#### STATE OF CALIFORNIA-THE RESOURCES AGENCY

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

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ITEM:TU 5jFiled:11/13/9849th Day:1/01/98180th Day:5/12/99Staff:MH-VStaff Report:11/13/98Hearing Date:12/09/98Commission Action:

# STAFF REPORT: CONSENT CALENDAR

APPLICATION NO. 4-98-262

APPLICANTS: John & Susan Montanaro AGENT: James Esserts, AIA

PROJECT LOCATION: 30810 Broadbeach Road, City of Malibu, Los Angeles County.

**PROJECT DESCRIPTION:** Add a 649 sq. ft. second-story guest unit to an existing detached single-story 3-car garage (total height with addition: 24 feet above grade) on a beachfront lot with an existing 3,805 sq. ft., two-story single family residence. In addition, the applicant proposes to construct a new 14-foot, trellised portico at the front (inland side) of the existing residence.

LOCAL APPROVALS RECEIVED: City of Malibu: Planning Department Approval in Concept, September 22, 1998; Environmental Health Department, Septic Approval, November 3, 1998; Geology Approval, September 25, 1998.

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains Land Use Plan; Geotechnical Engineering Report, RJR Engineering Group, Inc., dated September 3, 1998; California State Lands Commission, letter of review, November 6, 1998.

<u>SUMMARY/ STAFF RECOMMENDATION</u>: Staff recommends approval of the proposed project with special conditions regarding: Assumption of Risk, Plans Conforming to Geologic Recommendations, Future Improvements, and Wild Fire Waiver of Liability. The proposed project is located on a beachfront lot, in an area of Malibu known as Broadbeach. The project will not increase the seaward footprint of the existing development, and will not require grading or vegetation removal.



### 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. <u>Notice of Receipt and Acknowledgment</u>. 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. <u>Expiration</u>. 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. <u>Compliance</u>. 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. <u>Interpretation</u>. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 5. <u>Inspections</u>. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
- 6. <u>Assignment</u>. 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. <u>Terms and Conditions Run with the Land</u>. 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.

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#### 1. Assumption of Risk

Prior to the issuance of the coastal development permit, the applicants as landowners 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 landsliding and erosion and the applicants assume the risks from such hazards; and (b) that the applicants unconditionally waive any claim of liability against the Commission and agree to indemnify and hold harmless the Commission, its employees, and 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 that 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.

### 2. Plans Conforming to Geologic Recommendation

All recommendations contained in the <u>Geotechnical Engineering Report</u>, <u>Proposed</u> <u>Second Story Garage Addition</u>, prepared by RJR Engineering Group, Inc., dated September 3, 1998 shall be incorporated into all final design and construction plans including recommendations concerning <u>foundations</u>, <u>grading</u>, and <u>drainage</u> plans. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval of the Executive Director, evidence of the geotechnical consultants' review and approval of all final project plans. The geotechnical consultant shall confirm that the final project plans and designs incorporate all recommendations contained in the above referenced report. Evidence of such review submitted to satisfy the Executive Director shall include the affixation of the consulting engineering geologists' stamp and signature to the final project plans and designs.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plan 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.

### **Future Improvements**

Prior to the issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the Coastal Development Permit 4-98-262, and that any additions or improvements to the permitted guest house that might otherwise be exempt under Public Resource Code Section 30610(b), will require a permit from the Coastal Commission or its successor agency.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens 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.

#### 3. Wild Fire Waiver

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 or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

## . IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

#### A. Project Description

The applicants propose to construct a 649 square foot second-story guest suite addition, 24 feet in total height, to an existing detached single-story 3-car garage. The subject garage is situated on the landward side of a rectangular, relatively level beachfront lot at 30810 Broadbeach Road, in the City of Malibu. The lot contains an existing 3,805 square foot, two-story single family residence. In addition, the applicants propose to construct a new 14 feet high trellised portico at the front (inland side) of the existing residence (Exhibits 1-7). The existing landscaping consists of shrubs and trees, and the site is drained by sheetflow runoff to the southwest (seaward). The applicants do not propose to undertake grading or vegetation removal. As proposed, there will be no change in the footprint of the existing residence or garage.

