

# RECORD PACKET COPY

STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

## CALIFORNIA COASTAL COMMISSION

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

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Staff: R. Richardson  
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Hearing Date: March 13-15, 1996  
Comm. Action on Findings:



### STAFF REPORT: REVISED FINDINGS

W24a

APPLICATION NO.: 4-95-237

Applicant: Gerald and Neesa Perman Agent: William J. Pajares

PROJECT LOCATION: 28870 Grayfox St., City of Malibu

PROJECT DESCRIPTION: Construction of a 1,200 sq. ft. second unit, with septic system on a 1.03 acre lot in the Point Dume area of the City of Malibu. The site is presently developed with a 3,682 sq. ft. single family residence with septic system.

COMMISSION ACTION: Approved with Conditions

DATE OF COMMISSION ACTION: February 7, 1996

COMMISSIONERS ON PREVAILING SIDE: Cava, Calcagno, Carpenter, Flemming, Karas, Pavley, Rick, Wan, Wright, Wolfsheimer and Chairman Williams

### SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following revised findings in support of the Commission's action on February 7, 1996 approving with conditions regarding revised plans, future development, drainage and erosion control and geologic recommendations.

### I. STAFF RECOMMENDATION

#### Approval with Conditions

The Commission hereby grants a permit for the proposed development, subject to the conditions below, 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.

## 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 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 development during construction, 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. Revised Plans

Prior to the issuance of the permit, the applicant shall submit revised plans, for the review and approval of the Executive Director, which illustrate that the interior floor space of the proposed second unit does not exceed 750 sq. ft.

### 2. Future Development:

Prior to the issuance of a coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, stating that the interior floor space of the second unit shall not exceed 750 sq. ft. and that any future structures, additions or improvements to the property, including but not limited to clearing of vegetation and grading, that might otherwise be exempt under Public Resource Code Section 30610(a), will require a permit from the Coastal Commission or its successor agency. Removal of vegetation consistent with L. A. County Fire Department standards relative to fire protection is permitted. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

3. Drainage and Erosion Control Plans

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a run-off and erosion control plan designed by a licensed engineer which assures that run-off from the roof, patios, and all other impervious surfaces on the subject parcel are collected and discharged in a manner which avoids ponding on the pad area. Site drainage shall not be accomplished by sheetflow into the disturbed canyon area. Should the drainage structures fail or any erosion result from the drainage from the project, the applicant or successor in interest shall be responsible for any necessary repairs and restoration.

4. Plans Conforming to Geologic Recommendations

All recommendations contained in the Geotechnical Engineering Investigation and Report, dated 6/28/95, prepared by Ralph Stone and Company and the Engineering Geology Report, dated 6/13/95 shall be incorporated into all final design and construction including foundations, septic systems, and drainage, all plans must be reviewed and approved by the consultant prior to commencement of development. Prior to the issuance of the coastal development permit, the applicant shall submit evidence for the review and approval of the Executive Director of the consultant's review and approval of all final design and construction plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, foundations, septic systems, 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.

STAFF NOTE:

At the request of the Commission, staff presented at the same February 7, 1996 Commission meeting at which this application was heard [South Central Coast District Director's Report (Item 18a)], "History and Background of Second Units and Guesthouses in the City of Malibu and the Santa Monica Mountains Coastal Zone." During this presentation the Commission was provided with background to the subject of coastal development permit applications 4-95-237 (Perman) and 4-95-243 (Cortazzo). As such the Chairman indicated that the record of item 18a was to be incorporated into the record of the cited permit items. Accordingly, attached is Exhibit 6, which is the staff report of item 18a.

#### IV. Findings and Declarations.

The Commission hereby finds and declares:

##### A. Project Description

The applicant is proposing to construct a 1,200 sq. ft. second unit with a 480 sq. ft. 2-car garage and septic system. The 1.03 acre site is presently developed with a 3,102 sq. ft. single family residence, garage, driveway, septic system, and two storage sheds. Under the current Malibu LUP, which the Commission considers as guidance, the site is designated as a combination of Residential I (one dwelling per acre) and Rural Land II (one dwelling per two acres). Approximately one fourth of the site is designated as a Disturbed Significant Oak Woodland and Savannah. The project does not involve the removal of any oaks nor does it involve the intrusion into any riparian areas. The site is located in the Point Dume Community of the City of Malibu and is approximately 1/2 mile seaward (south) of Pacific Coast Highway. Further, the site is located approximately 1 mile east of Point Dume State Park.

##### B. Background

Staff notes that the issue of second units on lots with primary residences has been the subject of past Commission action in the certification of the Malibu Land Use Plan (LUP). In its review and certification of the LUP, the Commission found that placing an upper limit on the size of second units (750 sq. ft) was necessary given the traffic and infrastructure constraints which exist in Malibu and given the abundance of existing vacant residential lots. Furthermore, in allowing these small units, the Commission found that given the small size of the units (750 sq. ft.) and the fact that they are likely to be occupied by one or at the most two people, such units would have less impact on the limited capacity of Pacific Coast Highway and other roads (as well as infrastructure constraints) than an ordinary single family residence would [Certified Malibu Santa Monica Mountains Land Use Plan 1986, pg. 29 and P.C.H. (ACR), 12/83 pg. V-1 - VI-1].

This issue has also been raised by the Commission with respect to statewide consistency of both coastal development permits and Local Coastal Programs (LCPs). Statewide, additional dwelling units on single family parcels take on a variety of different functions which in large part consist of: 1) a second unit with kitchen facilities (includes a granny unit, caretaker's unit and farm labor unit); and, 2) a guesthouse, without separate kitchen facilities. Past Commission action has consistently found that both second units and guesthouses inherently have the potential to cumulatively impact coastal resources. As such, conditions on coastal development permits and standards within LCPs have been required to limit the size and number of such units to insure consistency with the Chapter 3 policies of the Coastal Act (Certified Malibu Santa Monica Mountains Land Use Plan 1986, pg. 29).

The applicants state that the proposed second unit is necessary for their parents, who require medical attention. Further, the applicants contend that the request for the subject development has been made following their application to the City of Malibu in May of 1995 and following their expenditure of costs necessary to complete the permit application requirements. Further, the applicants contend that the existence of other large sized second units should be considered in review of this project (See Exhibit 4).

