

**CALIFORNIA COASTAL COMMISSION**

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

Filed: 4/17/97  
 49th Day: 6/5/97  
 180th Day: 10/14/97  
 Staff: CAREY  
 Staff Report: 4/22/97  
 Hearing Date: 5/13-16/97  
 Commission Action:

STAFF REPORT: CONSENT CALENDAR

Tu 4e

APPLICATION NO.: 4-97-062

APPLICANT: Walter and Hildy Hill

AGENT: J. Stuart Hilliard, Inc.

PROJECT LOCATION: 31368 Broad Beach Road, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Demolition of an existing residence and construction of a 3,383 sq. ft., 31 ft. high from existing grade single family residence with 2-car garage, patio and septic system on a beachfront lot developed with a vertical seawall.

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|---------------------|----------------|
| Lot area:           | 10,719 sq. ft. |
| Building coverage:  | 1,809 sq. ft.  |
| Pavement coverage:  | 2,400 sq. ft.  |
| Landscape coverage: | 800 sq. ft.    |
| Parking spaces:     | 4              |
| Ht abv ext grade:   | 31 ft.         |

LOCAL APPROVALS RECEIVED: City of Malibu Approval in Concept, Environmental Health Department In-Concept Approval, Geologic Review Sheet

SUBSTANTIVE FILE DOCUMENTS: 4-93-012 (Hill), Geotechnical Engineering Report, dated 1/22/97, prepared by-RJR Engineering Group, Inc., Wave Design Report, dated 12/20/96, prepared by Noble Consultants, Inc.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission approve the proposed project with special conditions regarding geology and wildfire waiver of liability. The proposed project will not extend development any further seaward than existing development adjacent to the project site. The applicants' geologic consultants have determined that the proposed project will be safe from geologic hazard so long as their recommendations are incorporated into the final project design. Staff recommends that the applicants be required to submit evidence of the consultants' review and approval of the final plans. Further, the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wildfire. Staff recommends that the applicants be required to acknowledge and assume the liability from this risk. If the project is so conditioned, staff recommends that the Commission find the proposed project consistent with the Sections 30210, 30211, 30212, 30251, and 30253 of the Coastal Act.

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 Conditions.

#### 1. Plans Conforming to Geologic Recommendation

All recommendations contained in the Geotechnical Engineering Report, dated 1/22/97, prepared by RJR Engineering Group, Inc. and the Wave Design Report, dated 12/20/96, prepared by Noble Consultants, Inc. shall be incorporated into all final design and construction including foundations, 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 consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

#### 2. 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 applicants propose the demolition of an existing residence and the construction of a 3,383 sq. ft., 31 ft. high from existing grade single family residence with 2-car garage, patio and septic system on a beachfront lot developed with a vertical seawall. The proposed project site is located near the west end of Broad Beach in the City of Malibu.

The applicant has submitted evidence of the City of Malibu's Approval in Concept for the proposed project as well as preliminary in-concept approval from the City's Environmental Health Department for the new septic system.

The Commission has previously approved Permit 4-93-012 (Hill) for the removal of an existing, unpermitted, rock revetment and the construction of a vertical bulkhead to protect the existing residence on the subject project site. The Commission granted a total of five permits (4-93-012, 013, 014, 107 and 111) for the construction of vertical bulkheads on four contiguous parcels (including the subject site) and one non-contiguous parcel. These permits were

approved with Special Conditions relating to revised plans, assumption of risk, construction responsibilities and debris removal, condition compliance and removal of rock revetment timing.

B. Public Access and Seaward Encroachment.

Coastal Act Section 30210 states that:

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.

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 the 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.

Finally, 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. 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.

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 substantially impede the achievement of the State's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate these impacts.

The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access of such projects can include among others, encroachment on lands subject to the public trust 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 the proposed project, the proposed residence will not extend development any further seaward than the existing structures on the project site nor will it extend development further seaward than the existing structures on the upcoast and downcoast sides of the proposed project site. Further, the Commission has previously approved the construction of a vertical bulkhead across the property which ties into an identical bulkhead located on the properties upcoast and downcoast of the project site to protect the existing residence. The applicants propose no other protective devices.

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.

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 the scenic quality of the shoreline as required by Section 30251 of the Coastal Act.