## **B.** Public Access and Seaward Encroachment

All projects that require a coastal development permit and are situated on beachfront lots require review for compliance with the public access provisions of Chapter 3 of the Coastal Act. The applicable policies include:

Coastal Act Section 30210, which 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 which states that:

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.

In addition, 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**

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 proposed shoreline projects in Malibu has shown that such projects may pose one or more of the following individual or cumulative impacts on public coastal access: a) encroachment on lands subject to the public trust (thus physically excluding the public); b) interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas; or c) overcrowding or congestion of such tideland or beach areas; and d) visual or psychological interference with the public's access to and the ability to use public tideland areas.

### "Stringline" Analysis-(control of seaward extent of buildout)

As a means of controlling seaward encroachment of residential structures onto beaches subject to the public trust, and to thereby protect and ensure maximum public 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 a method of reviewing the seaward extent of buildout that has become known as a "stringline" analysis. The Commission performs a stringline analysis of proposed beachfront development by evaluating the seaward extension of a proposed structure in reference to a line drawn between the nearest corners of similar structures on adjacent properties. A similar analysis is used to review decks. The Commission has generally not approved development that would extend beyond the applicable stringline, thus limiting the seaward "creep" of new development.

The Commission has applied this analysis to numerous past permits involving infill on sandy beaches and has found it to be an effective tool in preventing further encroachments onto sandy beaches. In addition, the Commission has found that restricting new development to building and deck stringlines also protects and ensures maximum public access as required by Sections 30210 and 30211 and protects public views and the scenic quality of the shoreline as required by Section 30251 of the Coastal Act.

## **Consistency with Public Access and View Protection Policies: Conclusion**

The proposed project includes a second story addition over an existing garage located on the inland side of the subject parcel. The footprint of existing structures on site is within the stringline measurements. This footprint will not change and there will be no seaward extension of development. The garage, with the proposed second floor addition, will total 24 feet above the existing grade. The applicable height limit established by the City of Malibu is 28 feet. The proposed addition will not result in any adverse public visual impacts. The proposed project will not interfere with or preclude public access to any presently existing vertical or lateral public access easements. For all of these reasons, the Commission finds that the project would have no individual or cumulative adverse impacts on public access or public coastal views. 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. Hazards; Geologic Stability

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.

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, the 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. 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 must assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicants to waive any claim of liability against the Commission and its employees and agents for damage to life or property which may occur as a result of the permitted development. The applicants' assumption of risk, as required by **Special Condition 1**, when executed and recorded on the property deed, will show that the applicants are aware of and appreciates the nature of the hazards which exist on the site that may adversely affect the stability or safety of the proposed development.

The Commission finds, therefore, that due to risks to the proposed project from liquefaction, wave attack, erosion, and flooding, the applicants shall, as a condition of Commission approval, assume these risks as outlined in **Special Condition 1**. Therefore, in accordance with **Special Condition 1**, the applicants also waive any claim of liability against the Commission, its officers, employees or agents for any damage or economic harm suffered as a result of the development herein permitted in accordance with the applicants' request.

### Wild Fire Waiver

Furthermore, the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire. The typical vegetation in the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, <u>Terrestrial Vegetation of California</u>, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Although the applicants' property is located seaward of Pacific Coast Highway, and adjacent to the Pacific Ocean, the risk posed by wild fire to life and property on the subject site remains. Wild fires originating in the chaparral vegetation of the Santa

Monica Mountains have been known to move swiftly toward beachfront properties under certain circumstances--particularly when wild fires originate during the hot, dry "Santa Ana" wind conditions that reverse the usual direction of coastal breezes and drive fire storms down the mountain slopes and toward the sea. Thus, wild fires threaten even beachfront properties in the Malibu area.

