

CALIFORNIA COASTAL COMMISSION

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

Filed: 12/14/95
49th Day: 2/1/96
180th Day: 6/11/96
Staff: R. Richardson
Staff Report: February 28, 1996
Hearing Date: March 13-15, 1996
Commission Action:

STAFF REPORT: PERMIT AMENDMENT*W20a*

APPLICATION NO.: 5-90-1139A

APPLICANT: Richard Weintraub AGENT: Terry Valente

PROJECT LOCATION: 26848 P. C. H., City of Malibu, Los Angeles County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a 2 story, 7,197 sq. ft. single family residence with 4 car 1,100 sq. ft. 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).

DESCRIPTION OF AMENDMENT: Revise special condition #1 to allow the structure to exceed the horizon line by approximately 8 ft. 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).

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department "Approval in Concept"

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan, Coastal Development Permits: 5-90-1139 (Sea Mesa Limited); 5-89-514 (Robertson)

PROCEDURAL NOTE: 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 staff recommends that the Commission determine that the proposed development with the proposed amendment, subject to the conditions below, is consistent with the requirements of the Coastal Act.

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

I. Approval

The Commission hereby approves the amendment to the coastal development permit, on the grounds that as conditioned, 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.

NOTE: Unless specifically altered by the amendment, all conditions attached to the previous approved permit including special condition #1, Revised Plans, as modified to delete the requirement of staking the site and increase the allowed structure height, shall remain in effect.

II. Special Conditions

1. Revised Plans

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 an approximate elevation of 132 ft. Specifically, the currently proposed structure would need to be reduced in elevation a minimum of 8 ft. to accomplish this end.

III. Findings and Declarations.

The Commission hereby finds and declares:

A. Amendment Description

The applicant is proposing to amend the original coastal development permit for the total construction of 8,947 sq. ft.: a two story, 7,197 sq. ft. single family residence; 1000 sq. ft. garage; 750 sq. ft. guest house; tennis court; pool; septic system; entry walls; and, 1,050 cu. yds. of grading (525 cu. yds. cut and 525 cu. yds. fill) on a 1.6 acre blufftop site. The Commission approved this project on March 14, 1991 subject to special

conditions regarding revised plans, archaeological resources, geologist recommendations, assumption of risk, future improvements and landscaping. As proposed by the amendment, the size of the single family residence would be increased to approximately 7420 sq. ft. and the size of the garage and guest house would be reduced to 434 sq. ft. (guest house) and 442 sq. ft (garage). Additionally, the grading proposed would be reduced to 975 cu. yds. (750 cu. yds. cut and 225 cu. yds. fill).

To date the permit has not been issued and has been extended three times. In addition, the site has been the subject of a past coastal development permit involving the subdivision of two parcels into four single family residential lots, ranging in size from 1.3 to 2.2 acres (5-89-514). The approval was subject to special conditions regarding cumulative impact mitigation and septic system approval.

The site is located on the seaward side of Pacific Coast Highway in the City of Malibu. The site contains a coastal bluff which descends south to a private street, Malibu Cove Colony Drive and a row of beachfront lots between the property and the ocean. Site drainage is by sheet flow runoff towards the south and is concentrated in south-trending tributary canyons.

B. Visual Resources

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.

In addition, the certified LUP contains a number of policies regarding viewsheds and the protection of unobstructed vistas from public roads, parks and beaches consistent with the Coastal Act. These policies have been certified as consistent with the Coastal Act and used as guidance by the Commission in numerous past permit actions in evaluating a project's consistency with Section 30251 of the Coastal Act. Policy 125, for example, suggests that new development be sited and designed to protect public views from scenic highways to and along the shoreline. Policy 129 further suggests that structures be designed and located to create an attractive appearance and harmonious relationship with the environment. And finally, policy 130 suggests that along scenic highways, new development, including buildings, fences, paved areas and landscaping, be sited and designed to protect public views to the ocean, be visually compatible with and subordinate to the character of its setting and be sited so as to not significantly intrude in to the skyline.

