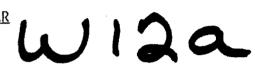
RECORD PACKET COPY PETE WILSON, Governor

# CALIFORNIA COASTAL COMMISSION

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

Filed:	2/28/96
49th Day:	4/17/96
180th Day:	8/26/96
Staff:	JCJ/V
Staff Report:	3/19/96
Hearing Date:4	/9-12/96
Commission Action:	
7184A	

CONSENT CALENDAR STAFF REPORT:



APPLICATION NO.: 4-96-014

James P. and Christine R. Riley APPLICANT:

PROJECT LOCATION: 18928 Pacific Coast Highway, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Construct 1,100 sq. ft. second story addition, remodel and add 68 sg. ft. to existing first floor, add 224 sg. ft. storage room below first floor, add decks to first and second floors, add a catwalk on grade, and side yard privacy screens. Install new pile foundation system embedded into bedrock. No grading is proposed.

> Lot Area Building Coverage Pavement Coverage Landscape Coverage Parking Spaces Zoning Plan Designation Project Density Ht abv fin grade

2.420 sa. ft. 1,518 sq. ft. 190 sq. ft. 32 sq. ft. two SFR - M - 4 du/acreSingle Family Residential 18 du/acre 28 feet

LOCAL APPROVALS RECEIVED: Project Approval in Concept, City of Malibu; In Concept Approval, dated 1/18/96; In-Concept Approval, Environmental Health, City of Malibu, dated 1/17/96.

SUBSTANTIVE FILE DOCUMENTS: Coastal Permit No. 4-95-142, Sintek; Coastal Permit No. 4-95-215, Haber; Coastal Permit No. 5-88-349, Wimberly, Dworak, Hamilton. and Drane; Coastal Permit No. 5-88-349A, Bergmann.

SUMMARY OF STAFF RECOMMENDATION: Staff recommends approval of the proposed project with four (4) Special Conditions addressing the consulting geologist's recommendations, an applicant's assumption of risk, a wildfire waiver of liability, and construction responsibilities and debris removal. The project geologist has determined that the site is suitable for the proposed project and it is adequately protected from hazards. The proposed project conforms to the stringline between adjacent properties and a shoreline protective device exists on site. As such, the project will have no impact on public access or scenic and visual resources.

# **STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

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

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

- II. Standard Conditions.
- 1. <u>Notice of Receipt and Acknowledgment</u>. 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. <u>Expiration</u>. 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. <u>Compliance</u>. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
- 4. <u>Interpretation</u>. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 5. <u>Inspections</u>. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
- 6. <u>Assignment</u>. 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. <u>Terms and Conditions Run with the Land</u>. 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.

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III. SPECIAL CONDITIONS:

#### 1. PLANS CONFORMING TO GEOLOGIC RECOMMENDATIONS

Prior to the issuance of the permit the applicant shall submit, for the review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans. All recommendations contained in the "Soils and Engineering Geologic Investigation for Proposed Additions to the Residence at 18928 Pacific Coast Highway, Malibu, California" including site preparation, foundation design, retaining wall design, temporary excavations, surface drainage control, and sewage disposal system must be incorporated into the final plans. All final design and foundation plans must be reviewed and approved by the geologic consultant.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

# 2. ASSUMPTION OF RISK

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

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

# 3. WILDFIRE WAIVER OF LIABILITY

Prior to the issuance of the coastal development permit, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses, of liability arising out of the acquisition, design, construction, operations, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

#### 4. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL

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

# IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

#### A. Project Description and Background

The applicant proposes to remodel and construct additions to an existing 1,380 sq. ft. one story single family residence with a two car garage. The additions consist of 68 sq. ft. to the first floor, a 675 sq. ft. wood deck and catwalk on grade, a new 1,100 sq. ft. second floor addition, a new 152 sq. ft. deck on the second floor, a new 224 sq. ft. storage and mechanical room under the first story, and privacy screens along side yards, not to exceed six feet in height. About 15% of the existing walls will be demolished. The applicant proposes to revise the existing wood piles, now supporting the residence, with a new pile foundation system embedded in bedrock, as is typical for this area.

