

**CALIFORNIA COASTAL COMMISSION**

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

**ITEM: WED 3d**

Filed: 9/30/98  
 49th Day: 11/17/98  
 180th Day: 3/28/99  
 Staff: MH-V *[Signature]*  
 Staff Report: 10/14/98  
 Hearing Date: 11/05/98  
 Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

APPLICATION NO.: 4-98-253

APPLICANT: Resurrection Trust Agent: David Lawrence Gray

PROJECT LOCATION: 21958 Pacific Coast Hwy., City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Construct an 824—sq. ft. second floor addition to an existing 3,404 sq. ft. single family residence for a total height of 24 feet above finished grade, and construct a new septic disposal system on beachfront lot with no grading.

LOCAL APPROVALS RECEIVED: Approval in Concept, City of Malibu Planning Department.

SUBSTANTIVE FILE DOCUMENTS: City of Malibu Department of Environmental Health Septic Disposal System Approval, Coastal Engineering Report prepared by David C. Weiss, dated June 29, 1998; California State Lands Commission Letter of Review, dated September 15, 1998.

**SUMMARY/ STAFF RECOMMENDATION:**

Staff recommends approval of the proposed project with a special condition regarding applicant's assumption of risk. The proposed addition does not extend the development footprint seaward and the applicant has provided evidence that the proposed development will be located outside of the wave uprush zone. Therefore, the proposed project will not increase the likelihood that future shoreline armoring will be necessary to protect the subject property. Construction will not be staged from the beach, therefore the project poses minimal risk of causing significant, adverse effects on coastal resources.

**STAFF RECOMMENDATION:****I. Approval with Conditions.**

The staff recommends that the Commission adopt the following resolution:

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 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.

## **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 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 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 development during construction, 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 permit issuance, applicants as land owners 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 hazards from liquefaction, storm waves, erosion or flooding and the applicant assumes the risks from such hazards; and (b) the applicant

unconditionally waives any claim of liability against 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 enforceability of the restriction. This deed restriction shall not be removed or changed 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.**

The Commission hereby finds and declares as follows:

**A. Project Description**

**Location**

The project site is located at 21958 Pacific Coast Highway, on a beachfront lot (Carbon Beach) in the City of Malibu, Los Angeles County. See Exhibits 1-3.

**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.

### **Public Access Considerations for Beachfront Projects**

The Commission has established a policy that 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. In past permit actions, 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.

Past Commission review of shoreline residential projects in Malibu has shown that individual and cumulative public access impacts of such projects can include encroachment on lands subject to the public trust (thus physically excluding the public); interference with the natural shoreline processes 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.

### **"Stringline" Policy--(control of seaward extent of buildout)**

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, in past permit actions, developed the "stringline" policy to control the seaward extent of buildout. 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.

**Consistency with Public Access Policies: Conclusion**

The proposed project does not invoke the restrictions of the stringline policy because the proposed project will not exceed either the first or second floor stringlines as measured from adjacent development. In addition, the applicant has submitted a California State Lands Commission Letter of Review, dated September 15, 1998. State Lands staff decline to raise any issue of potential intrusion of the proposed project onto state tidelands, citing the fact that the proposed addition is situated landward of the stringlines applicable to the existing structures on site. The proposed project would not preclude public access to any presently existing vertical or lateral public access easements or rights or adversely affect public coastal views. 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.

**B. Geologic Stability; Hazards**

Section 30253 of the Coastal Act states in pertinent 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, 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.

**Applicant's Assumption of Risk**

The proposed development is located on an oceanfront lot in the City of Malibu. The Malibu coast has historically been subject to substantial damage as the result of storm and flood occurrences--most recently, and perhaps most dramatically, during the past El Nino severe winter storm season that gave rise to a significant number of emergency permit requests for repairs to and the protection of, shoreline properties. Last winter's severe storms resulted in substantial public costs through emergency responses and low-interest, publicly-subsidized reconstruction loans in the millions of dollars in Malibu alone.

In the winter of 1977--1978, storm-triggered mudslides and landslides caused extensive damage along the Malibu coast. According to the National Research Council, damage to Malibu beaches, seawalls, and other structures during that season caused damages of as much as almost \$5 million to private property alone.

