

CALIFORNIA COASTAL COMMISSION

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

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STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 4-97-221

APPLICANTS: Bud Hoffman and Mary Saltzburg AGENT: Mike Barsocchini

PROJECT LOCATION: 21340 Pacific Coast Highway, Malibu, Los Angeles County

PROJECT DESCRIPTION: Construct a 982 sq. ft. addition to the second story of an existing beachfront single family residence; extend 3 caissons seaward of the existing residence; 56 sq. ft. first story deck enlargement; addition of two decks totalling 407 sq. ft. to second story; 54 sq. ft. addition to garage; demolish utility shed and replace with trash storage unit. No grading.

LOCAL APPROVALS RECEIVED: City of Malibu: Environmental Health Department, In-concept Approval, dated Sep 5, 1997; Geology and Geotechnical Engineering Review Sheet, dated 8-11-97; Planning Department, Approval in Concept, dated 11-4-97.

SUBSTANTIVE FILE DOCUMENTS: California State Lands Commission project review letter, December 9, 1997; RJR Engineering Group, Inc., Geotechnical Engineering Report, August 11, 1997; Pacific Engineering Group, Wave Uprush Study, August 13, 1997.

SUMMARY OF STAFF RECOMMENDATION:

The proposed development is for additions to an existing single family residence on a beachfront parcel, including seaward extension of the building, caissons and decks within the allowed stringlines measured from adjacent development. Staff recommends approval of the proposal with special conditions pertaining to geologic recommendations, construction responsibilities and debris removal, assumption of risk, and wild fire waiver of liability.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, 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, 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, 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. Plans Conforming to Geologic Recommendation

All recommendations contained in the RJR Engineering Group, Inc., Geotechnical Engineering Report, August 11, 1997 and Pacific Engineering Group, Wave Uprush Study, August 13, 1997 shall be incorporated into all final design and construction including foundations, grading and drainage. All plans must be reviewed and approved by both 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.

2. Construction Responsibilities and Debris Removal

The applicant shall ensure that the project contractor: (a) not store any construction materials or waste where it may be subject to wave erosion and dispersion; (b) not allow any machinery on the sandy beach or in the intertidal zone at any time; and (c) remove promptly from the beach any and all debris that results from the construction activities.

3. 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 and from erosion 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.

4. 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.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description.

The applicants propose to construct a 982 sq. ft. addition to the second story of an existing two story, 1892 sq. ft. beachfront single family residence. The proposal includes extension of 3 caissons seaward of the existing residence, a 56 sq. ft. first story deck enlargement, addition of two decks totalling 407 sq. ft. to the second story, a 54 sq. ft. addition to the attached garage, demolition of the utility shed and replacement of the shed with a trash storage unit. No grading is proposed.

There are no changes to the septic system. The septic system is protected from wave action by an existing wall underneath the house, as shown on the cross-section provided with the wave uprush study by Pacific Engineering Group.

The proposed project site is located on the south side of Pacific Coast Highway, facing La Costa Beach in the City of Malibu. Access to the property is directly from Pacific Coast Highway. There are existing residences on each side of the subject lot.

The applicant has submitted a stringline map which is drawn between the nearest adjacent first story corners of these two structures, and includes deck as well as building stringlines. The proposed development would extend seaward toward, and not beyond, both stringlines. Furthermore, the project has been reviewed by the State Lands Commission. The State Lands Commission, at this time, asserts no claim either that the project intrudes into sovereign lands or that it would lie in an area that is subject to public easement in navigable waters.

B. 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 applicant has submitted a RJR Engineering Group, Inc., Geotechnical Engineering Report, August 11, 1997 and Pacific Engineering Group, Wave Uprush Study, August 13, 1997. RJR Engineering Group, Inc., including a registered engineer and a certified engineering geologist, determined that the proposed project site is suitable from a soils and engineering geologic standpoint for construction of the proposed development provided that their recommendations were followed, including cast in place construction of the new piles (caissons).

