

CALIFORNIA COASTAL COMMISSION

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



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 Staff: SPF-VNT *SR*
 Staff Report: 4-21-97
 Hearing Date: May 13-16, 1997
 Commission Action:

STAFF REPORT: CONSENT CALENDAR

Tu 4b

APPLICATION NO.: 4-96-178

APPLICANT: Constance Fearing

AGENT: Paul Soderburg

PROJECT LOCATION: 24342 Malibu Road, City of Malibu; Los Angeles County

PROJECT DESCRIPTION: Remodel existing single family residence with interior changes, exterior changes to a stairway and deck and construction of a fence. No changes to the existing bulkhead.

Lot area:	5,900 square feet
Building coverage:	2,400 sq. ft. existing
Pavement coverage:	2,150 sq. ft. existing
Landscape coverage:	900 sq. ft. existing
Parking spaces:	4 existing
Plan designation:	1 dua
Project density:	1 dua
Ht abv fin grade:	28 feet max., existing

LOCAL APPROVALS RECEIVED: Approval in concept from the City of Malibu; State Lands determination.

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains Land Use Plan.

SUMMARY OF STAFF RECOMMENDATION

The applicant is applying for a minor remodel to an existing single family residence with no additional square footage, and no seaward encroachment of any portion of the structure. The project has been reviewed by the City of Malibu and the State Lands Commission. The project raises no adverse environmental or visual issues. Staff recommends that the Commission approve the project with special conditions regarding the recordation of an assumption of risk deed restriction and a waiver of wild fire liability.

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 below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions.

1. Assumption of Risk Deed Restriction

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: (a) that the

applicant understands that the site may be subject to extraordinary hazard from wave run-up during storms, flooding and erosion 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 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. Wild Fire 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, 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.

A. Project Description and Background

This project is for a minor remodel of an existing single family residence on a beachfront lot on Malibu Road. The project does not involve an enlargement of the existing structure or a seaward encroachment of any portion of the building. Specifically, the project includes minor interior changes to some walls, the removal of an existing exterior stairway, changes to the exterior decking, and a fence on top of the existing bulkhead.

The existing, two story, 2,400 square foot single family residence was constructed in 1948. There have been no improvements on this site, and subsequently no coastal development permits. The lot is located on the seaward side of Malibu Road. There is existing public access to the east and the west of this lot. The neighboring lots are developed with single family residences.

B. Shoreline Development and Seaward Encroachment

The proposed project includes a remodel to the existing residence which does not involve seaward encroachment of the residence. All 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 applicable policies in this case are as follows:

Section 30251 of the Coastal Act states:

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 area 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.

Section 30211 of the Coastal Act 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.

Section 30212 of the Coastal Act states:

(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. Dedicated access way 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 access way.

The major access issue in such permits is the occupation of sand area by a structure, in contradictions of Coastal Act policies 30211, 30212, and 30221. 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 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 those impacts.

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 an ability to use and cause adverse impacts on public access such as above.

In this case, there is no seaward encroachment of any development. All improvements are within the existing footprint of the existing structure. No improvements are proposed for the existing bulkhead which is the furthest seaward extension of the structure. All other development is landward of the bulkhead. The bulkhead was constructed prior to the January 1, 1977 effectiveness date of the Coastal Act, as well as Proposition 20, and is aligned with the bulkhead to the immediate west which also pre-dates the Coastal Act and Proposition 20.

In order to avoid negative impacts on public access, the project must also not be located on public lands. Pursuant to Public Resources Code Sections 30401 and 30416, the State Lands Commission is the agency entrusted with management of all state lands, including tide and submerged lands; the Commission is compelled to both respect the State Lands Commission's assertion of jurisdiction over this area and to also avoid issuing a permit for the project which the Lands Commission has indicated could not be permitted. The project was reviewed by the State Lands Commission. The State Lands Commission asserts no claim 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. Therefore, the Commission finds that this development is consistent with the Sections 30211, 30212, and 30251 of the Coastal Act.

C. Geological Hazards

Section 30253 of the Coastal Act states:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, 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 on a sandy beach, and as such, is subject to flooding and wave damage from storm waves and storm surge conditions. However, no development is proposed further seaward than the existing structural footprint; no development is proposed for the bulkhead.

