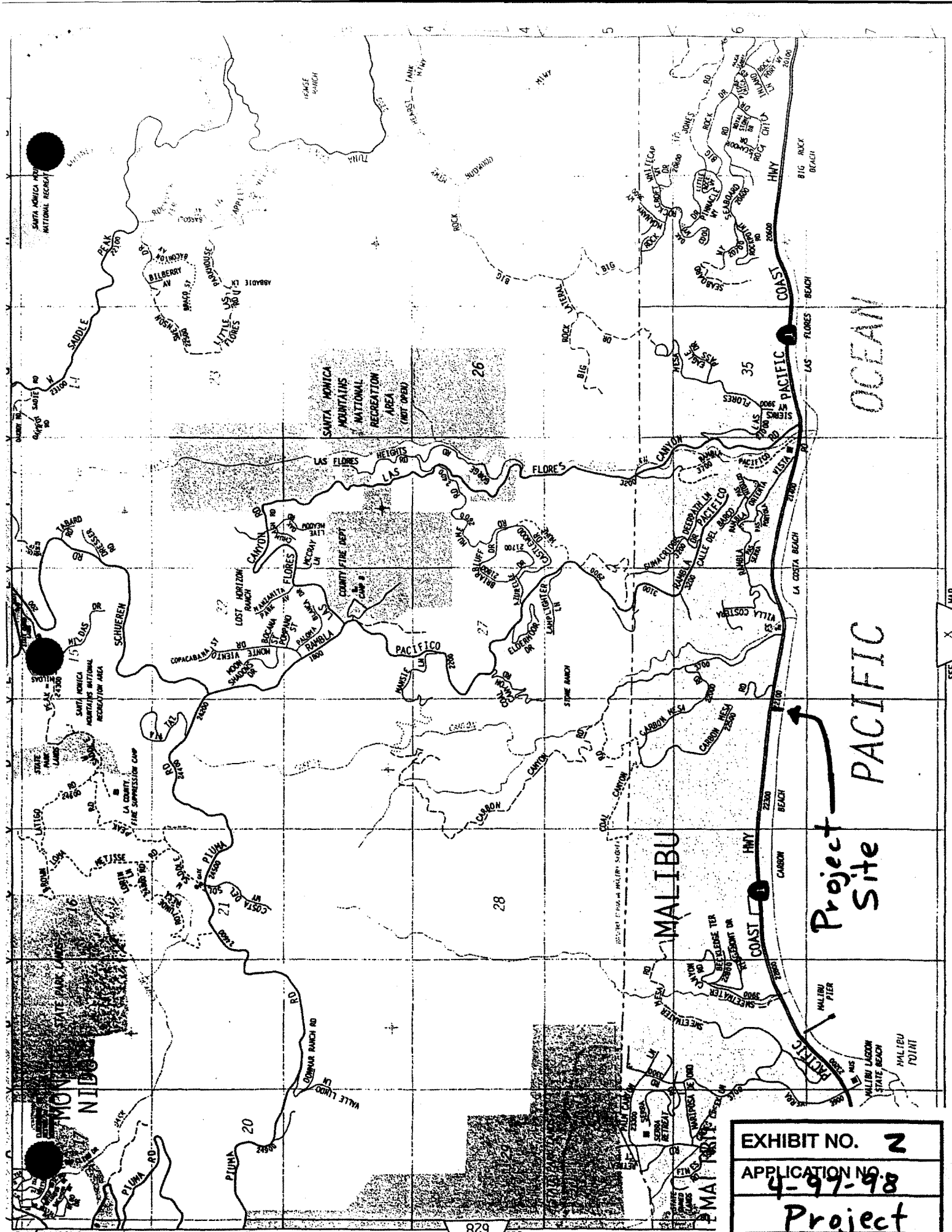
California Coastal Commission

LOCATION MAP



County of Los Angeles

Sheet 2 of 5



Project Site

EXHIBIT NO. 2
 APPLICATION NO. 4-97-98