C. Cumulative Impacts of New Development.

The proposed project involves the construction of a second unit which is defined under the Coastal Act as new development. New development raises issue with respect to cumulative impacts on coastal resources. In particular, the construction of a second unit on the site where a primary residence exists intensifies the use of a site and impacts public services, such as water, sewage, electricity and roads. Sections 30250 and 30252 of the Coastal Act address the cumulative impacts of new development.

Section 30250(a) of the Coastal Act states:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of the surrounding parcels.

Section 30105.5 of the Coastal Act defines the term "cumulatively," as it is used in Section 30250(a), to mean that:

the incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

Section 30252 of the Coastal Act discusses new development requiring that the location and amount of new development should maintain and enhance public access to the coast. The section enumerates methods that would assure the protection of access and states that such maintenance and enhancement could be received by (in part), "...providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads... and by, assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by..."

In addition, the certified Malibu LUP, which the Commission certified as consistent with the Coastal Act and now considers as guidance for implementing the Chapter 3 policies of the Coastal Act, contains policy 271 which states:

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

As explained in the preceding Background Section the issue of second units on lots with primary residences relative to consistency with the new development policies of the Coastal Act has been a topic of local and statewide review and policy action by the Commission. These policies have been articulated in both

coastal development permit conditions and policies and implementing actions of LCPs. Further, the long-time Commission practice in approving development has upheld the policies, for example 750 sq. ft. size limit in the City of Malibu. This policy has been upheld in several hundreds of coastal development permit approvals.

To get greater understanding of the statewide practice regarding second units, an examination of Commission practice is in order. With respect to LCPs and subsequent amendments that have been certified by the Commission, other cities and counties have strictly defined the size, location and use of second units. Staff review of LCP implementation policies indicates that typical limitations placed on their development include: a maximum size restriction; the allowance of no more than 1 (one) second unit; the location in proximity to the primary residence of less than 250 ft.; the approval of a conditional use permit; the use of sewer rather than septic system; and, the assurance that parking and circulation will not be adversely impacted (see Exhibit 5).

As reviewed by staff several LCPs have been amended to include revised provisions to the implementation component of the LCP. At the October 1995 hearing, the Commission approved revisions to the City of Encinitas (LCPA 1-95-B) and County of San Luis Obispo (LCPA 2-95) LCPs. Under the City of Encinitas LCP, second units were limited to 750 sq. ft. and guest houses were limited to 640 sq. ft. The City's LCP allows no more than 1 unit per site, where the minimum lot size must be greater than 10,000 sq. ft. This policy is more restrictive than the City of Malibu's in that the second unit potential for permanent occupancy is afforded an additional 110 sq. ft. (750 sq. ft.) and the guest house is limited to a smaller sized unit (640 sq. ft.). The approved County of San Luis Obispo amendment encouraged smaller detached units of 640 sq. ft. to 800 sq. ft. However, the amendment also allows structures up to 1200 sq. ft. in size providing that lots which are on private septic systems are a minimum of 1 acre in size. In the case of the larger second units, the LCP placed performance standards on such approvals and required that detached second units could only be approved on a 1 acre site or larger where the site is served by on-site septic system. Additionally, where the larger units are proposed on lots in a land use category other than residential, the site must be larger than five acres. In contrast to the City of Malibu, there are no lot size minimums and the geographic area contains a vast number of lots which are smaller than 1 acre.

Under Santa Barbara County's LCP amendment #3-93-B (certified by the Commission in 1994) there were revisions to the County's Housing Element programs that were located within the coastal zone. The amendment contained a number of components which included provisions for both attached and detached guest units. Specific review of policies pertaining to detached second units find that the County's certified LCP limits the size of second units to 1,000 sq. ft. and precludes the construction of second units within rural residential areas (such as Tecolote Canyon and Summerland) and within land use designations of Special Problem Areas or Special Treatment Areas. Furthermore, the total gross floor area of all covered structures, including the detached residential second units can not exceed 40% of the gross lot area. As such, the County estimated the total potential buildout of detached second units within the County Coastal Zone at only 49 units. This is in certifying this amendment, the Commission found that the limited number of second units would not compete significantly with Coastal Act priority land

uses for limited public resources. In addition the Commission found that by limiting the location of the second units to existing residential developed areas where sufficient infrastructure was available to accommodate the increased demand further insured consistency with the applicable cumulative impact sections of the Coastal Act. Thus, 1,000 sq. ft. was appropriate where only 49 units were contemplated and where there was enough infrastructure. This is in contrast to the Malibu/Santa Monica Mountains area where 2,110 residential units are the maximum number of units which may be constructed prior to the construction of upgrades to the existing infrastructure (Policy 274 of the Malibu LUP, which is considered as guidance). This policy is based on evidence that the area's infrastructure cannot support more development [Certified Malibu Santa Monica Mountains Land Use Plan 1986, pg. 29 and P.C.H. (ACR), 12/83 pg. V-1 - VI-1].

More recently in 1995, the Commission certified Del Norte County LCP amendment #1-95 which involved the establishment for a use permit procedure to allow (in part) for second units. The Commission found that the permanent and temporary placement of second units was consistent with the County's LCP based on modifications that insured that the second units were consistent with the allowable land use plan density and that the subject parcel was twice the minimum parcel size. In the case of granny units which were proposed for senior housing, the size of the units were limited to 700 sq. ft. As proposed by the County and modified by the Commission, second units were not allowed on all sites where the construction of such a unit would conflict with the maximum density under the LUP map certified by the Commission. Moreover, the Commission found that an increase in the County's existing densities, which were established in order to insure that adequate services were available to accommodate allowable future increases in development, would create adverse impacts on coastal resources. In comparison to Del Norte County, the Malibu area does not require a minimum lot size to construct a second unit. In addition, the size of the units are restricted to a maximum of 700 sq. ft. as opposed to the allowed 750 sq. ft. in the Malibu/Santa Monica Mountains area (or 1200 sq. ft. as proposed by the City). As set forth above, the Commission has certified policies and implementing measures that are at the present more restrictive than what is presently imposed in this area of the coast.