The El Nino storms recorded in 1982--1983 caused high tides of over 7 feet, which were combined with storm waves of up to 15 feet. These storms caused over \$12.8 million to structures in Los Angeles County, many located in Malibu. The severity of the 1982--1983 El Nino storm

events are often used to illustrate the extreme storm event potential of the California--and in particular--Malibu--coast.

The 1998 El Nino storms also resulted in widespread damage to residences, public facilities and infrastructure along the Malibu Coast. The total damages and costs resulting from those storms are currently being assessed.

Thus, ample evidence exists that all oceanfront development in the Malibu area is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. For this reason, new development raises the question of whether additional shoreline armoring may be necessary to protect the proposed structures. Such hardening of the shoreline has been shown to adversely impact littoral cell transport and thus beach profiles. Resultant reductions in sandy beach widths adversely impact public access and recreation, in addition to the potential displacement of beach area by the protective structure.

To address this issue, the applicant has submitted a wave uprush study prepared by a licensed coastal engineer, David C. Weiss, dated June 29, 1998. The study determined that the proposed development, including the proposed new septic disposal system, will be located outside of the calculated wave uprush zone. The site is not presently protected by a bulkhead, seawall or revetment. The conclusions of the wave uprush study indicate that the proposed project would generally not be affected by the potential wave attack identified and evaluated in the study and therefore the proposed development would not require the construction of a shoreline protective device. For this and the other reasons set forth above, the Commission finds that the proposed project would not adversely affect public access or recreation and minimizes risks to life and property.

The Coastal Act recognizes that oceanfront development, even when constructed to incorporate all recommendations of the applicant's consulting geologist, coastal engineer and other experts, may still involve the taking of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

The Commission finds that due to the possibility of liquefaction, storm waves, surges, erosion, and flooding, the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, as required by **Special Condition 1**, when executed and recorded on the property deed, will show 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 or safety of the proposed development. The Commission finds, for the reasons set forth above, that if conditioned pursuant to **Special Condition 1**, the proposed development is consistent with Section 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 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 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).

**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 that the application, as conditioned by any conditions of approval, is consistent with the 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 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 consistent with CEQA and the policies of the Coastal Act.

LOS ANGELES CO.

