

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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 Staff: Betz *JB*
 Staff Report: 4/18/96
 Hearing Date: 5/7-10/96
 Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 4-96-013

APPLICANT: Karen Lehrer and Steven Sherwin AGENT: Lynn Heacox

PROJECT LOCATION: 5863 Bonsall Drive, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Construction of a glulam timber and concrete pedestrian bridge in an existing easement over Zuma Canyon Creek adjacent to an existing fair weather crossing with 10 cu. yds. of grading for caissons.

Ht abv creek bottom	5.8 ft.
Ht abv 1994 peak water	2.5 ft

LOCAL APPROVALS RECEIVED: City of Malibu Approval in Concept

SUBSTANTIVE FILE DOCUMENTS: State Department of Fish and Game Notification No. 5-078-96 (i.e. "not substantially impact fish and wildlife resources"); Coastal Development Permits 4-95-123 (Los Angeles County Public Works Department) and 4-95-012 (Family Restaurants).

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project with Special Conditions regarding assumption of risk, debris removal, and wildfire waiver of liability. The assumption of risk is necessary to ensure that the applicant acknowledges and appreciates the potential flood hazard risk on the property and that the applicant waives any potential claim of liability against the Commission. To ensure that any materials used in the proposed construction are not introduced into the stream, staff recommends that the applicant be required not to store materials or waste where it is subject to creek flows and that all materials be removed at the end of construction. Because the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wildfire, staff recommends that the applicant be required to acknowledge and assume the liability from this risk.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, 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 Conditions.

1. Applicant's Assumption of Risk.

Prior to the issuance of the coastal development permit, the applicants shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the landowner understands that the site may be subject to extraordinary hazard from flooding during high stream flow and during storms and the landowner assumes the liability from such hazards; and (b) that the landowner unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors 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. Construction Responsibilities and Debris Removal

The applicant or successor in interest agrees not to store any construction materials or waste where it is subject to creek flow or dispersion. The permittee shall remove from the site any and all debris that results from the construction period. In addition, no construction machinery will be allowed in the creek at any time.

3. Wild Fire Waiver of Liability

Prior to the issuance of the coastal development permit, the applicants 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, operation, 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.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description and Background.

The applicant proposes the construction of a concrete and glulam timber pedestrian bridge in an existing easement over Zuma Canyon Creek adjacent to an existing fair weather concrete crossing with 10 cu. yds. of grading for caissons. (See Exhibits I and II) The bridge is narrow (only two feet wide) and topped with a three foot high railing. Pedestrians will step up four steps on the house side (west side) and five steps on the side toward Bonsall Drive (east side).

The bridge is necessary to provide access to the residence which is uniquely situated, in comparison to nearby residences, on the west side of the stream

and against a steep hillside. The applicant has stated that they could not get in or out of the house for several days during the 1994 storms because the fair weather crossing was not passable.

The proposed bridge is located above the multiple stream banks which vary in height on each side. The multiple banks are caused by the stream being confined in its outer bend by a steep hill, while the inside of the bend is a relatively flat canyon bottom so that the multiple banks reflect various peak flows. The overall design will be above these banks and be 7.3 feet above the creek bottom measured from the top of the bridge walkway, 5.8 ft. measured from the bottom of the bridge to the creek bottom, and 2.5 feet above 1994 peak flow flow. (Exhibit III)

The proposed residence is near the north end of the residential area of Zuma Canyon north of which is a portion of the Santa Monica Mountains National Recreation Area. (Exhibit IV) Surrounding development consists of residential development and related development such as landscaping, accessory buildings, fences, decks and corrals. There are both other concrete crossings and pedestrian bridges in the project vicinity, although a review of the files indicates no record of coastal development permits for these developments.

Existing development on the site consists of a one-story residence and concrete ("Arizona") crossing through the stream bed, which predate the Coastal Act according to the applicant. There are no records for coastal development permits for either the house or the concrete crossing across the stream bed, the applicant indicates that the house was constructed prior to the Coastal Act, and a review of the Assessor's records shows that the house was built in 1970.

By virtue of location away from the nearest public road, and small scale of development, and excavation of only ten cubic yards for the caissons, the proposal does not raise issues relative to alteration of natural landforms, grading or visual quality.