The applicant has submitted a stringline map which connects the existing adjacent structures both upcoast and downcoast of the proposed residence. The proposed residence will be located behind the structure stringline. The proposed deck will be located behind the deck stringline. All proposed development will be located behind the approved vertical bulkhead. As such, the proposed project will not extend development further seaward than adjacent development, minimizing potential impacts to public access opportunities, public views and the scenic quality of the shoreline.

Finally, the Commission found in its approval of the existing vertical seawall that a requirement of a public access easement was not appropriate. The Commission found that because the bulkhead would be subject to wave action only during severe winter storms, and because of the landward location of the seawall in relation to the mean high tide line and MSL marks, it would not have adverse impacts on public access. Since the subject proposed residence will not extend development further seaward than the approved bulkhead, it likewise will have no significant impacts on public access.

For all of these reasons, the Commission finds that the project would have no individual or cumulative adverse impacts on public access. Therefore, the Commission finds that a condition to require lateral access is not appropriate and that the project, as proposed, is consistent with Coastal Act Sections 30210, 30211, 30212 and 30251.

#### C. Geologic Stability/Coastal 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 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. Further, oceanfront sites are also subject to flooding and erosion from storm waves.

The applicant proposes the demolition of an existing single family residence on a beachfront parcel and the construction of a new residence. The applicant proposes the construction of a new foundation consisting of cast-in-place reinforced concrete piers to support the new residence. The applicant has submitted a Geotechnical Engineering Report, dated 1/22/97, prepared by RJR

Engineering Group, Inc which addresses the proposed project. The applicant has also submitted a Wave Design Report, dated 12/20/96, prepared by Noble Consultants which addresses the adequacy of the existing seawall to provide protection for the proposed development. Finally, the applicant has submitted a Geology and Geotechnical Engineering Review Sheet which provides evidence of the City of Malibu Geologist's review and approval in-concept of the geotechnical analysis.

The applicants' consultants determined that the proposed project site is suitable from a geotechnical engineering standpoint for construction of the proposed residence, provided their recommendations regarding foundations, excavations, retaining walls, slabs, and drainage are incorporated into the final project design. The applicant's geotechnical engineering report states that:

Based on the results of this investigation, the proposed residence is feasible from a geologic and geotechnical engineering standpoint.

With regard to the Wave Design Report, the coastal engineering consultants state that the existing vertical seawall was designed to withstand impacts associated with a 50 to 100 year return interval storm event as well as to minimize the amount of water which could overtop the seawall during such storm events. The consultants recommend that the minimum first floor elevation of 16.5 feet for the proposed residence. They make additional recommendations regarding yard grade and drainage.

Based on the recommendations of the consulting engineering geologists and coastal engineers, the Commission finds that the development is consistent with Section 30253 of the Coastal Act so long as the consultant's recommendations are incorporated into project plans. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by the consulting Engineering Geologist and Coastal Engineers as conforming to their recommendations.

Even though the consultants have determined that the project site will be free of geologic hazards, the Commission cannot absolutely acknowledge that the proposed residences 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.

In the case of properties in areas of known hazard, applicants 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. The Commission has consistently required that permits for development in areas with known hazards be conditioned to require the applicants to assume risk of failure, and 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 takes the form of an assumption of risk deed restriction recorded against the applicant's property. In this case, the applicants have already recorded an assumption of risk deed restriction as a condition of Permit 4-93-012 for the construction of the vertical bulkhead. This deed restriction acknowledged that the applicants understand that the project site may be subject to extraordinary hazard from storm waves, erosion, or flooding. The applicants further waived any future claims of liability against the Commission or its successors in interest for damage from such hazards. As such, the Commission finds that it is not necessary to require the applicants to record such a deed restriction for the proposed residence since they have previously acknowledged the hazards to which the site may be subject.

However, 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. Only as conditioned to provide evidence of the consultants' review of the final plans and to provide the wildfire waiver of liability is the proposed development consistent with Section 30253 of the Coastal Act.

#### D. Septic System.

The Commission recognizes that the build-out of lots in Malibu, including beachfront lots, and the resultant installation of septic systems to serve such development, may contribute to adverse health effects and impacts to water quality. Section 32031 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.

