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CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Hearing Date: 6/10-13/97



STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 4-95-248 A2

APPLICANT: Bryan Turner AGENT: Michael E. Barsochini

PROJECT LOCATION: 22048 Pacific Coast Highway, City of Malibu, Los Angeles County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: 4-95-248: Addition of 88 sq. ft. lateral extension to existing deck, supported by new cast in place concrete piles, with steps to the beach within deck stringline to existing two story single family residence; 4-95-248 A: Addition of 23 sq. ft. within existing building envelope consisting of extension of dining room area into entry area, replacement of existing level two guardrail with glass guardrail, installation of skylights in existing master bedroom ceiling, and remodel of master bath with spa tub with overhead skylight.

DESCRIPTION OF AMENDMENT: Install maximum four foot high cedar and ten foot long fence to match the existing fence, alongside an existing stairway to the beach between the building stringline and the deck stringline along the beachfront. Install a trellis in the front yard adjacent to the existing garage.

LOCAL APPROVALS RECEIVED: City of Malibu Approval in Concept

SUBSTANTIVE FILE DOCUMENTS: Coastal development permits 4-95-248 and -248A (Turner) and 4-90-872 (Newbound).

SUMMARY OF STAFF RECOMMENDATION:

The proposed development is a fence addition on an existing stairway to the beach and a trellis in the front yard. The fence addition is within the stringline for beachfront development and raises no issue relative to access, visual quality, and hazards. Staff recommends approval with the conditions of the underlying permit remaining in effect.

PROCEDURAL NOTE:

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following resolution:

I. Approval

The Commission hereby approves the amendment to the coastal development permit on the grounds that the development 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.

NOTE: All special conditions of permits 4-90-248 and -248A (Turner) remain in effect.

III. Special Condition.

None

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Project Description and Background

The proposed development is located in the area of beachfront residential development in Malibu known as Carbon Beach. The area is downcoast from the

Malibu Pier and is characterized by a mixture of strip commercial and residential land uses on the inland side and residential uses on the seaward side of Highway 1. (Exhibit I)

The applicant proposes to install a maximum four foot high cedar fence alongside the existing ten foot long stairway to the beach. The addition above the stairway matches in style, but is half as high as, the previously approved eight foot high along the sideyard. The additional fence will be located between the building stringline and the deck stringline along the beachfront. The applicant also proposes to install a trellis in the front yard adjacent to the existing garage. (Exhibit II)

The property contains a two story single family residence. A first floor remodel, addition of a second floor, and enclosure of a side patio with a glass wind wall was authorized under coastal development permit 4-90-872 (Newbound). Coastal development permit 4-95-248 (Turner) permitted the addition of a 88 sq. ft. lateral extension to the existing deck, supported by new cast in place concrete piles, with steps to the beach within the deck stringline. Following this, permit 4-95-248 A (Turner) permitted the addition of 23 sq. ft. within the existing building envelope consisting of extension of dining room area into entry area and replacement of the existing guardrail on the second level with a glass guardrail, installation of skylights in the existing master bedroom ceiling, and remodel of the master bath with a spa tub with overhead skylight.

This item was originally scheduled as an immaterial amendment to be considered at the Coastal Commission meeting of May 13-16, 1997. An objection was made to the Executive Director's determination of immateriality which caused the item to be referred to the Commission.

B. Shoreline Development:Public Access/Coastal Views/Hazards.

The Coastal Act requires the Coastal Commission to ensure that each project provides maximum public access for every project. Applicable sections of the Coastal Act provide:

PRC Section 30210 states:

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.

PRC 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.

PRC Section 30251 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 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 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 in the area of beachfront residential development in Malibu known as Carbon Beach. As such, development of this site has 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 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 and the ability to use and cause adverse impacts on public access such as above.

