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CALIFORNIA COASTAL COMMISSION

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

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Staff: JEL-*vt*
Staff Report: 10/15/98
Hearing Date: 11/3-6/98



STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 4-95-224-A1

APPLICANT: Wilson Family Trust

AGENT: Mike Barscocchini

PROJECT LOCATION: 31626 Sea Level Drive, Malibu (Los Angeles County)
(APN: 4470-001-002)

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Demolition of single family residence and construction of 3,434 sq. ft., 28 ft. high from existing grade single family residence with 2-car garage, and 500 cu. yds. of grading (250 cu. yds. cut and 250 cu. yds fill) on a beachfront lot.

DESCRIPTION OF AMENDMENT: After the fact approval for the construction of two retaining walls, each 6 ft to 12 ft in depth, under the driveway and extending 18 feet landward from the garage towards Sea Level Drive.

LOCAL APPROVALS RECEIVED: City of Malibu: Planning Department, Approval in Concept, 3/21/97; Environmental Health, Approval, 3/14/97.

SUBSTANTIVE FILE DOCUMENTS: Geotechnical Update Letter, Engineering Group, Inc., 9/16/97; Wave Uprush Update Letter, Pacific Engineering Group, 6/24/98; Coastal Development Permit 4-95-224 (Wilson).

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.

SUMMARY OF STAFF RECOMMENDATION:

The Executive Director has determined the proposed amendment to be of a material nature given the location of the project along the shoreline. The proposed retaining walls, located underneath the driveway between the basement and the road are necessary to support and protect the existing driveway and septic system and do not involve any seaward encroachment. The staff recommends that the Commission determine that the approved development with the proposed amendment, is consistent with the requirements of the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby approves the amendment to the coastal development permit, on the grounds that as modified, 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 effects on the environment within the meaning of the California Environmental Quality Act.

NOTE: All standard and special conditions attached to the previously approved permit are hereby incorporated and remain in effect. (A copy of these conditions are attached as Exhibit A.)

II. Findings and Declarations

A. Project Description and Background

The applicant is requesting an after-the-fact approval for the construction of two partially buried retaining walls, each 6 ft to 12 ft in depth, located under the driveway and extending 18 feet landward from the basement towards Sea Level Drive. The purpose of these walls is to support the driveway above, and to provide protection of the septic system that is located below the driveway between the basement and Sea Level Drive from erosion. The existing basement provides protection from direct southern wave exposure and extends approximately 37 feet further seaward than the subject retaining walls.

The project is located on the eastern end of Sea Level Drive, on Lechuza Beach, near Victoria Point, in the City of Malibu. The subject parcel is within a "locked gate" community. However, the homeowners association has allowed pedestrian access through the two gates onto the community beach.

In December 1995, the Commission approved CDP 4-95-224 (Wilson) for the demolition of a single family residence and construction of a 3,434 sq. ft. single family residence with a two car garage, and 500 cu. yds. of grading (250 cu. yds. fill and 250 cu. yds cut) on a beachfront lot. There were four special conditions of approval that related to: conformance to geologic recommendations, assumption of risk, wildfire waiver of liability, and construction responsibilities. All of the above special conditions were met, and the permit was issued June 27, 1996.

Construction of the project proceeded after the issuance of the permit, at which time the applicant recognized the need to provide additional support and protection for the driveway and the septic system. Local approval for the construction of the retaining walls were obtained from the City of Malibu in March of 1997.

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 access way.

Section 30235 of the Coastal Act states that:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

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 Three of the Coastal Act. In addition, pursuant to Section 30235 of the Coastal Act, the Commission is required to ensure the project is designed to eliminate or mitigate adverse impacts on local shoreline processes. Furthermore, Section 30251 of the Act requires that views and scenic qualities of the shoreline shall be protected.

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 subject project, the two retaining walls do not extend development any further seaward than the existing basement, which extends 37 feet seaward of the subject retaining walls. Nor are the subject walls located seaward of any structures on the upcoast or downcoast sides of the project site. At the furthestmost point seaward, the retaining walls project 22 feet from the Sea Level Drive right-of-way.

The applicants have submitted a Wave Uprush Study Update letter, dated 6/24/98, prepared by Pacific Engineering Group. Based on their investigation of the project site and subject retaining walls, the consultants conclude that:

At a maximum seaward location of 22 feet from the right-of-way line, the retaining walls are 10 feet landward of the wave uprush zone (limit). Since these wall are outside of the uprush zone they will have no adverse impacts on the coastline processes.