In addition, the Pacific Engineering Group, represented by a registered professional engineer, in their Wave Uprush Study, August 13, 1997 states that:

It is this office's opinion that the proposed construction, as outlined in the referenced preliminary plans, will not have adverse effects on the coastal processes of the adjoining beach properties, will not significantly change the amount of sand supply on the beach, and is landward of all surveyed Mean High Tide Lines known to this office.

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 consultant's geologic recommendations are incorporated into project plans. Therefore, the Commission finds it necessary to require through special condition no. 1 that the applicant submit project plans that have been certified in writing by the consulting Engineering Geologist as conforming to their recommendations.

The application includes addition of pilings and construction of a building additions and decks in the area of the sandy beach subject to tidal influence. Construction materials and equipment and debris will be in this vicinity and subject to wave and runup action, which may create a hazard to beach users. Therefore, it the Commission requires condition no. 2 to ensure applicant responsibility for construction materials and debris removal and not store material where it would not be subject to wave action.

Further, oceanfront sites are subject to flooding and erosion from storm waves and, as such, the risk to development from these hazards cannot be completely mitigated. Therefore, though the applicants may decide that the economic benefits of development outweigh the risk of harm which may occur from the identified hazards, neither the Commission nor any other public agency that permits development should be held liable for the applicants' decision to develop. Therefore, as conditioned through no. 3, the applicants are required to assume the risk of damage to the structure through wave action and flooding and expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the decision to develop. This waiver of liability will take the form of an assumption of risk deed restriction recorded against the property.

For all of the above reasons, the Commission finds that only as conditioned is the proposed development consistent with Section 30253 of the Coastal Act.

C. 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.

All beachfront projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. The Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline. The major access issue in such permits is the occupation of sand area by a structure, in contradiction of Coastal Act policies 30210, 30211, and 30212. However, a conclusion that access may be mandated does not end the Commission's inquiry. As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with ... the need to protect ... rights of private property owners..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the U.S. Supreme Court's decision in the case of Nollan vs. California Coastal Commission. In that case, the court ruled that the Commission may legitimately require a lateral access easement where the proposed development has either individual or cumulative impacts which 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 trusts thus physically excluding the public; interference with natural shoreline processes which are necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability to use and cause adverse impacts on public access such as above.

The proposed addition and new decks would not encroach further seaward than adjacent development, so they will not physically exclude the public from shoreline access. Further, the applicants do not propose the construction or improvement of any shoreline protective devices which could interfere with coastal 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, 30251 and 30253, 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 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.

The applicants have submitted a stringline map which connects the nearest adjacent corners of the residences (structures and decks) immediately to the east of the project sites with the nearest adjacent corners of the existing residence immediately to the west of the subject site. Staff has reviewed this map and notes that the stringline for the building addition and new deck is consistent with past Commission actions on stringlines and is appropriate for the proposed project. The proposed addition and deck conform to the stringline. As such, the proposed project will not extend development further seaward than adjacent development.

In addition the applicant has submitted evidence of State Lands Commission review of the proposed project. The review resulted in no State Lands assertion of claim that the project intrudes into sovereign lands or that it would lie in an area that is subject of the public easement of navigable waters.

Additionally, 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 letter (signed document) required in condition no. 4 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 Commission finds, therefore, that the proposed project is consistent with the Coastal Act public access policies as found in Sections 30210, 30211, 30212, and 30251.

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'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).

E. 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 Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with 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 for this area of the Santa Monica Mountains that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

F. California Environmental Quality Act

The Coastal Commission's permit process has been designated as the functional equivalent of CEQA. Section 13096(a) of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of 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 that would substantially lessen any significant adverse impacts that the activity may have on the environment.

As discussed above, the proposed project has been mitigated to incorporate conditions pertaining to geologic recommendations, construction responsibilities and debris removal, assumption of risk, and wild fire waiver of liability. The proposed amended development, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the Commission finds that the proposed amended project, as conditioned to mitigate the identified impacts, is consistent with the requirements of CEQA and the policies of the Coastal Act.

