

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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RECORD PACKET COPY

Filed: 6/28/96
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Staff: JCJ/V
Staff Report: 7/23/96
Hearing Date: 8/13-16/96
Commission Action:
7428A

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 4-96-005

APPLICANT: Sam Wyly, c/o Janice Williams AGENT: C D Carter, Architect

PROJECT LOCATION: 36 (23678) Malibu Colony Drive, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Construct 520 sq. ft. two story addition, demolish portions of first and second floors, and complete minor alterations and repairs to existing two story single family residence.

Lot Area	15,300 sq. ft.
Building Coverage	3,785 sq. ft.
Pavement Coverage	1,195 sq. ft.
Landscape Coverage	1,764 sq. ft.
Parking Spaces	3
Plan Designation	Residential III B
Zoning	4 - 6 du/acre
Project Density	3 du/ acre
Ht abv fin grade	27.5 feet

LOCAL APPROVALS RECEIVED: Project Approval in Concept, City of Malibu; In Concept Approval, dated 4/24/96; In-Concept Approval, Environmental Health, City of Malibu, dated 1/18/96; City of Malibu Geology and Geotechnical Engineering Review Sheets, dated 4/3/96 and 2/13/96.

SUBSTANTIVE FILE DOCUMENTS: Coastal Permit No. 4-96-014, Riley, Coastal Permit No. 4-95-220, Hamburger; Coastal Permit No. 4-95-044, Konheim; Coastal Permit No. 4-95-142, Sintek; Coastal Permit No. 4-95-215, Haber.

SUMMARY OF STAFF RECOMMENDATION: Staff recommends approval of the proposed project with three (3) Special Conditions addressing the consulting geologist's and engineer's recommendations, an applicant's assumption of risk, and construction responsibilities and debris removal. The project geologist and structural engineer have determined that the site is suitable for the proposed project and it is adequately protected from hazards. The proposed addition is located both behind the stringline among adjacent properties and on the inland portion of the site. A wooden bulkhead 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 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 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. PLANS CONFORMING TO GEOLOGIC AND ENGINEER RECOMMENDATIONS

Prior to the issuance of the permit the applicant shall submit, for the review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans. All recommendations contained in the "Reconnaissance Geologic And Geotechnical Exploration, Proposed Additions to the Residence at 23678 Malibu Colony Drive, Malibu, California", dated January 15, 1996, "Response to Geotechnical Review," dated March 13, 1996, by Pacific Materials Laboratory, Inc. and "Partial Wave Up-rush Study for 23678 Malibu Colony Drive", dated April 6, 1996 by David Weiss including site preparation and fill, surface drainage control, and final grading, site, foundation and landscape plans must be incorporated into the final plans. All final design and foundation plans must be reviewed and approved by the geologic and engineering consultants.

The final plans approved by the consultants 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 consultants 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, liquifaction, and flooding, 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. 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 demolish portions of the first and second floors of an existing two story single family residence to construct a new 520 sq. ft.

two story addition. In addition, minor alterations and repairs to the residence will be completed including, remove brick patio, replace portion of driveway with brick, remove existing entry gate, replace fence, planters, deck and steps at landward entry, and extend existing interior loft over living room an additional thirty (30) inches. Regarding the existing residence, about 3 % of the existing walls will be demolished. No grading is proposed.

The residence is located along the seaward side of Malibu Colony Road, a privately guarded beach community, between the Civic Center and Malibu Creek. The applicant's property is a 15,300 sq. ft. lot located on the sandy beach on the west side of the community between Malibu Colony Road and the mean high tide. An existing wooden bulkhead protects the residence and tea house from wave action. Exhibits 1 and 2 locate the project site. Exhibits 3 - 7 include the site plans, floor plans, and elevations.

The project site is designated in the certified Los Angeles County Local Coastal Plan as Residential III B which allows four to six 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 conforming as it meets these allowable densities at three (3) dwelling units per acre. In addition, the project site is not located in any designated environmentally sensitive habitat area within the Malibu area.

B. Public Access, Seaward Encroachment and Scenic and Visual Quality

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 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 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 subject site is located within Malibu Colony, a guarded private beach community located southeast of the Malibu Civic Center and west of Malibu Creek, in the City of Malibu. Due to the location, development of other sites have 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 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 the beach, thereby causing adverse impacts on public access such as above.

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 decks.