With respect to permit conditions, Commission action on second units and guesthouses has varied based upon such factors as the types of units proposed, the differences in conditions (or lack thereof) attached by local governments, and differences in the characteristics of the communities where such units are proposed. In the case of the City of Malibu and the unincorporated Santa Monica Mountains, limitations on the size of second units/guesthouses have historically been placed on their construction for several reasons still existent today. First, as stated in the previous section a second unit is normally characterized as a self-contained dwelling unit with kitchen facilities on a parcel that is developed with a single family residence. Second units as typically described would include a granny unit, caretaker unit or farm labor unit. In areas, such as the City of Malibu, where public service capacities are limited to support Coastal Act priority land uses (i.e. commercial visitor serving) and public access to the coast, the limit in size of the guest unit ensures against the potential for a large number of occupants. As such, the smaller number of occupants which would range from one to two persons ensures a limited impact on both traffic and sewage

disposal. Second, the smaller sized second unit/guesthouse reduces the likelihood that these structures will become separate dwelling units. Third, as set forth in the Malibu LUP, the Commission has found limitations to the capacity of Pacific Coast Highway to serve additional development. Policy 274 of the LUP includes a cap on the number of residential units and commercial square footage which may be approved before improvements to Pacific Coast Highway are made. As stated in this policy, the second units/guesthouses are assigned a half residential unit allocation based on their small size and limited occupancy of these structures. The basis for imposing caps on the number of residential units and the square footage of commercial development and the necessary improvements to the highway came from data designed to measure highway capacity produced by the California Department of Transportation (Certified Malibu/Santa Monica Mountains Land Use Plan 1986, pg. 29). To date, no improvements to the existing infrastructure has occurred and, therefore, there is no basis to alter the present policy, which limits development as certified by the Commission in certifying the LUP.

The Coastal Act requires that new development be permitted only where public services are adequate and only where public access and coastal resources will not be cumulatively affected by such development. The Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past permit actions. The cumulative impact problem stems from the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities, and beaches could be expected to grow tremendously. In addition, future build-out of second units on each existing lot within the Coastal Zone would create adverse cumulative impacts on coastal resources and public access.

Due to the fact that the applicant is proposing a 1,200 sq. ft. second unit, the Commission finds that the larger unit will have cumulative impacts, typical to those of a small house. Within the Malibu/Santa Monica Mountains area, the Commission has adopted several policies to ensure that the cumulative impacts of proposed development are adequately mitigated. One example is found in development approvals within the Small Lot Subdivisions where the size of the structure is based on the size and slope of the lot (with a minimum structure size of 500 sq. ft.) [Malibu/Santa Monica Mountains Land Use Plan, policy 271(b)(2)]. As such, the cumulative impact of constructing residential structures on small lots is mitigated due to the capacity of the area to support it, by insuring that the intensity is proportionate to the density of the proposed development.

A second example is in response to the issue of build-out and potential subdivisions of existing legal lots. Here the Commission has consistently required, as a special condition to development permits for land divisions and multi-unit projects, participation in the Transfer of Development Credit (TDC) program as mitigation (155-78, Zal; 158-78, Eide; 182-81, Malibu Deville; 196-86, Malibu Pacifica; 5-83-43, Heathercliff; 5-83-591, Sunset-Regan; and 5-85-748, Ehrman & Coombs). The TDC program resulted in the retirement from development of existing, poorly-sited, and non-conforming parcels at the same time new parcels or units were created. The intent was to insure that no net increase in residential units resulted from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of Section 30250(a).



As stated previously, the proposed project has received Approval in Concept from the City of Malibu. As asserted by the applicant this approval was granted based on consistency with the City of Malibu Municipal Code which allows for one second unit of up to 1200 sq. ft. and guest units up to 750 sq. ft. providing that proposed development is consistent with the maximum lot coverage. Staff notes that on July 12, 1995, the Coastal Commission's South Central Coast office submitted a comment letter on the Notice of Preparation of a Draft Environmental Impact Report from the City of Malibu for the City of Malibu General Plan and LCP. Further, on October 18, 1995, the Coastal Commission's South Central Coast office forwarded a comment letter regarding the City of Malibu's Draft Environmental Impact Report for the City of Malibu General Plan and LCP. As set forth in both letter, Commission staff raised concerns with the fact that the environmental impacts that would result from the proposed density and intensity of development, specifically the proliferation of large second units, within the City were not adequately addressed. Moreover, prior to the transmittal of both letters, Commission staff had conducted several meetings with City staff specifically to discuss the creation of performance standards for approving second units/guesthouses to a size consistent with the intent of past Commission action.

As evidenced in other certified LCPs, the issue of second units relative to coastal zone resources and public access is unique to each coastal community. As such, the Commission finds that an expansion of the current second unit/guesthouse size limitation is not in order, given that the City has not produced any updated technical studies or new information since the 1986 Plan, which might support the applicant's applications. This planning issue, more appropriately, should be resolved in the LCP. The Commission finds that given that a cumulative impacts study that counts the actual number of lots that could potentially contain second units and or guesthouses has not been performed by the City or anyone else, a deviation from the present 750 sq. ft. policy would result in a tremendous incremental increase in development. As evidenced in the past permit approvals and existing Land Use Designation Maps for this area, the Commission acknowledges that the vast majority of the area is developed with single family residential structures. This indicates that a large number of lots could be subject to future development of second units. Further, the Commission finds that allowing one 1,200 sq. ft. second unit in addition to a single family residence or allowing one 1,200 sq. ft. second unit and 750 sq. ft. guesthouses in addition to a single family residence would be similar to allowing a parcel to be subdivided without performing the environmental analysis necessary to approve such development. The Commission finds that any future cumulative impacts study should include the review of impacts associated with constructing a second or potential third septic system on sites subject to instability.