The residence is located along the seaward side of Pacific Coast Highway between Tuna Canyon Road and Topanga Canyon Boulevard, opposite the area known as Caltrans' Tuna Canyon Slide. The applicant's property is a 2,420 sq. ft. lot located on the sandy beach between Pacific Coast Highway and the mean high tide. An existing wooden bulkhead, was constructed in 1988 (Coastal Permit 5-88-349) which protects 4 residences (18918, 18922, 18926, and the subject property, 18928 Pacific Coast Highway). The Commission approved an amendment (Coastal Permit 5-88-349A) in 1993 to extend the bulkhead to protect one additional property at 18930 Pacific Coast Highway. Exhibits 1 and 2 locate the project site. Exhibits 3 - 6 include the site plans and elevations.

The project site is designated in the certified Los Angeles County Local Coastal Plan as Residential IV B which allows eight to ten dwelling units per acre. The City of Malibu Interim Zoning Ordinance designates the site as Single Family Residential with a minimum lot size of 0.25 acres, or four dwelling units per acre. The proposed project is non-conforming as it exceeds these allowable densities at eighteen (18) dwelling units per acre. In addition, the project site is not located in any designated environmentally sensitive habitat area within the Malibu area.

### B. <u>Public Access. Seaward Encroachment and Scenic and Visual Ouality</u>

Coastal Act Section 30210 states that:

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

Coastal Act Section 30211 states:

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

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

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

Further, Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

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

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

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

In the case of the proposed project, the remodel of the existing 1380 sq. ft. residence and garage, the addition of 1,392 new sq. ft. of interior space, the addition of 827 sq. ft. of deck space, the demolition of about 15 % of existing walls, a new catwalk/stairway to the sand, new privacy screens, and the revision of the wood support piles with a new pile foundation system, does

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constitute new development under the Coastal Act. According to the Commission's access records, there is an existing Irrevocable Offer to Dedicate Public Access Easement recorded on the applicant's property on April 10, 1989. The easement is described as "... from the mean high tide line to the seaward face of the approved bulkhead. The area ten feet seaward of the seaward edge of the existing decks shall be identified as a privacy buffer and this area shall be restricted to pass and repass only, and shall be available only when no other dry beach areas are available for lateral public access."

Although the proposed project site is located on the sandy beach, all of the proposed development is located on the landward portion of the parcel (landward of the existing bulkhead) including the first floor deck and catwalk/stairway to the sandy beach, about 48 feet landward of the bulkhead. Further, the applicant does not propose any modifications to the shoreline protective device, bulkhead, which could interfere with coastal processes. As such, the proposed project will have no individual or cumulative impacts on public access, nor will it affect the existing recorded offer to dedicate lateral access on the sandy beach seaward of the residence.

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

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

The applicants have submitted a plan with a stringline connecting the existing residences on either side of the project site. The plan clearly indicates that all of the proposed project structure and decks will be adequately setback from the respective stringlines. Therefore, the Commission finds that the proposed project does conform to this setback. As proposed the project will not extend development further seaward than adjacent development, minimizing potential impacts to public access opportunities, public views and the scenic quality along the sandy beach.

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

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

# C. Geologic and Fire Hazards

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

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

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

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. The proposed development is located in the Malibu area, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu area include landslides, erosion, flooding and storm waves. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property. Fires in the Malibu area have burned all the way to the sea, so even beach front homes are not immune to the risk of wildfire. Further, oceanfront sites are also subject to flooding and erosion from storm waves.

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

The proposed project is located along Las Tunas Beach which is a narrow and critically eroding beach as identified by the Department of Navigation and Ocean Development. This beach is particularly vulnerable to storms from the south. The beach was artificially extended seaward at the turn of the century with groins that have subsequently failed. Numerous beachfront homes were constructed on the sand, using the artificially build up beach for protection. As the rock and metal sheathing groins have failed, the mean high tide has moved closer to the houses, such that Las Tunas Beach is a wet sand beach except during the summer. The State Lands Commission, in a letter dated June 10, 1988, determined that the existing bulkhead is landward of the surveyed mean high tide line known at that time. Therefore, along Las Tunas Beach, the houses were constructed in locations dependent on shoreline structures and an artificial beach which have washed away.