In the case of previous development on the subject property, 5-90-872 (Newbound), as reviewed by the Coastal Commission, it was determined that the proposed development did not adversely affect public access. That development, consisting of a first floor remodel, addition of a second floor, and enclosure of a side patio, was more extensive overall than what is presently proposed, and did not include development seaward of the existing residence.

In the case of the proposed project, however, the fence will not extend further south than the existing stairway and thus not be a seaward extension of development. It would not extend beyond the stringline of decks of the adjacent residences in the area. 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. The proposed development does not include any shoreline protective devices that could adversely impact public access along the beach. Thus, 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.

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.

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.

The Commission has found the stringline policy to be 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 applicant is proposing a small addition to an existing stairway extending no further seaward and consistent with the stringline for decks on adjacent properties. The addition will augment the stairway in the existing location and may add some element of additional privacy. This minor increase in the appearance of the stairway will neither result in seaward intrusion of the residence nor extend beyond the stringline. Therefore, the Commission determines that the project as proposed is consistent with the relevant access and natural hazards policies of the Malibu LUP and the Coastal Act.

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. Because this risk of harm cannot be completely eliminated, the Commission often has required 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, shows that the applicant is aware of and appreciated the nature of the hazards which exist on the site and which may adversely affect the stability of safety of the proposed development.

However, in this case the assumption of risk deed restriction was required as a special condition for the development approved under the original permit. Consequently, no further waiver of liability is necessary.

Therefore, for all of the reasons set forth above, the Commission finds that the proposed development consistent with Section 30210, 30211, 30251 and 30253 of the Coastal Act.

C. Local Coastal Program

Section 30604 of the Coastal Act states that:

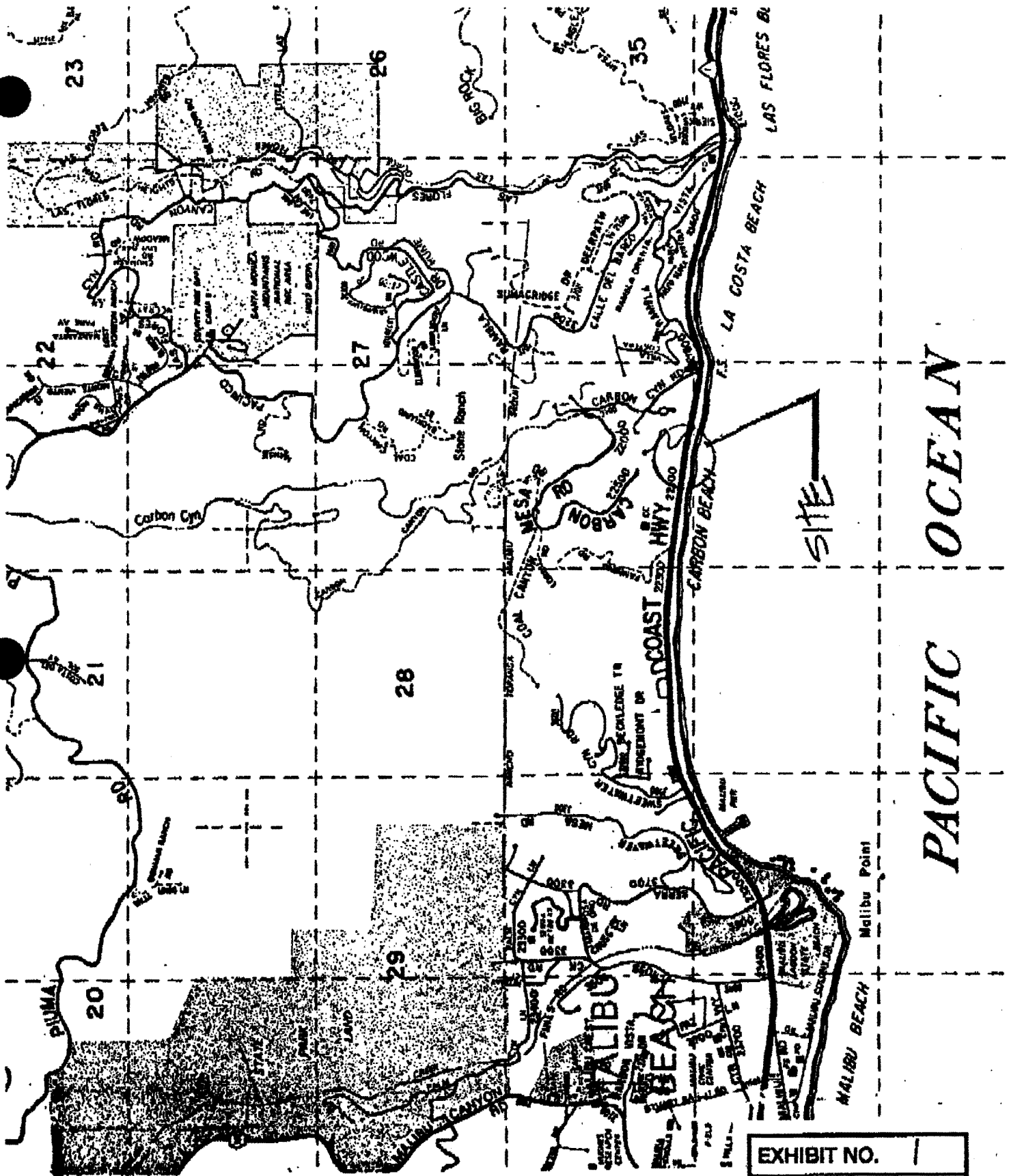
a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the 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 is in conformity with the provisions of Chapter 3. 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 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).