In addition, the Commission staff does not have any evidence that the required infrastructure upgrades (as stated in Policy 274 of the certified Malibu LUP which is considered as guidance) are no longer necessary. Where modifications to past restrictions are proposed, it is incumbent upon the responsible jurisdiction to provide evidence and to outline some sort of "performance standards" to insure the second units would not do the following: 1) significantly out-compete Coastal Act priority land uses; 2) increase the demand on existing infrastructure in a way that would impact coastal resources; and, 3) inhibit public access to the coast. As stated above, the

traffic and build-out study are outdated and new studies analyzing the necessary improvements to Pacific Coast Highway based on the potential residential and commercial development have not been conducted or submitted to the Commission for consideration. Therefore, the Commission has no new evidence shedding doubt on its earlier findings. For all of the reasons stated above, a revision from the Commission's prior policy of limiting residential development to one SFD and one detached 750 sq. ft. second unit/guesthouse is not appropriate. Special Condition #1 has been drafted to require the applicant to revise the project plans to reflect a 750 sq. ft. second unit.

The Commission finds that the construction of a second unit greater than 750 sq. ft. or in this case approximately 1200 sq. ft., which is 450 sq. ft. larger than the maximum allowed unit, is similar to or the equivalent of developing one small lot with a 500 sq. ft. single family residence. In comparing the two developments, one 500 sq. ft. house and a second unit that is 450 sq. ft. over the maximum allowed structure size, a number of parallels may be drawn. For example, the 500 sq. ft. house would require a septic system, driveway, garage, fire clearance and site improvements. Similarly, a larger unit at 1200 sq. ft. is detached and sited away from the SFD and requires the construction of a larger septic system, a garage, a larger area of fire clearance, a separate driveway for access and additional site improvements.

In comparing the 1200 sq. ft. unit against a 750 sq. ft. unit, the 750 sq. ft. unit might also include a driveway, septic system, fire clearance, etc., however, the smaller unit would still be seen as an ancillary or accessory use to an existing SFD in that they typically do not become or have less potential to become full-time rental units. Although the increase in square footage may only be 450 sq. ft, the cumulative impacts is much greater because the additional space results in a structure size that can contain two to three bedrooms, two baths and full kitchen and can become permanent rental or living quarters for a family of three to five. As such, the additional 450 sq. ft. that could accomodate a family of three to five would also typically result in two cars, a larger septic system, more visitors, and a greater number of vehicle trips than a smaller 750 sq. ft. structure. The smaller 750 sq. ft. structure which is typically not occupied full time would only be occupied by one or two persons with one car at most, less septic capacity, less visitors and a smaller number of vehicle traffic trips and, therefore, results in a less intense use of the site. The Commission notes that a large number of the 750 sq. ft. structures, as presently constructed, are utilized in the capacity of rental units. Rental units differ from guest and granny units in that the daily trips associated with a full time occupant would typically exceed that of a guest's visit or senior citizen's occupancy. The increase in trips would impact the area's main ingress and egress, and thereby impact public access. Because of the smaller size of the unit, a separate driveway is not typically proposed and usually no garage is proposed (many 750 sq. ft. second units are sited above the existing garage and use the same driveway), the unit can use a small septic system with a leachfeild common to the SFD or a reduced number of seepage pits, and area of total vegetation removal is minimized (given the unit's close proximity to the SFD). Additionally, a 750 sq. ft. guest house typically does not have kitchen facilities.

In this specific case, a separate driveway and two car garage is proposed along with the increased square footage which clearly has all the impacts of a bonafide permanent residential unit akin to splitting the lot, as opposed to the impacts of a typical 750 sq. ft. guest house/second unit. In addition, The Commission finds that the development of a larger unit would allow for permanent residency to be established on the site where one primary residence already exists and would thereby increase the traffic generation into the coastal zone. As explained in the preceeding paragraph, the larger unit could accomodate a family of three to five and as such the family would require a greater number of daily trips. In addition, a family accomodated by a larger unit would seek recreational uses in an area where recreational opprotunities primarily consist of limited public beach areas with limited parking. The increase in vehicle traffic in combination with the present congestion realized on PCH and the limited public beach opprotunities in this area would result in potential impacts on public access to the coast.

The Commission notes that concerns about the potential future impacts on coastal resources and coastal access might occur with any further development of the subject property. Impacts such as traffic, sewage disposal, recreational uses, visual scenic quality and resource degradation would be associated with the development of the additional unit in this area. Therefore, the Commission finds it is necessary to require the applicant to include a future improvements deed restriction that specifically limits the size of the second unit consistent with Special Condition #1. Thus the findings and special conditions attached to this permit will serve to ensure that the proposed development results in the development of the site that is consistent with and conforms to the Chapter 3 policies of the Coastal Act. In addition, the Commission notes that the City currently allows for a guest house and a second unit to be on the same parcel in addition to the SFD. The Commission finds that as conditioned, the proposed project is consistent with Section 30250(a) and with all the applicable policies of the Coastal Act.

#### D. Environmentally Sensitive Habitat/Geologic Stability

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

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, 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 30240 of the Coastal Act calls for the protection of environmentally sensitive habitat areas and Section 30253 requires that new development minimize risk to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. The applicant is proposing the construction of a 1,196 sq. ft. second unit, with two-car garage and septic system

The applicant has submitted an approved Geologic Review Sheet from the City of Malibu which indicates that the proposed project is consistent with the safety standards and building codes. Additionally, the applicant has submitted a Geotechnical Engineering Investigation and Report, dated 6/28/95, prepared by Ralph Stone and Company and the Engineering Geology Report, dated 6/13/95. The report recommends that the applicant improve site drainage and adds, "All downspouts should discharge directly into pipe drains to the natural ravine. Other concentrated drainage should also be collected and discharged to the natural ravine in non-erosive devices." Drainage for the site would be down easterly slope surfaces which lead directly to the canyon area and beach. The Commission notes that erosion caused by proposed grading and development in close proximity to canyons, ESHAs and beaches is an area of concern. While the project site is greater than 200 ft. from the ESHA, there is clearly a need to incorporate erosion control devices into the project plans in order to reduce the impact of site runoff into the canyon, ESHA and beach. Therefore, the Commission finds it necessary to condition the project to provide detailed drainage and erosion control plans.