In the case of the proposed project, the construction of a 520 sq. ft. two story addition to an existing 3,314 sq. ft. residence and three car garage, and various alterations noted above, does constitute new development under the Coastal Act. The proposed project would not exceed the seaward stringline among adjoining properties and is located in the side yard near the landward portion of the project site. 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 proposed project is located along Malibu Colony beach which is a wide beach which includes substantial sand. The site is located at about the 10 foot elevation. The shoreline is located about 100 feet from the existing deck and wooden bulkhead. The State Lands Commission staff, in a letter dated June 10, 1996, reviewed the proposed project on the east side of the residence. State Lands Commission staff stated that they do not have sufficient information to determine whether the project will intrude upon state sovereign lands or interfere with other public rights. Accordingly, the SLC presently asserts no claims either that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters.

Further, the development would not include any shoreline protective devices and would be located landward of the existing bulkhead. As such, the project will have no individual or cumulative impacts on public access. Therefore, the Commission finds that a condition to require lateral access is not appropriate in this project.

Therefore, the Commission finds that the proposed project does conform to this stringline setback. As proposed, the addition to this project will not extend new development further seaward than adjacent development, and will minimize 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 is located in the private gated community known as Malibu Colony which is seaward of Pacific Coast Highway and Malibu Road. This residential community already blocks public views from these roadways to the beach and ocean. Although the proposed two story addition may be visible, to a very limited degree, from the public sandy beach, the existing residence already blocks inland views from the beach. Moreover, the more scenic inland views of the Santa Monica Mountains as viewed from the water are above the proposed development. Thus, the proposed addition 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 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. 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 Malibu Colony beach which is a wide beach which includes substantial sand. The site is located at about the 10 foot elevation. The shoreline is located about 100 feet from the existing deck and wooden bulkhead.

Regarding the geologic hazard, the applicant submitted two geologic reports titled: "Reconnaissance Geologic and Geotechnical Explorations, Proposed Additions To The Residence At 23678 Malibu Colony Drive, Malibu, California", dated January 15, 1996, and "Response to Geotechnical Review", dated March 13, 1996, by Pacific Materials Laboratory, Inc. In addition, the applicant submitted a wave up-rush report completed by a structural engineer titled: "Partial Wave Up-rush Study for 23678 Malibu Colony Drive Malibu CA", dated April 6, 1996, by David Weiss. The geology reports address the geology issue by recommending an alternative foundation design to provide adequate stability for the proposed addition. These geology reports were approved "in concept" in the planning stage by the City of Malibu Department of Geology and Geotechnical Engineering Review.

The wave up-rush report addresses the site issues by stating:

If the above recommendations are followed, the addition proposed for the east side of the lot will be safe from damage due to ocean wave scour.

Therefore, the applicant's consultants determined that the proposed project site is suitable from a soils and engineering geologic standpoint for construction of the proposed residential addition, provided their recommendations are followed. Condition number one (1) provides for final

review and approval by the consulting geologists and engineer of the final project design and foundation plans 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.

In addition, the Reconnaissance Geologic and Geotechnical Exploration report indicates that "Other geological hazards which may potentially affect the subject property include seismic shaking, liqifaction, seismically-induced settlement and earthquake-induced flooding." The report goes on to state "...the site has a potential for liquifaction owing to the unconsolidated nature of insitu, semi-cohesive to cohesionless earth materials and shallow water table. In order to mitigate the impact of potential liquifaction upon the existing and proposed residence foundations it would be necessary to underpin the foundations with caissons extending to depth well below the potentially liquefiable zone, a procedure requiring extensive work and expense. ... The proposed additions may be constructed as planned provided that the client understands that the existing structure and proposed additions remain vulnerable to damage occurring as a result of liquifaction of the underlying sediments during a significant nearby seismic event."

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

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 three (3) 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 geologists and engineer, an applicant's assumption of risk, and a construction responsibilities and debris removal will the proposed project be consistent with Section 30253 of the Coastal Act.

D. Septic System

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 now connected to the existing 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 does not fully comply with all minimum requirements of the City of Malibu Uniform Plumbing Code relative to the size of the septic tank and leach field. However, the City does allow existing residences with minor additions and remodels to keep non-conforming septic systems as long as they function adequately and do not adversely affect health and safety. Therefore, the City of Malibu determined that the existing non-complying private sewage disposal system is functionally adequate and does not need to be renovated at this time. Therefore, the Commission finds that the existing septic system will not adversely impact the quality of coastal waters 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. California Environmental Quality Act