In a subsequent discussion with staff, Pacific Engineering Group reiterated that the primary purpose of the walls was to support the driveway, and that given that necessity, the walls were also designed to withstand any scour effect that might result from unanticipated wave uprush. Hence, the 6 to 12 foot subsurface depths of the retaining walls.

The construction of seawalls, bulkheads, revetments and other shoreline protective devices contribute to beach erosion downcoast of the structure, as well as, adversely impact public access. The applicant's consulting engineer indicates, however, that the subject retaining walls will not be exposed to any wave uprush, as noted above. In addition, the subject retaining walls are, with the exception of the two foot inward turning corners on the seaward end, perpendicular in alignment to the threat of any wave uprush should the waves exceed the projected uprush maximum. As such, the subject project will have no significant individual or cumulative impacts on public access, beach erosion or shoreline processes.

In addition, 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, 30235, and 30251, 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 bluff tops and has found it to be an effective policy tool in preventing further seaward encroachments. In addition, the Commission has found that restricting new development to building and deck "stringlines" is an effective means 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 relates the subject residence to those structures located both upcoast and downcoast of the project site. The subject retaining walls are located well within the stringline drawn from the upcoast and downcoast structures. As such, the subject 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.

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 and 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.

In regard to the subject retaining walls, the applicant has submitted a Geotechnical Update letter, dated 9/16/97, prepared by RJR Engineering Group, Inc. for the subject site. This letter states acknowledges the retaining walls provide support for a portion of the existing driveway, although they do not provide structural support for Sea Level Drive or the portion of the driveway that abuts up to Sea Level Drive. The consulting geotechnical engineer concludes:

"Based upon our review of the retaining wall, the retaining wall system is suitable from a geotechnical standpoint."

The geotechnical update letter does not provide any project recommendations, based on review of the project description and site observations. Based on the geotechnical consultant's site project review and site observations, the Commission finds that the development, as constructed, is consistent with Section 30253 of the Coastal Act.

D. Septic System

The Commission recognizes that the potential build-out of lots in Malibu, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area. Section 30231 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, minimizing alteration of natural streams.

The existing septic system includes a 1,200 gallon septic tank with seepage pits which was installed per the original 9/8/95 design, approved by the City of Malibu Department of Environmental Health and included as part of coastal development permit 4-95-224 (Wilson). The applicant has submitted an amended approval from the City of Malibu Department of Environmental Health for this sewage disposal system, which now includes the subject retaining walls to the east and west. This approval indicates that the sewage disposal system for the residence, now located between the subject retaining walls, complies with all minimum requirements of the Uniform Plumbing Code.

The Commission has found in past permit actions that compliance with the health and safety codes will minimize any potential for waste water discharge that could adversely

impact coastal waters. Therefore, the Commission finds that the proposed septic system is consistent with Section 30231 of the Coastal Act.

E. Violation

The applicant is seeking after-the-fact approval for the subject retaining walls. The applicant had obtained a coastal development permit for the residence, CDP 4-95-224 (Wilson), including the driveway, adjacent basement and septic system. During the construction process, the applicant recognized the need to support and protect the driveway and septic system. The City of Malibu Departments of Planning and Environmental Health have issued approvals for the subject walls.

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred.

F. Local Coastal Program

Section 30604(a) of the Coastal Act states that:

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 amendment is in conformity with the provisions of Chapter 3. The proposed amendment 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 amendment 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)(A) 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 effects which the activity would have on the environment.

The proposed amendment would not cause significant, adverse environmental effects. Therefore, the proposed amendment is found consistent with CEQA and with the policies of the Coastal Act.

