

## CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
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## RECORD PACKET COPY



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Staff Report: 3/21/96  
Hearing Date: 4/9-12/96

**wide**

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 4-96-031

APPLICANT: Carl Parmer AGENT: A. Thomas Torres

PROJECT LOCATION: 22012 Pacific Coast Highway, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Addition of 2281 sq. ft. second story to existing two story beachfront residence.

Lot Area	7,980 sq. ft.
Building Coverage	3,020 sq. ft.
Pavement Coverage	270 sq. ft.
Landscape Coverage	860 sq. ft.
Parking Spaces	2 covered
Ht abv fin grade	28 ft.

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

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits P-9593 (Goldberg) and 79-5656 (Goldberg) for seawall at subject address; 4-95-248 (Turner); 4-95-224 (Wilson); Geotechnical Engineering Investigation Proposed Second Story Addition, Coastline Geotechnical Consultants, Inc., February 16, 1996 and Limited Engineering Geologic Report, Proposed Second Story Addition and Reconstruction of Garage Area, Pacific Geology Consultants, Inc., January 23, 1996

SUMMARY OF STAFF RECOMMENDATION:

The proposed development is a 2281 sq. ft. second story landward addition to an existing two story beachfront residence. Staff recommends approval of the proposed project with Special Conditions addressing applicant's assumption of risk, wildfire waiver of liability, and plans conforming to geologic recommendations. 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. Approval with Conditions.

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

II. Standard Conditions.

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. Special Condition.

#### 1. Assumption of Risk

Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (1) that the applicant understands that the site may be subject to extraordinary hazard from storm waves, erosion, or flooding and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission, its officers, agents and employees relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest.

#### 2. 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.

#### 3. Plans Conforming to Geologic Recommendation

All recommendations contained in the Geotechnical Engineering Investigation Proposed Second Story Addition, Coastline Geotechnical Consultants, Inc., February 16, 1996 and Limited Engineering Geologic Report, Proposed Second Story Addition and Reconstruction of Garage Area, Pacific Geology Consultants, Inc., January 23, 1996 shall be incorporated into all final design and construction plans including foundation, grading, and drainage. All plans must be reviewed and approved by the consultants. Prior to the issuance of permit the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans.

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

#### IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

##### A. Project Description and Background

The proposed development is located in the area of beachfront residential development in Malibu known as Carbon Beach. The area is downcoast from the Malibu Pier and is characterized by a mixture of strip commercial and residential land uses on the inland side and residential uses on the seaward side of Highway 1. (Exhibit I) The applicant proposes an addition to the existing second story to extend landward essentially in the same footprint of existing residential and parking use on the first floor. (Exhibit II)

The property contains a two story single family residence and an existing septic system with a 1200 gallon tank. Although the project plans indicate a new 1200 gallon tank, the tank has been in place for many years. The applicant indicates that the recent City Health Department review is not for proposed development but for clearance of the 1200 gallon tank. The City Health Department review specifies inadvertently that the tank is 1000 gallons because this is the minimum required by the City.

##### B. Shoreline Development/Public Access/Coastal Views

The Coastal Act requires the Coastal Commission to ensure that each project provides maximum public access for every project. Applicable sections of the Coastal Act, including related visual quality policies, provide:

Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

##### Section 30212:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby, or,
- (3) agriculture would be adversely affected. ...

Section 30251: The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The Coastal Act also requires that new development minimize risks to life and property and assure structural integrity. Section 30253 of the Coastal Act provides:

Section 30253: 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. ...

All beachfront projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. The Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

The major access issue in such permits is the occupation of sand area by a structure, in contradiction of Coastal Act policies 30210, 30211, and 30212. However, a conclusion that access may be mandated does not end the Commission's inquiry. As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with ... the need to protect ... rights of private property owners..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the U.S. Supreme Court's decision in the case of Nollan vs. California Coastal Commission. In that case, the court ruled that the Commission may legitimately require a lateral access easement where the proposed development has either individual or cumulative impacts which impede the achievement of the State's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate these impacts.