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 applicants assume the liability from these associated risks. Through **Special Condition 4**, the wild fire waiver of liability, the applicants acknowledge the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Moreover, through acceptance of **Special Condition 4**, the applicants also agree to indemnify the Commission, its officers, agents, and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

### Geology

The applicant has submitted a geotechnical engineering report for the proposed project prepared by RJR Engineering Group, Inc., dated September 3, 1998. An evaluation of the geologic conditions found at the site was performed together with laboratory tests to determine the physical properties of the soil, including moisture content, density, shear strength, and consolidation characteristics.

The consulting engineering geologists found that there are no significant hazards due to seismicity, landslides, tsunamis, or liquefaction at the subject site. The report concludes that:

Based upon the available data, from our review, investigation and analysis, the proposed garage addition is feasible from a geologic and geotechnical standpoint. The portion of the site where the garage is located should be free of landslides, slumps or settlement. If the site is developed in accordance with the recommendations presented herein, the proposed improvements will have no adverse affect on the stability of the site or surrounding areas.

Based on the recommendations of the consulting geologists, the Commission finds that the development is consistent with Section 30253 of the Coastal Act so long as the geologic consultants' recommendations are incorporated into project plans. Therefore, the Commission finds it necessary to require the applicant to submit final project plans and designs that have been certified in writing by the consulting engineering geologists as conforming to all recommendations set forth in the September 3, 1998 report cited above, pursuant to the requirements of **Special Condition 2**.

For all of the reasons set forth above, the Commission concludes that the proposed project, as conditioned by **Special Conditions 1**, 2, and 4 is consistent with the requirements of Section 30253 of the Coastal Act.

#### C. Cumulative Impacts of New Development

The proposed project involves the construction of a 649 square foot guest unit which is defined under the Coastal Act as new development. New development raises issues with respect to cumulative impacts on coastal resources. In particular, the construction of a second unit on a site where a primary residence exists intensifies the use of a site and impacts public services, such as water, sewage, electricity and roads.

Section 30250(a) of the Coastal Act states in pertinent part:

#### Section 30250

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

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

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

In addition, the certified Malibu/Santa Monica Mountains LUP, which the Commission has relied on as guidance in applying the policies of Chapter 3 of the Coastal Act in past permit considerations, contains Policy 271, which states:

In any single-family residential category, the maximum additional residential development above and beyond the principal unit shall be one guest house or other second unit with an interior floor space not to exceed 750 gross square feet, not counting garage space.

The proposed 649-square foot detached, second unit (over the existing garage) conforms to the Commission's past actions allowing second dwelling units in the Malibu area if

such structures do not exceed 750 square feet (and are otherwise consistent with applicable Coastal Act policies). The Commission has found that second units up to that size limit, so long as the development of such units is compatible with the requirements of applicable policies of the Coastal Act considered on a case-by-case basis, do not intensify the residential use of an acceptable site sufficiently to cause additional impacts upon coastal resources that would not otherwise have occurred. The Commission notes, however, that concerns about the potential future impacts on coastal resources might arise should future additions or improvements to the guest unit be proposed. The Coastal Commission's concerns include, but are not limited to, potential impacts that further intensification of the residential land use of the site might have on traffic, sewage disposal, recreational uses, visual resources, and resource degradation.

Therefore, the Commission finds it necessary to require the applicant to include a future improvements deed restriction that limits future development, subject to the Commission's review, as defined under **Special Condition 3**. Thus, the imposition of this special condition will ensure that future development proposals on the subject site are consistent with Section 30250(a) 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 applicant proposes to construct a new 1,500 gallon septic system with a drain field as shown on the plans approved by the City of Malibu, Environmental Health Department, November 3, 1998. The conceptual approval by the City indicates that the sewage disposal system for the project in this application 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 wastewater discharge that could adversely impact coastal waters. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