D. CEQA

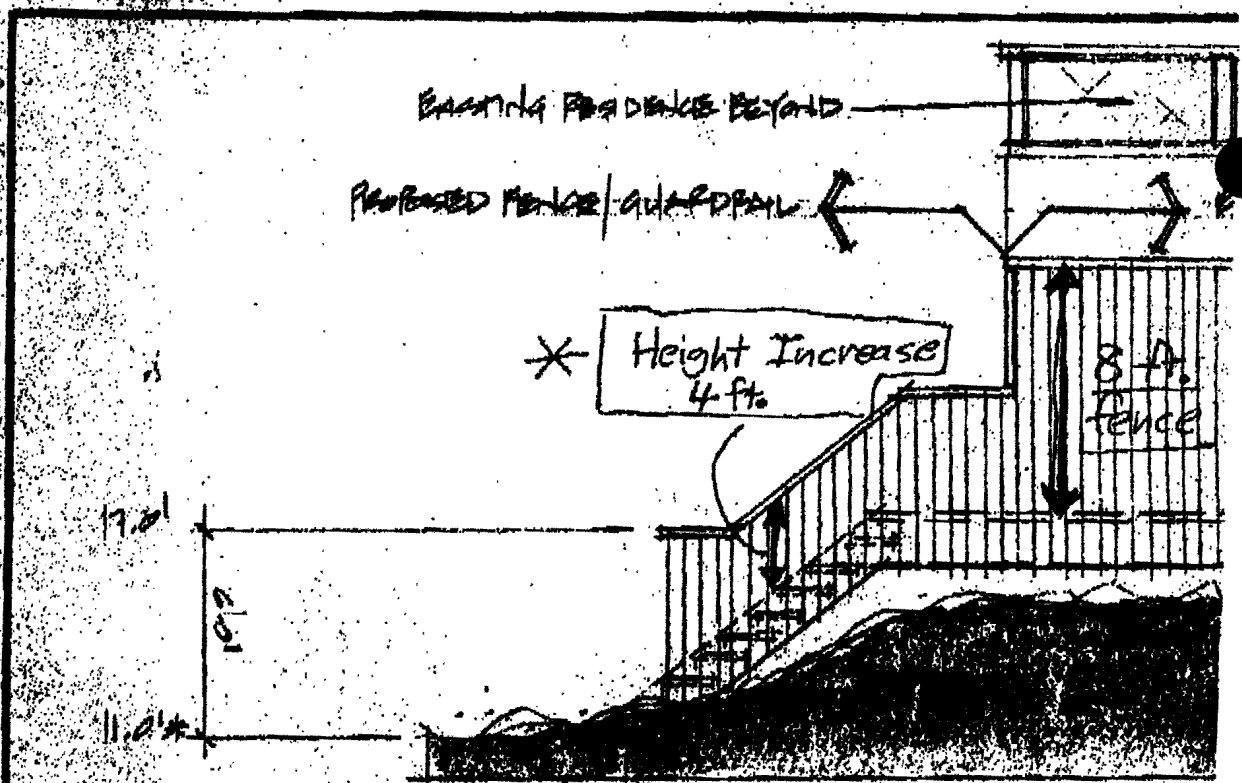
Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California 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.