The subject site is located in the area of beachfront residential development in Malibu known as Carbon Beach. Development of this site has been reviewed on many occasions with respect to Coastal Act sections relative to access and recreation. The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access of such projects can include, among others: encroachment on lands subject to the public trusts thus physically excluding the public; interference with

natural shoreline processes which are necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability to use and cause adverse impacts on public access such as above.

In the case of previous development on subject property, coastal development permit 79-5656 (Goldberg), as reviewed by the Coastal Commission, determined that the proposed development of a seawall did adversely affect public access. The Coastal Commission imposed a special condition requiring a recorded offer to dedicate lateral access seaward of the bulkhead allowed under subject permit.

In the case of the proposed project, the construction would be a landward expansion of a single family residence on a beachfront lot where, as noted, lateral access has already been provided. The project would not exceed the seaward extension of the existing residence. The development would not include any shoreline protective devices. Thus, the project will have no individual or cumulative impacts on public access. Therefore, considering the existing recorded offer and the lack of any additional impact by the proposed development, the Commission finds that a condition to require lateral access is not appropriate.

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 the adjacent decks. In this case, the existing two story residence exceeds the building stringline drawn between the two adjacent residences. However, as mentioned above, the proposed second story addition is landward of the existing second story and therefore will not result in a seaward extension of the structure. The proposed 28 foot high addition to the existing residence is consistent with other residential beach front development in this area. As such, the proposed project will not extend development further seaward, minimizing potential impacts to public access opportunities, public views and the scenic quality of the shoreline.

Therefore, for all of the reasons set forth above, the Commission finds that only as conditioned is the proposed development consistent with Section 30210, 30211, 30212, and 30251 of the Coastal Act.

### 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 Carbon Beach which is narrow and eroding beach. The applicant has submitted two geotechnical studies -- Geotechnical Engineering Investigation Proposed Second Story Addition, Coastline Geotechnical Consultants, Inc., February 16, 1996 and Limited Engineering Geologic Report, Proposed Second Story Addition and Reconstruction of Garage Area, Pacific Geology Consultants, Inc. Although neither geotechnical study submitted with the application evaluates site susceptibility specifically to flooding and wave damage from waves and storm conditions, they do address the need for and adequacy of the pile foundation which is common in areas subject to such conditions. The Pacific Geology engineering geology report (p. 9) acknowledges that: "The earth fill materials and beach sand deposits are not considered suitable for the support of new foundations as these materials are subject to erosion and scour during periods of high surf.". The Pacific Geology engineering geology report further states that (p. 12):

Properties are subject to some element of risk and the risks can be mitigated but not eliminated. Properties are subject to hazards including but not limited to, floods, mudslides, landslides, seepage, erosion, raveling of slopes, concentrated drainage, limit access, differential settlement and heaving and fire. The damage from these hazards can be reduced by the property owner maintaining yard, slopes, walls, slough protection devices and drainage facilities and by correcting any deficiencies found during occupancy of the property. It is not possible to eliminate all hazards.

Regarding the geologic hazards, the Pacific Geology engineering geology report addresses the geology issues by stating:

#### Section 309

Providing the recommendations contained in this report, in addition to the Geotechnical Engineer are followed, the addition is safe from landslide hazard, settlement or slippage. Furthermore, the proposed construction will not adversely affect off-site properties. All specific elements of the City of Malibu Building Code shall be followed in conjunction with design and future construction work.

Based on the recommendations of the consulting geologists the Commission finds that the development will be consistent with the relevant geology and natural hazards policies of the Malibu/Santa Monica Mountains Land Use Plan (used as guidance only for projects in the City of Malibu based on past permit decisions) and Section 30253 of the Coastal Act, so long as the geologic and soils geotechnical consultants' engineering recommendations are incorporated into project plans. Therefore, the Commission finds it necessary to require condition three (3) for the applicant to submit project plans that have been certified in writing by the consulting geologist and engineering geologists as conforming to their recommendations.