On adjoining properties at 18918 and 18922 Pacific Coast Highway, existing bulkheads were washed away in early 1988. The Commission approved the construction of a wooden bulkhead protecting this and four other houses in 1988 and 1993. (Coastal Permits 5-88-349 and 5-88-349A)

Regarding the geologic hazard, the applicant submitted a geologic report titled: "Soils And Engineering Geologic Investigation For Proposed Additions To The Residence At 18928 Pacific Coast Highway Malibu, California", dated 1-16-96, by GeoSystems. This report addresses the geology issues by stating:

Based on the findings of our investigation, the site is considered to be suitable from a soils and engineering geologic standpoint for construction of the proposed additions provided the recommendations included herein are followed and integrated into the building plans.

In order to provide uniform support for the proposed additions and avoid potential problems due to liquifaction we recommend that the proposed additions be supported on a new friction pile foundation system embedded in competent bedrock. It may also be desirable to underpin the existing residence to avoid potential problems as a result of future settlement of the existing structures.

It is the finding of this firm that the proposed addition will be safe and that the site will not be affected by any hazard from landslide, settlement or slippage and the completed work will not adversely affect adjacent property in compliance with the county code, provided our recommendations are followed.

Therefore, the applicant's consultant determined that the proposed project site is suitable from a soils and engineering geologic standpoint for construction of the proposed residential remodel and addition development. Condition number one (1) provides for final review and approval by the consulting geologist of the final project design and foundation plans for the project prior to the issuance of the permit.

Even though the consultant has determined that the project site will be free of geologic hazards, the Commission cannot absolutely acknowledge that the proposed residential development will be safe during all future storms or be constructed in a structurally sound manner and be properly maintained to eliminate any potential risk to the beach going public. The Commission acknowledges that many of the oceanfront parcels in Malibu such as the subject property are susceptible to flooding and wave damage from waves and storm conditions. Past occurrences have resulted in public costs (through low interest loans) in the millions of dollars in the Malibu area alone. Storms during the winter of 1982-83 caused over six million dollars in damage to private property in Los Angeles County and severely damaged existing bulkheads, patios, decks, and windows along the Malibu coastline, including this project site.

The applicant may decide that the economic benefits of development outweigh the risk of harm that may occur from the identified hazards. Neither the Commission nor any other public agency that permits development should be held liable for the applicant's decision to develop. Therefore, the proposed Therefore, the proposed project located on a beach front lot subject to tidal influence, is in an area subject to extraordinary potential for damage or destruction from storm waves, wave runup, erosion, flooding and liquifaction. The Commission can only approve the project if the applicant assumes the liability from the associated Through the waiver of liability, the applicant acknowledges and risks. appreciates the nature of the natural hazards that exist on this beachfront site that may affect the stability of the proposed development. The Commission imposed an assumption of risk condition on coastal permit 5-88-349, signed and recorded by the previous property owner, Kelly Wimberly, on this property. This assumption of risk applies to the existing bulkhead permitted

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by the Commission at that time. Condition number two (2) requires the applicant to assume these risks of the proposed residential development from storm waves, wave runup, erosion, flooding, and liquifaction hazards by waiving all Commission liability.

Additionally, due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from these associated risks. Through the waiver of liability, the applicant acknowledges and appreciates the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development, as incorporated by condition number three (3).

Lastly, as noted above, the project involves some demolition and construction on a beachfront lot subject to tidal influence. Construction equipment, materials and demolition debris could pose a significant hazard if used or stored where subject to wave contact or situated in a manner that a hazard is created for beach users. Therefore, the Commission finds it necessary to impose condition number four (4) requiring construction responsibilities and debris removal. This condition will ensure that the construction of the proposed project will minimize risks to life and property in this public beach area which is subject to wave hazards.

