

CALIFORNIA COASTAL COMMISSION

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



Filed: 12/08/95
49th Day: 1/26/96
180th Day: 6/05/96
Staff: JCJ/V JG
Staff Report: 12/21/95
Hearing Date: 1/9-12/96
Commission Action:

STAFF REPORT: CONSENT CALENDAR **TH 9h**

APPLICATION NO.: 4-95-213

APPLICANT: Ray & Stephanie Peschke

PROJECT LOCATION: 2145 Bilberry Ave., Topanga

PROJECT DESCRIPTION: Construct a Studio (second dwelling unit) on top of garage (formerly approved as a carport under coastal permit 5-87-791) and expand approved split level residence (1572 sq. ft.) by enclosing 492 sq. ft. of external deck area to create additional interior space for residence. A storage/utility space of about 500 sq. ft. is proposed below the approved residence. No further grading is proposed.

Lot area:	2.05 acres
Building coverage:	2836 sq. ft.
Pavement coverage:	2700 sq. ft.
Landscape coverage:	1370 sq. ft.
Parking spaces:	two
Zoning:	1 du/ 10 acres
Plan designation:	Rural Land I
Project density:	2 du/ 2 acres
Ht abv fin grade:	26 feet

LOCAL APPROVALS RECEIVED: Project Approval in Concept, Department of Regional Planning, Los Angeles County; Sewage Disposal Approved, Department of Health Services, Los Angeles County.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan, Los Angeles County; Coastal Permit No. 5-87-791, Glyn Johns; Coastal Permit No. 5-87-792, Walecki; Coastal Permit No. 4-92-238, Kinsman Trust.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project with three (3) Special Conditions addressing the consulting geologists recommendations, a wild fire waiver of liability, and condition compliance.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that 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, 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 GEOLOGIC RECOMMENDATION

All recommendations contained in the "Update Engineering Geologic and

Geotechnical Investigation for Proposed Single-Family Residence 2145 Bilberry Avenue, Topanga Area, Los Angeles County, California (M95-511), dated July 5, 1995 by Miller Geosciences, Inc." including foundations and drainage must be incorporated into the final plans. All plans must be reviewed and approved by the geologic consultant. 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.

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.

2. WILD FIRE WAIVER OF LIABILITY

Prior to the issuance of the coastal development permit, the applicant 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, operations, 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.

3. CONDITION COMPLIANCE

All requirements specified in the above conditions that the applicant is required to satisfy as a prerequisite to the issuance of this permit must be fulfilled within ninety (90) days of Commission action. Failure to comply with such additional time as may be granted by the Executive Director for good cause will result in the nullification of this permit approval.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The proposed project is located on a two acre lot on Bilberry Avenue south of Swenson Drive. Swenson Drive intersects the south side of Saddlepeak Road at about the 22,000 block. (See Exhibits I and II.) The project site is designated in the certified Los Angeles County Local Coastal Plan as Rural Land I which allows one dwelling unit per 10 acres. The lot was issued a Certificate of Compliance-Exemption by the Department of Regional Planning in 1979, which makes the lot one of legal record. The project site is not located in any designated environmentally sensitive habitat area within the Santa Monica Mountains.

The applicant proposes to modify and enlarge an approved residence and carport approved by the Commission in 1987 (Permit 5-87-791). The proposed project now includes an existing garage and studio unit on the second floor which is separate from the approved residence. (See Exhibits III, IV, and V.) The studio, a second dwelling unit, is 507 square feet with 192 sq. ft. exterior deck, while the garage is 768 square feet in size. The foundation of the

approved residence is partially constructed. In addition, the applicants propose to enclose exterior deck area of the approved residence for use as a dining room, den and entry. The approved residence is 1576 square feet in size, while the proposed modification to enclose the decks will result in a residence of 2068 square feet of habitable space. Because the residence is a split level structure, the applicants propose to enclose a basement space beneath the residence for use as a storage/utility space of about 500 square feet, which will not be habitable space. The residence will total 2568 sq. ft. of interior space. No further grading is proposed beyond that completed for the original coastal permit number 5-87-791 (Johns) approved by the Commission for the property.

B. Visual Impacts

Section 30251 of the Coastal Act states in part 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.

In addition, the certified Los Angeles County Local Coastal Plan includes a Land Use Plan including the following policies regarding protection of visual resources, which are used as guidance and are applicable to the proposed development. These policies have been applied by the Commission as guidance, in the review of development proposals in the Santa Monica Mountains.

P91 All new development shall be designed to minimize impacts and alterations of physical features, such as ravines and hillsides, and processes of the site (i.e., geological, soils, hydrological, water percolation and runoff) to maximum extent feasible.

P129 Structures should be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment.

P130 In highly scenic areas and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:

- be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LCP.

- minimize the alteration of natural landforms.

- be landscaped to conceal raw-cut slopes.

- be visually compatible with and subordinate to the character of its setting.

- be sited so as not to significantly intrude into the skyline as seen from public viewing places.

P134 Structures shall be sited to conform to the natural topography, as feasible. Massive grading and reconfiguration of the site shall be discouraged.

The applicants propose to expand an approved and partially constructed split level residence and modify and expand an approved carport into a garage and second floor studio. The residence is proposed to be expanded from 1572 sq. ft. to 2064 sq. ft. of habitable space, with a storage area of about 500 sq. ft. proposed beneath the southern portion of the structure. The foundation for the residence is partially constructed. The garage and studio is a two story structure totalling 1275 sq. ft. (See Exhibits IV and V.)

In the review of this project, the Commission reviews the publicly accessible locations where the proposed development is visible to assess visual impacts to the public. The Commission examines the building site, the grading, and the size of the building pad and structures.

The Malibu Land Use Plan protects visual resources in the Santa Monica Mountains. Saddle Peak is recognized as a "Significant Ridgeline" which is given special treatment when evaluating potential impacts caused by new development. The project site is located south of the most prominent portions of the ridgeline. The development of the residence and studio/garage is sited and designed to protect views along the Saddle Peak ridgeline and public roadway, because the structures are located a substantial distance below the ridgeline.

From the south, however, the project is visible by the public from the Tuna Canyon Trail. Nevertheless, the applicant has designed the project to minimize the alteration of natural land forms and to be visually compatible with the surrounding sandstone and chaparral environment. The development is visually compatible with and subordinate to the character of its setting, because the design of the residence steps down the slope and the two story garage/studio is located on the lower portion of the buildable area. In addition, the proposed project will not require further grading and therefore, will minimize the alteration of natural land forms. The proposed addition to the approved residence and carport, totalling 3839 sq. ft. of enclosed space, is considerably smaller in size than other projects the Commission has approved in this area. The building pads are relatively modest in size, measuring 2068 sq. ft for the residence and 768 sq. ft. for the garage/studio.