SEE 630 MAP

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MAP 589

MAP 589

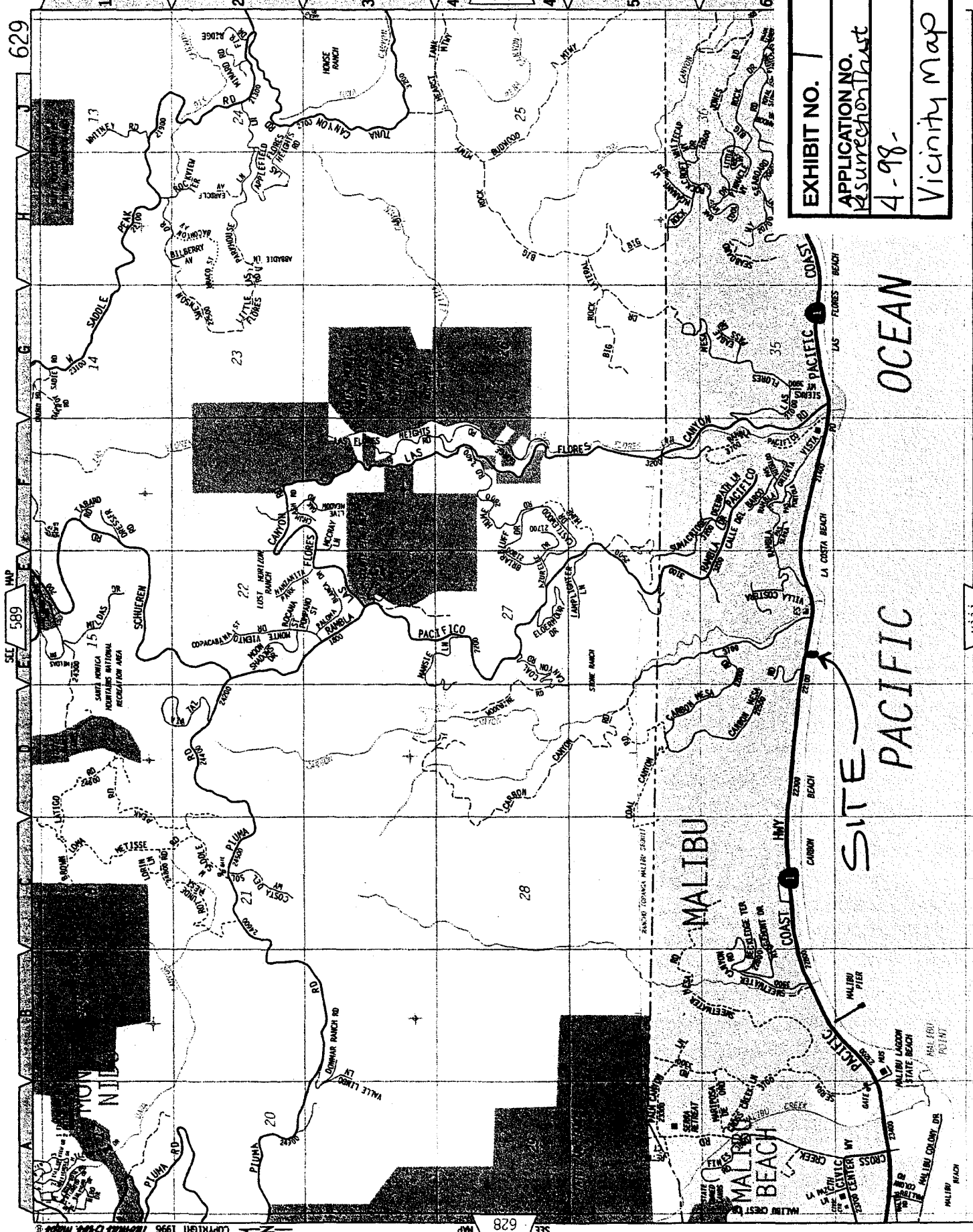


EXHIBIT NO. 1
APPLICATION NO. Resurrection Trust
4-98-
Vicinity Map

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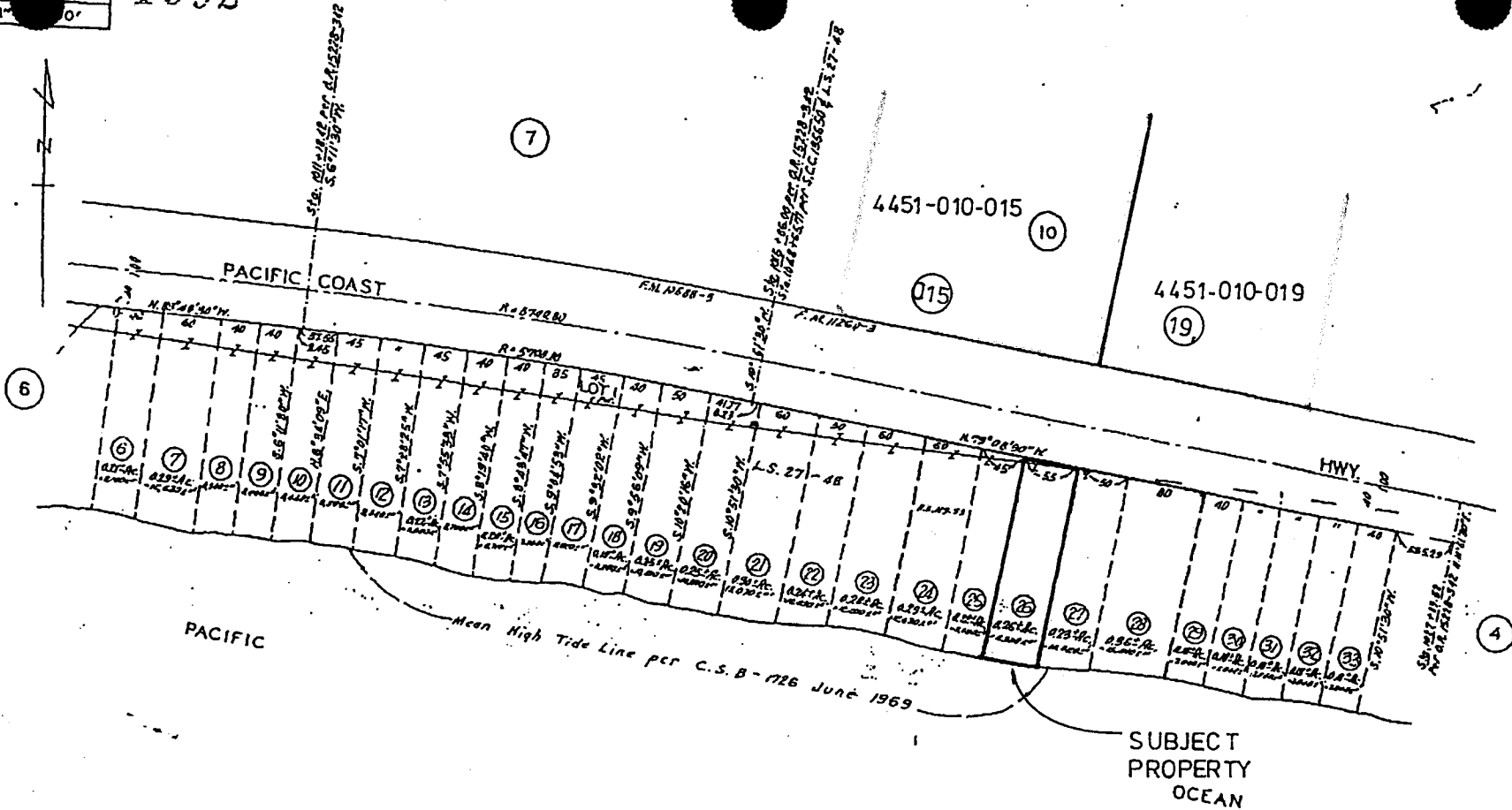
SITE PACIFIC