B. 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, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The Commission reviews a 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 Zuma Canyon Creek in an area in or over a stream which has experienced serious flooding. The project plans do indicate that the pedestrian bridge has been designed above projected peak flood flow elevations for this section of the creek. The bottom of the bridge

is at an elevation of 68.5 feet which is above the stream channel elevation. If flood flows exceed the channel banks the flood waters will spill into surrounding flat land area. At the proposed design elevation it is anticipated the bridge will not be subject to damage from flood flows. The City of Malibu Deputy Engineer has reviewed the bridge design and has indicated the bridge is designed above projected peak flows for this section of Zuma Creek.

The Commission cannot absolutely acknowledge that the proposed bridge will be safe during all future flood or debris flow events or be constructed in a structurally sound manner and be properly maintained to eliminate any potential risk to the public or the applicant. The Commission acknowledges that many parcels crossed by streams in Malibu such as the subject property are susceptible to flooding from floods and storm conditions. Past flooding occurrences have resulted in public costs (through low interest loans) for damage repair.

The Commission finds that the development is consistent with Section 30253 of the Coastal Act so long as the proposed pedestrian bridge is above the base flood level (elevation), is constructed in a structurally sound manner and is properly maintained to eliminate any potential risk to the public. The City has reviewed the project plans and the Deputy City Engineer is of the opinion that elevation of the bottom of the bridge above peak flood elevations, together with the piling design and location outside this flow area, provides adequate protection against flood hazard.

The applicant may decide that the economic benefits of development outweigh the risk of harm which 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, as conditioned to assume risk of failure, the applicant is required to expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the decision to develop. This waiver of liability will take the form of an assumption of risk deed restriction recorded against the applicant's property.

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property. Fires in the Malibu area have also burned all the way to the ocean so even beach front homes are not immune to the risk of wildfire.

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 the 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. The Commission finds that the proposed development, as conditioned, is consistent with Section 30253 of the Coastal Act.

In summary, the Commission finds that the development will be consistent with Section 30253 of the Coastal Act, so long as the certain conditions regarding assumption of risk, debris removal, and wildfires are incorporated into their approval.

C. Environmentally Sensitive Habitat Areas

Sections 30231 of the Coastal Act are designed to protect and enhance, or restore where feasible, marine resources and the biological productivity and quality of coastal waters, including streams:

Section 30231:

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.

In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values:

Section 30240:

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

The Malibu/Santa Monica Mountains Land Use Plan policies addressing protection of ESHAs and Significant Watersheds are among the strictest and most comprehensive addressing new development. Additionally these policies have been found to be consistent with the Coastal Act and, therefore, may be looked to as guidance by Commission staff in the analysis of a projects conformity with Coastal Act policy. The LUP contains the following policies regarding landform alteration and the protection of ESHAs which are applicable to the developed proposed:

P68 Environmentally sensitive habitat areas (ESHAs) shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. Residential use shall not be considered a resource dependent use.

P78 Stream road crossings shall be undertaken by the least environmentally damaging feasible method. Road crossings of streams should be accomplished by bridging, unless other methods are determined by the ERB to be less damaging. Bridge columns shall be located outside stream courses, if feasible. Road crossings of

streams within ESHAs designated by the LCP may be allowed as a conditional use for the purpose of providing access to recreation areas open to the public or homesites located outside the ESHA where there is no feasible alternative for providing access. Wherever possible, shared bridges or other crossings shall be used for providing access to groups of lots covered by this policy.

P82 Grading shall be minimized for all new development to ensure the potential negative effects of runoff and erosion on these resources are minimized.

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

The LUP for Malibu states the following:

Significant oak woodlands are woodlands (or savannahs) which are located outside Significant Watersheds (i.e., outside undisturbed watersheds). These woodlands are located much closer to existing roads and development (e.g., Red Rock Canyon area) and, consequently are not as heavily utilized by sensitive, secretive wildlife such as Golden eagles and other birds of prior large mammals such as mountain lions and bobcats. In this sense, these woodlands are not quite as critical as remote, undisturbed woodlands. Nevertheless, any oak-dominated habitat is considered a biologically critical resource because of the large number of wildlife dependent upon oak trees and because of the declining nature of oak-dominated habitats in southern California.

To a varying degree these designated Significant Oak Woodlands contain riparian woodland as well, which are subject to disturbance by siltation and sedimentation which can damage the root systems of riparian species, causing their early death.

The applicant proposes the construction of a concrete and glulam timber pedestrian bridge in an existing easement over Zuma Canyon Creek adjacent to an existing fair weather crossing with 10 cu. yds. of grading for caissons. The staff site visit has confirmed the existence of native riparian vegetation near the project site, which is recognized by the Commission as Significant Oak Woodland and an Environmentally Sensitive Habitat Area. Although this project is directly adjacent to Zuma Canyon Creek and in a significant oak woodland, much of the stream vegetation has been scoured out by the 1994 storms, including breaking off of smaller sycamore trunks. Regeneration has already begun, however. During the staff site visit, a clump of willow was seen beginning to regenerate just north of the existing stream crossing. No major vegetation would be displaced by the excavation for the caissons.