The applicant proposes the construction of a new septic system to provide sewage disposal for the proposed residence. The applicant's geologic reports conclude that the proposed project site would provide adequate percolation for the proposed septic system. Additionally, the applicant has received in-concept approval for the septic system design from the City Environmental Health Department. This approval indicates that the proposed design meets the standards of the health and plumbing codes. The Commission has found, in past permit decisions, that adherence to these codes would assure that impacts to human health and marine resources are minimized. Therefore, the Commission finds that the proposed project, meeting these codes, is consistent with Section 30231 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 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).

F. 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.

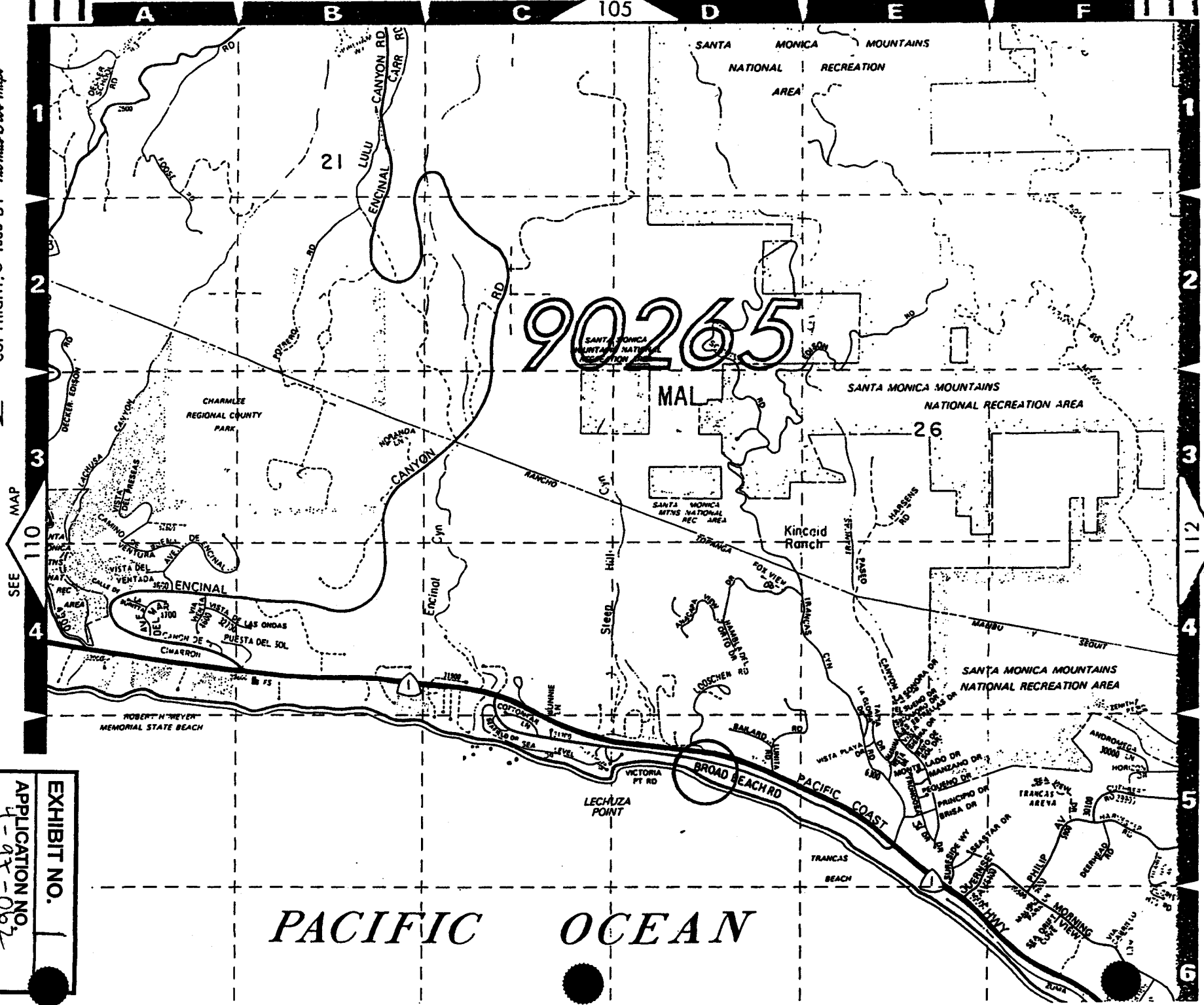
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SEE 105 MAP