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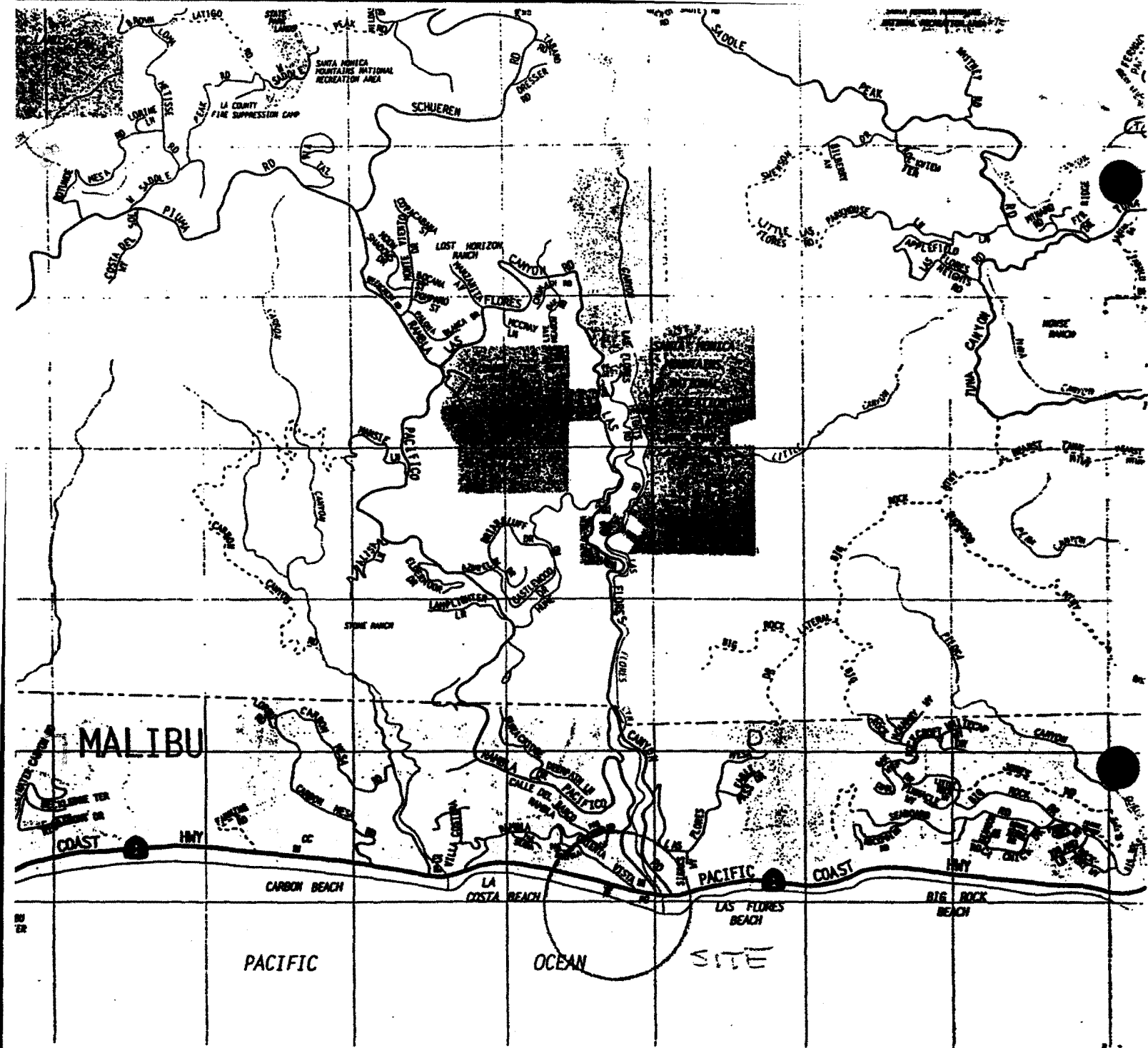