The proposed development is consistent with the above LUP policy on stream crossings, used as guidance in the City of Malibu, because the work is necessary to provide access to the homesite where there is no feasible alternative, is consolidated with the existing concrete stream crossing, and, because of topography and lot configuration, and there is no possibility of shared roadways or pedestrian ways in combination with other nearby residences on the west side of the Creek.

The State Department of Fish and Game has determined that (Notification No. 5-078-96) there is no substantial impact on fish and wildlife resources from the proposed project and that no agreement is required.

The work associated with this development is above the stream or sides of the stream channel. The excavation and pilings installation including removal of ten cubic yards will be outside the riparian corridor. The limited work in the stream channel will take place from the existing concrete apron. No riparian vegetation will be removed during construction activities.

Construction within the existing easement for the concrete apron could result in less impact on the riparian corridor, but is not practical because it would impose on the clearance above the apron for private and public safety vehicles and not allow sufficient width in the travel way for vehicles. The travel way is only eight feet wide.

In order to minimize erosion and disturbance of the riparian habitat on site, the Commission finds that it is necessary to prohibit construction equipment in the natural stream channel as noted in special condition 2. Furthermore, to ensure construction materials and debris are not introduced into the stream which would adversely impact water quality and the biological productivity of the stream, the Commission finds it necessary to require the applicant not to store any construction materials or debris within the stream channel and remove all construction materials and debris from the site generated by construction.

The Commission finds that the project, as conditioned, is consistent with Sections 30231 and 30240 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 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).

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, 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 would have on the environment.

The proposed development would not cause significant, adverse environmental impacts which would not be adequately mitigated by the conditions imposed by the Commission. Therefore, the proposed project, as conditioned, is found consistent with CEQA and with the policies of the Coastal Act.

7238A

EXISTING RESIDENCE
5861 BONSTALL DR.

WOODEN FENCE

GAZEBO
FLOOR EL. = 73.0

24" DIA. CASSION
PIPE (1" x 12")

WOODEN FENCE

CONC. DRIVE

EASEMENT

S 79° 25' 31" E 386.00'

STEPS

CHAIN-LINK
FENCE

ZUMA CANYON CREEK

N 10° 31' 29" E 108.24'

(Not a part)
VEHICLE BRIDGE

PEDESTRIAN BRIDGE

Proposed Development

SITE PLAN

SCALE: 1" = 10'

RESIDENCE
BONSTALL DR.

CONC. DRIVE

S 79° 25' 31" E 386.00'

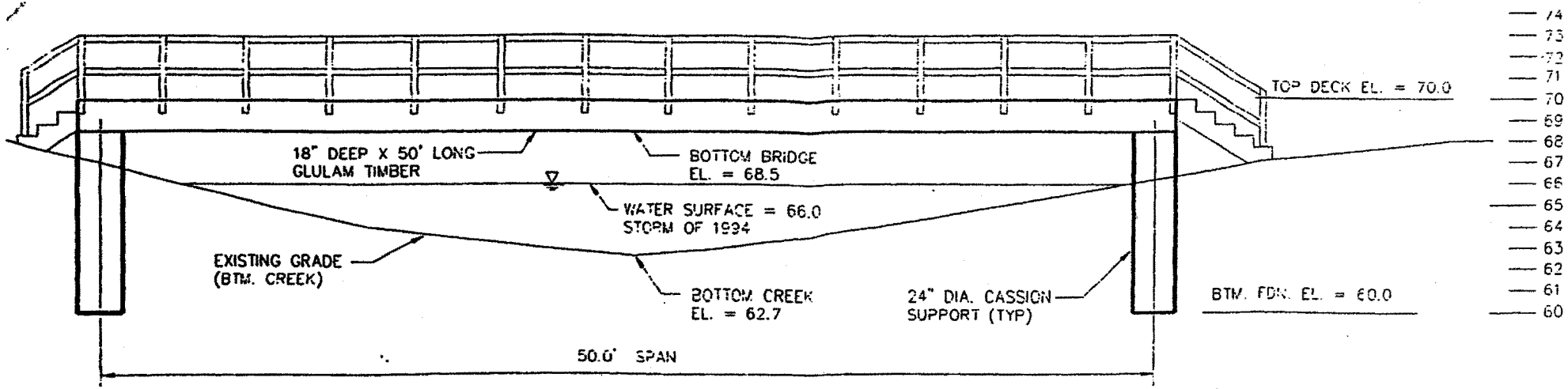
TOP OF
SLOPE

EXHIBIT NO. II

APPLICATION NO.