As stated previously, the site is located on Pacific Coast Highway (PCH), which parallels the ocean through the 27 miles of the coastline in the Malibu Coastal Zone. The diverse physical and scenic features of the coastline include wide sandy beaches, marine terraces and bluffs, steep-sided promontories and secluded coves. Protection of this visual resource, a view corridor to the ocean, is mandated by Section 30251 of the Coastal Act. The site is located immediately west of Latigo Canyon Road and is less than one mile east of Escondido Beach. The seaward side of this stretch of PCH is screened in part by development due to the inland location of the highway. However, this area does contain unobstructed views along blufftop segments of the highway, including at the subject parcel. The Commission notes that in contrast to this stretch of PCH (Latigo Canyon Road to Escondido Beach), the views along several segments of PCH that are located predominantly east of the Malibu Civic Center area, have been obstructed by residential and commercial development. The Commission further recognizes that the visual qualities of the Malibu coast line have and continue to attract large numbers of visitors to the area in order to take advantage of the ocean views.

In past permit actions, which are located in the area of the subject parcel, the Commission has required protection of the coastal views. For example in coastal development permit 5-90-1009 (Cher), the applicant originally applied for the construction of a residence with security walls 10 to 15 ft. in height. In response to concerns raised by staff, the applicant performed a viewshed analysis which evidenced that the bulk of the structure was located on the seaward side of the lot, which is lower in elevation. As evidenced in the staff's analysis, the horizon line traveling southbound was maintained and was an improvement over the site's previously existing building. Additionally, at the request of Commission staff, the applicant revised the plans to step the security walls down the slope of the property in order to minimize the visual impacts of the project. The Commission approved the project subject to special conditions which included the requirement of landscape screening to soften and screen the impacts of the security walls.

Similarly, the Commission approved the subject project in 1991 with the requirement (special condition #1) that the applicant revise the project plans in a manner that would reduce the height of all development to, "...be no taller than the 128 ft. elevation or the centerline of the frontage road (PCH)" Further, the condition required that the applicant stake the site to the maximum height of all structures to demonstrate that the horizon line was visible above the development. The Commission required that if the structure's height could not be reduced below the horizon line that the applicant would be required to submit revised plans for a one-story structure utilizing a flat roof line. Additionally, the Commission imposed special condition #6 which required the applicant to submit a landscaping plan and identify fence location that also ensured that the public views of the horizon line would not be obstructed. As stated in the staff report, the Commission found that any development on this site would be visible from PCH but underscored through special conditions 1 and 6, described above, that preservation of the public's view of the Pacific Ocean and the horizon line was necessary in order to find the project consistent with Section 30251 of the Coastal Act.

Following the Commission's action, the applicant's agent submitted revised plans which demonstrated a reduced structure height of 24 ft. (maximum). As shown on the site plan dated March 12, 1992, the building pads were at elevations of 108 ft., 109.5 ft., 111 ft., 112.5 ft. and 114 ft. The maximum height of all structures and fencing shown on this plan was 132 ft. The total structural area including the garage, guest house and residence is shown as approximately 9,000 sq. ft. On April 8, 1992, staff conducted a site visit to view the stakes that were placed to demonstrate that the maximum height of the structure did not exceed the horizon line view as required by Special Condition #1. Staff determined that the revised project did not obstruct the view and accepted the applicant's revised plans as compliance with Special Condition #1 and part of Special Condition #6 relative to fence height.