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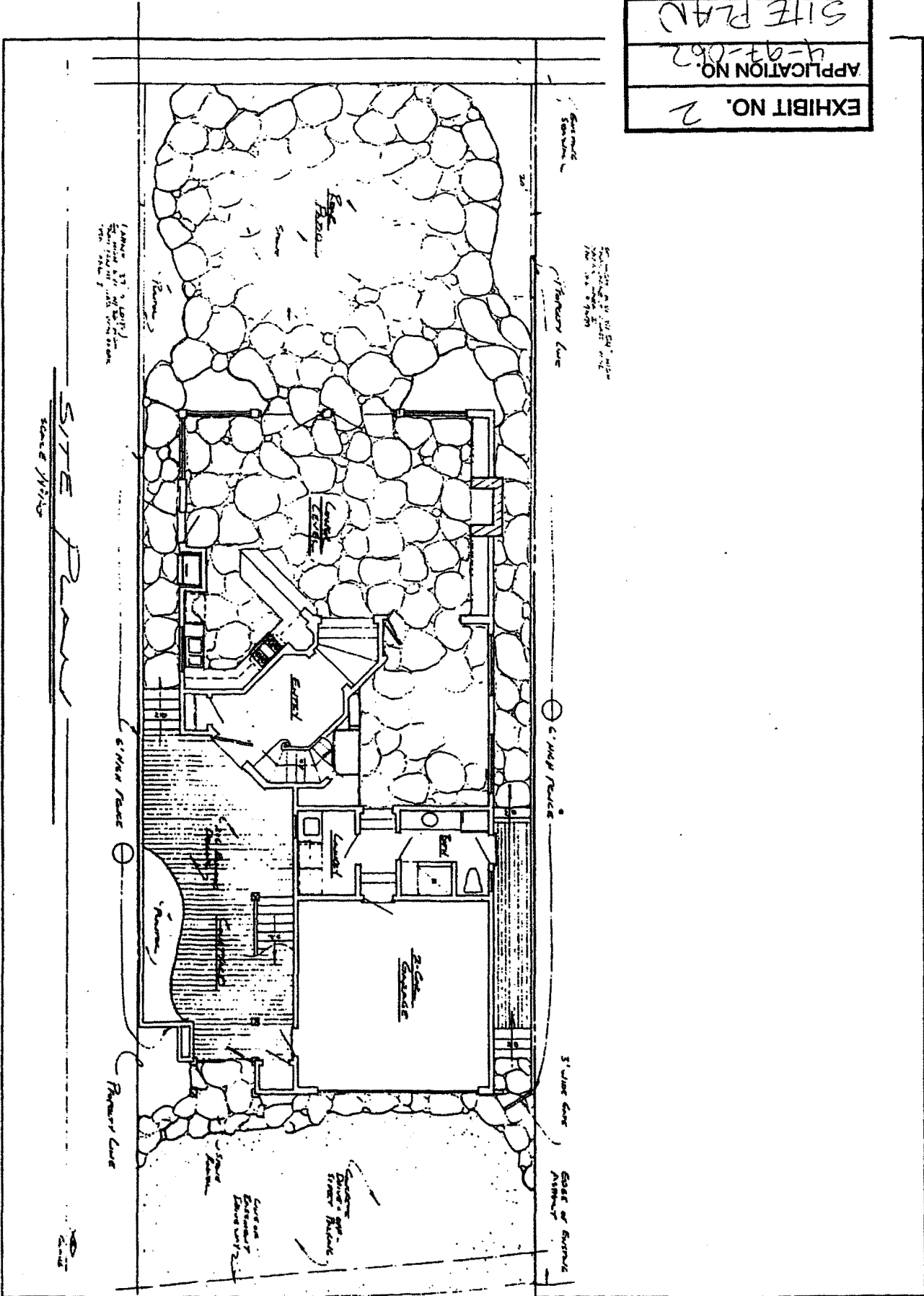


DETAIL

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| EXHIBIT NO.     | 1        |
| APPLICATION NO. | 4-95-062 |
| VICINITY        |          |