4-96-13 (Lehner
Sherwin)

Plan View



(A) PEDESTRIAN BRIDGE
 SCALE: 1" = 5'

EXHIBIT NO. IV
APPLICATION NO.
4-96-13 (Lehner Scheuval)
Bridge Cross Section

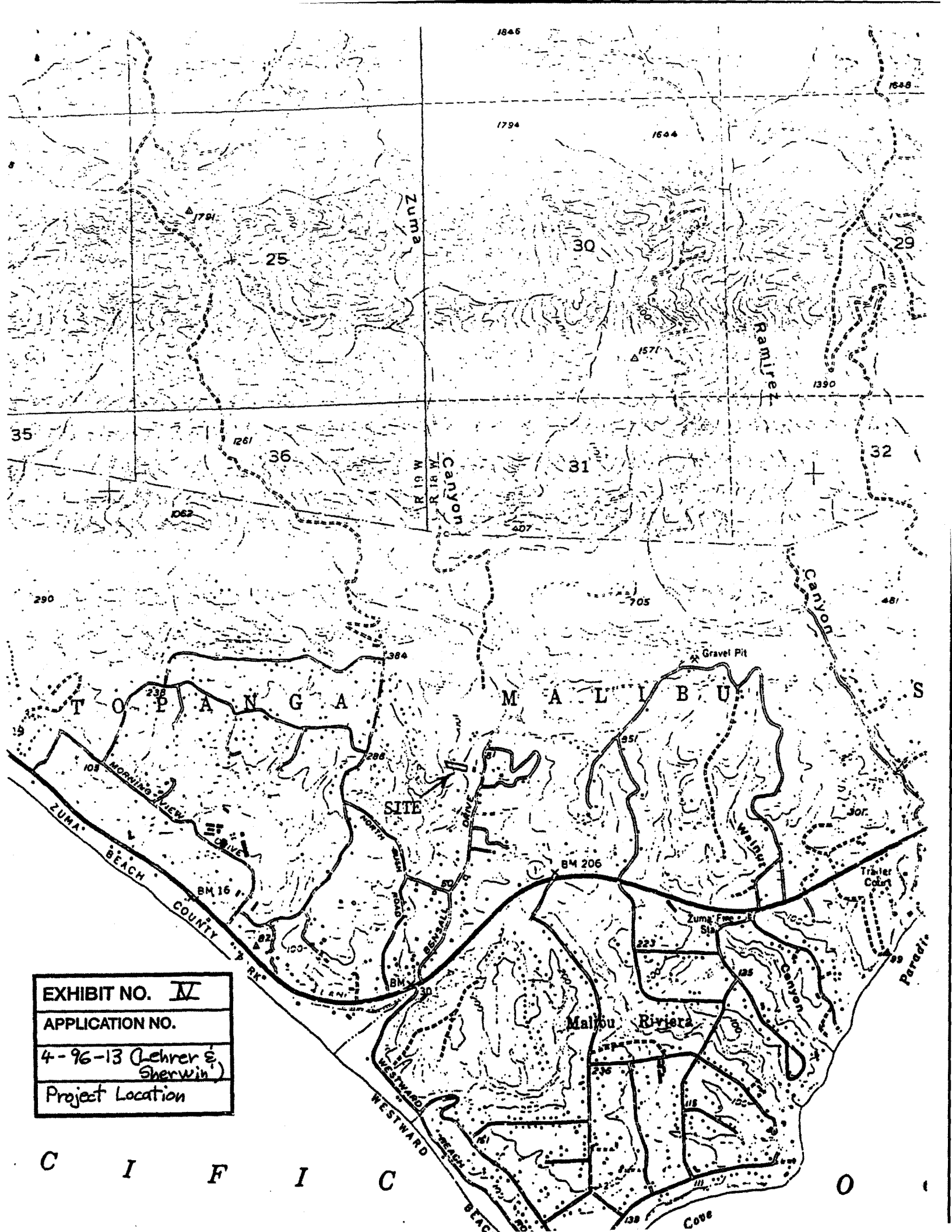


EXHIBIT NO. IV
APPLICATION NO.
4-96-13 (Lehrer & Sherwin)
Project Location

C I F I C O