The applicant's geotechnical investigation concluded that:

...if constructed in accordance with our recommendations and the recommendations of the other project consultants, and properly maintained the proposed structures will be safe against hazard from landslide, slippage, damaging settlement, or slippage and that the proposed building or grading construction will have no adverse effect on the geotechnical stability of the property outside the building site.

The applicant has stated that the project will not require grading and the Commission notes that should the project be modified to include grading an amendment to this permit will be required. Based on the recommendations of the consulting geologist the Commission finds that the development will be free from geologic hazards so long as all the recommendations made by the geologic and soils consultants are incorporated into the project plans. Therefore, the Commission finds it necessary to require the consulting Engineering Geologists and Soils Engineer as conforming to their recommendations. The Commission finds that only as conditioned is the proposed project consistent with Section 30253 of the Coastal Act.

#### E. Septic System

The Commission recognizes that the potential build-out of lots in Malibu, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area. 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, minimizing alteration of natural streams.

The applicant is proposing to install a new septic system, which the applicant has indicated that the septic system has already been installed. The applicant has submitted a letter from David Riggle, Consulting Environmental Health Specialist which states that the percolation tests indicated that favorable percolation for the sewage disposal system exist on the site. The report concludes that the proposed project septic system is consistent with the City's uniform plumbing code and will not adversely impact the biological productivity and quality of the coastal waters located south of the subject site. Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

E. Violation

Prior to the submittal of this application, the applicant constructed the septic system. Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. 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.

F. 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, as conditioned, will not

prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

G. 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, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970 that have not been adequately mitigated. 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.

0114R

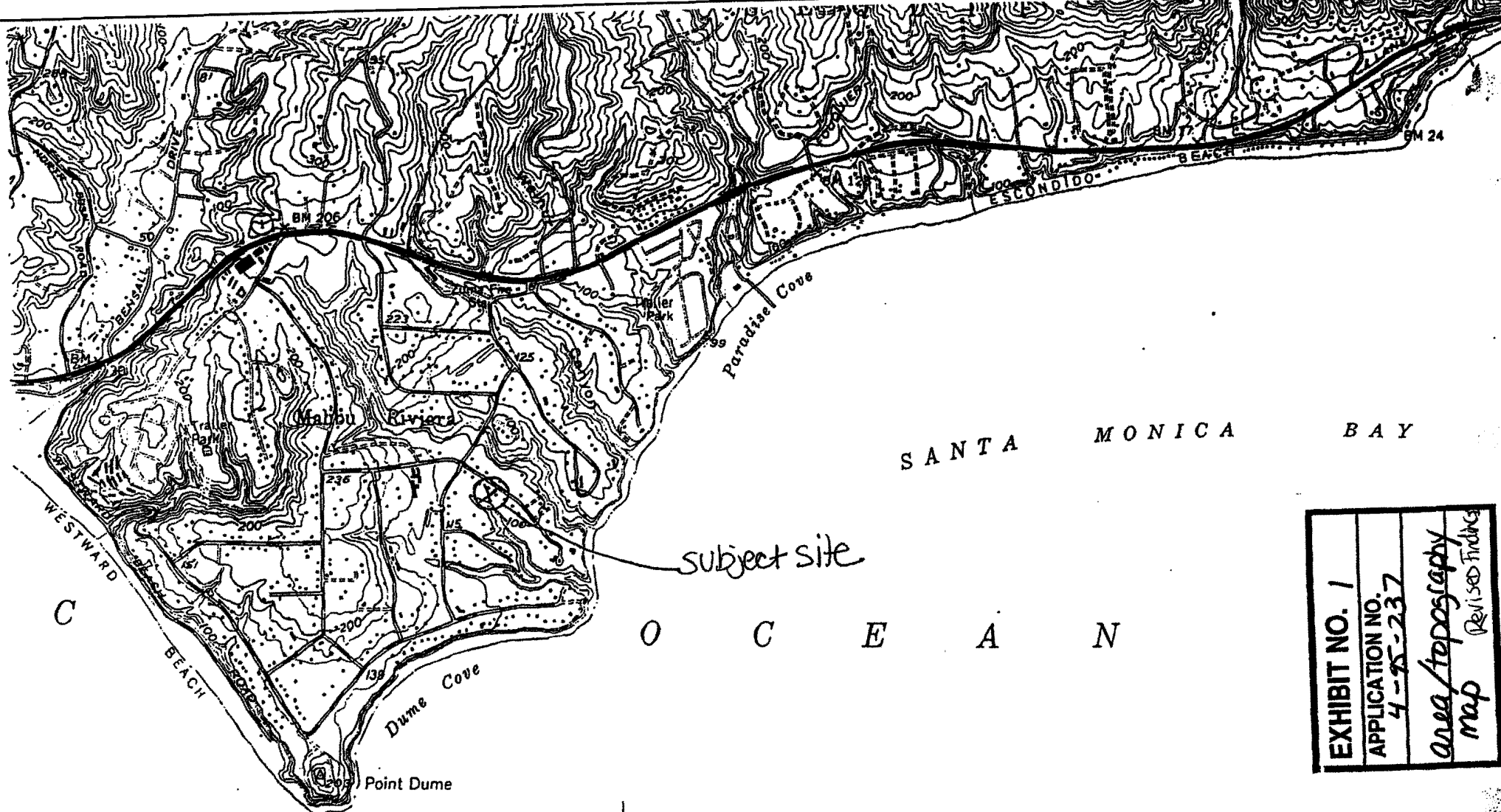


EXHIBIT NO. 1
APPLICATION NO. 4-85-237
area/topography map
Revised Findings

1000 2000 3000 4000 5000 6000 7000 FEET

0 1 MILE

0 1 KILOMETER

CONTOUR INTERVAL 25 FEET

NATIONAL GEODETIC VERTICAL DATUM OF 1929

1/4 IN REPRESENTS THE APPROXIMATE LINE OF MEAN HIGH WATER

MEAN RANGE OF TIDE IS APPROXIMATELY 4 FEET

APPLIES WITH NATIONAL MAP ACCURACY STANDARDS  
L SURVEY, DENVER, COLORADO 80225, OR RESTON, VIRGINIA 22092  
TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

Revisions shown in purple and woodland compiled from  
aerial photographs taken 1978 and other sources. This  
information not field checked. Map edited 1981