The residence as proposed in this amendment will result in a structural increase of approximately 223 sq. ft. However, at issue is the applicant's revision to the height of the residence which would revise the structure's height to 28 ft. (from 24 ft.). The building pad elevation of the residence would be approximately 112 ft., which is approximately 4 ft. higher than illustrated on the revised plans (March 9, 1992). The house will therefore, be 140 ft. in elevation at its highest point. As set forth by the applicant's agent this change in the structure proposed is a result of a transfer of ownership (From Sea Mesa Ltd. to Weintraub), where the new owner has requested to modify the project from that which the Commission reviewed and approved in 1991. The agent for the applicant asserts that the applicant was not aware of the restriction to the height of the structures. In addition, the applicant's agent contends that: 1) the location of the existing eucalyptus trees located on the property adjacent to the east of the subject site presently obstructs the viewshed; 2) the City of Malibu Site Plan Review Notice of Decision indicates that the 28 ft. height of structures would not inhibit the existing views; and, 3) the two westerly parcels subject of the previous subdivision, when developed, will be limited to a height of eight ft. (See Exhibit 1). There is no evidence to support these assertions.

In response to the above enumerated assertions made by the applicant's agent, staff has researched each one. First, the applicant's agent contends that the location of eucalyptus trees on the site adjacent to the west of the subject property presently obstruct the viewshed. As described previously, the stretch of PCH where this site is located (between Latigo Canyon Road and Escondido Beach) is presently screened partly by development due to the inland location of PCH. The site is located on a stretch of PCH where segments of the highway are sited approximately 500 ft. landward of the ocean. Further, some of the segments of PCH that traverse this area are topographically lower than the residential parcels on the seaward side of PCH. As such, the scenic view opportunities along the highway in this area are limited solely to bluff sites with lower elevations than PCH, such as the subject property and to the areas two sandy beach areas. Development along this stretch of PCH which screen the public's view of the Pacific Ocean include the development of landscaping as well as structures. The Commission notes that the site adjacent to the west in which the eucalyptus trees are located was developed approximately in the 1950s and therefore, not subject to the Commission's review. The Commission underscores that such view obstructions, were the basis for the language of Section 30251 and they emphasize the necessity to protect the existing scenic ocean vistas. Moreover, the Commission found in

its approval of the original permit in 1991 that this stretch of coastal view, in which this parcel comprises one fourth of, represents an unobstructed viewshed area that should be protected consistent with Section 30251 of the Coastal Act. Staff notes that the eucalyptus trees existed when the Commission reviewed the original project in 1991.

Second, the applicant contends that the City of Malibu Site Plan Review Notice of Decision indicates that the 28 ft. height of structures would not inhibit the existing views. As stated in this notice, the City's approval of this project was based on the provisions of the Municipal Code which pertain to height increases and to the findings stated in Article IX, Section 9423(D). Specifically, finding 3 states that, "the project provides maximum feasible protection to significant public and private views, as defined in Municipal Code Section 9303(A)(17). This section of the Code [9303(A)(17)], however, addresses site landscaping and requires that the site's "primary view" (e.g. the adjacent property owner's view of the ocean) not be obstructed by landscaping. This section differs largely from Coastal Act Section 30251 in that the City's Code does not require the applicant to protect views to and along the ocean and scenic coastal areas, as required by the Coastal Act. Instead the Code assures that the landscaping proposed by the applicant does not obstruct the adjacent structures that surround the project. Therefore, the City's conclusion that public views are protected to the maximum extent feasible is not based on a Code Section that considers public views to the ocean.

Third, the applicant's agent contends that the two westerly parcels subject of the previous subdivision, when developed, will be limited to a height of eight ft. Currently, the Commission's South Central Coast office is not processing any coastal development permit applications. Clearly, PCH drops in elevation from this open stretch at approximately the location of the two sites approved to the west of the subject site in the underlying subdivision report (5-89-514). As evidenced in the Commission's approval of the underlying subdivision, the Commission did not speculate as to project design given that the project did not indicate the location of any future building pad locations. In other subdivision approved by the Commission (e. g. Javid, Zwan and Thorne) in the Malibu/Santa Monica Mountains area, the Commission found that the visual impacts of future residences were to be analyzed at the time individual permits were sought for each residence. In cases where the majority of the site proposed for subdivision is visible from a scenic highway and where grading amounts associated with building pads and with accessway creation are identified, the visual implications of such development (landform alteration) were analyzed and not the future single family dwellings (Javid). In cases where the proposal did not identify pad locations due to the lot being relatively flat and the availability of more than one potential building site, a detailed review of future projects in comparison to Section 30251 did not typically occur.