## E. Local Coastal Program

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

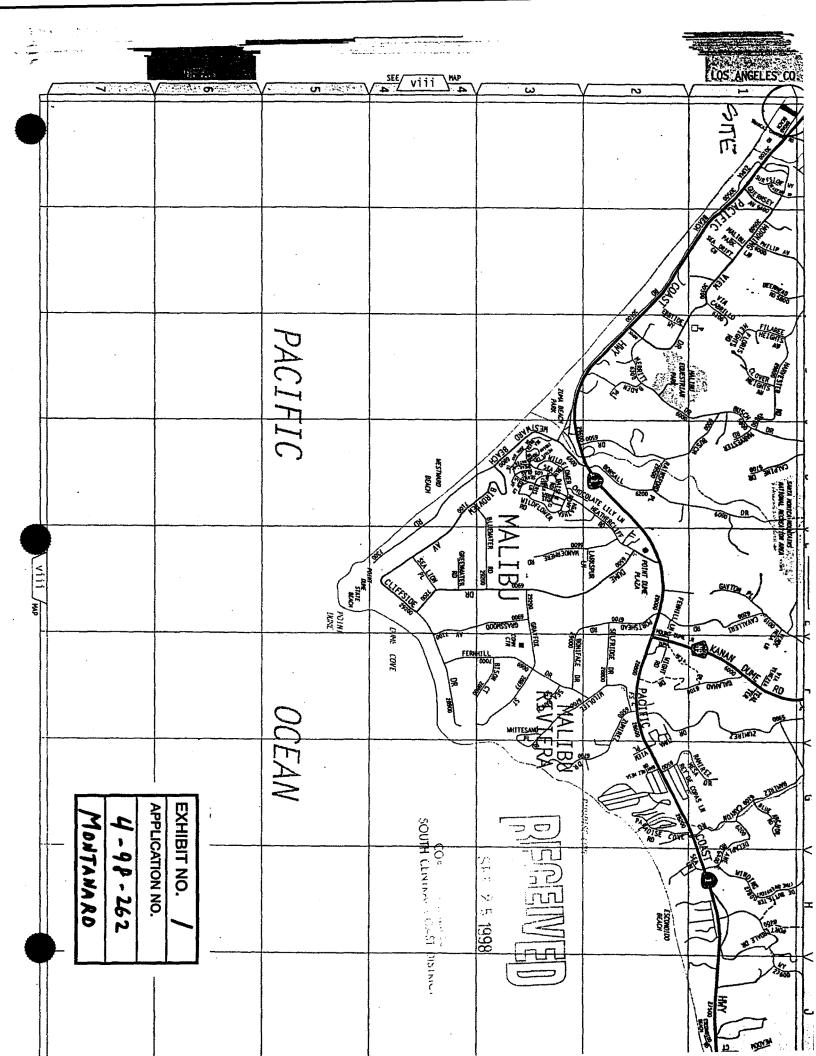
Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted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