The proposed structures are designed to be compatible with and subordinate to the natural sandstone and rock environment, as the exterior appearance of the structures are of a southwest design. The exterior consists of stucco with a sandstone color.

Vegetation on the parcel consists of indigenous coastal chaparral. Although the 1993 Malibu fire has diminished the volume of heavy brush, the light grasses and small shrubs are returning on the site. The approved landscape plan includes native, drought resistant, wind tolerant and fire retardant plants compatible with the surrounding vegetation. These plants will minimize and control erosion, as well as screen and soften the visual impact of the proposed development. The landscape plan met a condition (on the prior permit 5-87-791) which provided a revised plan showing the residence screened, as seen from the south, with plant material which blends in with the surrounding native vegetation.

Thus, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act and complies with the guidance provided by the applicable policies in the certified Los Angeles County Malibu/Santa Monica Mountains Land Use Plan.

C. Geologic and Fire 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.

In addition, the certified Los Angeles County Local Coastal Plan includes a Land Use Plan including the following policies regarding hazards, which are applicable to the proposed development. These policies have been applied by the Commission as guidance, in the review of development proposals in the Santa Monica Mountains.

P147 Continue to evaluate all new development for impact on, and from, geologic hazard.

P156 Continue to evaluate all new development for impact on, and from, fire hazard.

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

The Commission reviews the proposed project's risks to life and property in areas where there are geologic, flood and fire hazards. Regarding the geologic hazard, the applicant submitted an updated geologic report titled: "Update Engineering Geologic and Geotechnical Investigation for Proposed Single-Family Residence 2145 Bilberry Avenue, Topanga Area, Los Angeles County, California, (M95-511), dated July 5, 1995 by Miller Geosciences, Inc". Numerous other reports were previously submitted as a result of the initial project review for permit 5-87-791 and were again reviewed in this updated report. The updated report addresses the geology issues by stating:

Based on the previous reports and the recent findings of our update investigation, the site is considered to be suitable from a soils and engineering geologic standpoint to continue the construction of a single-family residence provided the recommendations presented in the previous consultants reports referenced above are followed and integrated into the building plans.

Staff has contacted the Mr. Miller regarding this recommendation and found that the final plans have yet to be reviewed to ensure that this recommendation is fully incorporated into the final plans. Special condition number one (1) provides for final review and approval by the consulting geologist of the final plans for the residence and garage/studio prior to the issuance of the permit.

The project site has been graded to provide for the driveway to the garage and the foundation for the residence. (See Exhibits II and III.) The residence and garage/studio are located on the most level portions of the lot. The building site is on the south side of a rounded bedrock hill. Most of the two acre lot consists of steep slopes of sandstone of the Topanga Formation. The slopes descend from the small ridge where the residence is located, to the southwest, south and southeast at ratios ranging from 4:1 along the ridge to 3:1 on the western and eastern flanks. Drainage on the site is by sheetflow over the slopes into the undeveloped canyons below. According to the consulting geologist, no evidence of erosion or concentrated flows was observed on the site.

Additionally, due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission will only approve the project if the applicant assumes liability from the associated risks. The applicants are proposing to construct the residence of a new fire resistant design without the use of wood. The structure is made of concrete sandwiched with steel and foam. However, through the waiver of liability, the applicant acknowledges and appreciates the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development, as incorporated by condition number two (2).

The Commission imposed an applicant's assumption of risk condition and a future improvements condition on coastal permit number 5-87-791 for this project site. The Commission finds that these conditions and deed restrictions continue to be relevant regarding potential hazard risks and the need to require coastal permits for future development. Therefore these restrictions apply to this property and the proposed developments in this application.

The Commission finds that only as conditioned to incorporate all recommendations by the applicant's consulting geologist and the wild fire waiver of liability, will the proposed project be consistent with Section 30253 of the Coastal Act and complies with the guidance provided by the applicable policies of the certified Los Angeles County Malibu/Santa Monica Mountains Land Use Plan.

D. Septic System

The Coastal Act includes policies to provide for adequate infrastructure including waste disposal systems. Section 30231 of the Coastal Act states that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and

entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30250(a) of the Coastal Act states in part that:

New residential, ... development, ... shall be located within, ... existing developed areas able to accommodate it ... and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

In addition, the Los Angeles County Malibu/Santa Monica Mountains Land Use Plan includes the following policies concerning sewage disposal, which are used as guidance:

P217 Wastewater management operations within the Malibu Coastal Zone shall not degrade streams or adjacent coastal waters or cause aggravate public health problems.

P218 The construction of individual septic tank systems shall be permitted only in full compliance with building and plumbing codes...

P226 The County shall not issue a coastal permit for a development unless it can be determined that sewage disposal adequate to function without creating hazards to public health or coastal resources will be available for the life of the project beginning when occupancy commences.

The proposed development includes connecting the approved septic system to the second residential unit (studio) to provide sewage disposal. The applicant has submitted an approval for the sewage disposal from the Department of Health Services, Los Angeles County. This approval indicates that the sewage disposal system for the entire revised project in this application complies with all minimum requirements of the County of Los Angeles Plumbing Code. The Commission has found in past permit actions that compliance with the health and safety codes will minimize any potential for waste water discharge that could adversely impact coastal waters. Therefore, the Commission finds that the proposed septic system is consistent with Sections 30231 and 30250 of the Coastal Act and the guidance provided by the applicable policies of the certified Los Angeles County Malibu/Santa Monica Mountains Land Use Plan.

E. Second Residential Unit

Sections 30250, 30251 and 30252 of the Coastal Act address the cumulative impacts of new developments. Based on these policies the Commission has limited the development of second dwelling units (the studio) on residential lots in the Santa Monica Mountains. The Commission has found that second units can intensify the use of a site and impact public services, such as water, sewage, electricity, and roads.

The certified Malibu/Santa Monica Mountains Land Use Plan of the Los Angeles County Local Coastal Program includes policy 271 as guidance which states:

In any single family residential category, the maximum additional residential development above and beyond the principal unit shall be one guest house or other second unit with an interior floor space not to exceed 750 gross square feet, not counting garage space.