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

# D. <u>Septic System</u>

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

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

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

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

The proposed development includes continuing to use the existing septic tank and drain field connecting it to the remodelled residence. The applicant has submitted an Approval In Concept for the sewage disposal system from the Environmental Health, City of Malibu. This approval indicates that the sewage disposal system for the project in this application complies with all minimum requirements of the City of Malibu Uniform Plumbing Code. The Commission has

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found in past permit actions that compliance with the health and safety codes will minimize any potential for waste water discharge that could adversely impact coastal waters. Therefore, the Commission finds that the proposed septic system is consistent with Sections 30231 and 30250 of the Coastal Act.

# E. Local Coastal Program

Section 30604 of the Coastal Act states that:

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

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

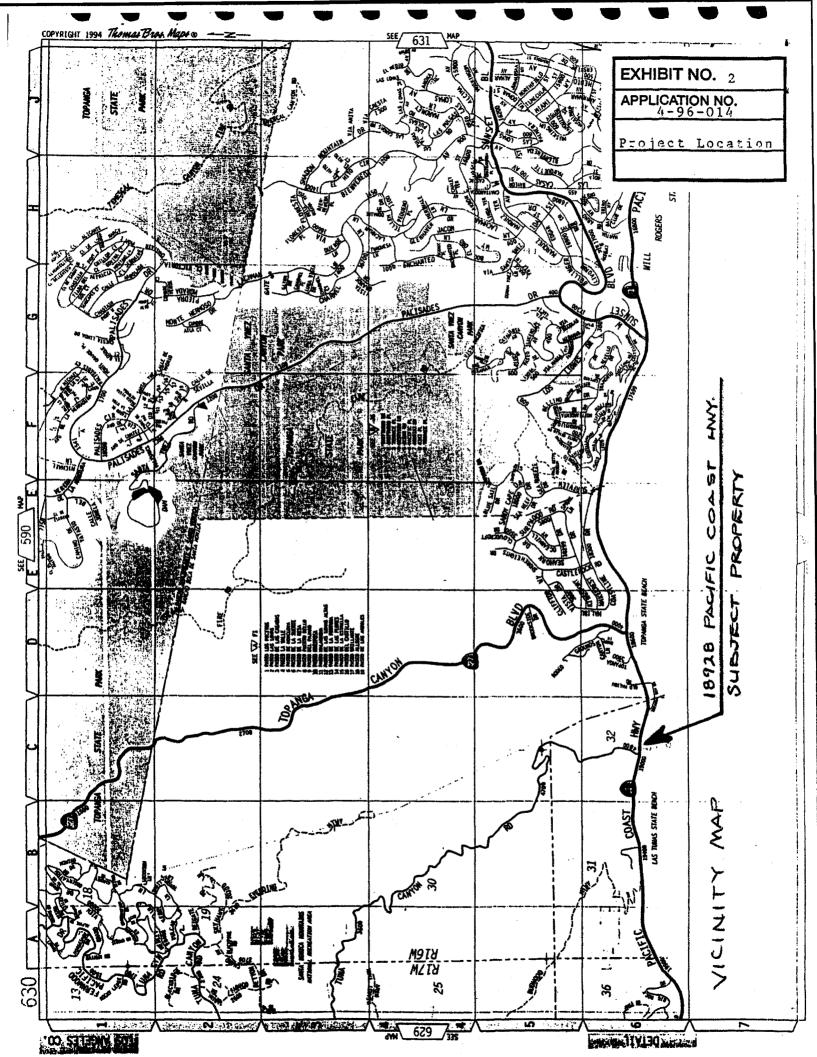
#### F. <u>California Environmental Ouality Act</u>

