

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
 SOUTH CALIFORNIA ST., SUITE 200  
 VENTURA, CA 93001  
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 Staff Report: 12-24-97  
 Hearing Date: January 12, 1997

**STAFF REPORT: CONSENT CALENDAR****M 3h**

APPLICATION NO.: 4-97-210

APPLICANT: John and Susan Montanaro AGENT: Jim Eserts

PROJECT LOCATION: 23916 Malibu Road, City of Malibu; Los Angeles County

PROJECT DESCRIPTION: Remodel the interior of an existing single family residence construct a 81 sq. ft. addition to the first floor of the residence, a 58 sq. ft. addition to the second floor deck, and add a 5 ft. 3 in. tall by 4 ft wide by 13 feet long architectural element to the existing roof.

Lot area:	5000 sq. ft.
Building coverage:	81 sq. ft. new proposed
Pavement coverage:	0 new proposed
Parking spaces:	0 new proposed
Landscape coverage:	0 proposed
Parking Spaces	2 existing
Project density:	81 sq. ft.
Ht abv fin grade:	24 feet

LOCAL APPROVALS RECEIVED: Approval-in-concept from the City of Malibu

SUBSTANTIVE FILE DOCUMENTS: Malibu/ Santa Monica Mountains Land Use Plan. Coastal Development Permit 4-96-178 (Fearing), Coastal Development Permit 4-94-135 (Roven).

**SUMMARY OF STAFF RECOMMENDATION:**

The applicant is applying for an interior remodel and minor addition to an existing single family residence. The footprint of the property will not be increased. The additional architectural element will not exceed the City of Malibu height requirement. 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 assumption of risk deed and a waiver of 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 governments 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. Assumption of Risk

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 that: (a) the applicant understands that the site may be subject to extraordinary hazard from storm waves, erosion, or flooding and the applicant assumes the liability from such hazards that; and (b) the applicant unconditionally waives any claim of liability on the part of the California Coastal Commission and agrees to indemnify and hold harmless the California Coastal Commission, its officers, agents and employees relative to the California Coastal 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 conveyed and 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.

3. Plans Conforming to Geologic Recommendation

All recommendations contained in the Foundation Investigation Report for Proposed Residential Re-model by RJR Engineering Group, Inc. dated October 10, 1997 shall be incorporated into all final design and construction plans including foundations, grading and drainage plans. ***Prior to the issuance of the coastal development permit***, the applicant shall submit for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans incorporates all of the recommendations specified in the above-referenced geologic evaluations approved by the California Coastal Commission for the project site

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Proposed changes to the approved final plans shall not occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

IV. Findings and Declarations.:

A. Project Description and Background

The applicant is proposing the remodel and addition of 81 sq. ft. to an existing 1,840 sq. ft. single family residence located on a beach front lot in the City of Malibu (Exhibit 1 and 2). In addition, the applicant is proposing an addition of 58 sq. ft. to the existing second story deck and the addition of an architectural structure that will be approximately 5 ft. 3 in tall, 4 ft. wide, and 13 in. wide. The project involves no changes to the septic system or grading. As proposed, there will be no change to the footprint of the existing residence. The seaward encroachment of the residence and the deck will remain within a stringline between the adjacent residences. With the architectural element the maximum height of the residence will be 24 ft, which is less than the 28 ft. limit imposed by the City of Malibu. There is an existing wood bulkhead and a deck located approximately 48 ft. seaward of the existing residence. The proposed addition will not extend beyond the bulkhead.

The existing two story house, 1,840 sq. ft. single family residence was constructed in 1968. There have been no improvements on this site, and subsequently no coastal development permits. The neighboring lots are developed with single family residences. The lot is located on the seaward side of Malibu Road

**B. Shoreline Development/ Seaward Encroachment/ Public Access**

All projects that require 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 reduced interference with access to and along the shoreline. Those policies that apply in this case are as follows:

**Section 30210:**

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.

**Section 30211:**

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:**

(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.

Section 30251:

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.