In the case of development that may occur along this stretch of PCH, any development will be visible from PCH -- the issue is designing such development so as not to intrude into the horizon line and the public's coastal view. Therefore, as specified above, there is no evidence to support that the future development of the two westerly lots party to the underlying subdivision of the proposed amendment would be limited to structure heights of eight feet. Further, this assertion does not obviate the proposed amendment from conforming to the mandate of Section 30251 of the Coastal Act.

For all the reasons stated above, the amended project as proposed is not consistent with the Coastal Act, is not the environmentally preferred alternative and would impact the scenic resources found along the coastline. Therefore, the Commission finds it is necessary to require the applicant to submit revised project plans which illustrate that the project's height is reduced to an elevation that insures the structure and ancillary developments do not exceed the horizon line. The Commission finds that as conditioned, the proposed amendment is consistent with Section 30251 of the Coastal Act.

C. 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 amendment 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).

D. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of 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 project which consists of a house that reaches an elevation of 137 ft. is not the environmentally superior alternative. The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

TERRY VALENTE

21928 Altaridge Dr. Topanga, CA 90290 (310) 456-8990

EXHIBIT NO. 1 (106)
APPLICATION NO. 5-90-1139A
Letter and Attachments from Applicant

February 21, 1996

Ms. Rebecca Richardson
California Coastal Commission
89 S. California Street, 2nd Floor
Ventura, CA 93001

RE: Americana Glendale
Coastal Proposed Amendment #5-90-1139A
26848 Pacific Coast Hwy.
Malibu, CA

RECEIVED

FEB 23 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Dear Rebecca,

Enclosed please find the posting declaration. Also enclosed are the following items related to the view issue :

View Plan and Section which indicates; (a) the location of existing eucalyptus trees bordering the side yards of the 4-lot Parcel Map which obstruct the view (b) the front yard span of 500' and (c) Section A indicating the existing view from Pacific Coast Hwy.

City of Malibu Site Plan Review Notice of Decision; item #3 discusses their justification that 28' height structures would not inhibit the existing views.

Mr. Weintraub, owner, was not aware of the existing Coastal condition which established a horizon restriction of 132' when he submitted his proposed project to the City of Malibu Planning Department and when he planted his trees. Also, I was surprised to learn that, should the 132' horizon restriction be upheld, the two westerly parcels would be allowed only an 8' roof height above grade to remain below the 132' horizon line.

Per our telephone conversation yesterday, I understand that a determination was processed by Coastal and that Coastal guidelines require that staff support previous determinations. However, I thought this information may be helpful in processing this amendment application.

Thanks again for your assistance.

Sincerely,

Terry Valente

Terry Valente

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1474.444
PO

VIEWSECTION A

18-1

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RANCHO

MA TTHEW
TOPANGA

EXHIBIT NO. 1

APPLICATION NO. 1244

5-40-1139A

PACIFIC

COAST
S.D. VIEW

SDO VIEW

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22

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NY 100-83446

For

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6.25 x Ac
2103 - 9451
K033Ac



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⑤

4 (3)

25

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534

For lots 1 to 4, P.M. 231-25;
to Geological hazard.



City of Malibu

23555 Civic Center Way, Malibu, California 90265
(310) 456-CITY FAX (310) 456-3356

Planning Department

EXHIBIT NO. 1

APPLICATION NO.

5-90-11391A

(30424)

NOTICE OF DECISION SITE PLAN REVIEW PERMIT NUMBER 94-064

NOTICE IS HEREBY GIVEN that, the City of Malibu has approved a site plan review application for Mr. Richard Weintraub for the construction of a 8,298 square foot single-family residence with a proposed structure height of 28 feet on property located at 26900 Pacific Coast Highway. Approval of this request is based on the provisions of the City of Malibu Municipal Code pertaining to height increases and the following findings as stated in Article IX, Section 9423(D):

1. That the project does not adversely affect the neighborhood character because the proposed residence will be at a similar height and size as the majority of residences in the immediate vicinity.
2. That the project protects the natural resources and complies with the City's land use policies, goals and objectives, as defined by staff, in that the City Biologist has determined that the proposed residence will be set back a sufficient distance from the edge of the bluff, which has been identified as an environmentally sensitive, to avoid any adverse impacts.