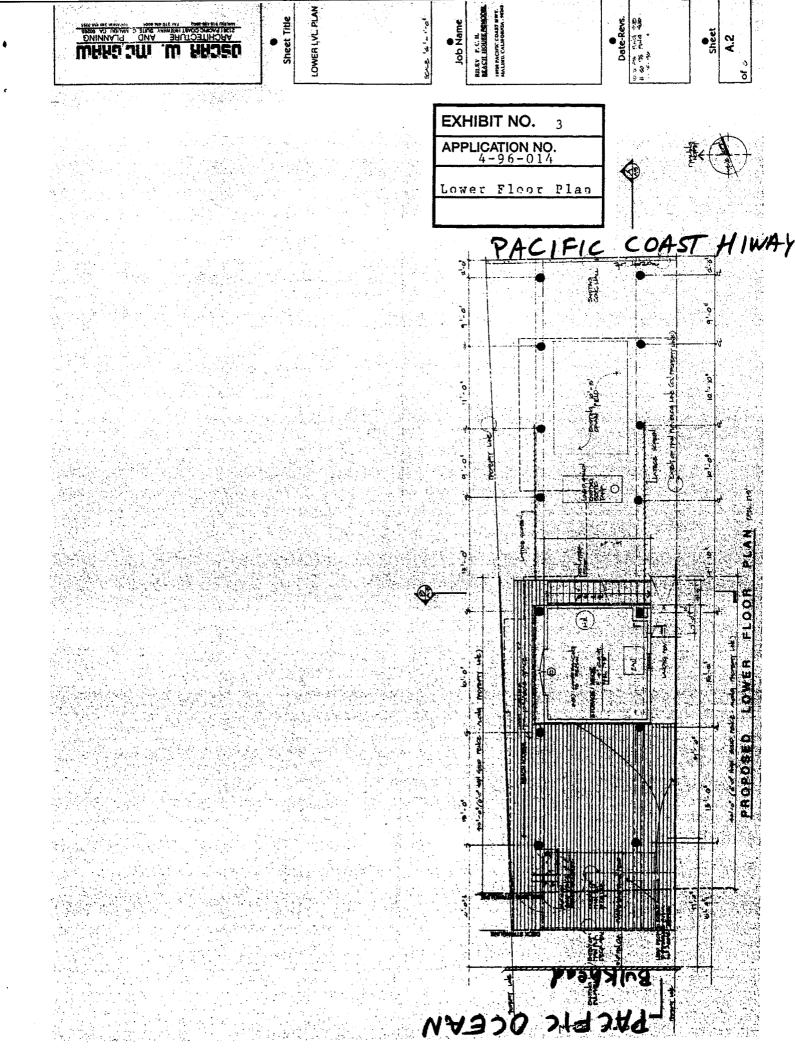
The Coastal Commission's permit process has been designated as the functional equivalent of CEQA. Section 13096(a) of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of CEQA. Section 21080.5 (d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impacts that the activity may have on the environment.