As proposed, the 507 sq. ft. studio unit located over the garage conforms to the Malibu/Santa Monica Mountains Land Use Plan criteria. This property includes a deed restriction required by coastal permit 5-87-791 (Johns) for future improvements. This restriction requires the applicant to obtain a new permit if additions or changes to the development are proposed in the future that might result in the studio unit exceeding the Land Use Plan criteria. The Commission finds that as conditioned, the proposed development is consistent with Section 30250, 30251, and 30252 of the Coastal Act and the guidance provided by policy 271 of the certified Malibu/Santa Monica Mountains Land Use Plan of the Los Angeles County Local Coastal Program.

F. Violation

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been solely based upon the Chapter 3 policies of the Coastal Act. Condition number three (3) requires the applicant to meet all of the conditions that are a prerequisite to the issuance of this permit for this permit within ninety (90) days of Commission action, otherwise this permit will be nullified. This condition is necessary as development has occurred in the past without the benefit of a coastal permit, and therefore, must be properly permitted to bring the development into compliance with the Chapter 3 policies of the Coastal Act. The proper permit includes requiring the applicant to fully agree and comply with these conditions in this coastal permit within ninety (90) days of Commission action. Review of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred.

G. 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 County of Los Angeles' ability to prepare a Local Coastal Program for this area of the Santa Monica Mountains that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

H. 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 geologist, include a wild fire waiver of liability, and condition compliance. As conditioned, there are no feasible alternatives or 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, is the least environmentally damaging feasible alternative and is found consistent with the requirements of CEQA and the policies of the Coastal Act.

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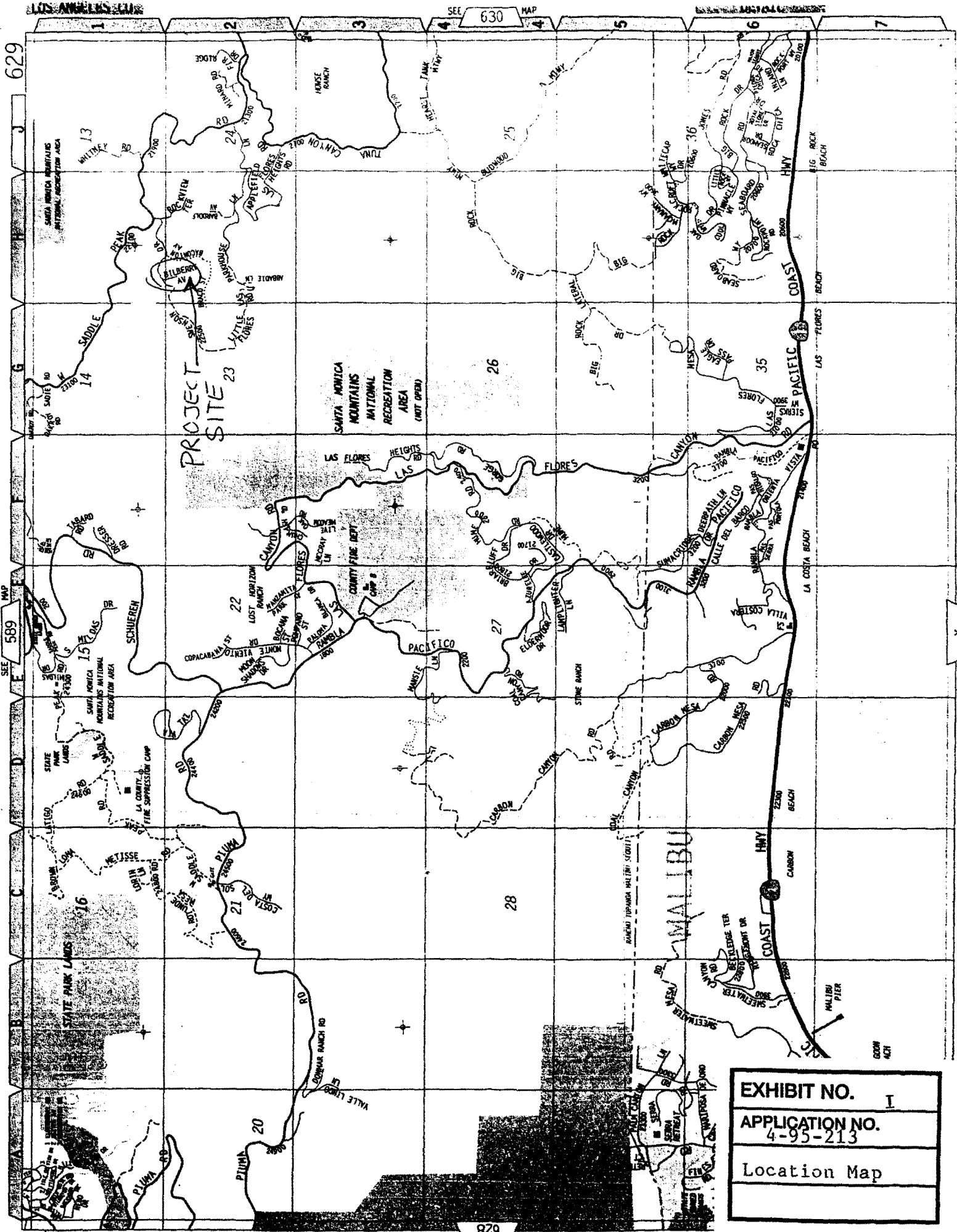
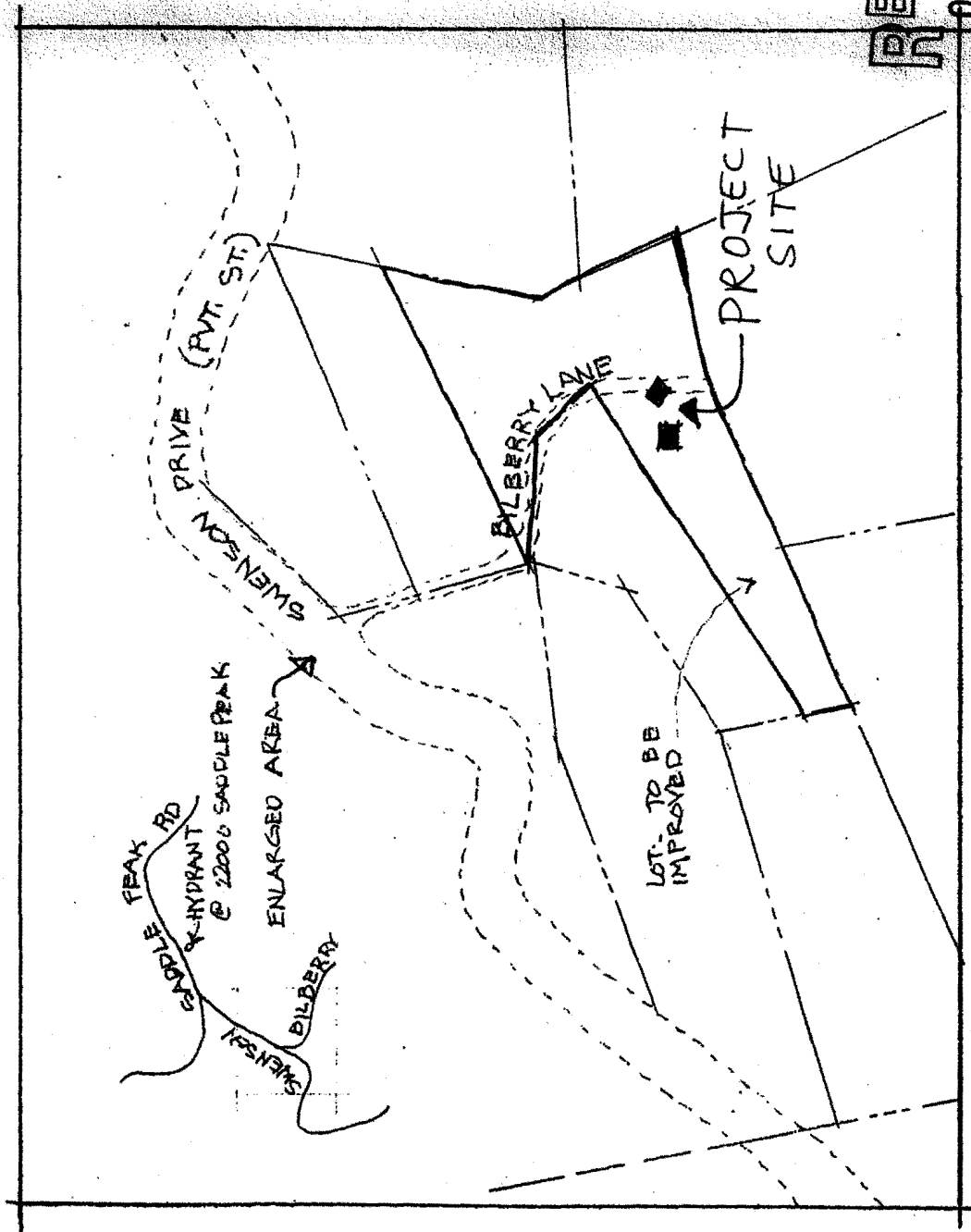