MALIBU

MALIBU BEACH

VICINITY MAP 21958 PACIFIC COAST HWY





CODE 10865

LAND OF MATTHEW KELLER IN THE RANCHO TOPANGA MALIBU SEQUIT R. F. 534

FOR PREV. ASSMT SEE: 4451-44 & 42

RECEIVED

ASSESSOR'S MAP COUNTY OF LOS ANGELES, CALIF.

SEP 15 1998

CALIFORNIA COASTAL COMMISSION SOUTH CENTRAL COAST DISTRICT

EXHIBIT NO. 2
APPLICATION NO. Resurrection Trust
4-98-253
Parcel Map

IMPORTANT: THIS PLAT IS NOT A SURVEY. IT IS MERELY FURNISHED AS A CONVENIENCE TO LOCATE THE LAND IN RELATION TO ADJOINING STREETS AND OTHER LANDS AND NOT TO GUARANTEE ANY DIMENSIONS, DISTANCES, BEARINGS, OR ACREAGE.





GENERAL NOTES  
SENDER OF PROJECT  
OWNER  
APPLICANT'S NAME

LOCAL OWNER  
SUBJECT PROPOSITION  
DESCRIPTION OF PROJECT

BUILDING TYPE  
CONTRACT AGREEMENT  
LOT AREA  
EXISTING STRUCTURE SIZE  
EXISTING 1ST FLOOR  
EXISTING 2ND FLOOR  
EXISTING BUILDING HEIGHT

PROPOSED STRUCTURE SIZE  
PROPOSED 1ST FLOOR  
PROPOSED 2ND FLOOR  
PROPOSED BUILDING HEIGHT  
PROPOSED SETBACKS  
FRONT  
SIDE  
REAR