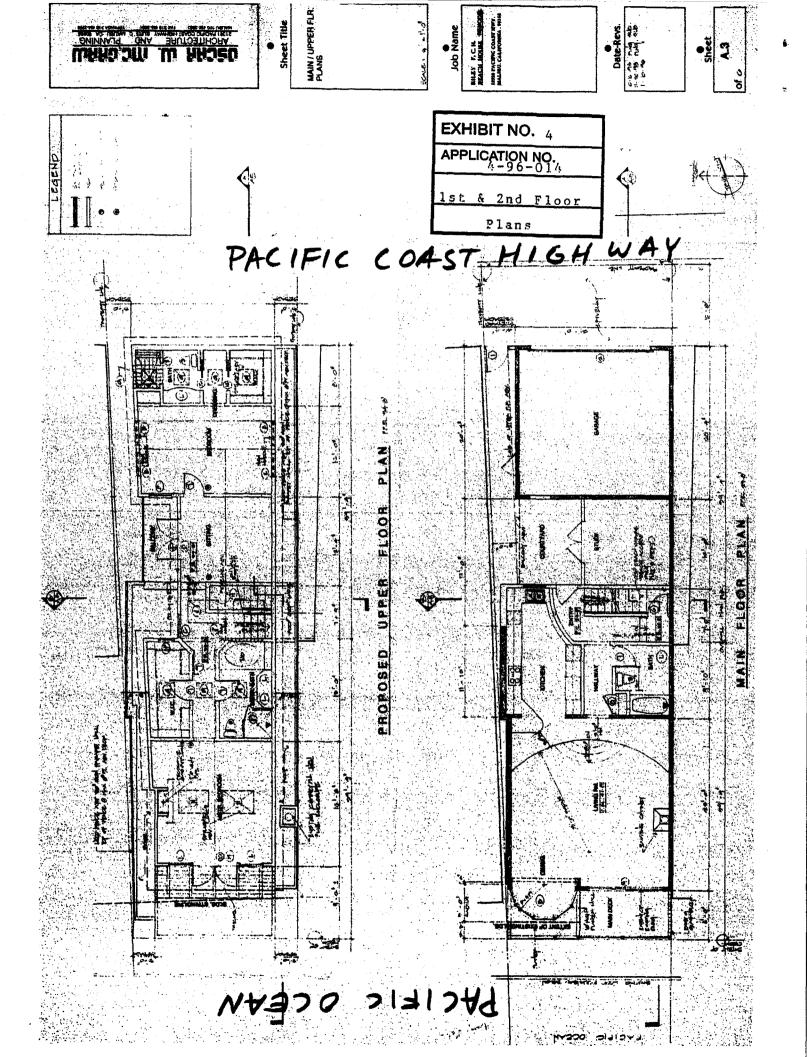
As discussed above, the proposed project has been mitigated to incorporate all recommendations by the applicant's consulting geologist, an applicant's assumption of risk, a wild fire waiver of liability, and a construction responsibilities and debris removal condition. As conditioned, there are no feasible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

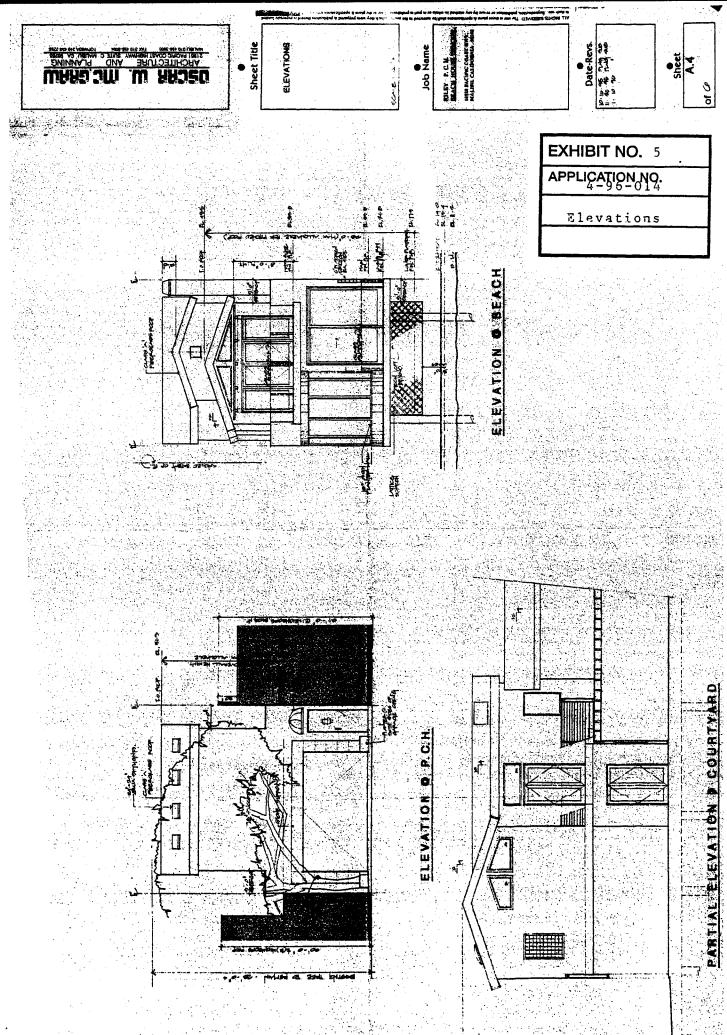
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