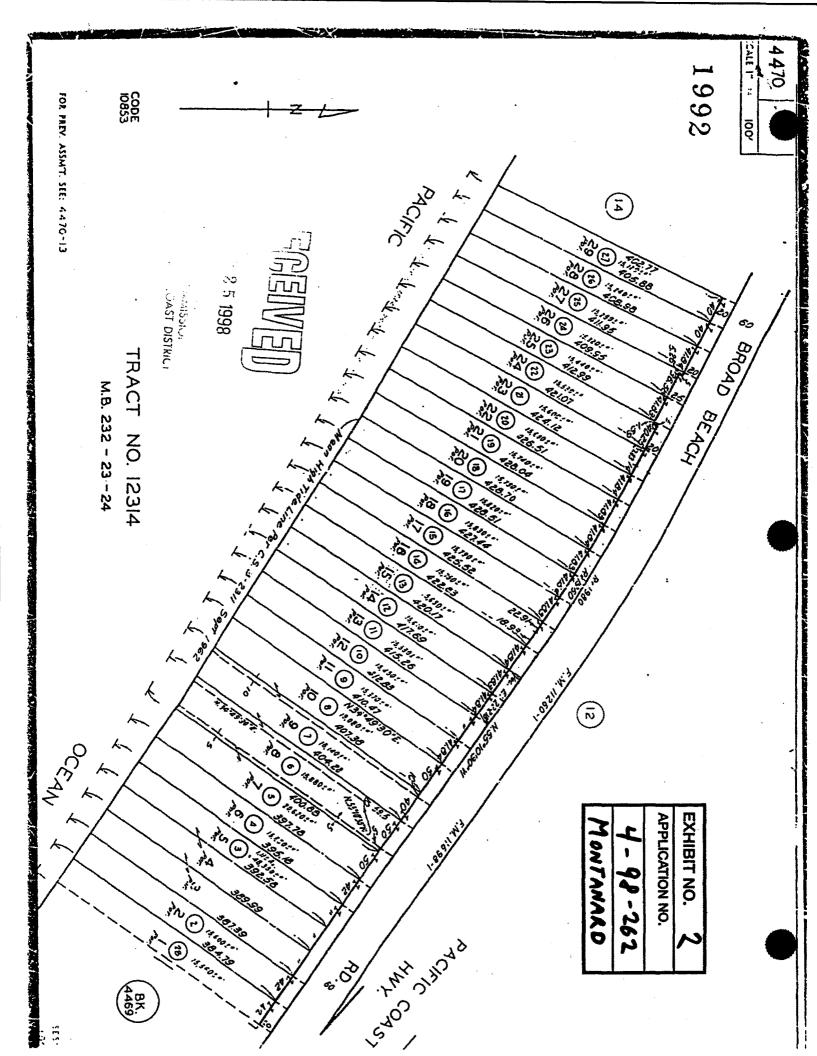
Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

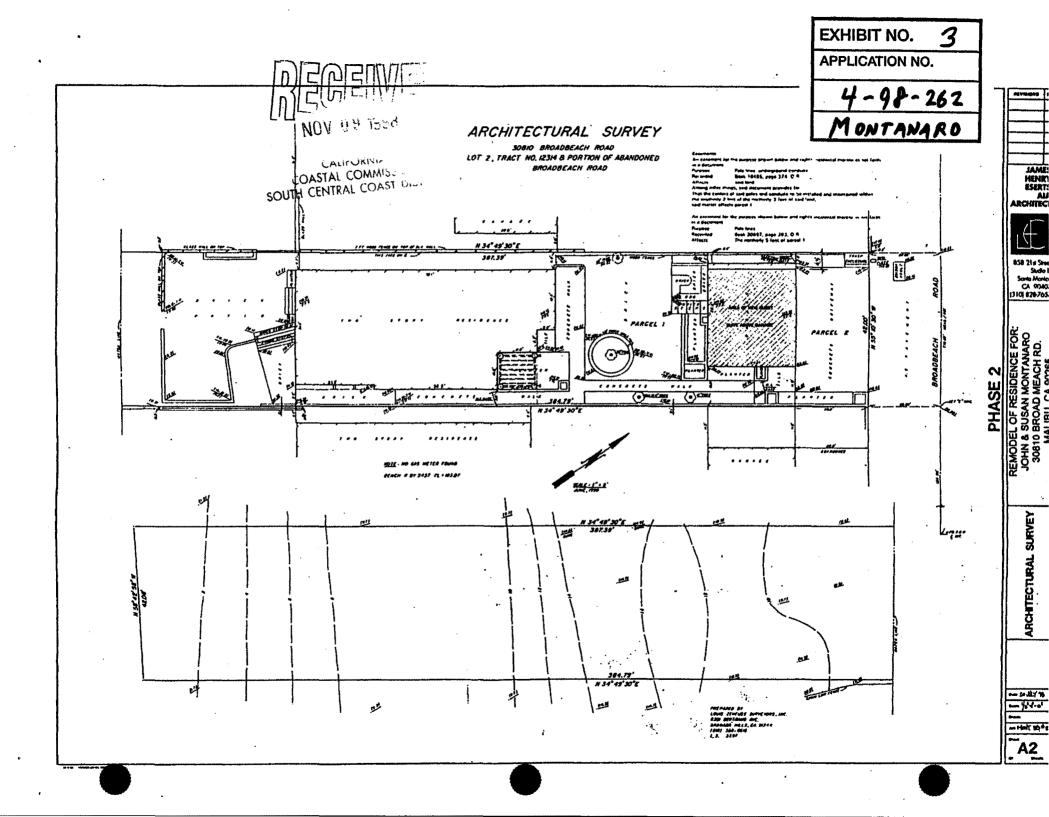
#### F. California Environmental Quality Act