PROPOSED SUPERSTAIR LOT COVERAGE  
PROPOSED GARAGE

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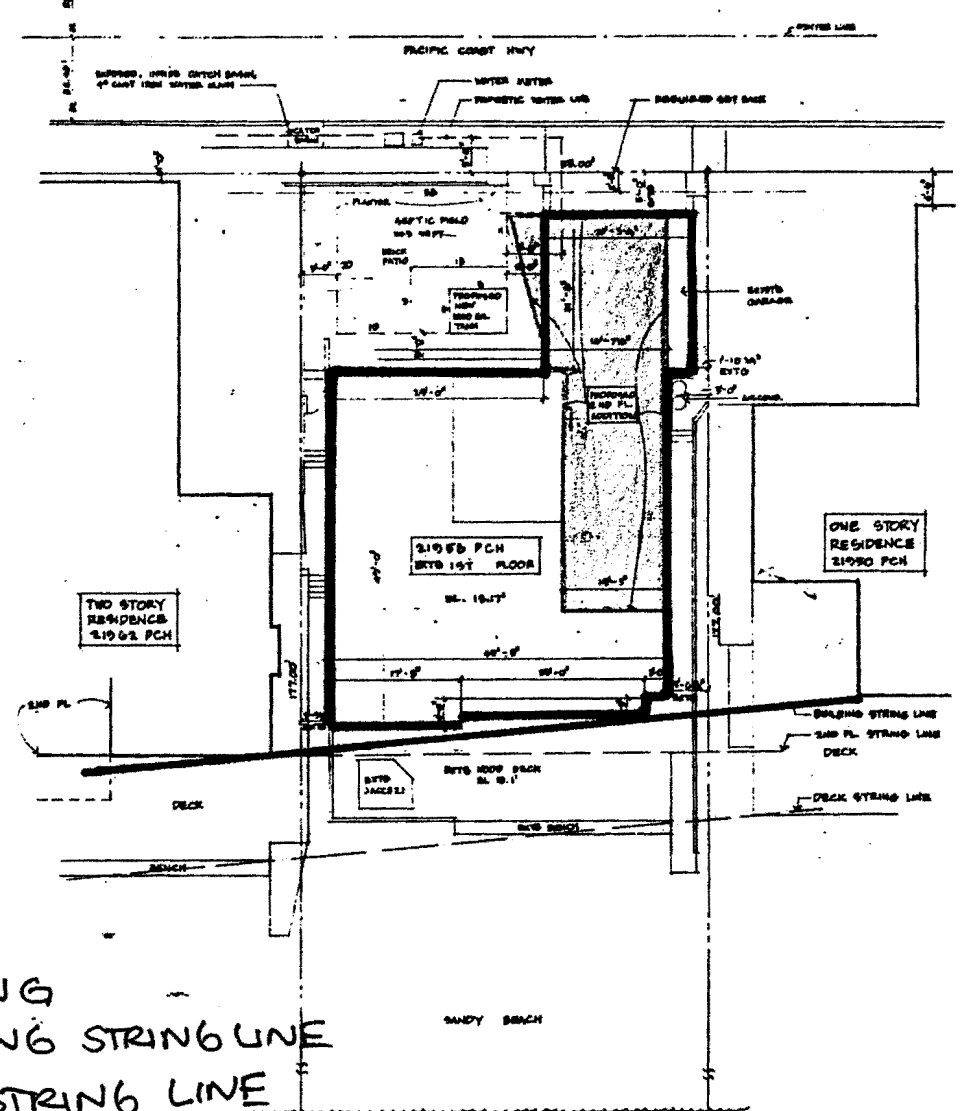
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EXISTING  
BUILDING STRING LINE  
DECK STRING LINE  
PROPOSED 2ND FLOOR ADDITION

EXHIBIT NO. 4  
APPLICATION NO.  
Resurrection Trust  
4-98-253  
Stringlines

# STRING LINES

21856-DACIFIC-COAST-INT.  
MILPITAS, CA 95025

S.F.D.: 3 Br. - 3 Br. (Remodel)  
SEPTIC TANK: 1500 Gallon w/Screened Effluent Pump (E)  
PERMITS: 1 - 4" X 11" Mechanical Trickling Filter  
and 1 - 16" X 14" Bottomless Sand Filter (S)  
NOTES: None  
PRINCIPALS: Sam Cofoglio