Refer (3)
to Exhibit 2

That the project provides maximum feasible protection to significant public and private views as defined in the Municipal Code Article IX, Section 9303(A)(17), in that:

- a. the properties to the north are located at a higher elevation than the subject property, and
 - b. the properties to the south are located below the steep bluff and have primary views oriented to the ocean which is in the opposite direction; and
 - c. the property to the east does not have a primary view across the subject property, and
 - d. the property to the west would have its primary view partially obstructed with a structure height of 18 feet; therefore, any increase in the structure height above 18 feet would not create any additional obstruction.
4. That the project does not affect solar access, as defined by staff, in that adequate setbacks will be provided.

EXHIBIT NO. 1
APPLICATION NO. 5-90-1139A
1484

5. That the project will not adversely affect the City's ability to prepare a General Plan in that the project is a single-family residence.
6. That the project is likely to be consistent with the General Plan being prepared in that the project is a single-family residence in an area zoned for such a use and, even if the project is ultimately inconsistent with the General Plan, there is no probability of substantial detriment to or interference with the future adopted General Plan.
7. The proposed project complies with all applicable requirements of state and local law.

This decision may be appealed to the Planning Commission for a period of ten (10) days following the date of the decision listed below. All appeals must be in the form of a letter and must be submitted to the City Clerk along with the \$300.00 appeal fee no later than 5:00 p.m. on September 18, 1995.

Please contact the Planning Department at (310) 456-2489 for further information.

Date: September 6, 1995

By: Joyce Parker-Bozylinski
Joyce Parker-Bozylinski, AICP
Planning Director

EXHIBIT NO. 2

APPLICATION NO.

5-90-1139A

City of Malibu

Municipal Code

ting. Previously approved and existing single-family residences shall be permitted to remodel within pre-remodel lot coverage, height, setbacks and volume. remodelling, including grading and changes in the wastewater disposal system, shall not exceed these existing dimensions or previous approvals shall comply with the standards of this Chapter. Notwithstanding the foregoing, nothing in this paragraph shall be construed to permit or legalize an illegal structure.

16. Neighborhood Standards. Notwithstanding any other provision of this Section, upon application and pursuant to Section 9423, the Planning Commission may approve or conditionally approve increased height, structure size and/or development area and/or decreased setbacks where such modifications do not exceed the neighborhood standards and where the Planning Commission affirmatively makes all the findings set forth in Section 9423(d).

For the purpose of this Section, "neighborhood standards" means the average setback, height, structure size and/or development area of at least 80% of the legal lots developed with a single-family residence within a 500 foot radius of the subject lot, but in no event less than 10 developed lots. This Paragraph 16 does not apply if there are less than 10 developed lots within the 500-foot radius. (Ord 93, 6/14/93)