Public Access

The major access issue in such permits is the occupation of sand area by a structure. However, a conclusion that access may be mandated by Section 30212 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 out 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, the applicant is proposing a minor seaward extension of a existing single family residence. The proposed project includes the extension of the first floor of the residence by four feet seaward, extension of the second floor deck by three feet seaward, and add an architectural element on top of the existing roof. The first floor extension will inclose a portion of the first floor deck and, therefore, will be located within the existing footprint. All development is landward of the wooden deck and bulkhead located approximately 48 feet seaward of the existing structure. No improvements are proposed for the existing bulkhead

which is the furthest seaward extension of the property. 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 predates the Coastal Act. Therefore, the condition to require lateral access is not appropriate for this project.

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 30410 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 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. After reviewing the project, 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 Sections 30210, 30211, and 30212 of the Coastal Act.

### Seaward Encroachment

As a means of controlling seaward encroachment of residential structures on a beach in order to insure maximum public access, protect public views and minimize wave hazards as required by the Coastal Act, the Commission has developed the "stringline" policy to control the seaward extent of buildout in past permit actions. As applied to beach front development, the stringline limits extension of a structure to a line drawn between the nearest corners of the adjacent structures and limits decks to a similar line drawn between the nearest corners of the adjacent decks. In addition, the certified Malibu Land Use Plan, which is used as guidance by the Commission, includes the following stringline policy:

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

The Commission has applied this policy to numerous past permits involving infill in sandy beaches, and has found it to be an effective policy tool in preventing further and further encroachments onto sandy beach. In this case, the applicant is proposing to extend the first floor of the single family residence seaward by four (4) feet and the second floor balcony three (3) feet seaward. The applicant's proposed new construction of both the residence and the balcony are adequately setback within a stringline drawn between the existing structures and decks on either side of the proposed development and is therefore consistent with the stringline policy outlined in the certified LUP. Therefore, the Commission finds that the proposed development will be consistent with the relevant shoreline policies of the Coastal Act.

### Visual Impacts

For the proposed structures to be consistent with the visual resource protection policies of the Coastal Act the Commission must find that the structures, individually and cumulatively, do not

interfere with coastal views to and along the coastline, are visually compatible with their surroundings.

The subject property is located on the ocean side of Malibu Road in the Amarillo beach area. The adjacent properties to the east and west are developed with single family residences. Development across the street consists of a commercial shopping center. This proposed project includes the placement of an architectural structure that will be approximately 5 feet 3 inches tall, 4 feet wide, and 13 feet long. This structure will be placed on the landward side of the already existing roof. With this addition the maximum height of the building be 24 feet tall, which is less than the 28 foot height limit imposed by the City of Malibu. The proposed additions will not result in any adverse visual impacts and will be compatible with surrounding development. Therefore, the Commission finds that this development is consistent with section 30251 of the Coastal Act.

In summary, the Commission finds that as conditioned above the proposed additions are consistent with the access and visual resource policies 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. The proposed project is located on the sandy beach in Malibu, an area which is generally considered to be subject to an unusually high amount of natural hazards. Among these hazards include landslides, erosion, flooding and wave damage. The proposed development consists of the remodel and addition of 81 sq. ft. to an existing 1,840 sq. ft. single family residence and the addition of 58 sq. ft. to the second story balcony. The proposed seaward encroachment of the residence will remain behind the wooden deck and bulkhead. However, no development is proposed further seaward than the existing structural footprint; no development is proposed for the bulkhead.

Because of the inherent risks to development situated adjacent to an eroding shoreline, the Commission cannot absolutely acknowledge that the proposed development and existing seawall 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 does acknowledge 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 and therefore may involve the taking of some risk.

The Commission finds that due to the unforeseen possibilities of wave attack, erosion, and flooding, the applicant shall assume these risks as a condition of approval, as outlined in Special condition 1. Therefore, as conditioned to assume risk of failure, the applicants are required to waive any claim of liability against the Commission for any damage or economic harm suffered 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.