Even though the consultant has determined that the project site will be safe from landslide hazard, settlement or slippage, beach erosion and wave action is not addressed in this determination and 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 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 risks. Through the waiver of liability, the applicant acknowledges and appreciates the nature of the natural hazards that exist on this beachfront site that may affect the stability of the proposed development.

The past permit action, noted above, did not have an assumption of risk condition on this property. Condition number one (1) requires the applicant to assume these risks of the proposed 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 two (2).



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. 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 a hazard condition is 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).

E. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The proposed development would cause no adverse environmental impacts which would not be adequately mitigated by the project conditions required herein. Therefore, the proposed project, as conditioned, is found to be consistent with CEQA and the policies of the Coastal Act.

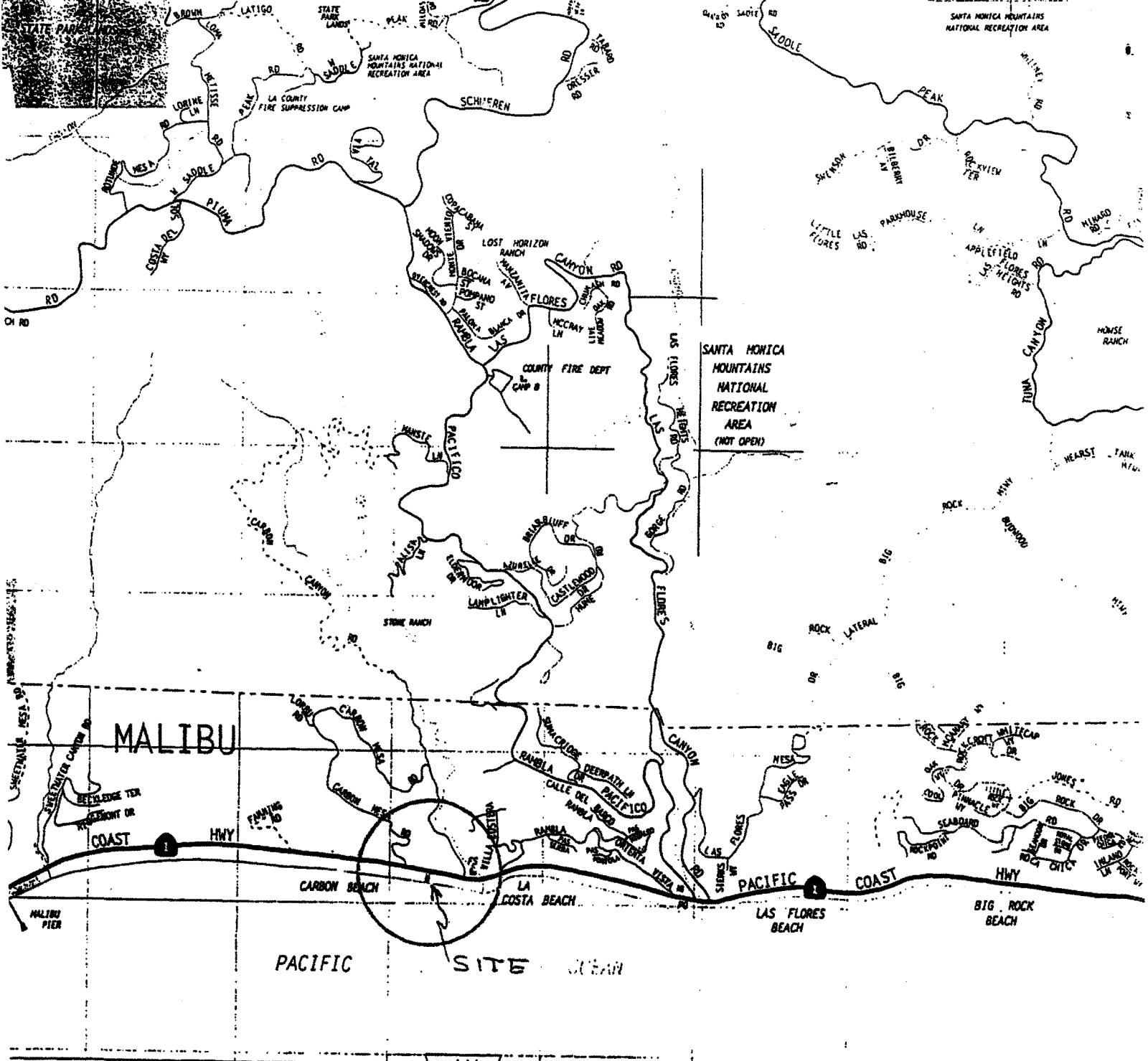
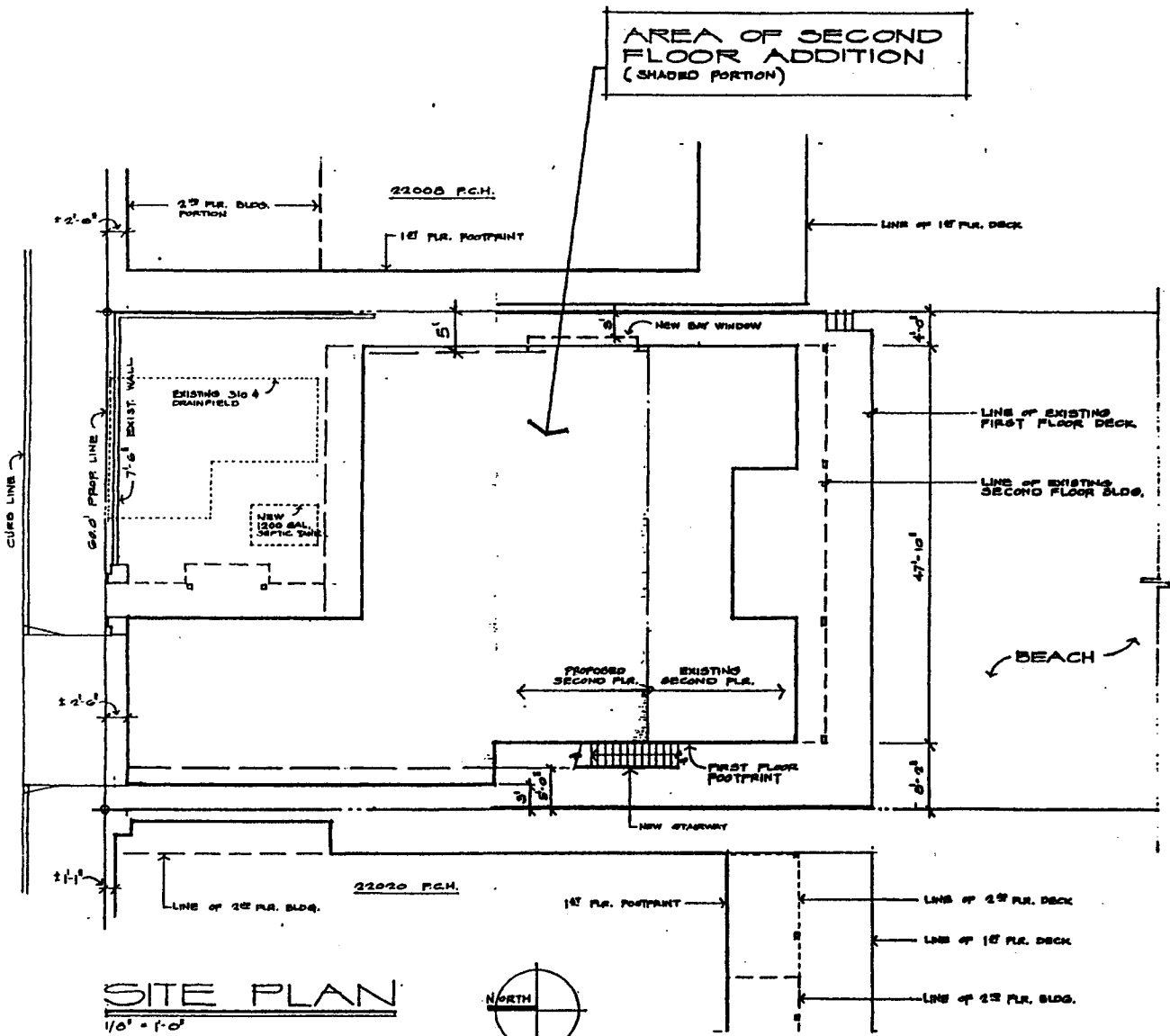
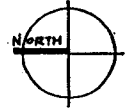