There are no negative impacts caused by the proposed development which have not been adequately mitigated. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.



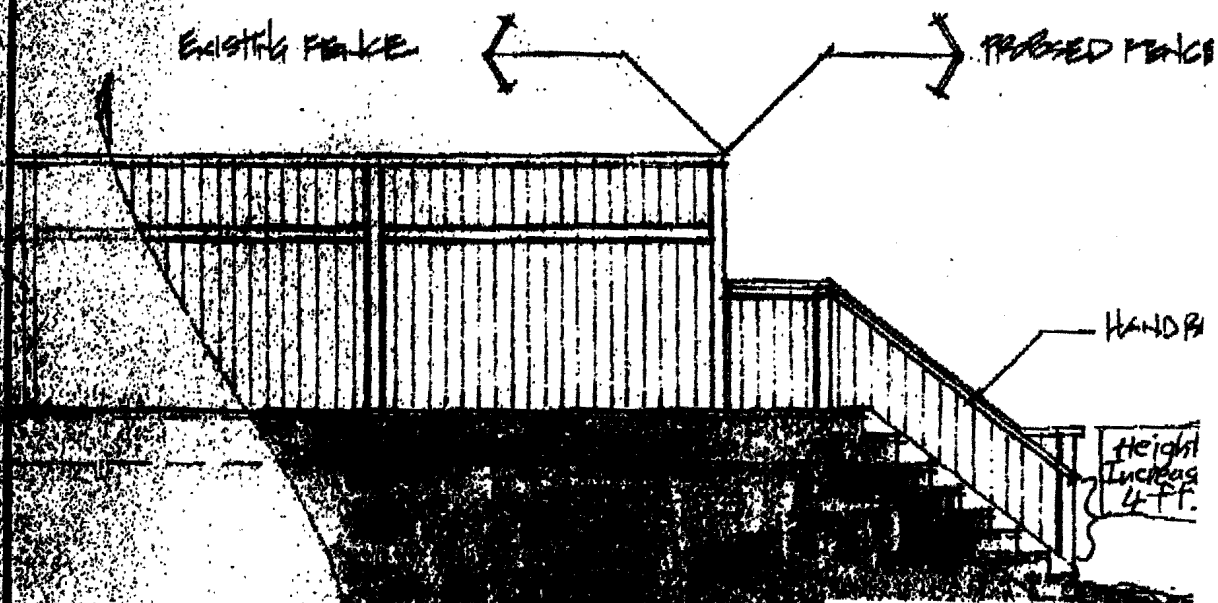
PACIFIC OCEAN

EXHIBIT NO.	1
APPLICATION NO.	
	4-95-248 A2 TURNER
Project Location	



WEST ELEVATION

* ELEVATION PROVIDED BY 22044 P.C.H.



EAST ELEVATION

EXHIBIT NO.	2
APPLICATION NO.	4-95-248 A2 Turner
Elevation	