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**CALIFORNIA COASTAL COMMISSION**

TH CENTRAL COAST AREA  
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Staff: CAREY *[Signature]*  
Staff Report: 5/19/97  
Hearing Date: 6/10-13/97  
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

**APPLICATION NO.: 4-97-085**

**APPLICANT:** Dick and Dolly Martin

**AGENT:** Dave Maynard

**PROJECT LOCATION:** 31026 Broad Beach Road, City of Malibu, Los Angeles County

**PROJECT DESCRIPTION:** Demolition of existing garage, construction of 3-car garage with 368 sq. ft. of interior storage and 750 sq. ft. guest unit above, replacement of existing septic system, and no grading on a beachfront lot developed with a single family residence.

Lot area:	13,450 sq. ft.
Building coverage:	2,450 sq. ft.
Pavement coverage:	3,093 sq. ft.
Landscape coverage:	1,484 sq. ft.
Parking spaces:	3
Ht abv ext grade:	24ft., 9 in.

**LOCAL APPROVALS RECEIVED:** City of Malibu Approval in Concept, Preliminary Health Services Approval

**SUBSTANTIVE FILE DOCUMENTS:** Geologic and Soils Engineering Exploration, dated 2/19/97, prepared by Grover Hollingsworth and Associates, Inc.

**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends that the Commission approve the proposed development with Special Conditions regarding geologic stability, wildfire waiver of liability, and future improvements. As conditioned, the proposed project will be consistent with all applicable Coastal Act policies.

**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

**I. Approval with Conditions.**

The Commission hereby grants a permit, subject to the conditions below, 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 the first public road nearest the shoreline and is in conformity 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. **Future Improvements**

Prior to issuance of the Coastal Development Permit, the applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, which provides that Coastal Development Permit 4-97-085 is for the approved development only and that any future improvements or additions to the garage/guest unit structure will require a permit from the Coastal Commission or its successor agency. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens or any other encumbrances which the Executive Director determines may affect the interest being conveyed.

2. **Plans Conforming to Geologic Recommendation**

All recommendations contained in the Geologic and Soils Engineering Exploration, dated 2/29/97, prepared by Grover Hollingsworth and Associates, 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.

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.**

The applicants propose the demolition of their existing 2-car garage and the construction of a new structure containing a 3-car garage with 368 sq. ft of interior storage on the ground level, and a 750 sq. ft. guest unit on the second level. The proposed project also includes upgrading the existing septic system and no grading. The proposed garage structure will be located on the landward side of the property. The proposed project site is located on a beachfront lot developed with a single family residence on the east end of Broad Beach in the City of Malibu.

The applicants have 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 septic system improvements.

##### **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 public tideland areas.

In the case of the proposed project, the proposed garage/guest unit structure is located adjacent to the street, landward of the existing residence. The applicants do not propose any additions or modifications to the existing residence. As such, the proposed project will obviously 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.

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.

In this case, the stringline requirement is not appropriate since the proposed structure will be located landward of the existing residence. As such, it is clear that the proposed development will not extend development any further seaward.

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/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 beachfront 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 2-car garage on a beachfront parcel developed with a single family residence and the construction of a new 3-car garage with storage and a 750 sq. ft. guest unit above. The applicant has submitted a Geologic and Soils Engineering Exploration, dated 2/29/97, prepared by Grover Hollingsworth and Associates, Inc. which addresses the geologic stability of the proposed project site.

The applicants' consultants determined that the proposed project site is suitable from a geologic and soils engineering standpoint for construction of the proposed garage/guest house structure, provided their recommendations are incorporated into the final project design. The applicant's geologic report states that:

The subject property is considered a suitable site for the proposed development from a geologic and soils engineering standpoint. It is the opinion of the undersigned that the proposed development will be safe against hazards from landslide, settlement or slippage, and that the proposed development will not have an adverse effect on the geologic stability of the property outside the building site provided our recommendations are followed during construction. This opinion is based upon the findings of our investigation.

Based on the recommendations of the consulting geologists and geotechnical 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 geologists and geotechnical engineers as conforming to their recommendations.

Even though the consultants have determined that the project site will be free of geologic hazards, the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire. In the Malibu area, many wildfires that originated in the Santa Monica Mountains have burned their way to the sea, destroying or damaging beachfront structures. As such, the Commission can only approve the proposed 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.

In addition to the risk of wildfire, the Commission has found 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 past permit actions, the Commission has consistently required that permits for development in areas with known hazards, such as wave and flooding hazards, be conditioned to require the applicants to assume the 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 proposed project is located on the widest end of Broad Beach, behind a wide sandy beach and vegetated dune field. Furthermore, the proposed garage/guest house structure is located adjacent to the road, landward of the existing residence. As such, the Commission finds that it is not appropriate in this case to require the applicant to record an assumption of risk deed restriction as the proposed structure is not subject to extraordinary hazard from waves.

In conclusion, the Commission finds it necessary to require that the applicants provide evidence of the consulting geologists' review and approval of the final plans. Further, the applicants must acknowledge the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development by submitting the wildfire waiver of liability. The Commission finds that only as so conditioned is the proposed development consistent with Section 30253 of the Coastal Act.



**D. Guesthouse.**

The proposed project involves the demolition of an existing 2-car garage and the construction of a 3-car garage with storage and a 750 sq. ft. guest house above which are defined under the Coastal Act as new development. New development raises issues with respect to cumulative impacts on coastal resources. In particular, the construction of a second unit on a site where a primary residence exists can intensify the use of a site and can impact public services, such as water, sewage, electricity and roads. Section 30250(a) of the Coastal Act states:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of the surrounding parcels.