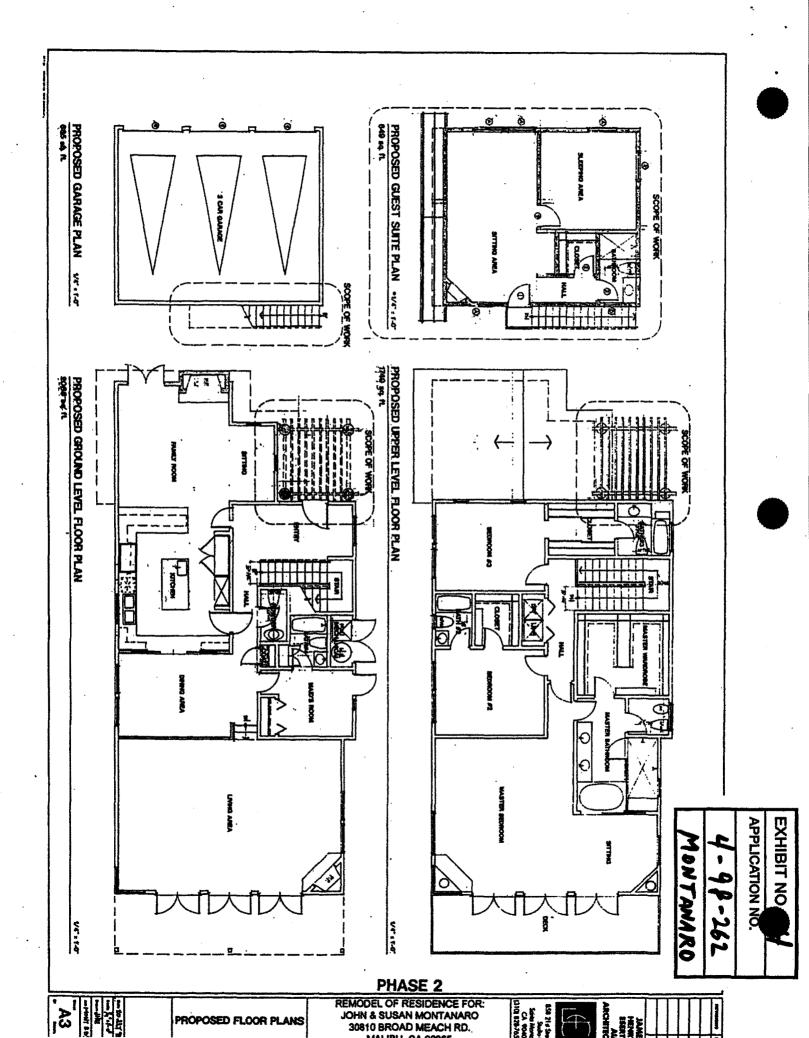
Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (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 effect which the activity would have on the environment.