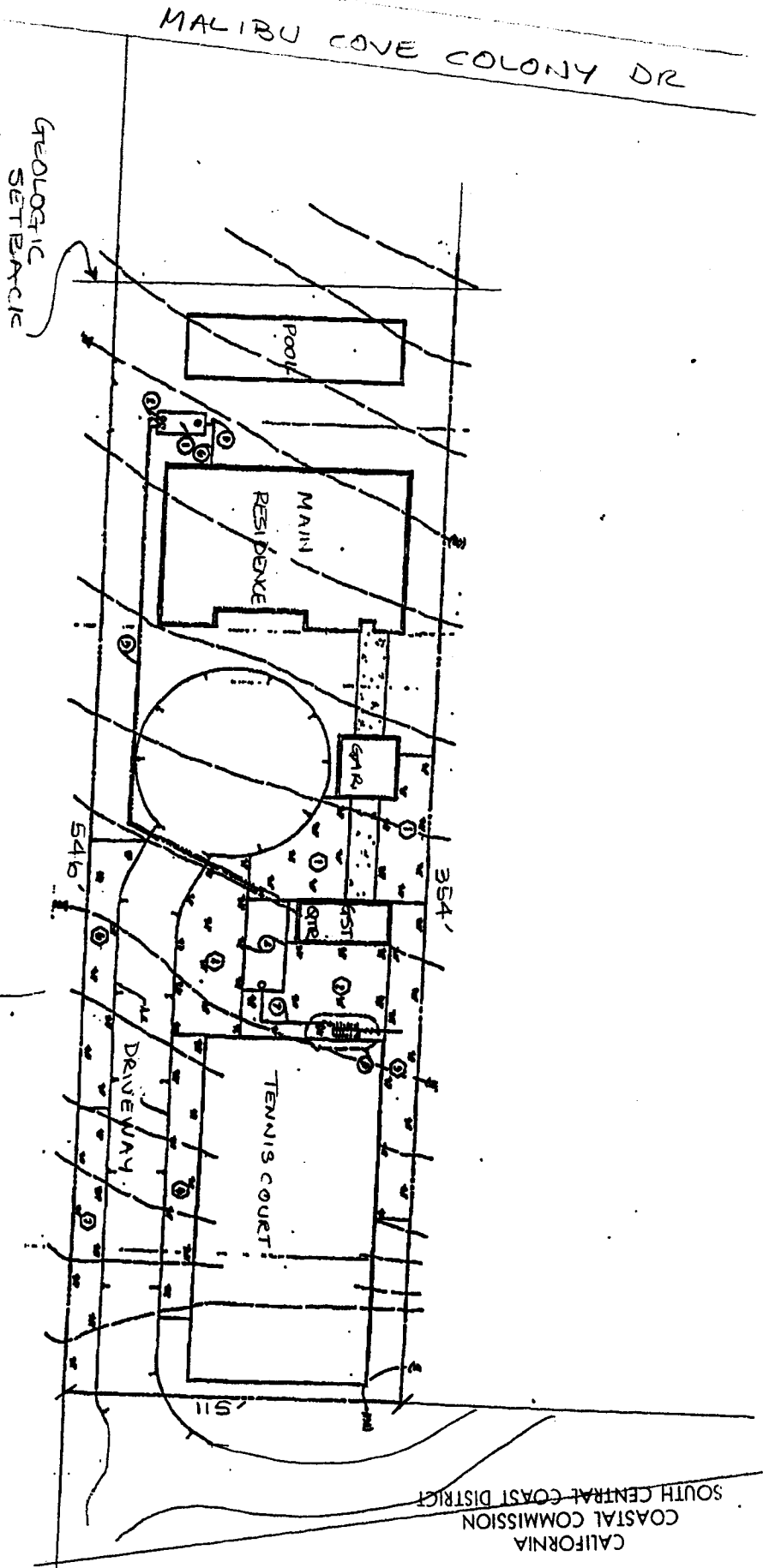
17. Landscaping. Prior to issuance of a grading or building permit, the applicant shall submit a landscaping plan to the Director for approval. Vegetation provided for in the plan shall be situated on the property so as not at any time (given consideration of its future growth) to obstruct significantly the primary view from private property, and shall otherwise be in conformance with all City requirements. Vegetation, excepting that with a mature height of 6 feet or less, shall not be planted on the property unless in conformance with the approved landscaping plan. The Director may approve modifications to the landscaping plan. Assistance and information will be provided by the City Biologist.