Furthermore, 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 applicant has submitted a Geotechnical Report, prepared by RJR Engineering Group, Inc., dated October 10, 1997 and an approval from the City of Malibu's Geologist dated July 31, 1997. The geotechnical report concludes that the project "...should be suitable from a geotechnical engineering standpoint as long as assumptions and recommendations made in this report are followed." Based on the findings and recommendations of the consulting geologist, the Commission finds that the proposed development is consistent with Section 30253 as long as all recommendations are incorporated into the project plans as noted in Special Condition 3. Therefore, Commission finds that only as setforth in the above conditions will the proposed development be consistent with Section 30253 of the Coastal Act.

D. 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).***

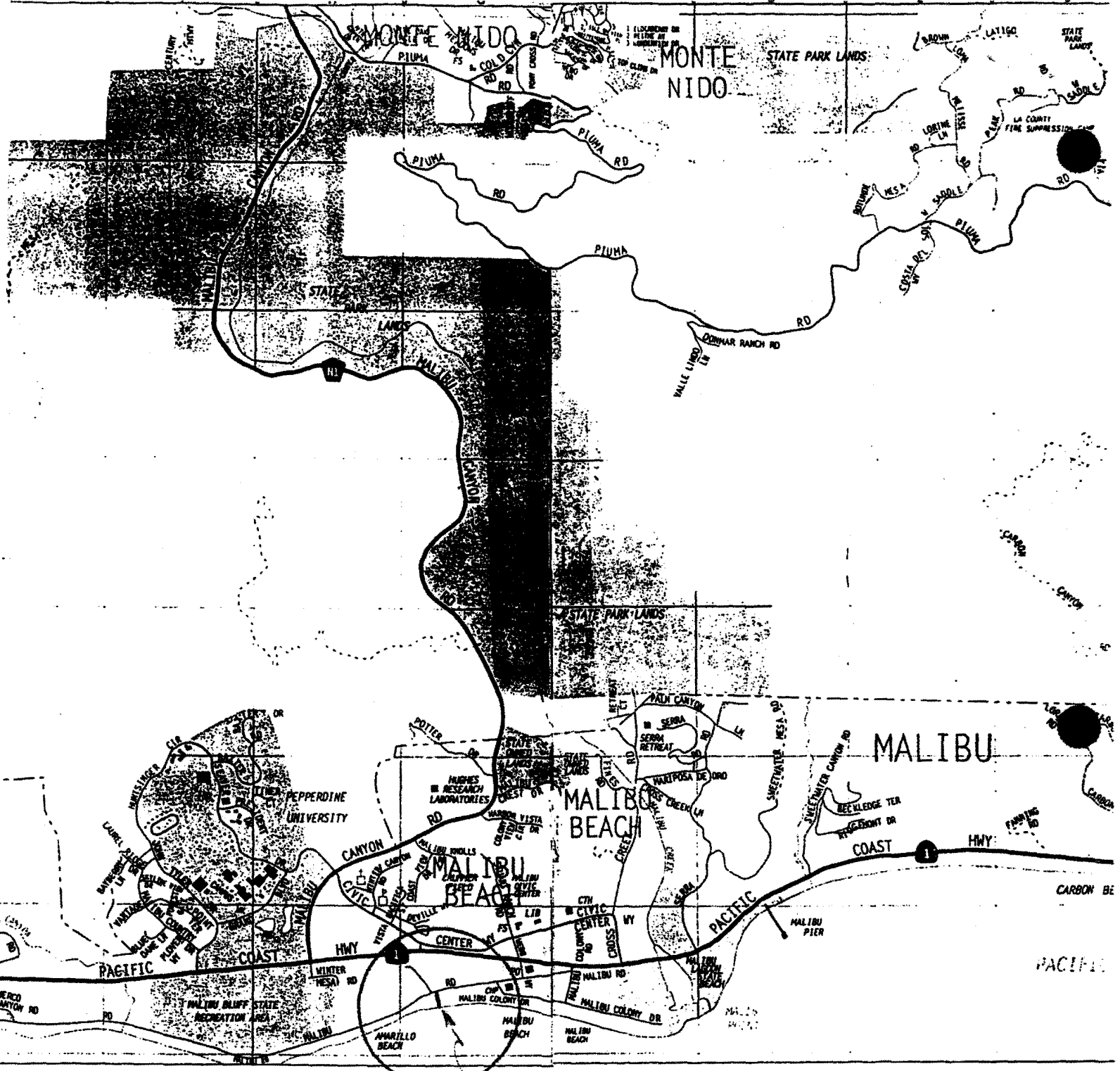
Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections 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 of Malibu's ability to prepare a Local Coastal Program which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).