EXHIBIT NO. I
APPLICATION NO. 4-95-213
Location Map

2145 BILBERRY LANE, TOPANGA OWNERS: RAY AND STEPHANIE
 PESCHE



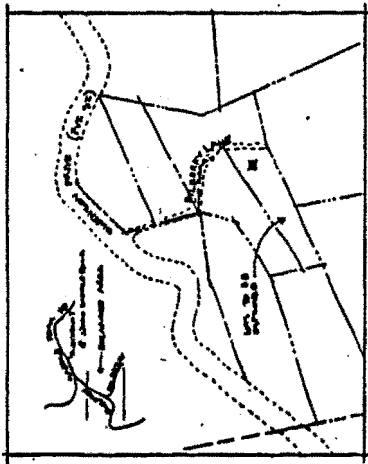
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OCT 17 1995

CALIFORNIA
 COASTAL COMMISSION
 SOUTH CENTRAL COAST DISTRICT

VICINITY MAP

EXHIBIT NO.	II
APPLICATION NO.	4-95-213
Vicinity Map	



YACHTY MAP

LANDSCAPE NOTES
ALL PLANTS TO BE PLANTED IN THE SPRING, 1995. THE PLANTING OF THE PLANTS IS THE RESPONSIBILITY OF THE LANDSCAPE ARCHITECT.

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EXHIBIT NO. III
APPLICATION NO. 4-95-213
Project Site Plan

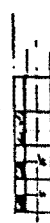
Project Site Plan

RECEIVED

OCT 17 1995

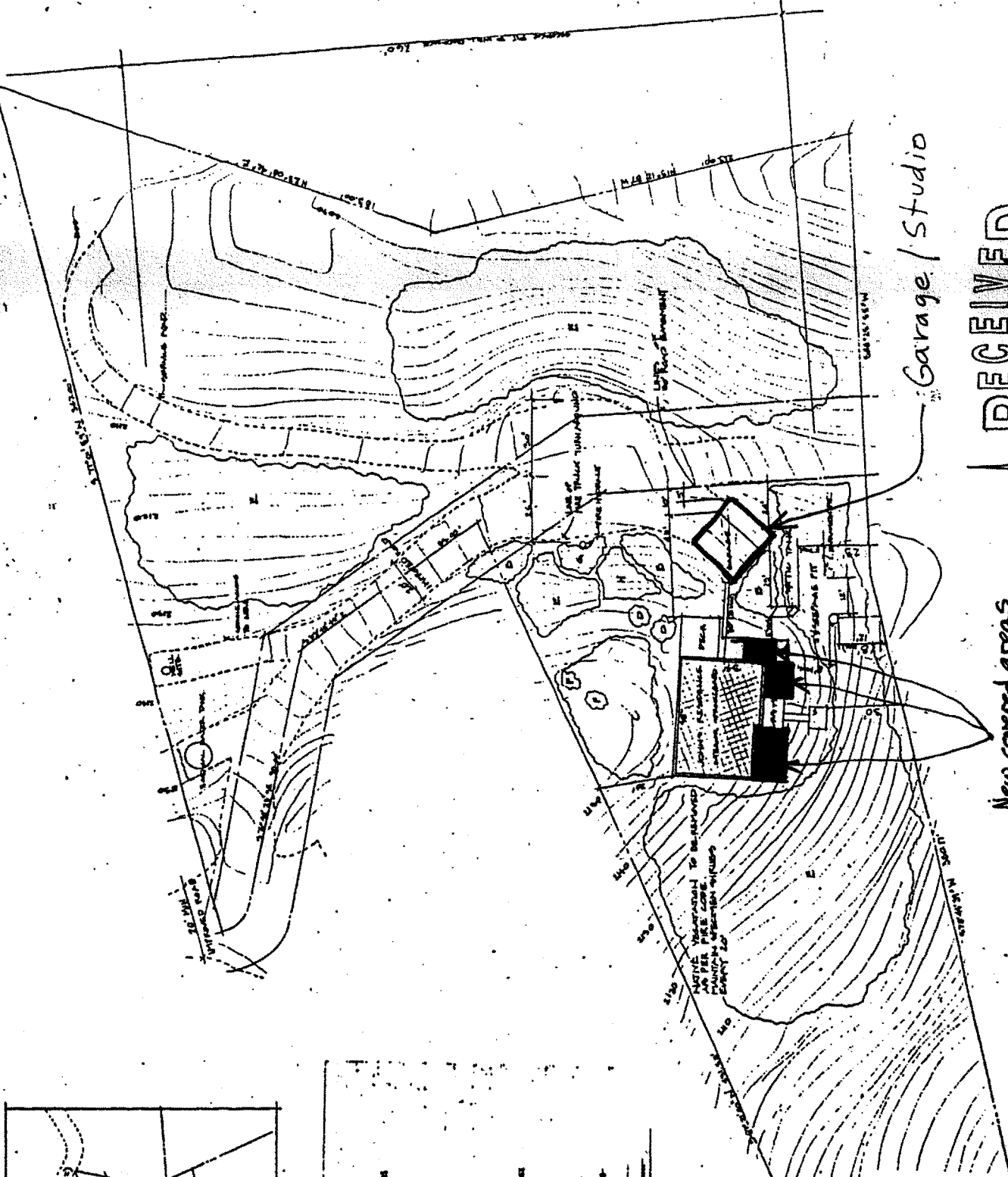
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