"Primary View" means the view from the ground floor of a principal residence, excluding hallways and closets, immediately adjoining patio or deck area at the same elevation as the residence which consists of a visually impressive scene or vista not located in the immediate vicinity of the residence, such as a scene of the Pacific Ocean, off-shore islands or the Santa Monica Mountains. The determination of the primary view shall be made by the Director, in consultation with the property owner claiming the view. The Director shall consider the nature of the view to be protected

and the importance of the area within the structure from where the view is taken. The primary view for any structure shall only be determined once. A property owner may appeal the determination of the primary view pursuant to the provisions of Chapter 9570. (Ord 93, 6/14/93)

Section
of Municipal
Code
cited in
City of Malibu
Notice of
Decision

EXHIBIT NO. 3
APPLICATION NO. 5-90-1139A
Site plan
PROPOSED



CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

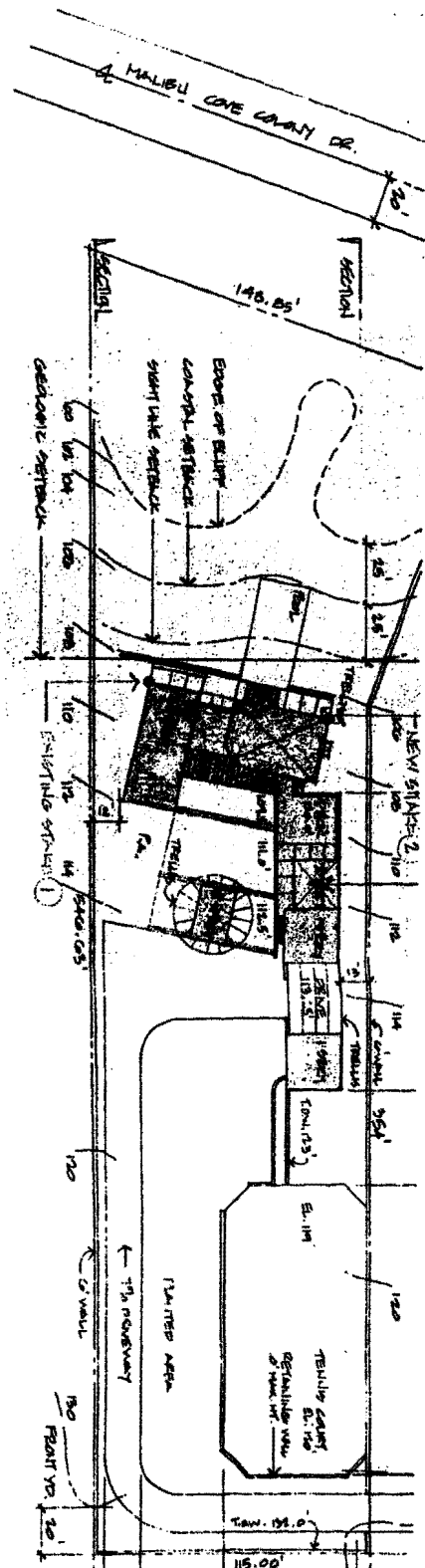
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RECEIVED

