

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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Staff: JEL-V  
Staff Report: 3/19/98  
Hearing Date: 4/7-10/98

**STAFF REPORT: PERMIT AMENDMENT****APPLICATION NO.: 4-97-128-A1****APPLICANT: SAM Trust****AGENTS:** Michael Rutman, Sherman Stacey,  
Daryl Hosta**PROJECT LOCATION:** 31100 Broadbeach Road, Malibu (Los Angeles County)  
(APN: 4470-015-004)**DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:** Restoration of coastal dunes seaward of a stringline drawn between the corners of the adjacent decks and retention of grass lawn that is located landward of said stringline.**DESCRIPTION OF AMENDMENT:** Amend the western point of the stringline terminus approximately 20 feet seaward to accurately reflect the location of a terrace deck on the adjacent property to the west.**LOCAL APPROVALS RECEIVED:** N/A**SUBSTANTIVE FILE DOCUMENTS:** Malibu/Santa Monica Mountains Certified Land Use Plan; Coastal Development Permits: 4-87-093 (Leff), 5-90-997 (SAM Trust), 4-96-158 (SAM Trust); 4-97-128 (SAM Trust)

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**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.

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## **SUMMARY OF STAFF RECOMMENDATION:**

The staff recommends that the Commission determine that the proposed development, as amended, 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 remain in effect, including the implementation of the dune restoration plan. The proposed amendment does not permit any new development.

### **II. Findings and Declarations**

**Staff Note:** The practical impact of the proposed "stringline" amendment will be to: 1) establish the accurate boundary between land and sea from which the dune restoration plan shall commence; and, 2) permit the applicant to retain the terrace deck, as existing, and a small portion of the lawn area landward of the deck "stringline".

#### **A. Project Description and Background**

The applicant is requesting an amendment to retain an existing terrace deck and a small portion of an existing lawn area seaward of an existing beach front residence. The improvements are within a stringline drawn from the corners of the nearest adjacent terrace decks on the properties to the east and west. The stringline proposed in this amendment was originally approved under coastal development permit (CDP) 5-90-997 (Sam Trust) for the construction of a residence on the property.

Under CDP 4-97-128 the applicant requested to retain unpermitted landscaping on the coastal dune seaward of the deck stringline, which is a designated Environmentally

Sensitive Habitat Area (ESHA). However, the deck stringline proposed by the applicant and utilized to determine the seaward extent of development under this permit(4-97-128) was not the correct stringline already permitted under CDP 5-90-997 (see Exhibit 2).

Thus, the subject amendment will result in conformance of the inadvertently incorrect stringline approved under CDP 4-97-128 with the original stringline approved in CDP 5-90-997. This proposal will correctly delineate the dune area, which is required to be restored under CDP 4-97-128, from the developed portion of the property, and, as noted above, permit the applicant to retain the terrace deck as existing and a small portion of an existing lawn area seaward of the residence .

In 1991, the Commission approved coastal development permit CDP 5-90-997 to demolish an existing single family residence and construct a 8,949 sq. ft. single family residence with an attached garage, nanny's quarters, a septic system, swimming pool and 2,200 cu. yds. of fill. The project would encompass two lots, for a total 31, 641 square feet (.73 acre).

CDP 5-90-997 was approved subject to six special conditions which required the applicant to complete the following: 1) submit revised plans that illustrated the development conformed to a building and deck "stringline"; 2) submit final development plans in conformance with the recommendations contained in the geology report; 3) record a deed restriction that indicates the applicant assumes the risk of developing in a location that could be subject to hazard; 4) record a deed restriction that any future development will require a coastal development permit; 5) submit evidence the septic system is located seaward of the residence and adjacent to the dunes; and, 6) submit and implement a dune restoration program.

These special conditions were met and a permit for CDP 5-90-997 was issued on February 2, 1991. In particular, compliance with special condition number one, to submit revised plans that conformed to a building and deck "stringline", accurately established the existing 20 foot wide terrace deck located on the adjacent property to the west as the western terminus for the SAM Trust deck "stringline" (see Exhibit 2).