PACIFIC OCEAN

EXHIBIT NO. 2  
 APPLICATION NO. 4-97-067  
 SITE PLAN



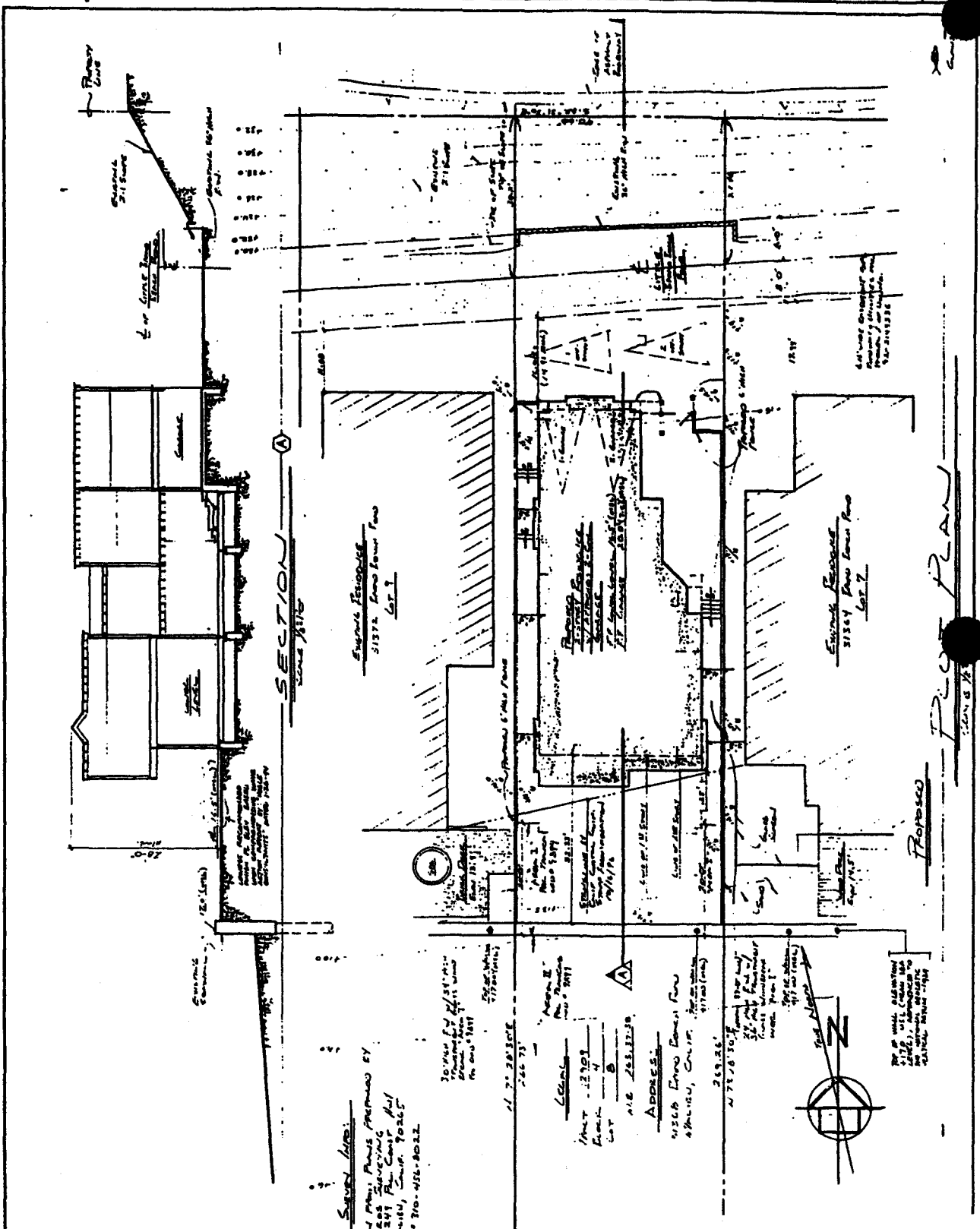
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 SHEET # 2 OF 2

REVISIONS  
 1/2/76  
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DESIGNED FOR  
 Vance & Moor Hill  
 31363 Stone Lakes Road  
 Northridge, Calif 91325

J. STUART HILLIARD INC.  
 522 S. SEPULVEDA BLVD. #111  
 WEST LOS ANGELES, CA 90049

JSH  
 PHONE # 471-7585  
 182031



Survey Maps:  
 30' x 60' Plan, Permitted by  
 County of Los Angeles  
 21581 Plan, County of  
 Alhambra, Calif. 90225  
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EXHIBIT NO. 3  
 APPLICATION NO.  
 4-97-062  
 Cross section