SITE PLAN

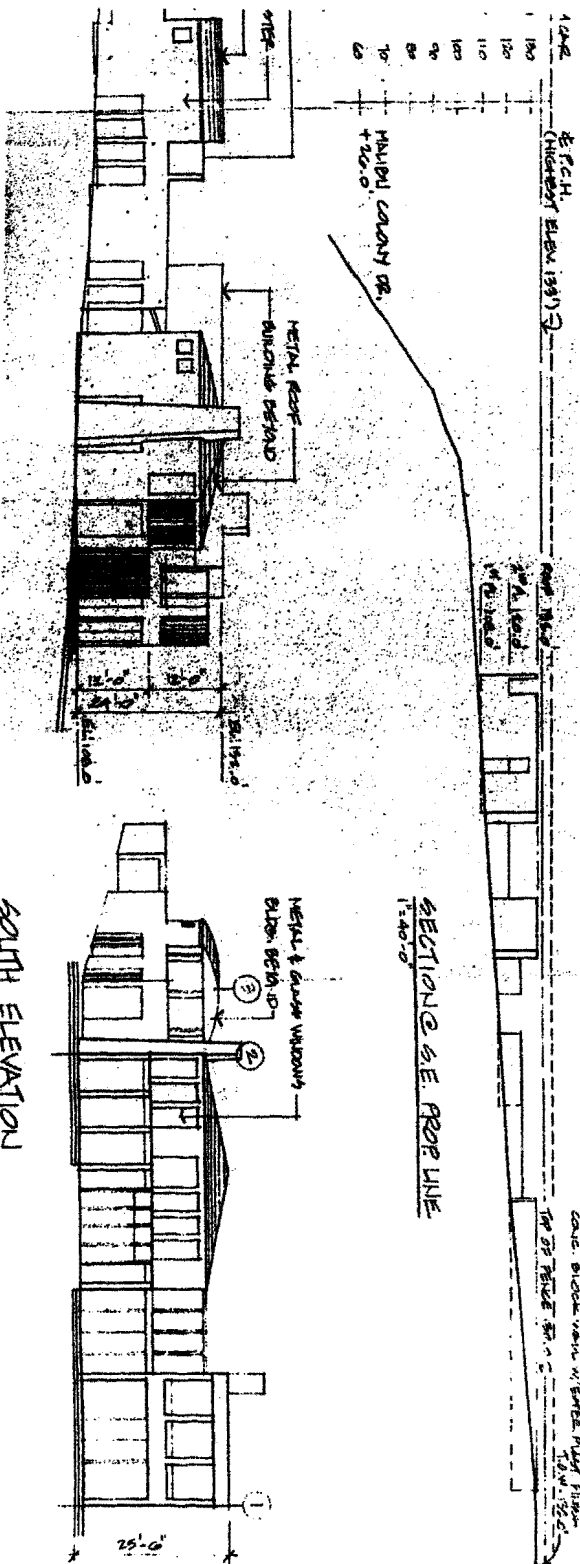

26848 PACIFIC COAST HWY
MALIBU, CA

approved original permit



SITE PLAN

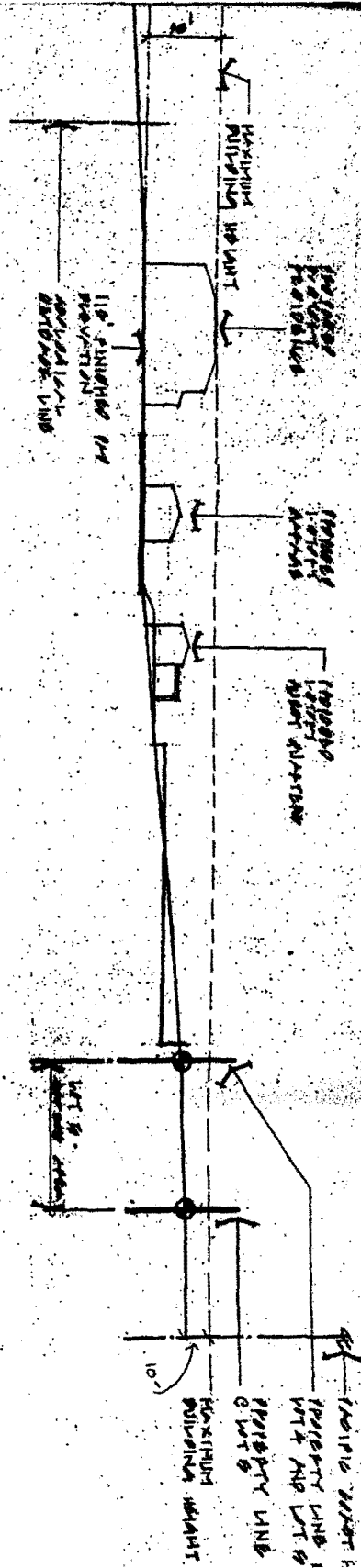
1" = 40'



SOUTH ELEVATION

Elevations of Proposed Amenities

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT



26848 PACIFIC COAST HWT.
MAC1BU; CA

EXHIBIT NO. 6
APPLICATION NO. 5-90-1139A
Exemptions
Approved - Original
Permit