After construction of the residence was completed, Commission staff discovered landscaping with non-native and invasive plant species had occurred within the coastal dune area, a designated ESHA. On July 24, 1996, the applicant was notified by the enforcement unit of the Commission that because the dune restoration program, that was part of the permit, had not been completed (as specified in CDP 5-90-997) the applicant was in non-compliance with the terms and conditions of the approved permit, which constitutes a violation of the Coastal Act.

On August 28, 1996 the applicant submitted a separate permit application, CDP 4-96-158, for a revised coastal dune restoration plan. The application was subsequently withdrawn on June 11, 1997 due to various postponements and the requirements of the

Permit Streamlining Act. The identical project was then re-submitted as permit application CDP 4-97-128, also on June 11, 1997.

On August 14, 1997, the Commission approved CDP 4-97-128 to restore the coastal dunes, including ice plant and lawn removal located seaward of a "stringline" drawn between the corners of the adjacent decks. CDP 4-97-128 was subject to two special conditions that required: 1) a revised restoration and monitoring plan; and 2) implementation and completion of the restoration plan.

However, the deck "stringline" location submitted by the applicant and utilized in staff's analysis of the permit application was not the approved location per CDP 5-90-997 special condition number one, but rather, a deck "stringline" erroneously drawn from the second story balcony, and 20 feet landward from the actual seaward most point of the neighboring deck to the west. Thus, when the Commission took action to approve CDP 4-97-128 this erroneous "stringline" location was inadvertently adopted for CDP 4-97-128, while CDP 5-90-997 specified a different, correct "stringline."

At the time the current amendment to CDP 4-97-128 was requested in October 1997, staff researched the associated permits and files, including the permit for the adjacent property to the west, CDP 4-87-093 (Leff). The Leff permit indicates the property at 31108 Broadbeach had a pre-existing residence and concrete patio at the location of the existing residence and terrace deck (see Exhibit 3). The approved plans for CDP 4-87-093 indicate the approval of a terrace deck 20 feet seaward of the residence, at the location of the pre-existing concrete patio (see Exhibits 4 and 5).

Furthermore, upon review of the underlying permit for the SAM Trust residence and other documents pursuant to this proposed amendment, CDP 5-90-997, further staff analysis led to the conclusion that compliance with special condition number one clearly established the western terminus for the deck "stringline" to be the Leff terrace location, 20 feet seaward of the residence proper.

## **B. Environmentally Sensitive Habitat Areas and Visual Resources**

The Coastal Act defines an environmentally sensitive area in Section 30107.5 stating that:

*Environmentally sensitive area means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

The proposed amendment location is adjacent to the Trancas Beach (Broad Beach) coastal dunes, which are considered an environmentally sensitive area because this area supports a flora and fauna restricted to coastal dunes and upper beaches. In addition, the Commission has found in certifying the Malibu Land Use Plan and in reviewing over a dozen permits for development on this beach that the dunes are an

environmentally sensitive habitat area (ESHA). The Commission notes that the Trancas Beach dunes are the only extensive dunes within the 27 mile stretch of the Malibu Coastal Zone and that the Trancas dunes represent one of the last extensive dune fields existing in Southern California.

The Coastal Act mandates that ESHAs be protected against habitat disruption. Furthermore, the Coastal Act requires that development adjacent to an ESHA be sited and designed to prevent impacts that would degrade the ESHA value. Specifically, Section 30240 states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values and only uses dependent on such resources shall be allowed within such area.*
- (b) Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade such areas and shall be compatible with the continuance of such habitat areas.*

In addition, the Coastal Act mandates that development be designed to minimize the alteration of natural landforms that are scenic to the coast. Specifically, Section 30251 states:

*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 public views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character 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.*

In August 1997, the applicant proposed, under application CDP 4-97-128, a revised dune restoration plan that would remove unpermitted non-native vegetation (except ice plant) and revegetate coastal dunes consistent with Special Condition #6 of CDP 5-90-997 and develop a 2,000 sq. ft. lawn in place of other dunes. The Commission granted a permit to restore the dunes, including ice plant removal, seaward of the "stringline" and to retain the grass lawn landward of the "stringline", and denied a permit to for the development of a grass lawn seaward of the "stringline".