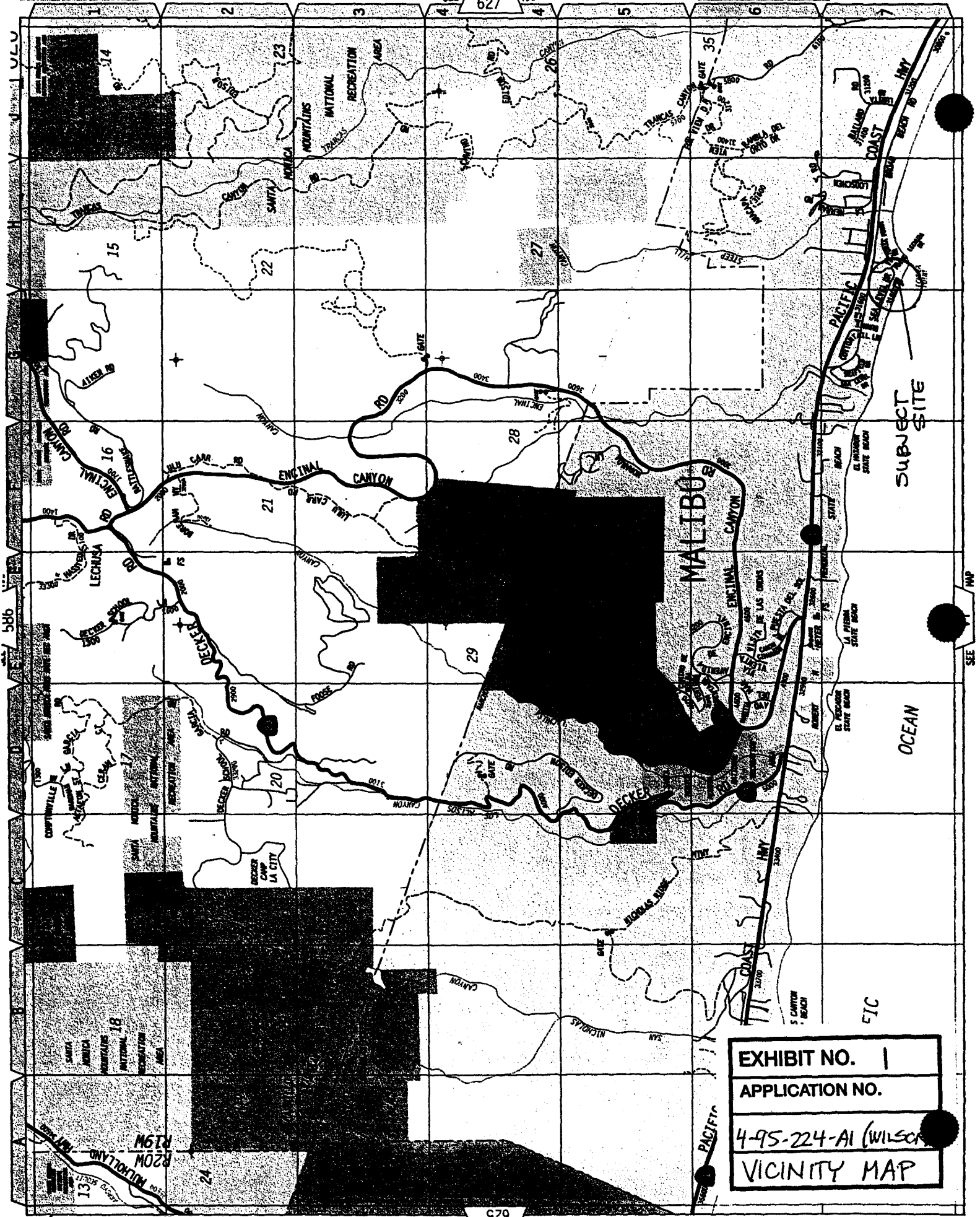
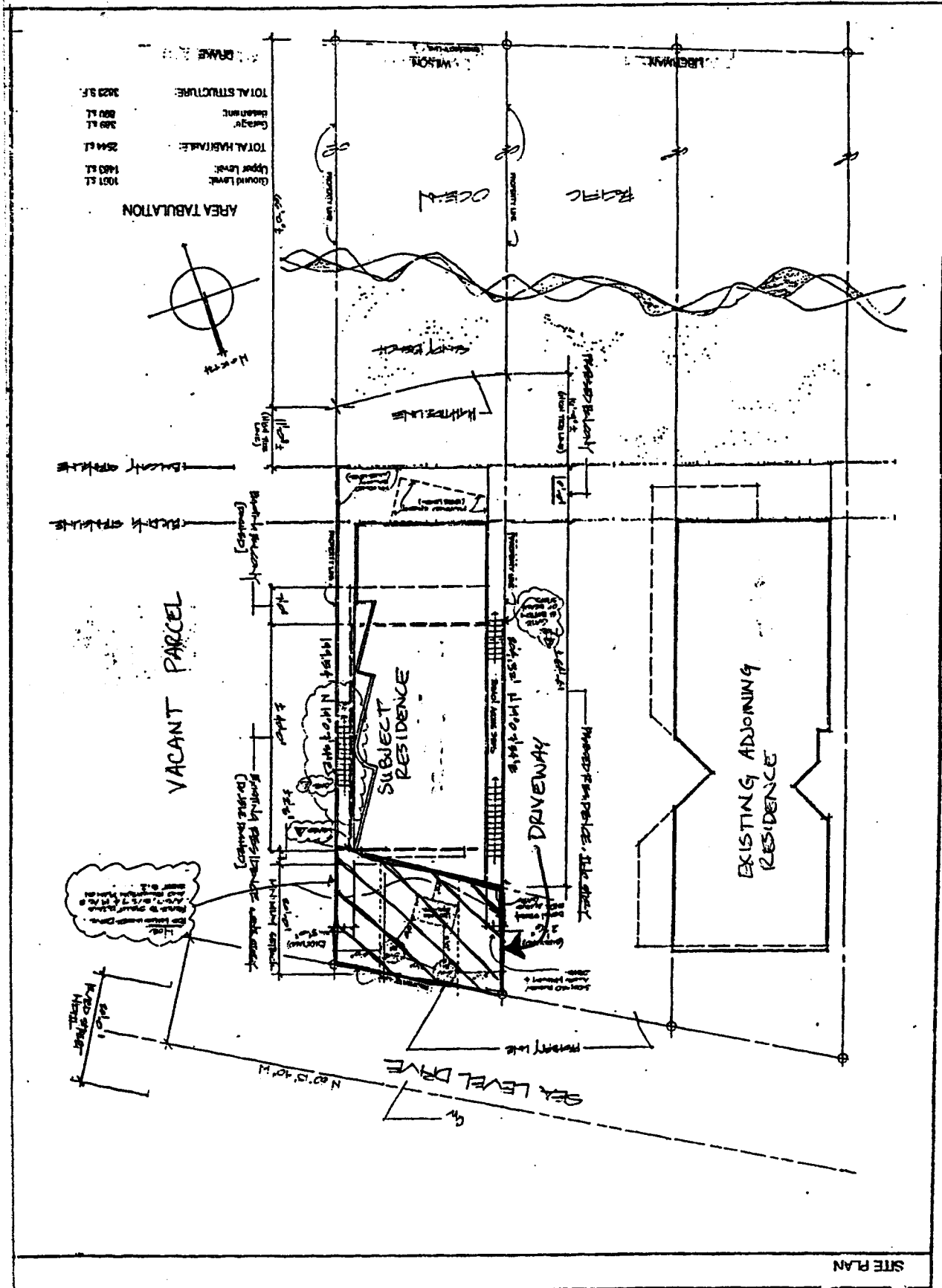