Section 30105.5 of the Coastal Act defines the term "cumulatively," as it is used in Section 30250(a), to mean that:

the incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The issue of assuring the consistency of second units on lots with primary residences with the new development policies of the Coastal Act has been a topic of local and statewide review and policy action by the Commission. These policies have been articulated in both coastal development permit conditions and policies and implementing actions of LCPs. In the case of the Malibu area, the Commission has, in past permit actions, found that if the maximum size of second units is restricted to 750 sq. ft., cumulative impacts to coastal resources through increased use of the site, use of public services, and traffic are minimized.

The Commission notes that potential future impacts on coastal resources and coastal access might occur with any further development of the subject property. Impacts to coastal resources from increased traffic, sewage disposal, recreational use, could be associated with the conversion of the proposed storage areas to a residential use or an increase in the size of the proposed guest unit. In order to ensure that impacts to coastal resources can be minimized, any modifications to the garage or guest unit must be reviewed by the Commission. Therefore, the Commission finds it is necessary to require the applicants to record a future

improvements deed restriction that limits future modifications to the garage/guest house structure, subject to the Commission's review. The Commission finds that only as conditioned is the proposed project consistent with Section 30250(a) of the Coastal Act.

**E. 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 replacement of the existing septic system with a new system to provide sewage disposal for the existing residence and the proposed one bedroom guest unit. 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.

**F. 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).

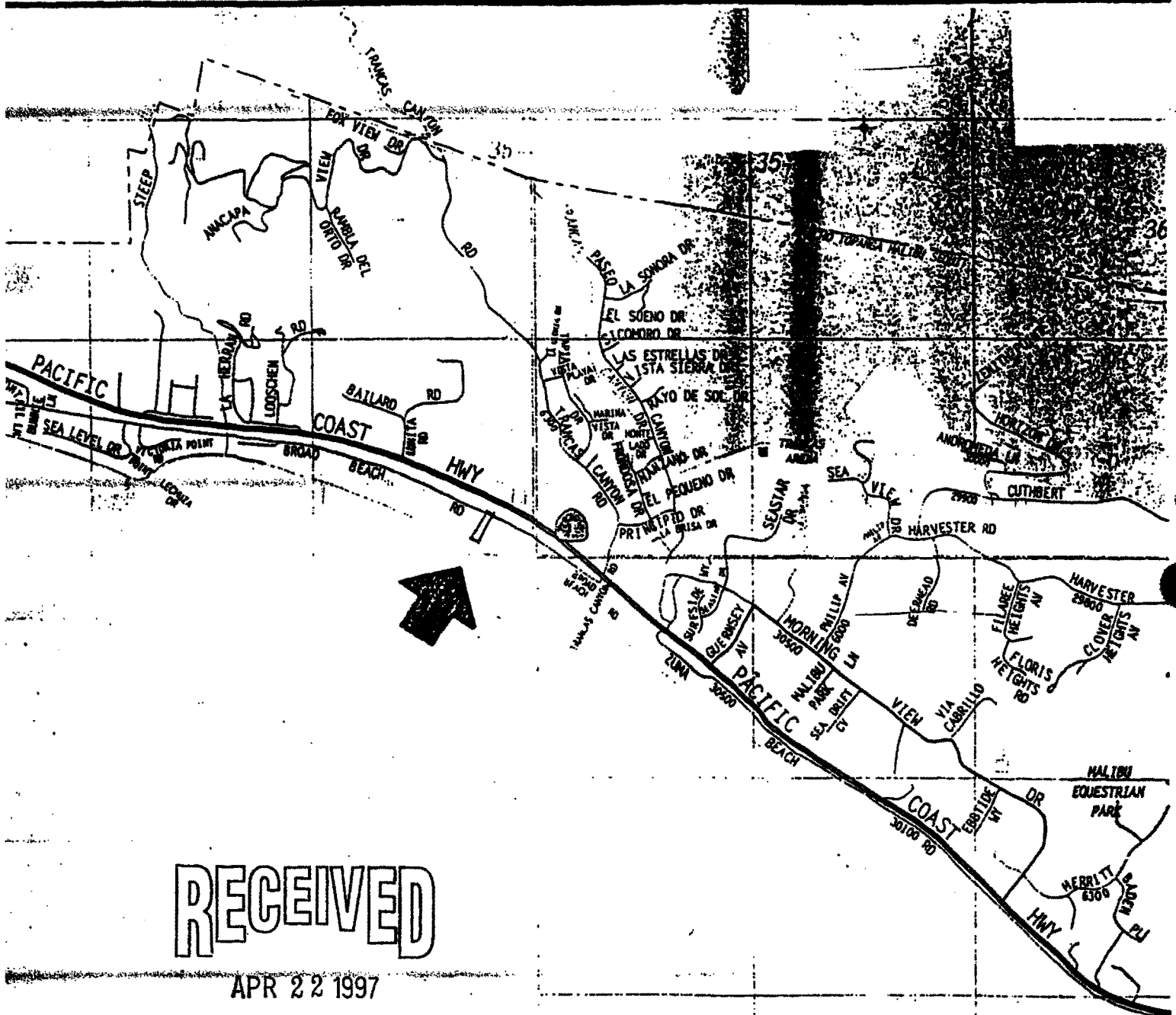
Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Development Permit only if the project will not prejudice the ability of the

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).

**G. 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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EXHIBIT NO.
APPLICATION NO. 4-97055
VICINITY MAP