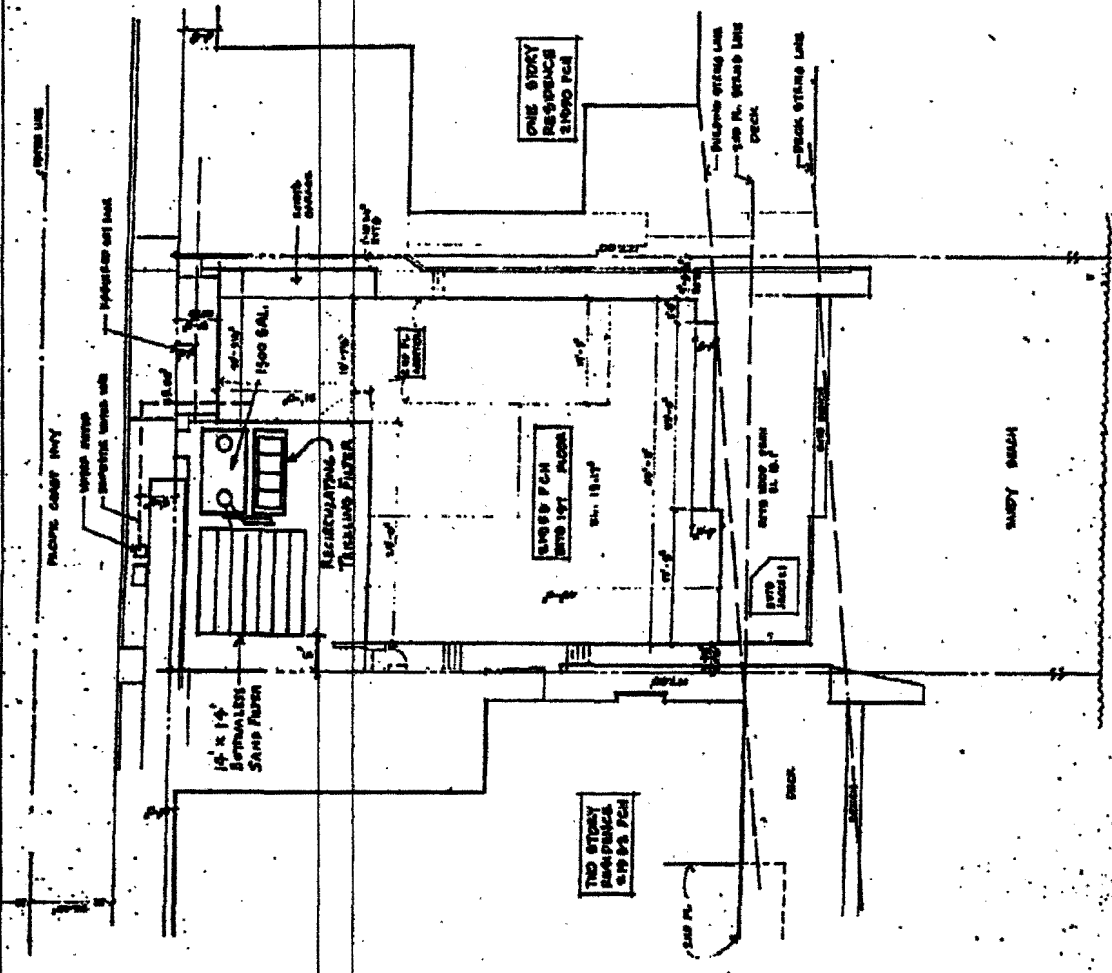
NOTES:

1. This approval is for a 3 bedroom Co 3 bedroom single family dwelling remodel. A new private sewage disposal system shall be installed, as shown.
2. This approval only relates to the minimum requirements of the City of Malibu Uniform Plumbing Code and does not include an evaluation of any geological, or other potential problems, which may require an alternative method of wastewater disposal.
3. This approval is valid for one year or until City of Malibu Uniform Plumbing Code and/or Administrative Policy changes render it noncomplying.

CITY OF MALIBU  
ENVIRONMENTAL HEALTH  
**IN-CONCEPT APPROVAL**  
DATE: AUG 31 1988 Ljung  
FINAL APPROVAL IS REQUIRED PRIOR TO THE ISSUANCE OF ANY CONSTRUCTION PERMITS.



1" = 16'



# SEPTIC SYSTEM APPROVAL

EXHIBIT NO. <u>5</u>
APPLICATION NO. <u>Resurrection Trust</u>
<u>4-98-253</u>
<u>Septic Approval</u>

SE

WEST  
SOUTH CEN

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
 SAN FRANCISCO, CA 94105-2219  
 VOICE AND TDD (415) 904-5200



October 16, 1998

**We 9c**

**To:** California Coastal Commissioners

**From:** Peter Douglas, Executive Director  
 Jaime Kooser, Federal Program and Water Quality Manager  
 Cy R. Oggins, Coastal Nonpoint Pollution Control Program Coordinator

**Subject:** Agreement with State Water Resources Control Board (SWRCB) to conduct activities to address and meet conditions of the final federal conditional approval of California's Coastal Nonpoint Pollution Control Program (CNPCP) prepared pursuant to the Federal Coastal Zone Act Reauthorization Amendments of 1990 (CZARA)<sup>1</sup>