N3400—W11845/7.5

1950

PHOTOREVISED 1981





Setbacks

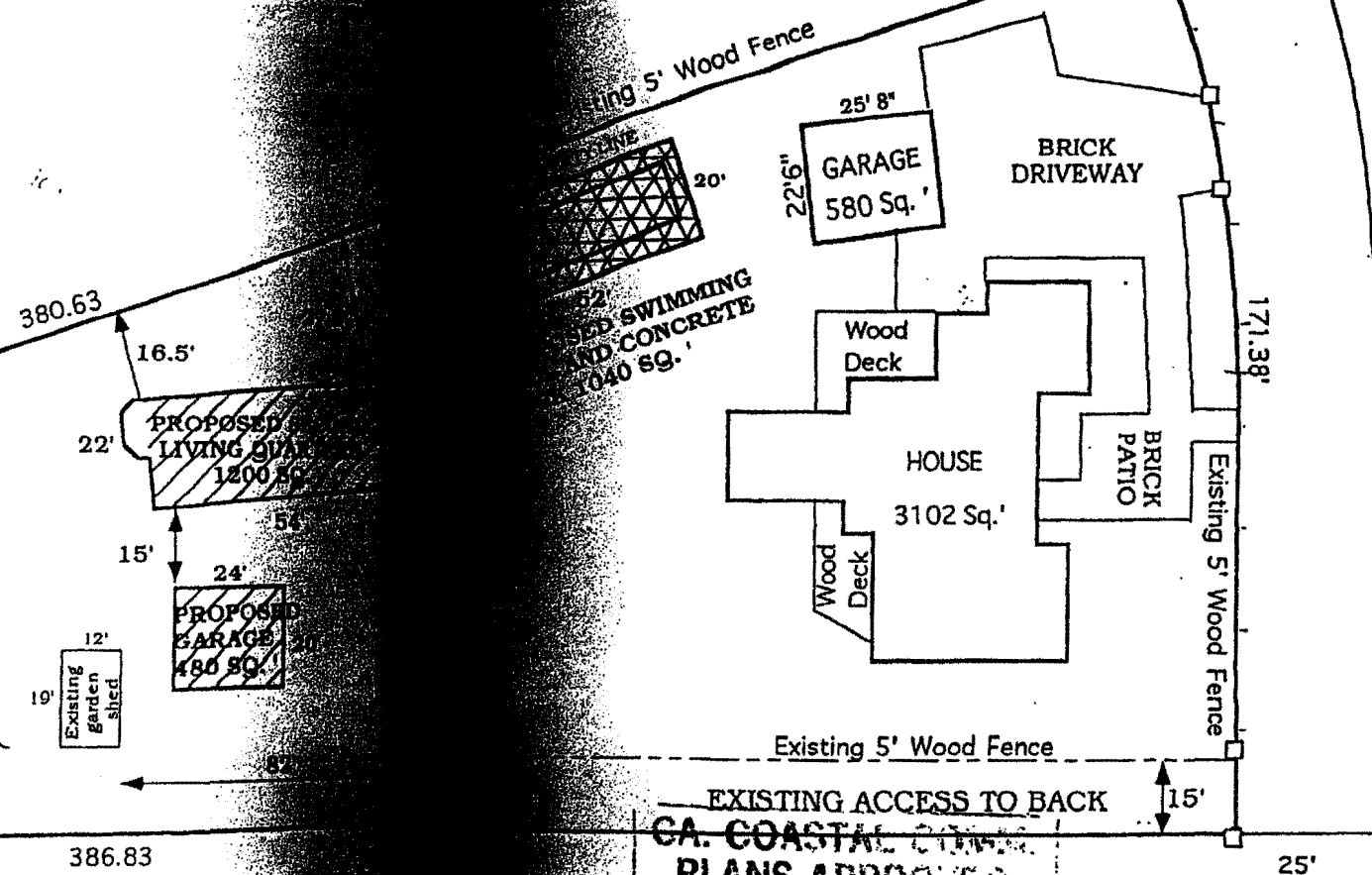
18' front, side  
2' thru side on corner

95-237

CITY OF MALIBU  
PLANNING DEPARTMENT  
PROV. CONCEPT  
1/32/95  
PPR-95-121  
APPROVED  
CITY OF MALIBU

(1,200 sq second unit, pool  
incl 2-car garage with  
ramping.

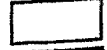
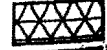

LOT 97, RECORD  
IN THE CITY OF MALIBU  
STATE OF CALIFORNIA



Depth: 383'  
Width: 118'

EXHIBIT NO. 3  
APPLICATION NO.  
4-95-237  
site plan  
REVISED FINDINGS

AUG 25 1995  
CITY OF MALIBU

<p>ACRE/44.867 SQ. FT. DE = 3,682 SQ. FT. LOT COVERAGE POOL = 1,040 SQ. FT. LIVING UNIT = 2, OR LIVING SPACE ER 18' = 480 SQ. FT.</p>	<p><b>VALUATION:</b> PHASE 1 - SWIMMING POOL PHASE 2 - SECOND UNIT</p> <p><b>LEGEND:</b></p> <p>EXISTING STRUCTURE </p> <p>PROPOSED PHASE 1 = </p> <p>PROPOSED PHASE 2 = </p>	<p>PREPARED FOR: CONSTRUCTION AND DESIGN</p>	<p>DATE: _____ SIGNED: _____</p> <p>These plans must be present on the project site &amp; shown to building &amp; zoning officials on request.</p> <p><b>JULY 1995</b></p> <p>PREPARED FOR: <b>NESSA &amp; JERRY PERMAN</b> 28870 GRAYFOX STREET MALIBU, CA. 90265 310 - 457-7737</p>
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RECEIVED  
January 18, 1996

California Coastal Commission  
South Central Coast Area Office  
89 S. California Street #200  
Ventura California 93001

JAN 23 1996

RECEIVED  
CALIFORNIA COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Re: Application 4-95-237  
GERALD & NESSA PERMAN

Dear Commissioners:

We are requesting immediate approval of the above application as follows:

1. The subject property at present consists of a single family home of about 2900 square feet, originally built in 1965, on slightly over one flat acre in the city of Malibu. It does not front nor is it close to actual beach front usage.
2. In May of 1995 we applied to the City of Malibu for a permit to construct a "second dwelling unit" of 1,200 square feet. We were at that time given a copy of their zoning ordinance which did allow the 1,200 square foot unit. There was no indication or notice that the Coastal Commission precluded the 1,200 square foot unit.
3. We were given a copy of California Government Code Section 65821 and 65852. A reading of these 2 State of California statutes made it clear that the state not only allowed, but actually encouraged the second unit of 1200. There is nothing in this state statute that states there is an exception as to the Coastal Commission.
4. Relying on this information, we have spent approximately \$9,400 in plans, permits and test drillings. It was only after we were ready to apply to the Coastal Commission did we learn through a telephone call that the 1200 square feet (versus the 750 square feet) is a "gray area", with no clear cut written notices available.

EXHIBIT NO. 4
APPLICATION NO. 4-95-237
Letter from applicant (1/23/96)

5. We were told that we first had to obtain the City of Malibu permit first, which we did, before applying to the Coastal Commission. This we did, at the mentioned \$9,400 cost.
6. We have been told that there have already been 1200 square foot units allowed by the Coastal Commission both in Malibu and in other areas, with an inconsistent criterea for allowance.
7. We have also been informed that there have only been two or three applicants for the 1200 square foot unit, which shows that there is no great demand for this size unit.
8. Our unit is to be used for our parents, Albert and Beatrice Axelrod, ages 83 and 87, as we do not wish to place them in a nursing home. Their medical needs require the 1200 size unit to give each a small private bedroom. The 750 square feet size is not adequate.

We are therefore requesting approval of the 1200 square foot unit upon legal grounds (lack of adequate notice and reliance upon Government Code Sections 658521), equitable grounds, having spent \$9,400 on good faith reliance on the City of Malibu criterea and hardship due to the medical needs of our parents.

Your cooperation is appreciated.

Yours truly,

  
GERALD A. PERMAN

  
NESSA PERMAN

Attached are copies of the City of Malibu ordinances and California Government Code Sections which were given to us in May, 1995.

EXHIBIT NO. 4
APPLICATION NO. 4-95-237
Letter from applicant
(2063)

**65852.1. "Granny" housing**

Notwithstanding Section 65906, any city, including a charter city, county, or city and county may issue a zoning variance, special use permit, or conditional use permit for a dwelling unit to be constructed, or which is attached to or detached from, a primary residence on a parcel zoned for a single-family residence, if the dwelling unit is intended for the sole occupancy of one adult or two adult persons who are 62 years of age or over, and the area of floor space of the attached dwelling unit does not exceed 30 percent of the existing living area or the area of the floor space of the detached dwelling unit does not exceed 1,200 square feet.

This section shall not be construed to limit the requirements of Section 65852.2, or the power of local governments to permit second units.

[Amended, Chapter 1150, Statutes of 1990]

**65852.2. Provisions for second unit ordinances/findings**

(a) Any local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones consistent with all of the following provisions:

(1) Areas may be designated within the jurisdiction of the local agency where second units may be permitted.

(2) The designation of areas may be based on criteria, which may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

(3) Standards may be imposed on second units which include, but are not limited to, parking, height, setback, lot coverage, architectural review, and maximum size of a unit.

(4) A local agency may find that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(5) The second units created shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(6) A local agency may establish a process for the issuance of a conditional use permit for second units.

(b) When a local agency which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c), receives its first application on or after July 1, 1983, for a conditional use permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901, every local agency shall grant a special use or a conditional use permit for the creation of a second unit if the second unit complies with all of the following:

(1) The unit is not intended for sale and may be rented.

(2) The lot is zoned for single-family or multifamily use.

(3) The lot contains an existing single-family dwelling.

(4) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(5) Any increase in the floor area of an attached second unit shall not exceed 15 percent of the existing living area.

(6) The total area of floor space for a detached second unit shall not exceed 1,200 square feet.

(7) Any construction shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

**EXHIBIT NO. 4**

**APPLICATION NO.**

4-95-237

Letter from applicant

attachment

(-3063)

EXHIBIT NO. 5 (106 2)
APPLICATION NO. 4-95-237
City of Malibu
Municipal Code

# ARTICLE IX

## ZONING

### CHAPTER 9210

#### RURAL RESIDENTIAL ZONE (RR)

#### 9210. Purpose

The RR District is intended for sensitively designed, large lot single family residential development, as well as agricultural uses and animal keeping which respects surrounding residents and the natural environment. This District incorporates a variety of natural resources and amenities.

#### 9211. Permitted Uses

The following uses and structures are permitted in the RR District:

- A. One single family residence per lot.
- B. Small Family Day Care and residential care facilities serving 6 or fewer persons.
- C. Accessory uses and structures as follows:
  1. Accessory buildings customarily ancillary to single family residences including, but not limited to, guest units (750 sq. ft. maximum), detached garages, barns, pool houses, gazebos, storage sheds, and greenhouses (non-commercial). (Ord 93, 6/14/93)
  2. Recreational structures including, but not limited to, pools, spas, non-illuminated sports courts, and corrals.
  3. Domestic animals, kept as pets or for personal use. (Ord 93, 6/14/93)
  4. Raising of crops including, but not limited to, field, trees, bush, berry row and nursery stock, provided there is no retail sale from the premises.
  5. Raising of horses, sheep, goats, donkeys, mules and other equine cattle for personal use by residents on the premises, subject to the following conditions:

**\* SUBJECT TO THE CITY'S DEVELOPMENT STANDARDS  
FOR SINGLE-FAMILY RESIDENTIAL PROJECTS**

EXHIBIT NO. (2062)5

APPLICATION NO.

4-95-237

City of Malibu  
Municipal Code

- c. That no more than two weaned hogs or pigs are kept.
- d. That the subject parcel is a minimum of one acre in size.