 Project Site

SEE X MAP

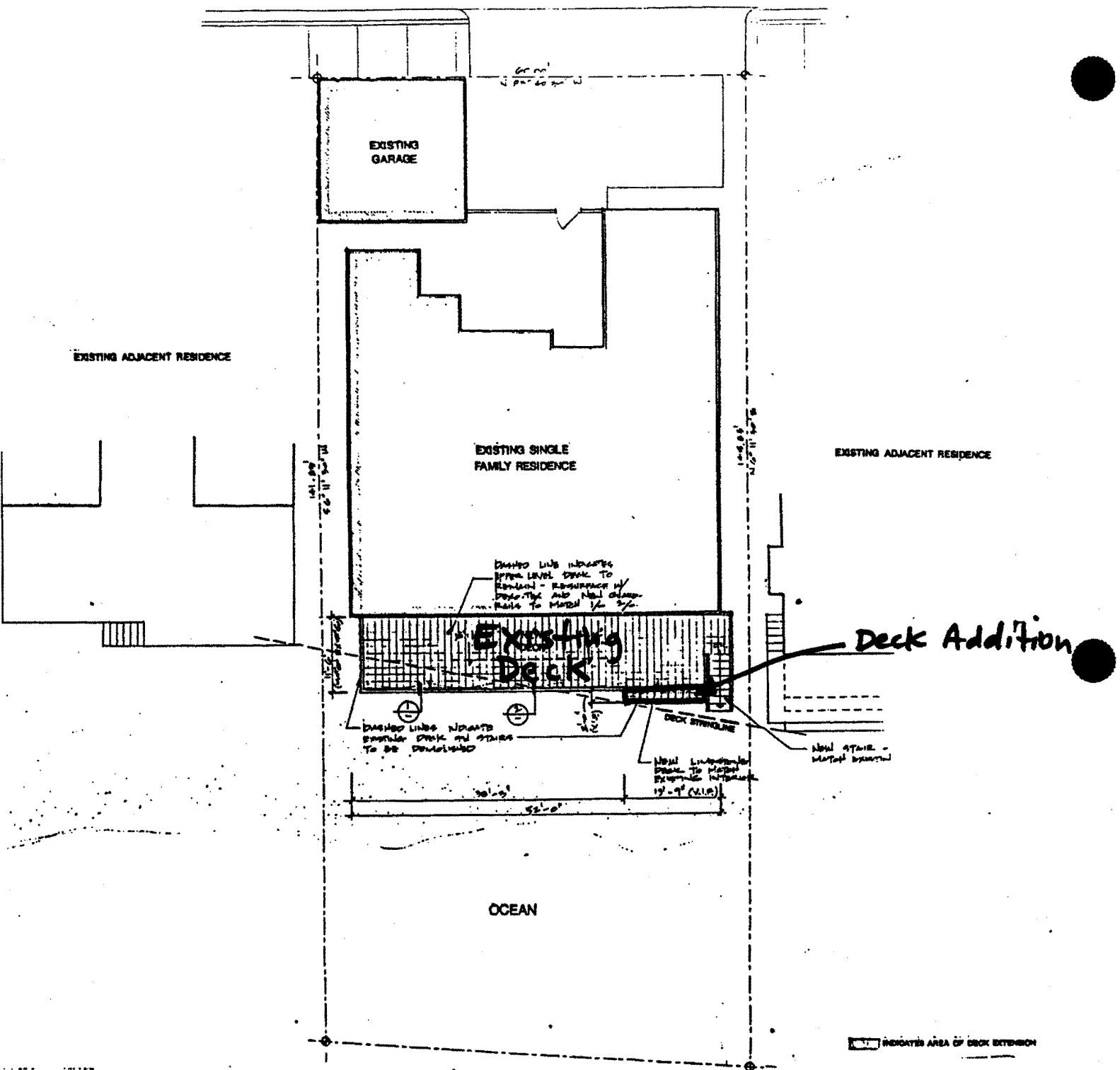


EXHIBIT NO. 3
APPLICATION NO. 4-97-98
Deck

ALDEN RESIDENCE DECK ADDITION
 22160 PACIFIC COAST HIGHWAY
 MALIBU, CA 90265