E. 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.

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 adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.



SITE

EXHIBIT NO. 1
APPLICATION NO. 4-97-210
Location

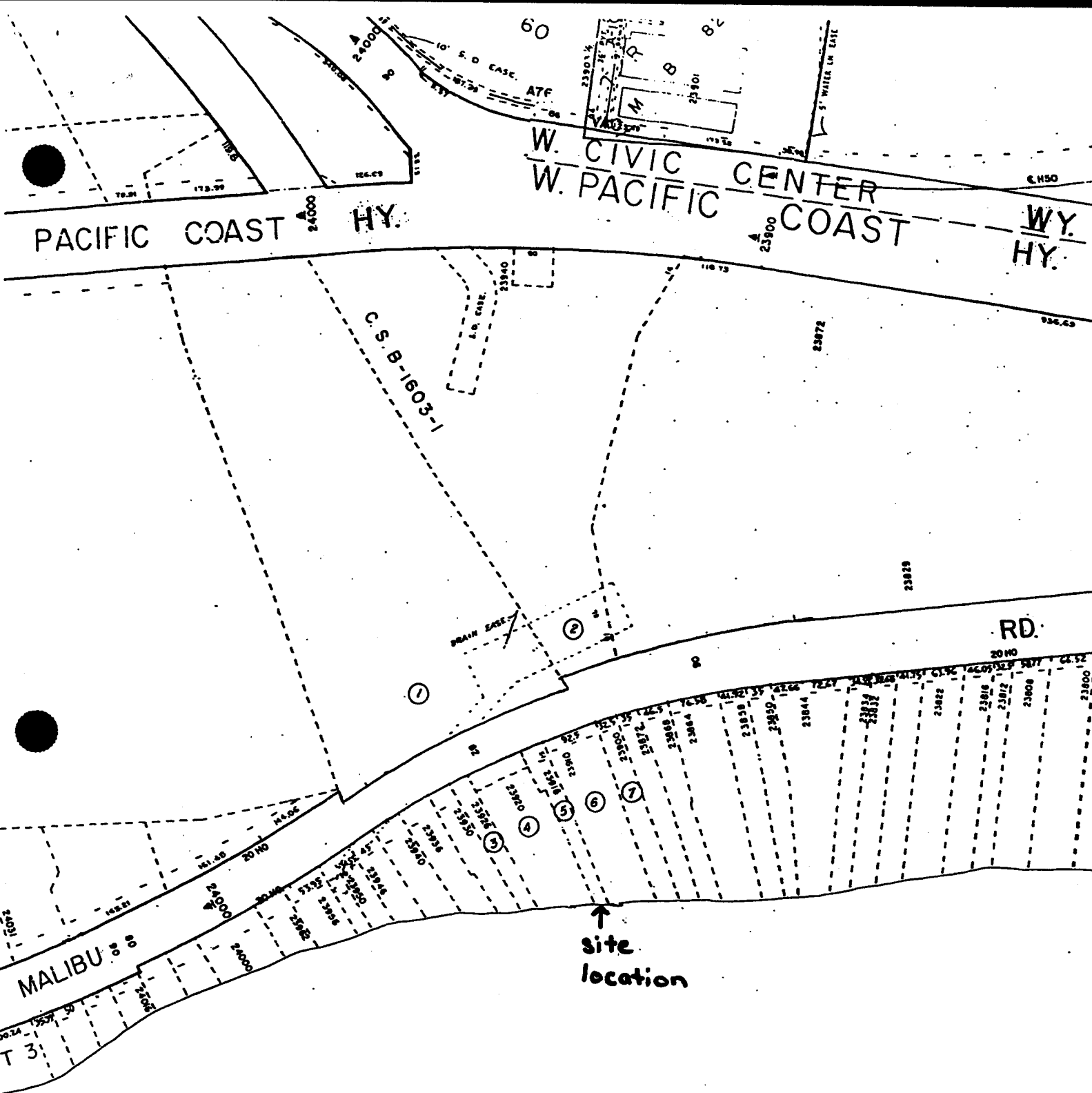


EXHIBIT NO. 2
APPLICATION NO.
4-97-210
Parcel map



of HALIBU ROAD

SITE PLAN

1" = 20'