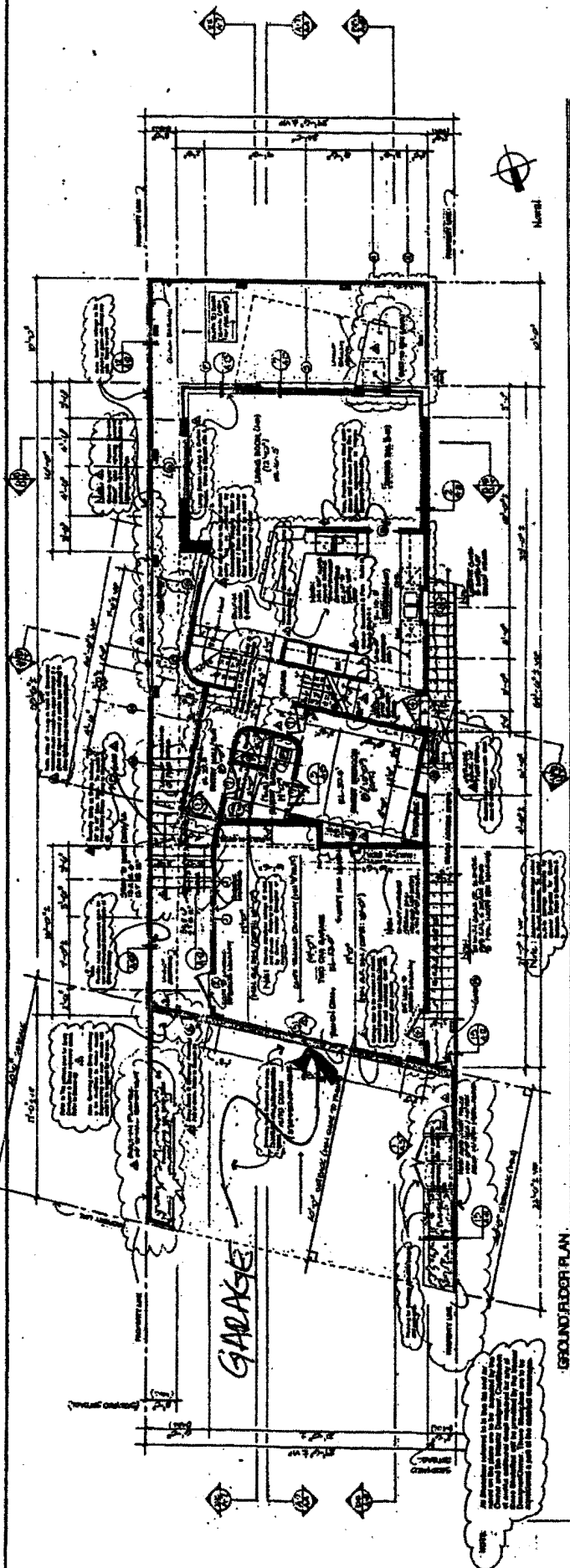
EXHIBIT NO. 1
APPLICATION NO.
4-95-224-A1 (WILSON)
VICINITY MAP



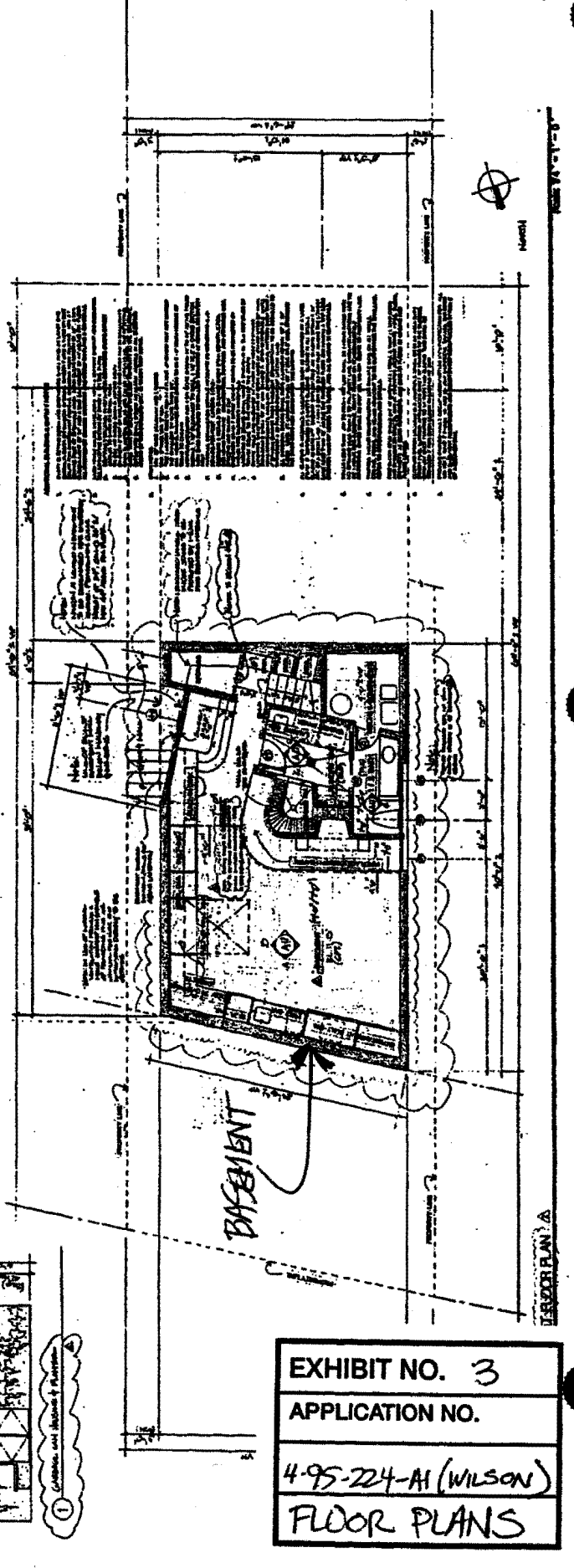