EXHIBIT NO. I
APPLICATION NO. 4-96-031 (Farmer)
Project Location

PACIFIC COAST HIGHWAY ↗



**SITE PLAN**  
1/8" = 1'-0"



**PROJECT DATA:**

OCCUPANCY: R-3/M-1  
 CONSTRUCTION: TYPE I-N  
 CODES: 1994 UNIFORM BLDG. CODE  
 1992 L.A. COUNTY BLDG. CODE  
 STORIES: 2 (ADDITION TO SECOND FLR. ONLY)  
 SQ. FOOTAGE: EXIST. FIRST FLR. = 3020 sq ft  
 EXIST. SECOND FLR. = 1000 sq ft  
 NEW SECOND FLR. = 2251 sq ft  
 TOTAL = 6271 sq ft

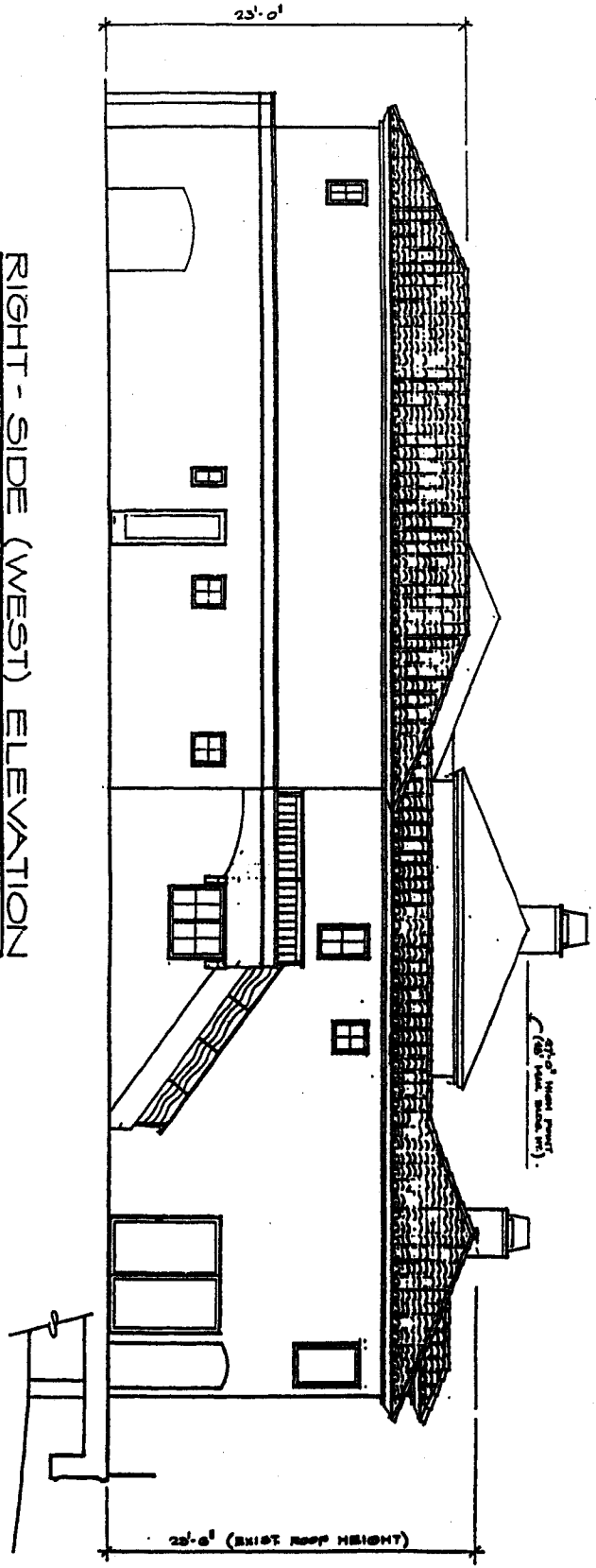
**ARCHITECT:**

A. THOMAS TORRES A.I.A.  
 P.O. BOX 1101  
 MALIBU, CA 90265 (310) 456-2555

EXHIBIT NO. II a  
 APPLICATION NO. 4-96-051 (Farmer)  
 Site Plan

FARMER RESIDENCE  
 22012 PACIFIC COAST HIGHWAY  
 MALIBU, CA 90265

RIGHT - SIDE (WEST) ELEVATION  
1/4" = 1'-0"



FRONT (NORTH) ELEVATION  
1/4" = 1'-0"

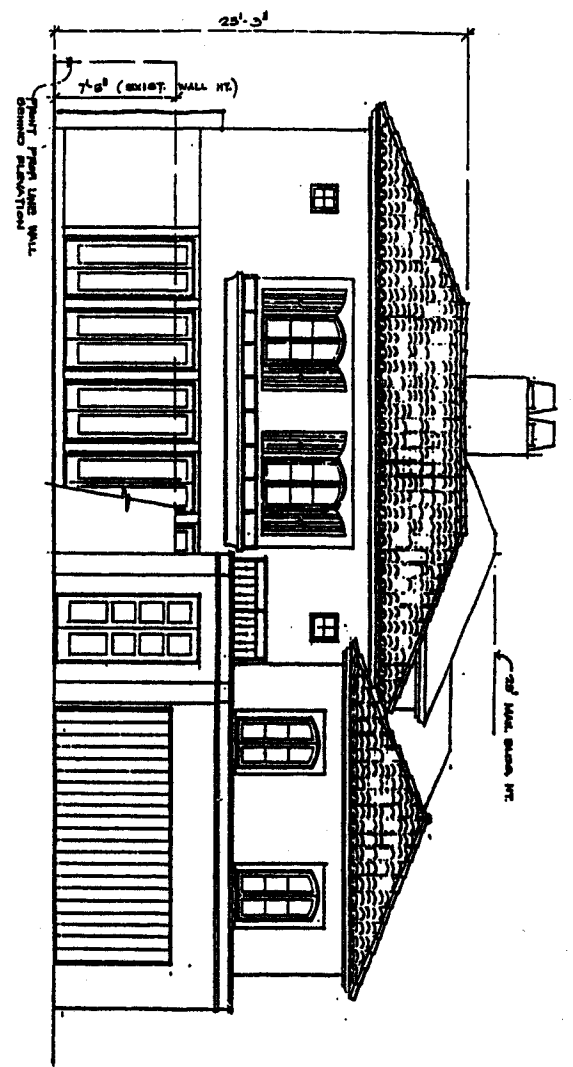


EXHIBIT NO. IIb
APPLICATION NO. 4-96-031 (Parmer)
Elevations