Taken literally, Section 30253 might require denial of any beachfront development, because on an eroding coast, no development can be assured of safety. While this decision would free the developer from the hazard of periodic storm waves, it would deny the applicant use of his property during the years when there are no storms, and deny the applicant the same use presently enjoyed by his neighbors. To carry out this policy, the Commission has generally required new development including additions to conform to a stringline, and in some cases to extend no further seaward than the existing house. As applied to beachfront development in past Commission actions, the

stringline, in most situations, limits extension of a structure to a line drawn between the nearest corners of adjacent structures and/or decks (emphasis added). In addition, the Commission has approved the "stringline policy" in the certified Malibu/Santa Monica Mountains Land Use Plan:

P153 On sites exposed to potentially heavy tidal or wave action, new development and redevelopment shall be sited a minimum of 10 feet landward of the mean high tide line. In a developed area where new construction is generally infilling and is otherwise consistent with LCP policies the proposed new structure may extend to the stringline of existing structures on each side.

Although the certified Malibu/Santa Monica Mountains Land Use Plan is no longer legally effective within the new City, many standards contained in the LUP are still applicable to development within the City and will continue to be used as guidance. The Commission has found the stringline policy to be an effective means of controlling seaward encroachment to insure maximum public access as required by Sections 30210 and 30211 and to protect public views and the scenic quality of the shoreline as required by Section 30251 of the Coastal Act.

In this case, the applicant's proposal does not involve a seaward encroachment. Nonetheless, the project is located on the beach and therefore subject to wave action and possible flooding. The project was reviewed by the City of Malibu and considered to be feasible from a geologically standpoint.

The Coastal Act recognizes that new development, such as the proposed additions, may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to establish who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

The Commission finds that due to the unforeseen possibility of wave attack, erosion, and flooding, the applicant shall assume these risks as a condition of approval, as outlined in special condition 1. Because this risk of harm cannot be completely eliminated, the Commission must require the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development.

Next, 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 (Special condition 2) 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 only as conditioned above to require the recordation of an assumption of risk deed restriction and the waiver of fire liability is this project consistent with Section 30253 of the Coastal Act.

D. Local Coastal Program

Section 30604(a) of the Coastal Act states:

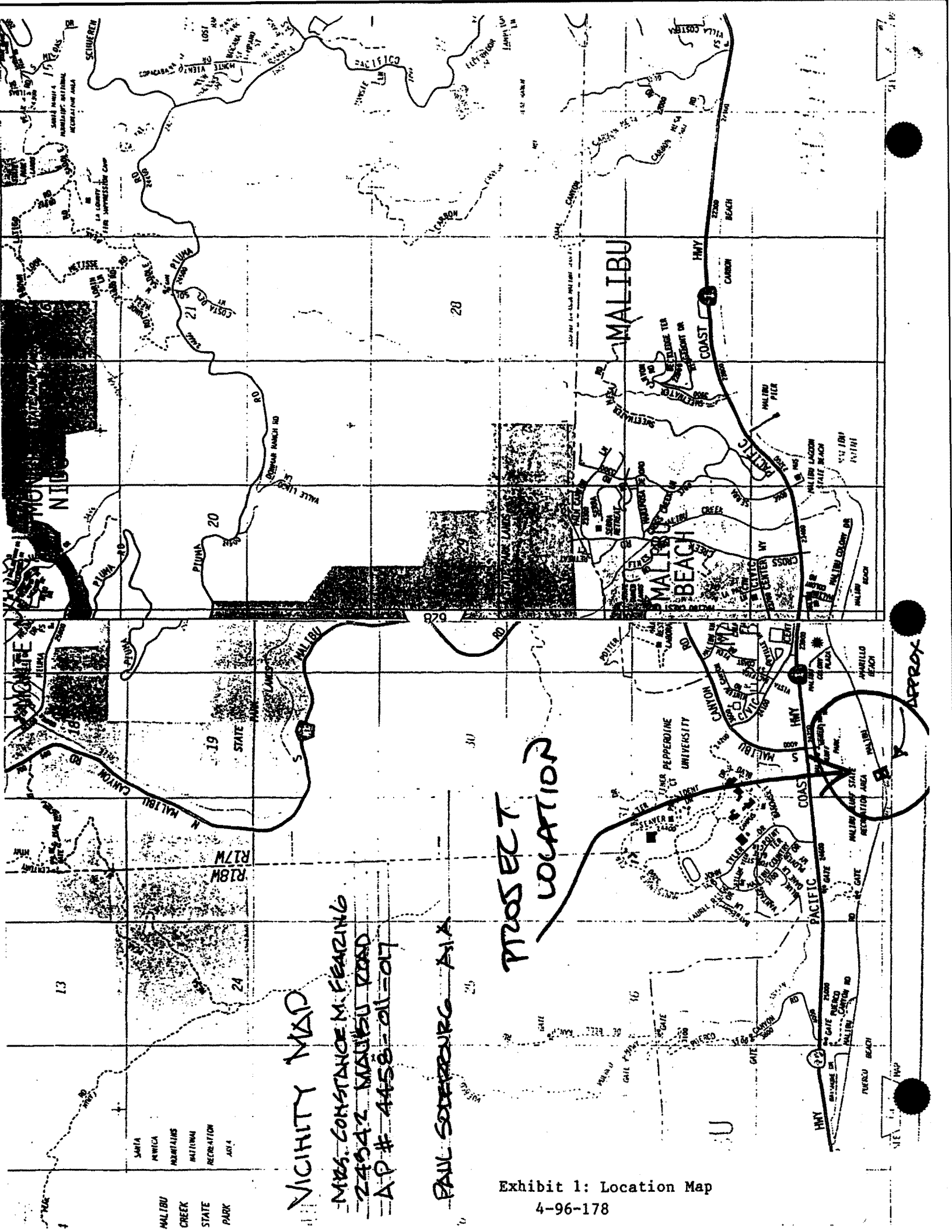
- (a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200 of the division and that the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