SITE PLAN

EXHIBIT NO. 2
APPLICATION NO.
4-95-224-A1 (WILSON)
SITE PLAN



GROUND FLOOR PLAN



BASEMENT PLAN

EXHIBIT NO. 3
APPLICATION NO.
4-95-224-A1 (WILSON)
FLOOR PLANS

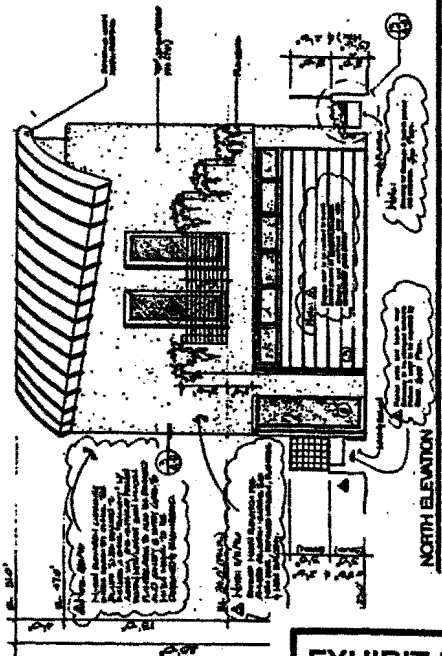
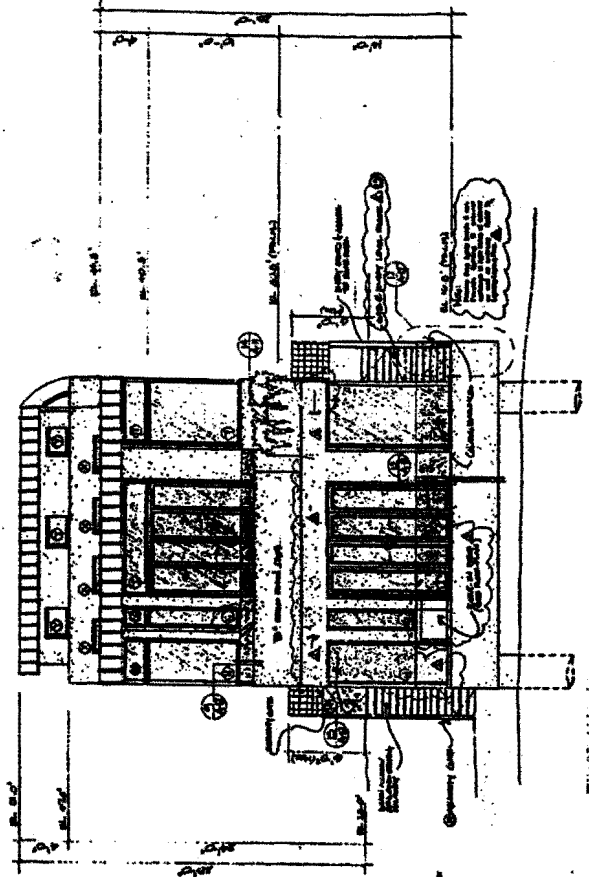
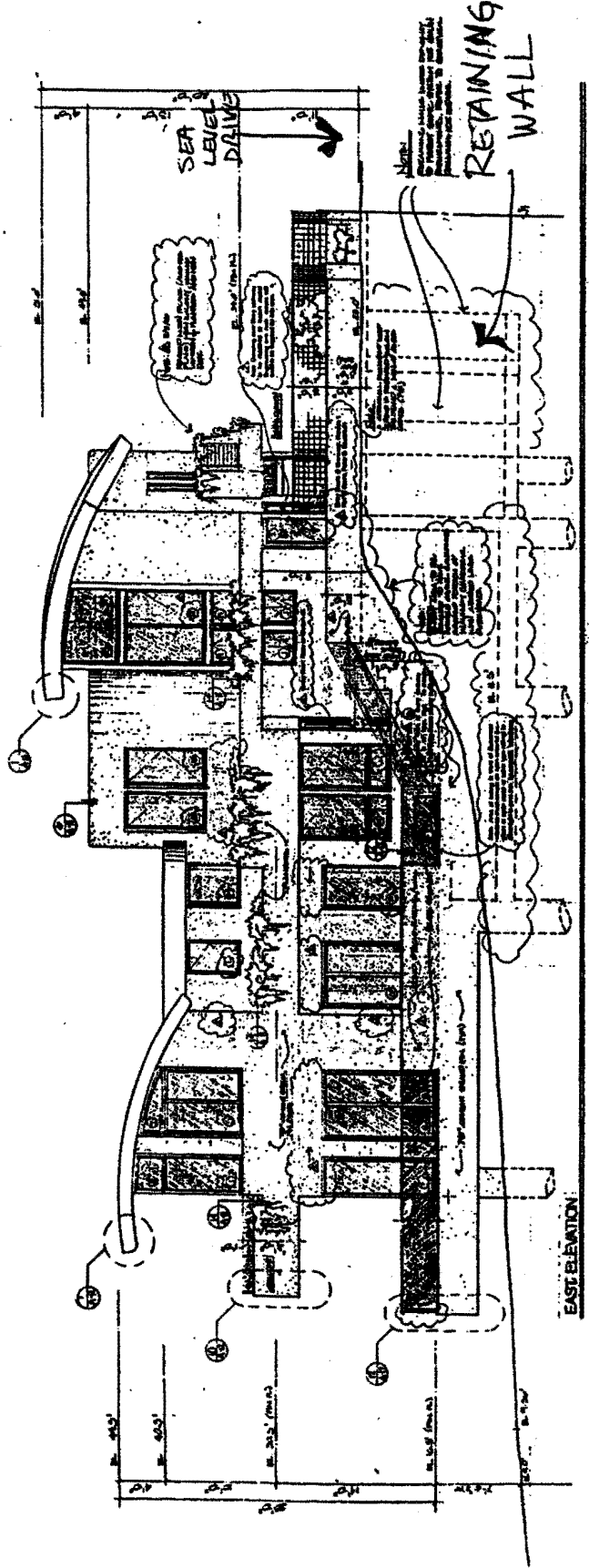