SITE LAYOUT PLAN

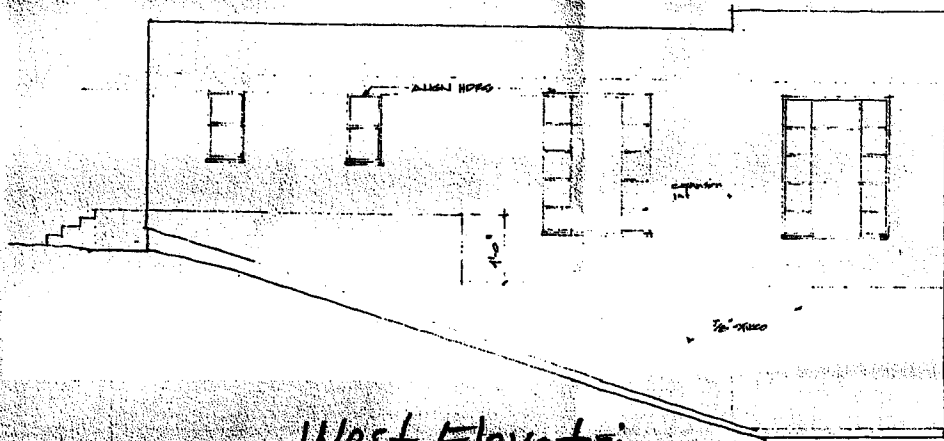


Garage / Studio

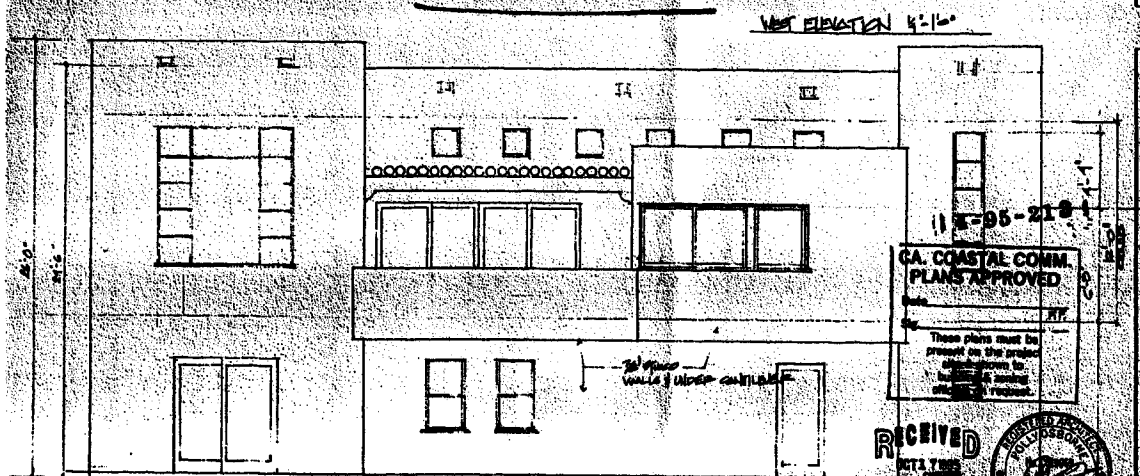
New covered areas
formerly approved as deck