The net effect of the Commission decision was to: 1) specifically require the removal of the non-native ice plant and the portion of the 2,000 sq. ft grass lawn area seaward of the deck "stringline", (2) require the applicant to develop a dune restoration plan that utilizes only native plants characteristic of the dune habitat area, and 3) permit the applicant to retain a grass lawn area landward of the deck "stringline" location.

The area landward of the originally approved "stringline" location, under permit CDP 5-90-997, which extends 20 feet further seaward than the erroneously approved location, under CDP 4-97-128, was in fact a historically disturbed area and does not actually constitute ESHA area. A survey of the property conducted in 1989, prior to approval of CDP 5-90-997, and confirmed by staff through analysis of aerial photographs, indicates the existence of a wood deck, a concrete slab and sunshade between the originally approved deck "stringline" and the residential structure. Furthermore, the same survey also identifies the location of a 60 foot long windscreen and barbecue structure on the seaward side of the originally approved deck "stringline".

Clearly, the dune area between the originally approved "stringline" and the erroneous "stringline" approved inadvertently under CDP 4-97-128 was historically disturbed prior to the approval of CDP 5-90-997 through the construction and use of the wooden deck, concrete slab and sunshade. In addition, as noted above, the disturbed sand area landward of the originally approved deck "stringline" is in fact the appropriate delimitation of the portion of the lot that can be developed for deck and lawn use, given the seaward most terminus of the Leff terrace to the west.

As such, the proposed 20 feet of lawn and terrace use for this portion of the parcel would be consistent with the uses on the surrounding properties up and down coast of the proposed amendment. Further, the amended "stringline" location would prevent any future improvements or non-native, non-dune landscape encroachment into the ESHA and thus, protect the sensitive dune ESHA seaward of this "stringline".

Finally, the proposed amendment will not affect the intent or the special conditions of the original approval for CDP 4-97-128, as the applicant will still be required to: 1) remove the non-native ice plant and that portion of the grass lawn area seaward of the deck "stringline", and (2) develop a dune restoration plan that utilizes only native plants characteristic of the dune habitat area.

Thus, the approval of the proposed amendment to achieve conformance between the originally approved deck "stringline", established under CDP 5-90-997, and the erroneously approved "stringline", under CDP 4-97-128, would maintain protection of the adjacent ESHA area by not exceeding the "stringline"; ensure the adjacent development is sited and designed to minimize any further degradation of the dune area, again given the delimitation of the "stringline"; and finally, the development of grass lawn within this area would be visually compatible with the character of the surrounding uses up and down coast. Therefore, the amendment as proposed would be consistent with Sections 30240(a)(b), and 30251 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.*

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 applicant submitted a letter from the State Lands Commission, dated 10/18/90, for the previous CDP 5-90-997 which indicated the proposed residence:" appears to be located landward of those surveyed mean high tide lines known to us at this time. Therefore, we will not require a lease or permit."

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.

In the case of the proposed project, the proposed amended "stringline" location will not extend development any further seaward than the existing structures on the upcoast or downcoast sides of the proposed project site. In fact, no new development is proposed. Rather, the applicant is requesting a 20 foot seaward extension of the deck "stringline" primarily to maintain a portion of the existing lawn area between the deck and the sand dune restoration area. The modification of the "stringline" would also legalize a small portion of the existing terrace which now encroaches beyond the erroneously approved "stringline", established under CDP 4-97-128 (see Exhibit 2).

As noted above, the applicant was required to restore the coastal dunes as special condition number six under the original CDP 5-90-997. The dune restoration program was then revised under CDP 4-97-128, and specifically clarified the "stringline" as the separation point between where the lawn area shall end and the restoration program shall begin.

As such, the proposed project will have no individual or cumulative impacts on public access or beach erosion and therefore is consistent with Sections 30210, 30211 and 30212 of the Coastal Act.

### **Stringline Policy**

The Commission has developed, through past permit actions, the "stringline" policy to control the 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. 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 proposed deck "stringline" amendment would be drawn between the nearest corners of the adjacent decks to the east and west. Thus, seaward encroachment of the existing lawn area and deck would be limited to the level of development found on either side of the proposed project site. Therefore, the proposed deck "stringline" amendment is consistent with Sections 30210, 30211, 30251 30253 and of the Coastal Act.