**1.0 STAFF RECOMMENDATION**

The staff recommends that the Commission authorize the Executive Director to enter into an amended agreement with the SWRCB, under which the Commission would receive an additional \$100,000 over a 12-month period to continue the Commission's efforts to improve treatment of nonpoint source pollution (polluted runoff). The Commission staff's activities under last year's SWRCB grant are scheduled to end on November 30, 1998. Specific staff responsibilities include conducting activities necessary to address and meet conditions of the final conditional approval of California's CNPCP by the U.S. Environmental Protection Agency (EPA) and National Oceanic and Atmospheric Administration (NOAA). These activities are described under "Scope of Work" below. Commission staff work pursuant to this agreement is consistent with the Coastal Commission's overall strategy for enhancing the coastal program's management of polluted runoff in the coastal zone.

**2.0 MOTION AND RESOLUTION**

Commission approval of the Agreement requires the following motion:

I hereby move that the Commission authorize the Executive Director to enter into an agreement with the SWRCB to receive \$100,000 to undertake activities as recommended by the staff to address and meet conditions of the federal conditional approval of California's Coastal Nonpoint Pollution Control Program.

The staff recommends a "yes" vote on the foregoing motion.

<sup>1</sup> Acronyms used in this Report include:

- |   |  |
|---|--|
| > CNPCP = Coastal Nonpoint Pollution Control Program          | > NOAA = National Oceanic and Atmospheric Administration |
| > CZARA = Coastal Zone Act Reauthorization Amendments of 1990 | > NPS = Nonpoint Source                                  |
| > EPA = Environmental Protection Agency                       | > RWQCB = Regional Water Quality Control Board           |
|   | > SWRCB = State Water Resources Control Board            |

### 3.0 SCOPE OF WORK

CZARA § 6217 requires California, through a partnership between the Coastal Commission and SWRCB, to develop a CNPCP. The Commission and SWRCB submitted California's CNPCP to EPA and NOAA in September 1995 after more than three years of development. In June 1998, EPA and NOAA conditionally approved California's CNPCP. One condition is for the Commission and SWRCB to jointly develop a comprehensive CZARA implementation strategy. As outlined in an "Action Plan" developed by Coastal Commission, SWRCB, NOAA, and EPA staffs in August 1997, products of this strategy include: (1) a *Management Measures Review Document* that identifies management measures that are appropriate for use in California and are equally or more effective than the management measures developed pursuant to CZARA § 6217(g); (2) a 15-year strategy that generally describes how the CNPCP will be incrementally implemented Statewide consistent with CZARA § 6217; and (3) a detailed 5-year strategy that addresses the first-tier of priorities consistent with the 15-year strategy.<sup>2</sup>

During the past year, the Commission, SWRCB and Regional Water Quality Control Board (RWQCB) staffs have jointly prepared a working draft *Management Measures Review Document* which has been distributed to other State agency staffs for review and comment. A draft outline of a NPS/CZARA Implementation Strategy is near completion. The Commission and SWRCB anticipate expanding the Strategy to include interagency taskforces to guide and coordinate the work of other agencies and local governments that relates to polluted-runoff-management efforts.

Under the proposed amended standard agreement with the SWRCB, the Coastal Commission would receive \$100,000 over a twelve-month period for Commission staff, in coordination with SWRCB staff, to continue development and begin implementation of the NPS/CZARA Implementation Strategy. Specific tasks include those listed below.

- Commission staff will co-host meetings with governmental agencies with statutory authority to implement NPS management measures, and will work to develop a strategy of cooperation with such agencies to ensure exercise of their authority and agreement to help implement the NPS/CZARA Implementation Strategy.
- Commission staff will co-host workshops, currently planned for December 1998, to present materials to the public, and to obtain stakeholder feedback and cooperation in the development and implementation of the NPS/CZARA Implementation Strategy.
- Commission staff will co-develop informational materials for public outreach, such as an NPS/CZARA Internet web site, and a periodic newsletter (in electronic and/or paper format) to keep the public and agencies updated on development and implementation of the NPS/CZARA Implementation Strategy.
- Commission staff will present the *Management Measure Review Document* and the 15-year and 5-year CZARA Implementation Strategies at a formal Commission workshop for public review and comment and Commission approval.

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<sup>2</sup> The "CZARA Action Plan" (August 1997) outlines a framework and activities for the SWRCB and Commission to achieve an approvable program under CZARA § 6217 while improving the State's NPS Program.