Main Residence



West Elevation



South Elevation

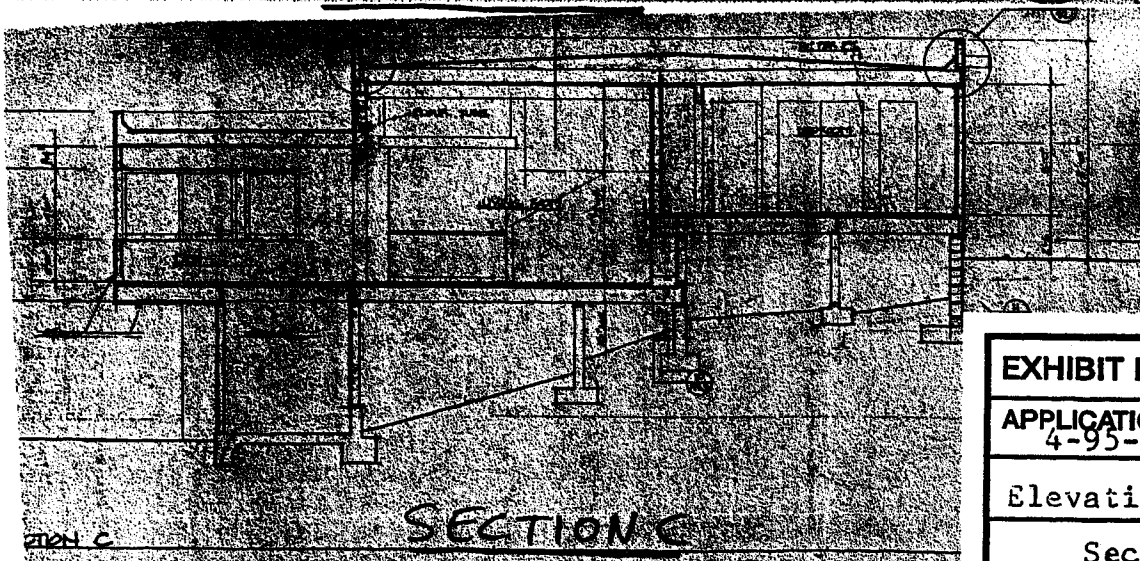


EXHIBIT NO. IV
APPLICATION NO. 4-95-213
Elevations and
Section

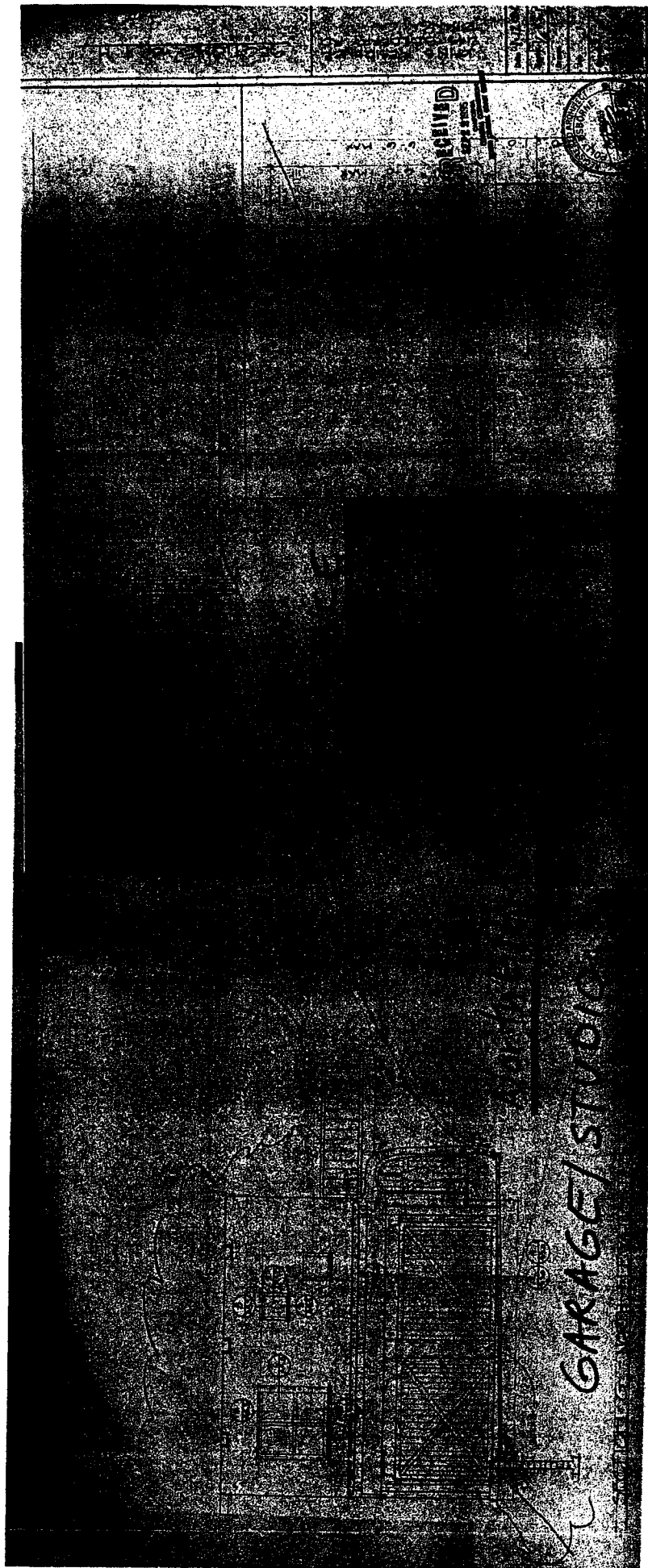


EXHIBIT NO. v

APPLICATION NO.
4-95-213

Elevation for
Garage/Studio

CALIFORNIA COASTAL COMMISSION

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



Filed: 11/17/95
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Staff: MB-V JB
Staff Report: 12/21/95
Hearing Date: 1/9-12/96

STAFF REPORT: CONSENT CALENDAR

TH9j

APPLICATION NO.: 4-95-220

APPLICANT: Martin & Carole Hamburger AGENT: Michael E. Barsochini

PROJECT LOCATION: 23640 Malibu Colony Drive, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Addition of 574 sq. ft. bedroom to landward side of two story single family beachfront residence, remodel entry, add windwall, and after the fact approval of relocated septic system.

Lot Area	7,410 sq. ft.
Building Coverage	1,892 sq. ft.
Pavement Coverage	1,618 sq. ft.
Landscape Coverage	527 sq. ft.
Parking Spaces	2 covered
Ht abv fin grade	24 ft.

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department Approval in Concept; City of Malibu Environmental Health Dept. Septic Approval.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit 4-95-042 (Longo)

SUMMARY OF STAFF RECOMMENDATION:

The proposed development includes: a second deck wind wall on the seaward side which is consistent with the neighborhood stringline for beachfront development; approval of a septic system already in place; and landward additions over an existing first story or on the entry. Staff recommends approval with a special condition for applicant's assumption of risk.

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 this permit is reported to the Commission. 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 Condition.

1. Assumption of Risk

Prior to the 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: (1) 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, its officers, agents and employees 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.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Project Description and Background

The proposed development is within Malibu Colony, a guarded private beach community located seaward of the Malibu Civic Center and west of Malibu Creek. (Exhibit I) The applicant proposes addition of a 574 sq. ft. bedroom to the landward side of two story single family beachfront residence, remodel of the entry, addition of a windwall to a second story existing seaward deck, and after the fact approval of a relocated septic system. (Exhibit II) The proposed development is on an oceanfront lot developed with an existing two story single family residence with a garage and teahouse.

While an assumption of risk and offer to dedicate were recorded relative to the previous permit for a remodel on the same property, 5-81-25, a new recordation of an assumption of risk is necessary for the proposed improvements.

B. Shoreline Development/Public Access/Coastal Views.

The Coastal Act requires the Coastal Commission to ensure that each project provides maximum public access for every project. Applicable sections of the Coastal Act provide as follows:

Section 30210: In carrying out the requirement 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.

Section 30211: 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.

Section 30251: 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. 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.