- E. Manufactured homes, pursuant to Government Code Section 65852.3.
- F. Second units, pursuant to Government Code Section 65852.2. — SEE ATTACHED
- G. Large Family Day Care facilities (serving 7 to 12 persons), subject to the provisions of Section 9450.
- H. Private equestrian and/or hiking trails.
- I. Greenhouses on a lot or parcel of land having an area of at least one acre.
- J. Temporary placement of mobilehomes and trailers subject to the conditions of Section 9303(A)(18). (Ord 104, 12-13-93)

9212. Uses Subject To Director's Review

The following uses and structures may be permitted subject to obtaining a minor Conditional Use Permit.

- A. Deleted. (Ord 104, 12-13-93)
- B. Home occupations, subject to Section 9303(A)(19). (Ord 93, 6/14/93)
- C. Boarding of Horses. The boarding of horses as a commercial use shall be subject to the same standards as specified in Section 9211(C)(5), except that the minimum area required shall be five acres. (Ord 93, 6/14/93)

9213. Conditionally permitted uses.

The following uses may be permitted subject to obtaining a Conditional Use Permit:

- A. Utility Facilities related to public projects.
- B. Lighted sports courts.

9214. Lot Development Criteria

- A. All new lots created within the RR District shall comply with the following criteria:

\* SUBJECT TO THE CITY'S DEVELOPMENT STANDARDS FOR  
SINGLE-FAMILY RESIDENTIAL PROJECTS

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
SOUTH CALIFORNIA STREET, SUITE 200  
VENTURA, CA 93001-2801  
(805) 641-0142

EXHIBIT NO. 6

APPLICATION NO.  
10F2

4-95-237

Revised Findings

W 18a

January 25, 1996

TO: Commissioners and Interested Persons

FROM: Steve Scholl, South Central Coast District Director  
Rebecca Richardson, Coastal Program Analyst

SUBJECT: History and Background of Second Units & Guesthouses in the City of Malibu & the Santa Monica Mountains Coastal Zone

The issue of second units on lots with primary residences has been raised by the Commission many times since the adoption of the Coastal Act. Commission review of coastal development permits and Local Coastal Programs (LCPs) has raised issues with statewide consistency. Statewide, additional dwelling units on single family parcels take on a variety of different functions which, in large part consist of: 1) a second unit with kitchen facilities (includes a granny unit, caretaker's unit and farm labor unit); and 2) a guesthouse without kitchen facilities. Past Commission action has consistently found that both second units and guesthouses inherently have the potential to cumulatively impact coastal resources, which include coastal access and coastal recreation. As such, conditions on coastal development permits and standards within LCPs have been required to limit the size and number of such units.

In the Malibu/Santa Monica Mountains area, the Commission policy is to allow a 750 sq. ft. detached second unit or guesthouse. This policy was reviewed by the Commission in the certification of the Malibu Land Use Plan in 1986 and has been subsequently upheld in over a thousand permit actions. In the Commission's review and certification of the LUP, it found that placing an upper limit on the size of the second unit was necessary given the traffic and infrastructure constraints which exist in Malibu and given the abundance of existing vacant residential lots. A smaller unit, which could be occupied by one or two people, was found to have less impact on the limited capacity of PCH, other roads and coastal resources than an ordinary single family house. Similar to the Malibu area, the Commission has maintained that restrictions on second units in other coastal jurisdictions are necessary in order to insure overall land use densities that are consistent with Chapter 3 of the Coastal Act.

The City of Malibu, which lies entirely within the Coastal Zone, incorporated in 1991 and in July of 1991 the City adopted an Interim Zoning Code. More recently, in November, 1995, the City adopted a General Plan. Pursuant to the provisions in the City's Zoning Code, residential zones are afforded increased building densities which include one SFD, one 1200 sq. ft. second unit and an unlimited number of 750 sq. ft. guest units, providing that the maximum lot coverage is not exceeded. As the Commission is aware, neither the General Plan nor the Zoning Code have been subject to the Commission's review and certification, via the LCP process. Incremental policy changes by the City which are absent new information or data force the Commission to act in a capacity similar to that of a Planning Commission and review project's on a case by case basis. Therefore, the proliferation of large second units and unlimited ancillary structures throughout the City effectively increases the intensity and density of residential lot development without consideration of cumulative impacts on locating development in areas able to accommodate it. It is recommended by staff that the Commission consider an interim policy which would remain in effect up to and until the City has an effective LCP which would maintain the allowance of one second unit but allow for an increased size limit over 750 sq. ft. with adequate mitigation. As such, the Commission will not prejudice the City's ability to prepare an LCP.

Attached is a chart of LCP certification status and second unit standards

# SECOND UNIT STANDARDS IN THE COASTAL ZONE

<b>JURISDICTION</b>	<b># OF 2ND UNITS</b>	<b>MINIMUM PARCEL SIZE</b>	<b>MAX. SIZE OF SECOND UNITS</b>	<b>RECENT LCP AMENDMENT</b>
<b>City of Encinitas</b>	1 unit	10,000 sq. ft.	750 sq. ft. - 2nd unit OR 640 sq. ft. guest unit	LCPA 1-95-B Oct. 10-13, 1995
<b>County of Del Norte</b>	1 unit		700 sq. ft.	LCPA 1-95
<b>County of Santa Barbara</b>	1 unit No Unit - Rural Residential	10,000 sq. ft.	1,000 sq. ft. possible on 49 lots	LCPA 3-93-B
<b>San Luis Obispo County</b>	1 unit	2 acres	800 to 1200 sq. ft.	LCPA 2-95 Oct. 13, 1995
<b>City of Santa Cruz</b>	1 unit	7,000 sq. ft.	500 sq. ft. Limit 25 approvals per year	Certified
<b>City of Laguna Beach</b>	1 unit	9,000 sq. ft.	640 sq. ft.	Certified
<b>City of Imperial Beach</b>	NO units in SFR zone	not permitted in R-1 zone		LCPA 3-92
<b>County of Ventura</b>	1 unit		700 sq. ft.	Certified
<b>City of Malibu</b>	<b>NO LIMIT</b> 1 second unit <b>PLUS</b> Guest Units	<b>NONE</b>	1200 sq. ft. 2nd unit and 750 sq. ft. guest units	<b>Not Certified</b>