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 geologists and engineer, an applicant's assumption of risk, 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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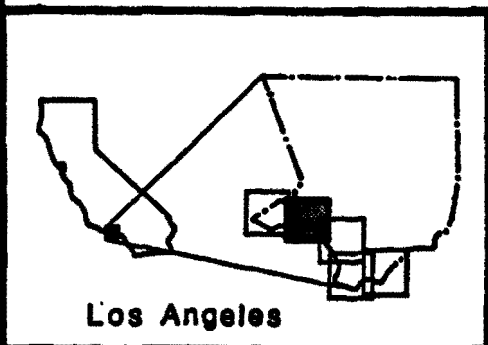
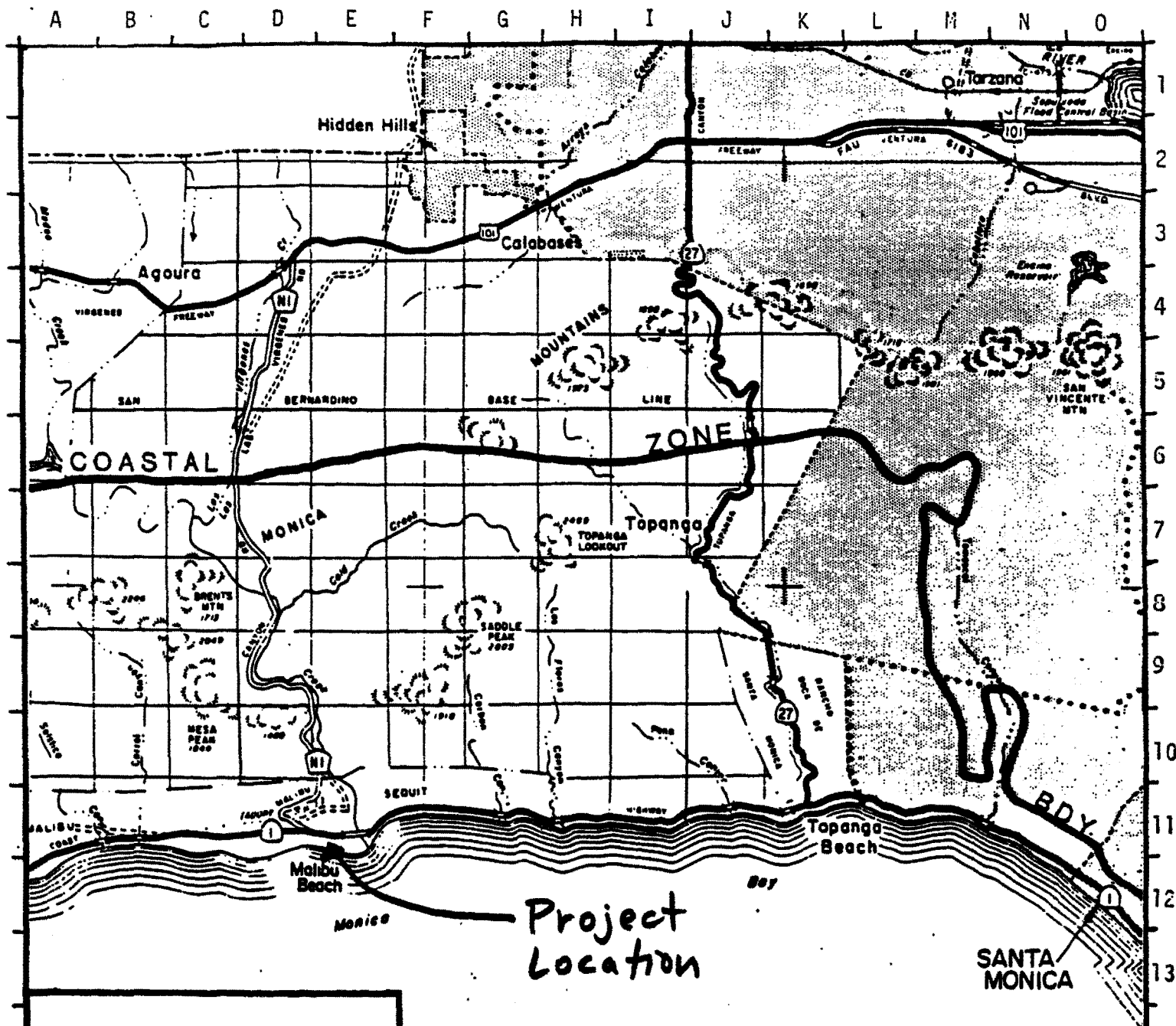