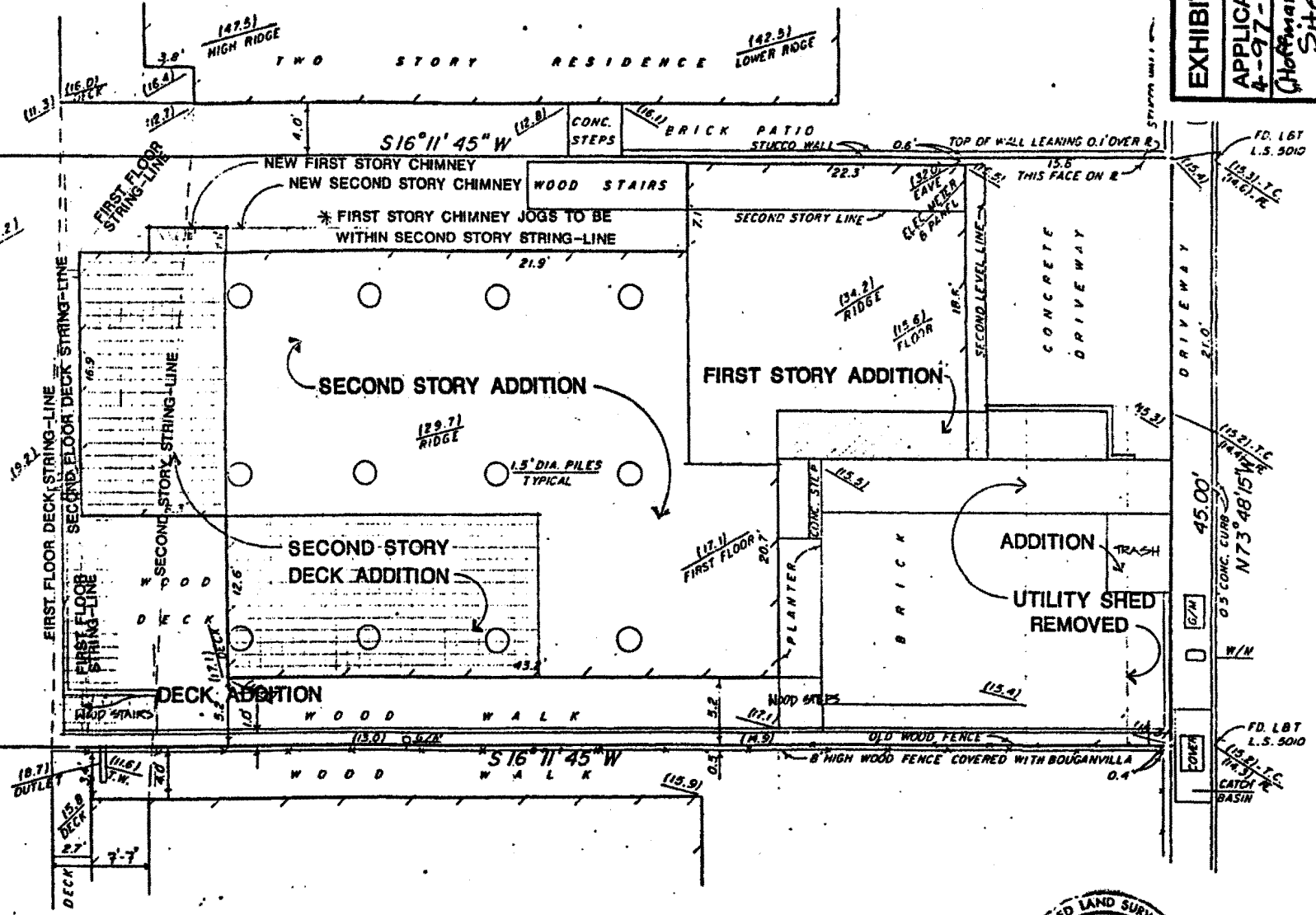
EXHIBIT NO. 1
APPLICATION NO. 4-97-221 (Hoffman & Saltzberg)
Project Location

RECEIVED

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CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

EXHIBIT NO. 2
APPLICATION NO.
 4-97-221
(Hoffman & Saltzberg)
Site Plan,
Additions, Stringline