#### **D. 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).*

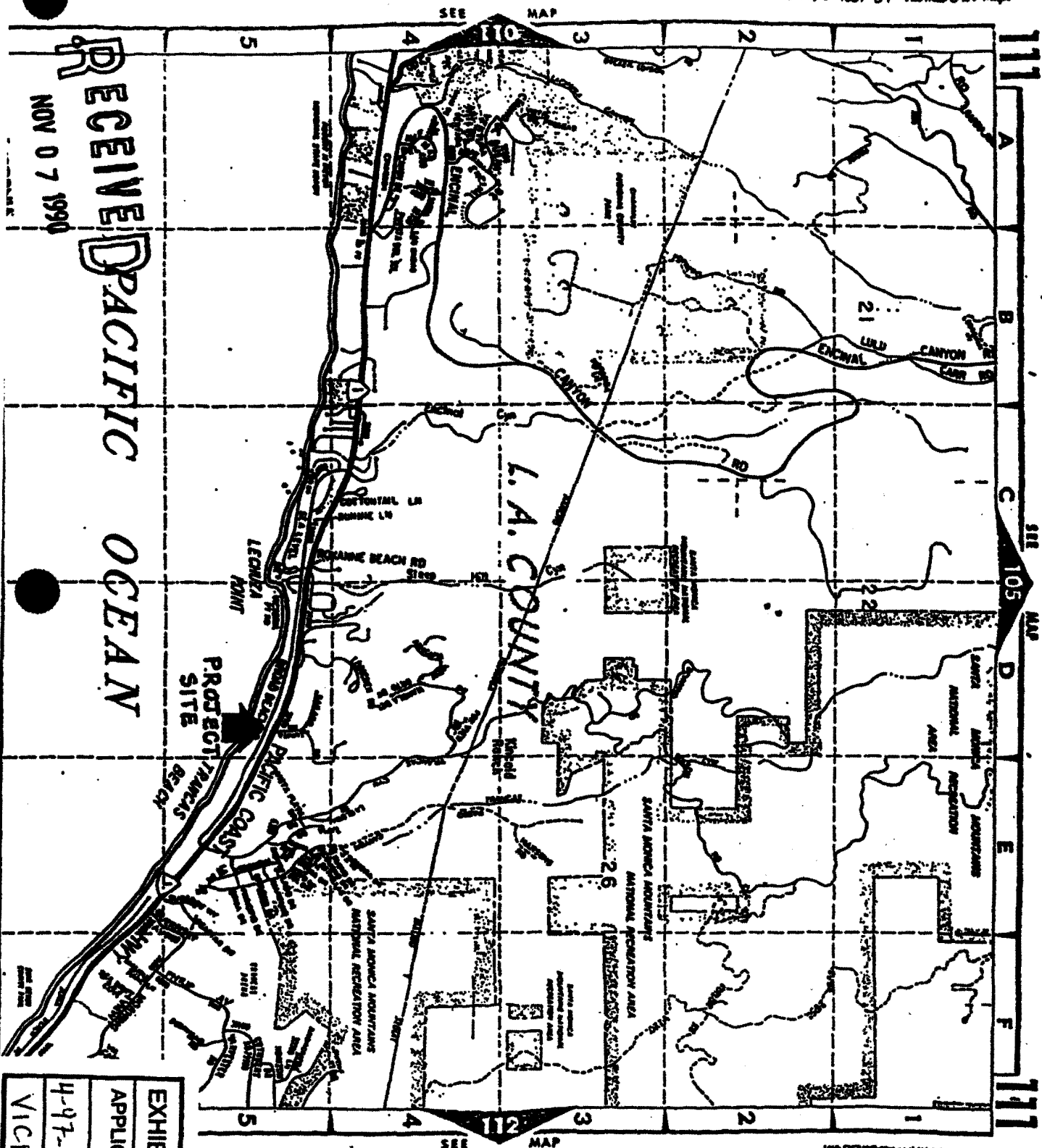
Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. The proposed amended development will not create adverse effects and is found to be consistent with the applicable policies contained in Chapter 3.

Therefore, the Commission finds that approval of the proposed amended development 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. 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 amended development would not cause significant, adverse environmental impacts that have not been mitigated. Therefore, the proposed project is found consistent with CEQA and with the policies of the Coastal Act.