EXHIBIT NO. 1
APPLICATION NO. 4-96-005
Project
Location

California Coastal Commission

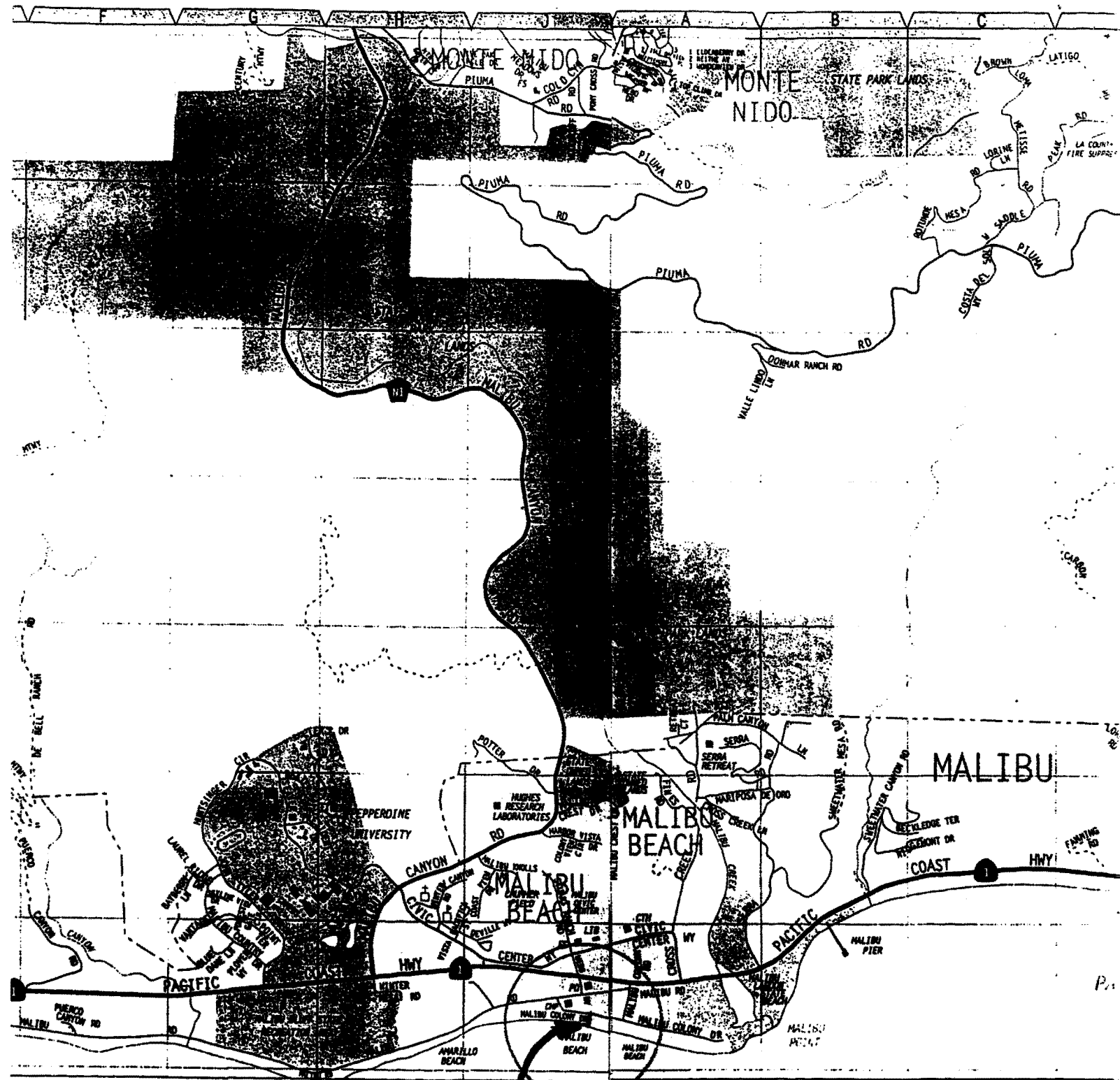
LOCATION MAP

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County of Los Angeles

Sheet 2 of 5



PROJECT
SITE

EXHIBIT NO. 2

APPLICATION NO.
4-46-885

Project
Location

BEACH

Existing Residence

NEW -
ADDITION

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EXHIBIT NO. 3

APPLICATION NO. **9-96-005**

Site Plan

Malibu Colony Drive

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1st Floor Plan

CH CARTER ARCHITECT MR. AND MRS. SAM WYLY

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EXHIBIT NO. 5
APPLICATION NO. 4-96-005
2nd Floor
Plan

MR. AND MRS. SAM WYLY

17001 VENTURA BOULEVARD, ENCINO, CALIFORNIA

80 MALIBU COLONY ROAD, MALIBU, CALIFORNIA

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