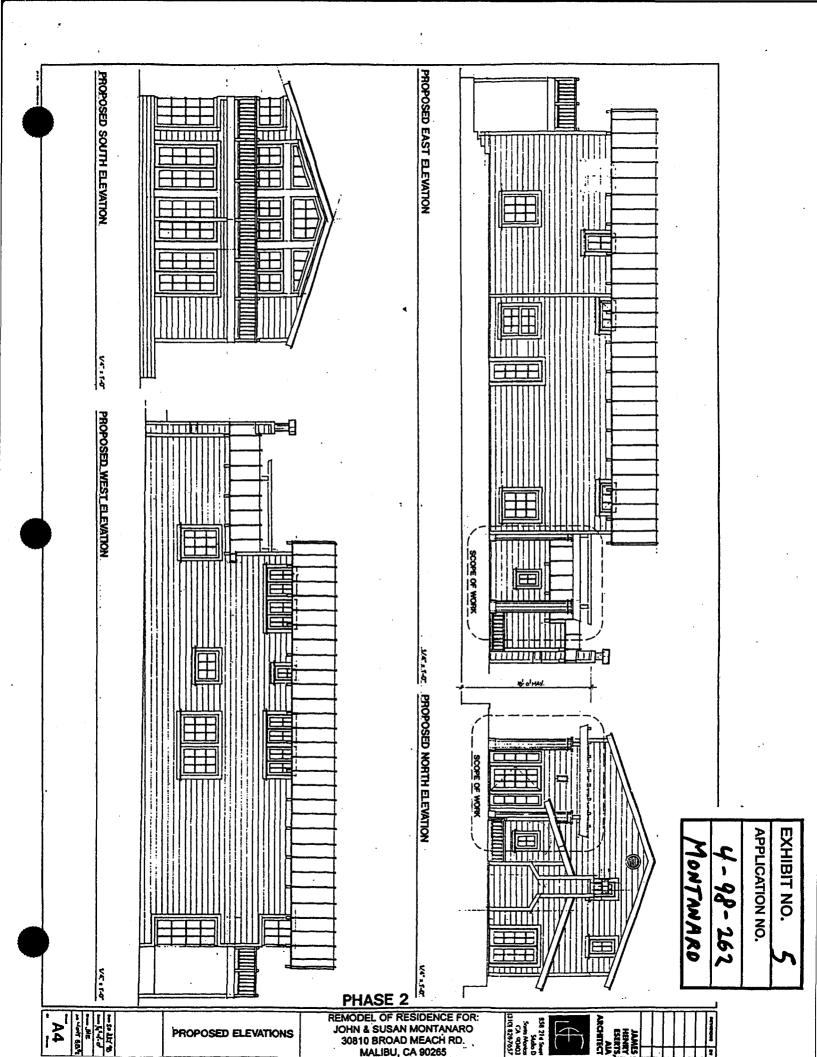
The proposed project, as conditioned, will not have any significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is consistent with CEQA and the policies of the Coastal Act.