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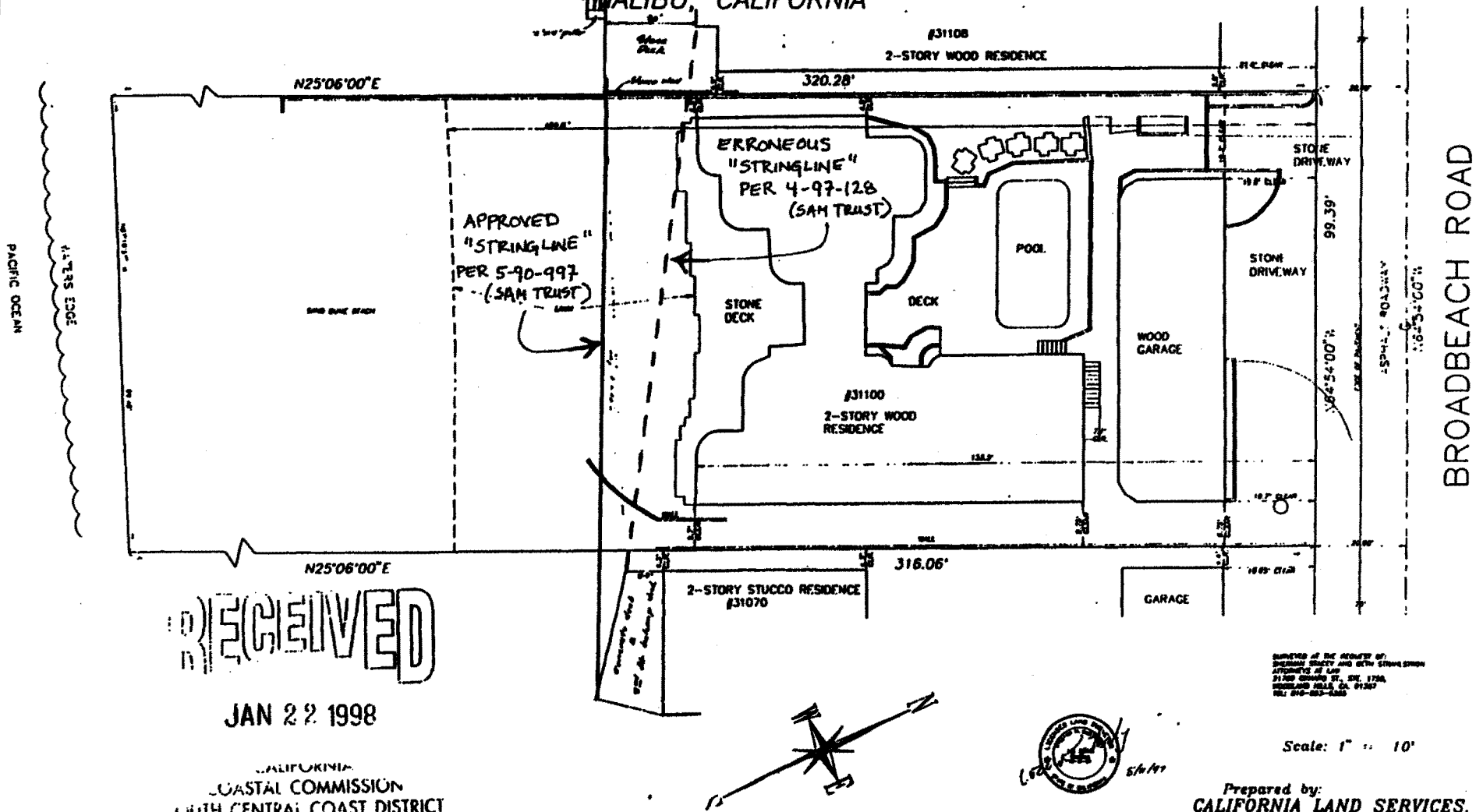
EXHIBIT NO. 1
APPLICATION NO.
4-97-125A (S.M. TRUST)
VICINITY MAP

EXHIBIT 1 Item 12i  
4-97-128 (S. A. M. Trust)  
VICINITY MAP

## LOCATION SURVEY

**31100 BROADBEACH ROAD**

~~UN~~ALIBU, CALIFORNIA



SURVEYOR OF THE RECORDS OF:  
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**Scale: 1" = 10'**