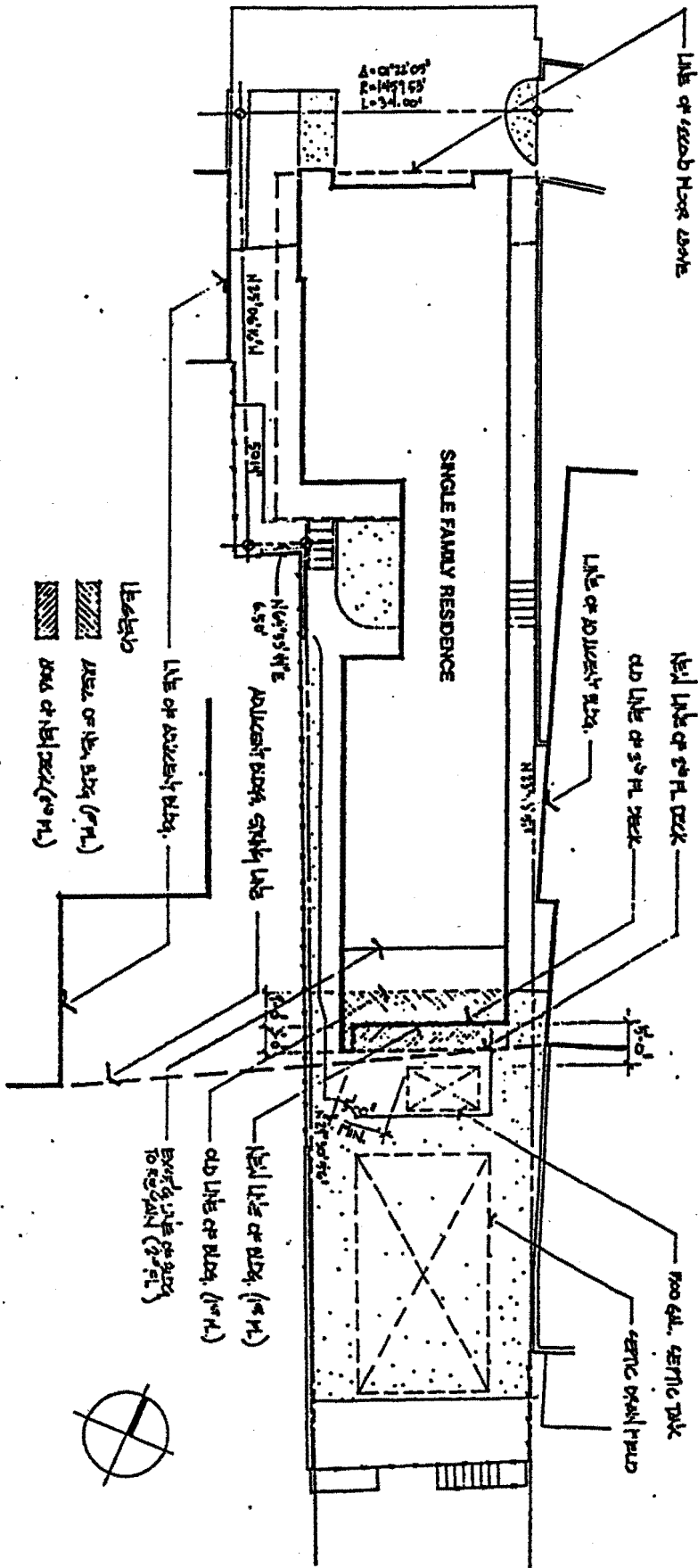


EXHIBIT NO. 3  
 APPLICATION NO.  
 4-97-210  
 site plans