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 inquiry. 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 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 subject site is located on within Malibu Colony, a guarded private beach community located seaward of the Malibu Civic Center and west of Malibu Creek, in the City of Malibu. As such, development of this site has been reviewed on many occasions with respect to Coastal Act sections relative to access and recreation. The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access of such projects can include, among others: encroachment on lands subject to the public trusts thus 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 and cause adverse impacts on public access such as above.

In the case of the proposed project, however, the construction would be a remodel and addition to a single family residence on a beachfront lot. The project would not exceed the footprint of the existing house and would not extend beyond the stringline. The development would not include any shoreline protective devices and be located landward of an existing bulkhead. Thus, the project will have no individual or cumulative impacts on public access.

Therefore, the Commission finds that a condition to require lateral access is not appropriate.

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 on a sandy beach, and as such is subject to flooding and wave damage from storm waves and storm surge conditions.

Taken literally, Section 30253 might require denial of any beachfront development, because on an eroding coast, no development can be assured of safety. While this decision would free the developer from the hazard of periodic storm waves, it would deny the applicant use of his property during the years when there are no storms, and deny the applicant the same use presently enjoyed by his neighbors. To carry out this policy, the Commission has generally required new development including additions to conform to a stringline, and in some cases to extend no further seaward than the existing house. As applied to beachfront development in past Commission actions, the stringline, in most situations, limits extension of a structure to a line drawn between the nearest corners of adjacent structures and/or decks.

The Commission has found the stringline policy to be 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 the scenic quality of the shoreline as required by Section 30251 of the Coastal Act.

In this case, the applicant is proposing a wind wall on an existing second story deck which will not increase the existing footprint or seaward intrusion of the residence nor extend beyond the stringline. Therefore, the Commission determines that the project as proposed is consistent with the relevant access and natural hazards policies of the Malibu LUP and the Coastal Act.

The Commission finds that due to the unforeseen possibility of wave attack, erosion, and flooding, the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission is requiring the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciated the nature of the hazards which exist on the site and which may adversely affect the stability of safety of the proposed development.

Therefore, for all of the reasons set forth above, the Commission finds that only as conditioned is the proposed development consistent with Section 30210, 30211, 30251 and 30253 of the Coastal Act.

C. Septic Systems

The Commission recognizes that the installation of septic systems may contribute to adverse health effects and geologic hazards in the local area.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations

of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The existing septic system is located seaward of the residence and landward of an existing bulkhead. The applicant has provided evidence of conceptual approval by the City of Malibu Environmental Health Department, of continued use of the existing septic system for the proposed project. The City's minimum health code standards for beachfront septic approval have been found protective of coastal resources and take into consideration the percolation capacity of soils along the coastline, depth to groundwater, etc. As part of local government review, the City Environmental Health Department noted that:

The existing private sewage disposal system shown on this plot plan does not agree with the plot plan approved by the Los Angeles County Department of Health Services dated 5-14-81 as to location or construction.

Commission records available during preparation of this report do not indicate that the work approved under coastal development permit 5-81-25 in 1981 for a remodel and addition included the County-approved septic system referenced by the City. Approval at this time will memorialize approval of existing development in the present location.

Therefore, the Commission finds the proposed development consistent with Section 30231 of the Coastal Act.

C. Geologic Stability/Hazards

Section 30253 of the Coastal Act states:

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.

The applicant has submitted a Geotechnical Engineering and Geology Report prepared by RJR Engineering Group, dated October 5, 1995. The report states (p. 7) that the proposed development:

will have no adverse affect on the geologic stability of the site and the site will be free from the hazard of landslide, settlement or slippage. that the project site will not be affected by hazards.

The report further notes that the proposed project may be prone to flooding during periods of intense rainfall and high tides. During the winter season, the proposed septic system will extend into an area exposed to wave attack,

flooding, and erosion hazards that in the past have caused significant damage to development along the California coast, including the Malibu coastal zone and the beach area nearby the subject property.

The Coastal Act recognizes that new development may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

The Commission finds that due to the unforeseen possibility of wave attack, erosion, and flooding, the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission is requiring the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciated the nature of the hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development.

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 the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local 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 will not prejudice the City's ability to prepare a Local Coastal Program for Malibu and the Santa Monica Mountains which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a). 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.

E. California Environmental Quality Act

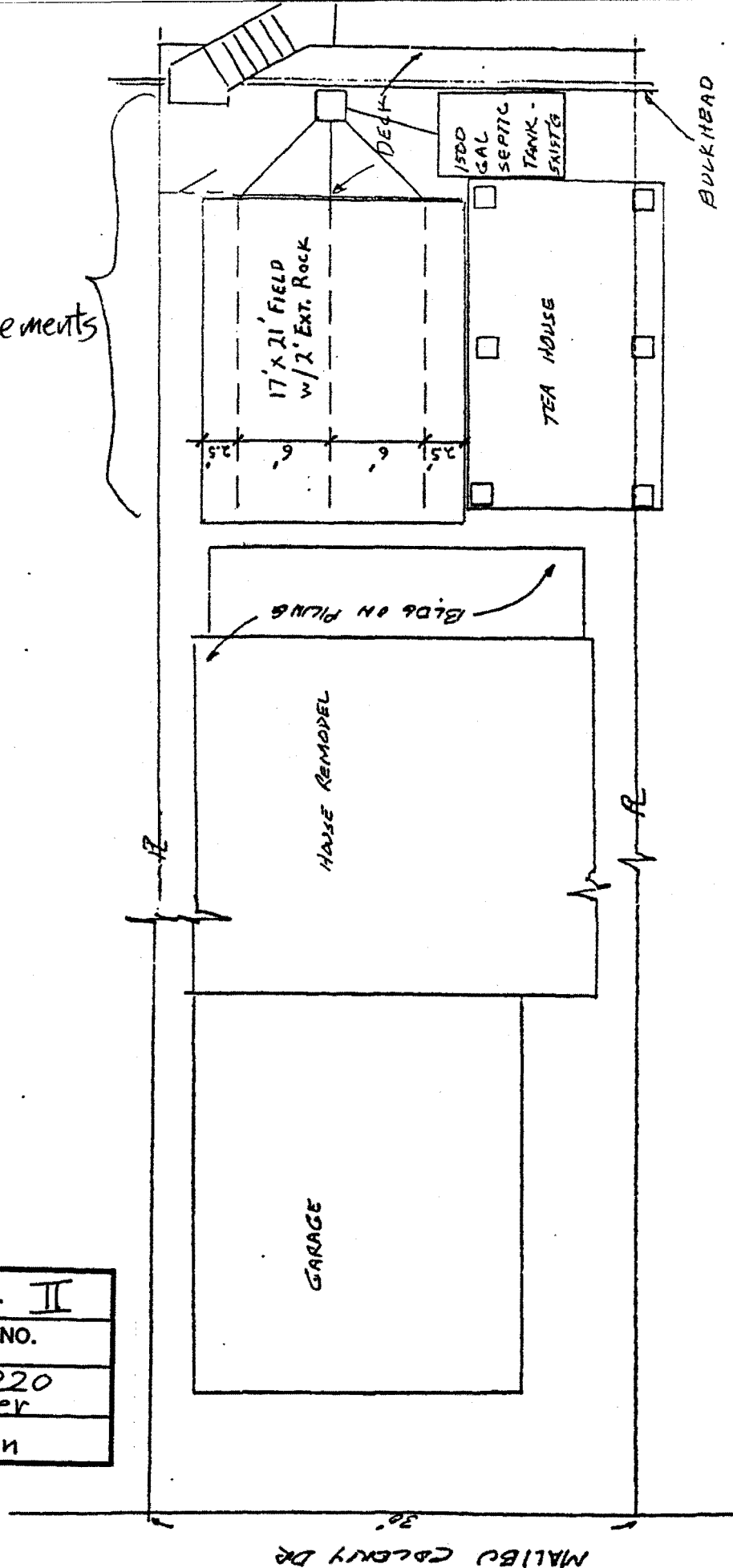
Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California 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 development would cause no adverse environmental impacts which would not be adequately mitigated by the project conditions required herein. Therefore, the proposed project, as conditioned, is found to be consistent with CEQA and the policies of the Coastal Act.