EXHIBIT NO. 5
 APPLICATION NO.
 4-95-224-A1 (WILSON)
 ELEVATIONS

CALIFORNIA COASTAL COMMISSION

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

Page 1 of 3
 Date: June 27, 1996
 Permit No. 4-95-224

**COASTAL DEVELOPMENT PERMIT**

On December 13, 1995, the California Coastal Commission granted to Wilson Family Trust, Permit 4-95-224 this permit subject to the attached Standard and Special conditions, for development consisting of:

Demolition of single family residence and construction of 3,434 sq. ft., 28 ft. high from existing grade single family residence with 2-car garage, and 500 cu. yds. of grading (250 cu. yds. cut and 250 cu. yds. fill) on a beachfront lot and is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 31626 Sea Level Drive, City of Malibu.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
 Executive Director

By: Barbara J. Carey
 Title: Coastal Program Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

 Date

A6: 8/95

 Signature of Permittee

EXHIBIT NO. <i>A</i>
APPLICATION NO.
<i>4-95-224-A1(WILSON)</i>
<i>PERMIT CONDITIONS</i>

COASTAL DEVELOPMENT PERMIT

Page 2 of 3
Permit No. 4-95-224

STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth 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.

SPECIAL CONDITIONS:

1. Plans Conforming to Geologic Recommendation

All recommendations contained in the Geotechnical Engineering Report, dated 6/28/95, prepared by RJR Engineering Group 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.

COASTAL DEVELOPMENT PERMIT

Page 3 of 3
Permit Application No. 4-95-224

2. Applicant's 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: (a) that the applicant understands that the site may be subject to extraordinary hazard from waves during storms or flooding and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest.

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.

4. Construction Responsibilities and Debris Removal

The applicant agrees not to store any construction materials or waste where it is subject to wave erosion and dispersion. In addition, no machinery will be allowed in the intertidal zone at any time. The permittee shall remove from the beach any and all debris that result from the construction period.

3418C/BJC/dp