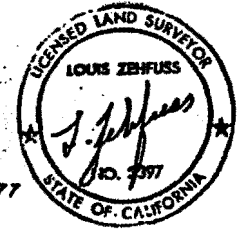


SCALE: 1" = 8'
 MAY, 1997

ARCHITECTURAL SURVEY

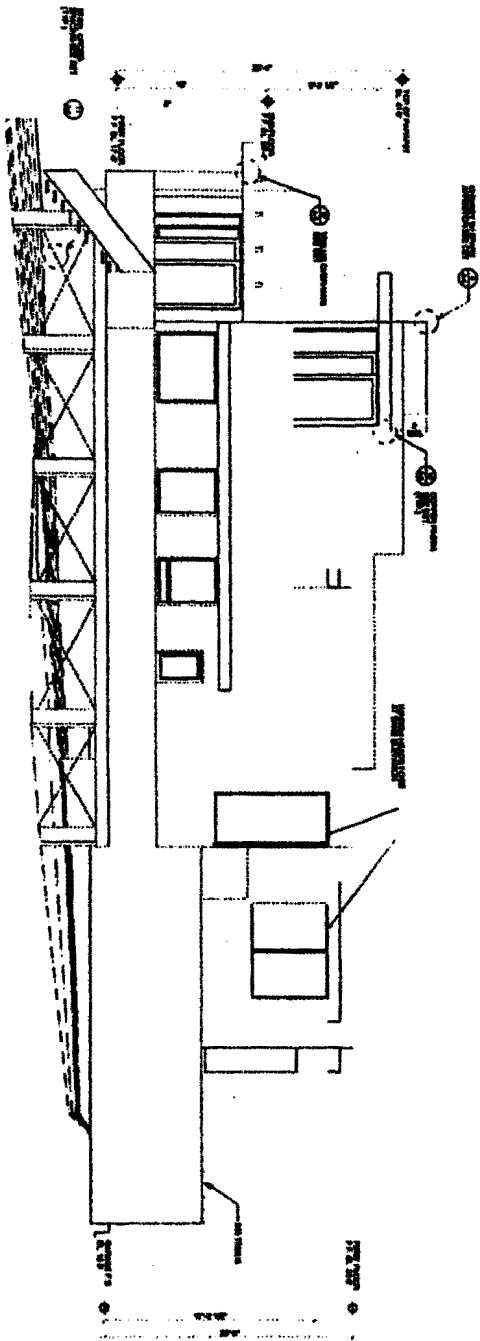
21340 PACIFIC COAST HIGHWAY

B.M. # DY 5383, ELEV. = 17.77



PREPARED BY
 LOUIS ZEHFUSS
 1301 BERTRAND
 GRANADA HILLS,
 (818) 368-8616
 L.S. 3397

EAST ELEVATION



SOUTH ELEVATION

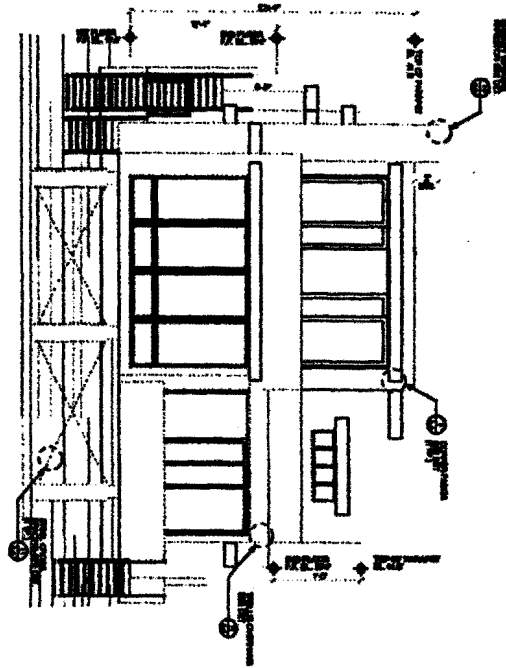


EXHIBIT NO. 3
APPLICATION NO.
4-97-221 (Hoffman & Saltzburg)
Elevations

A-5
 ELEVATIONS

BARSOCCINI & ASSOCIATES, INC.
ARCHITECTS
 MICHAEL E. BARSOCCINI, A.I.A. • (714) 466-0225
 3825 COAST VIEW DRIVE • MALIBU, CA 90265

HOFFMAN / SALTZBURG RESIDENCE
 21340 Pacific Coast Highway
 Malibu, CA 90265

DATE	BY	CHECKED	SCALE