7058A

EXHIBIT NO. II
APPLICATION NO.
4-95-220
Hamburger
Site Plan

Septic Improvements



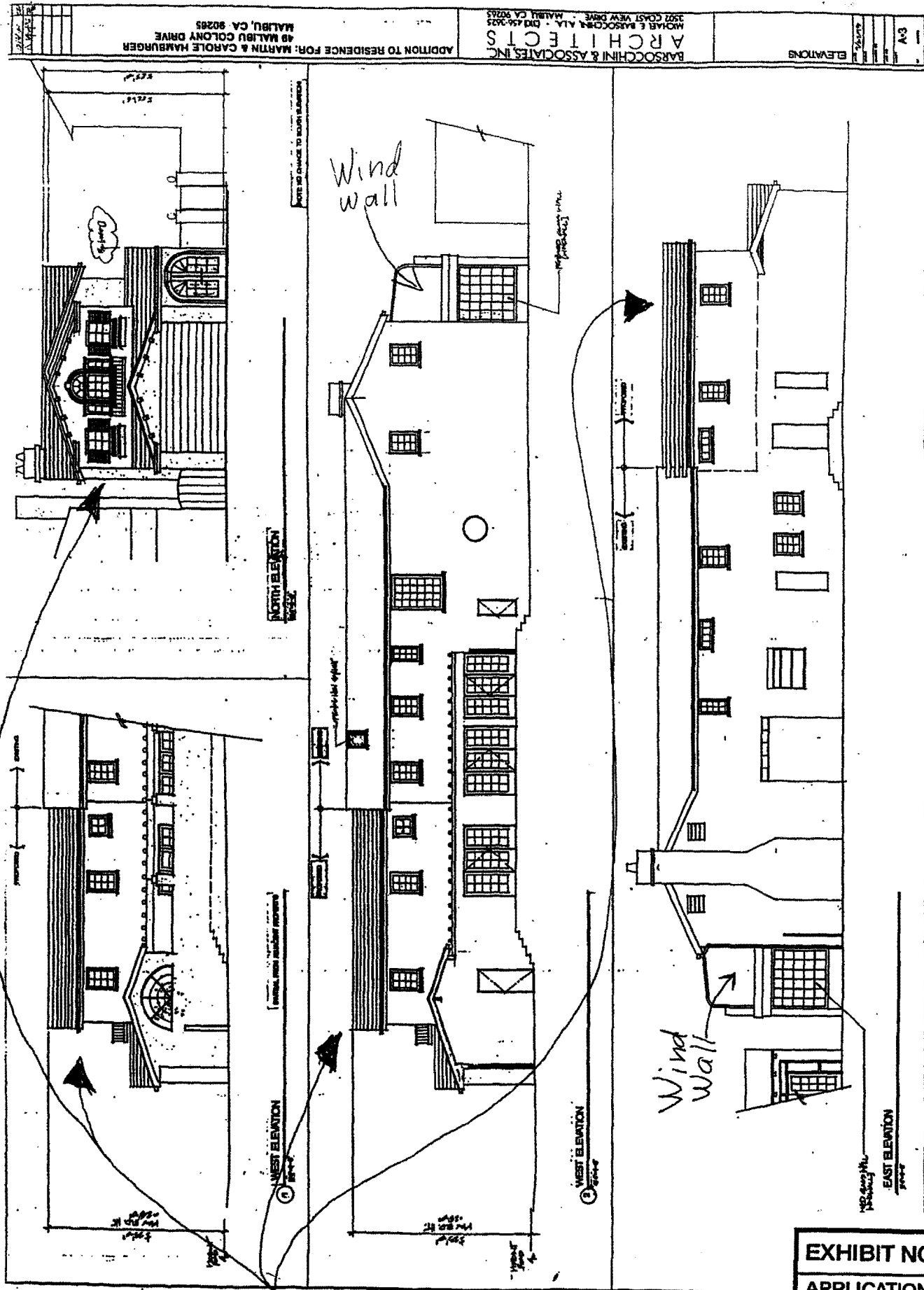
14-95-2204

CA. COASTAL COMM.
PLANS APPROVED

Date



1" = 10'



ADDITION TO RESIDENCE FOR: MARTIN & CAROLE HAMBURGER
48 MALIBU COLONY DRIVE
MALIBU, CA 90265

BARSOCCCHINI & ASSOCIATES INC.
ARCHITECTS
3502 COAST VIEW DRIVE - MALIBU, CA 90265
MOHAR & BARSOCCCHINI, AIA - DED 456-3025

ELEVATIONS
A-3

RECEIVED

OCT 27 1995

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Second Story
addition

EXHIBIT NO. III
APPLICATION NO.
4-95-220 Hamburger Elevations