Section 13096 of the Commission's administrative 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 the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The proposed project, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been determined to be consistent with CEQA and the policies of the Coastal Act.



VICINITY MAP
 MRS. CONSTANCE M. FEARING
 24542 MALIBU ROAD
 AP # 4458-01-017

PAUL SOFFERBURG AIA

PROJECT LOCATION

- SANTA MONICA MOUNTAINS NATIONAL RECREATION AREA
- MALIBU CREEK STATE PARK

Exhibit 1: Location Map
 4-96-178

APPROX

PARCEL LOCATION

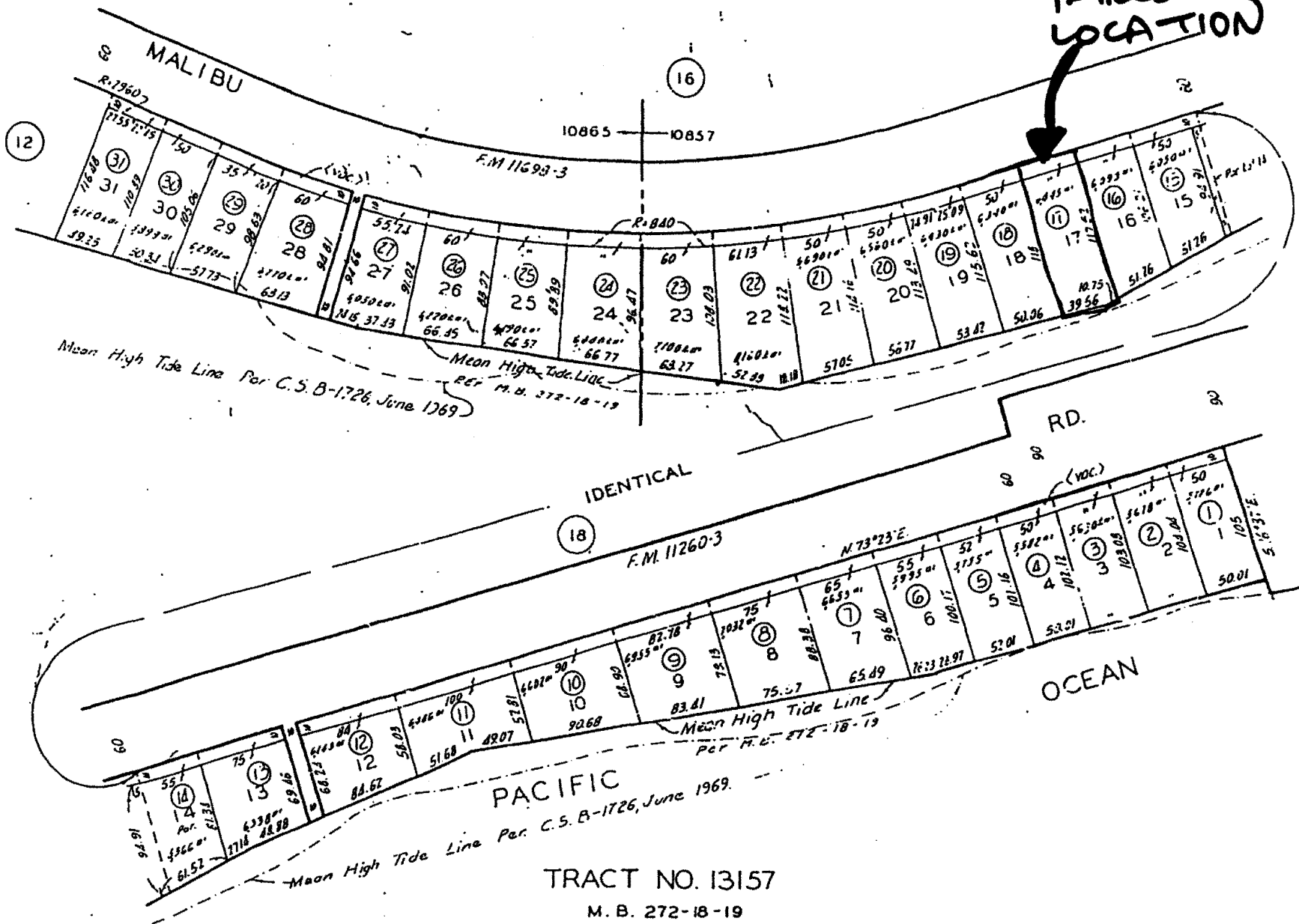


Exhibit 2: Parcel Map

4-96-178

CODE
10857
10865

FOR PREV. ASSM'T. SEE:
4458 - 11

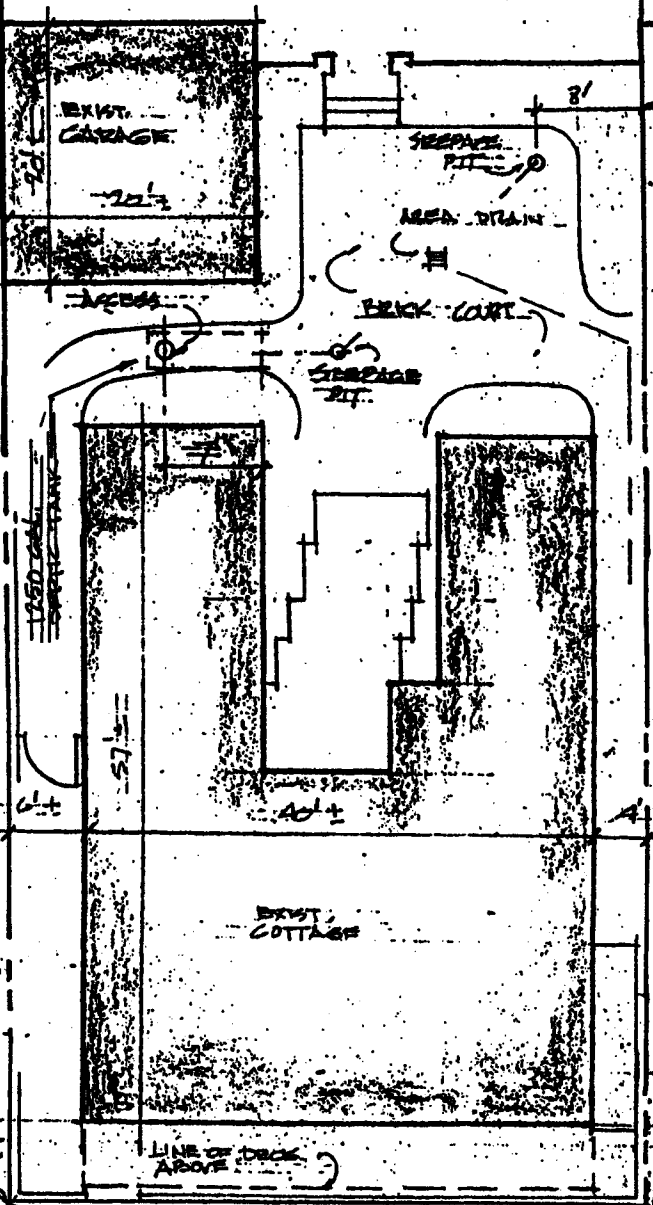
TRACT NO. 13157
M. B. 272-18-19

MALIBU ROAD

90'

50.5' 73.23' E

Prop. Line
516' 37.00' E



THE REMODEL OF BEACH COTTAGE FOR
MRS. CONSTANCE FEARNS
 24342 MALIBU ROAD
 MALIBU, CALIFORNIA
PAUL SODERBERG AIA
 SANTA BARBARA, CALIFORNIA
 (805) 565-1235



PILOT PLAN

AP # 4458-11-17

T&C ON FACE OF VERTICAL SEA WALL

HIGH TIDE LINE NOT ESTABLISHED BY SURVEY

SEE QUIROS SURVEYING #506-23 (310) 456-8022