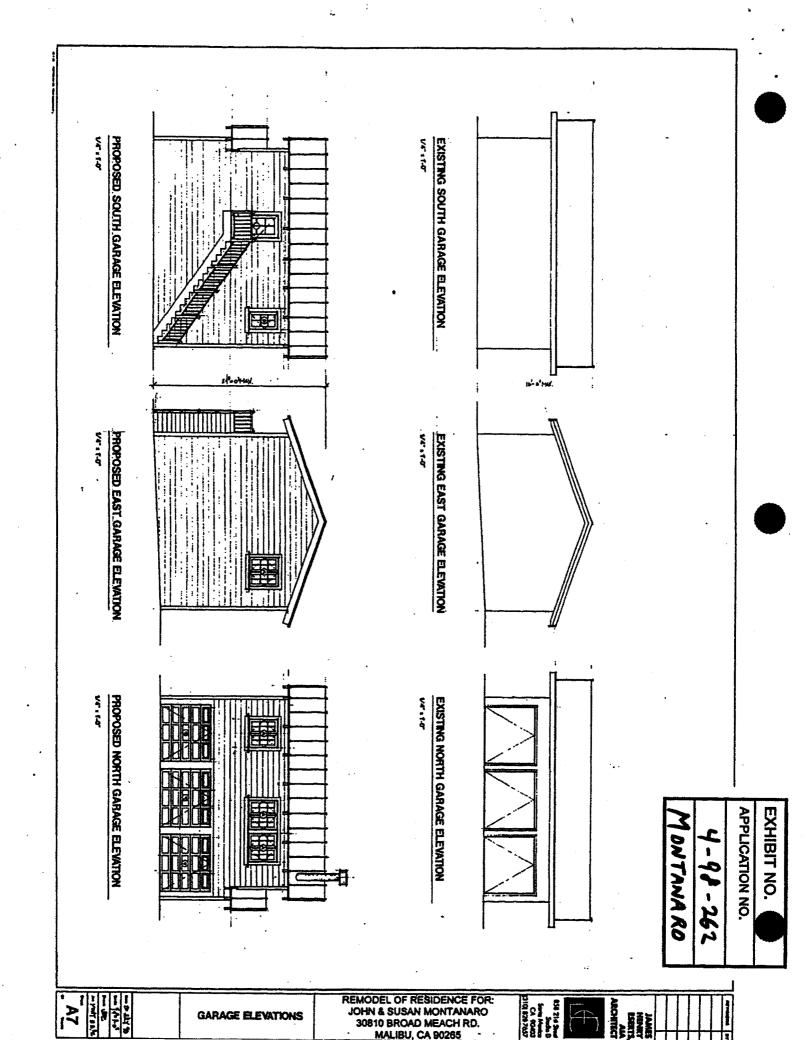


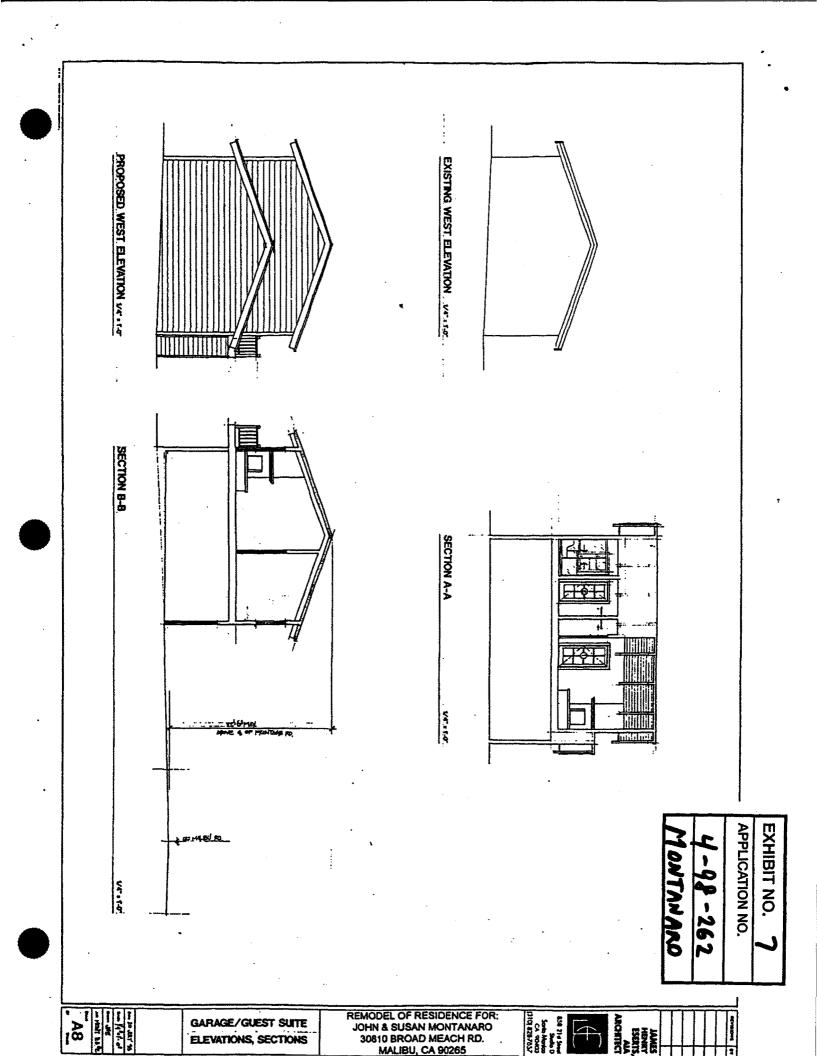












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