Prepared by:  
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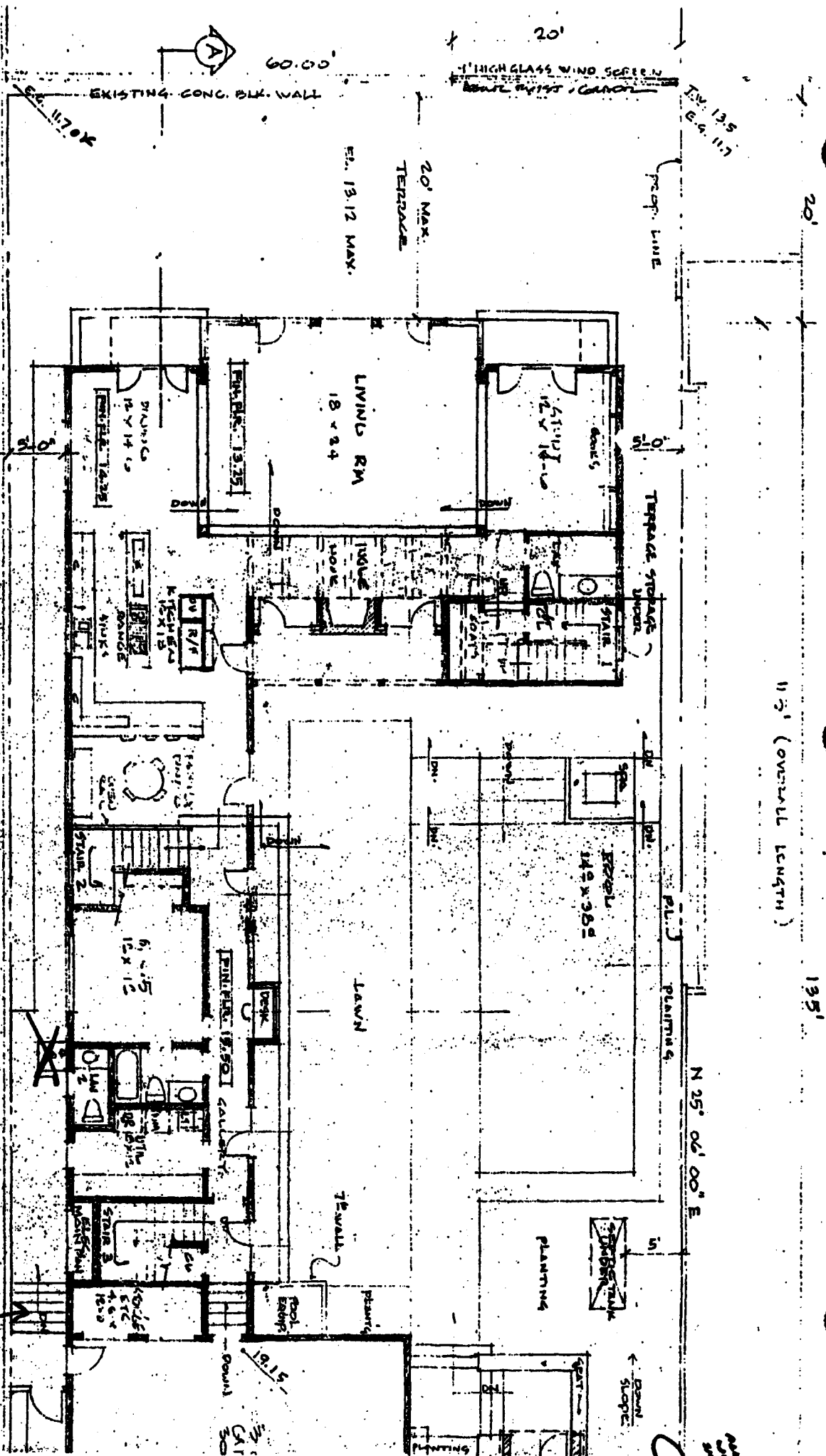
EXHIBIT NO. 2

**APPLICATION NO.**

497-128A (SAM TRUST)

# SITE PLAN





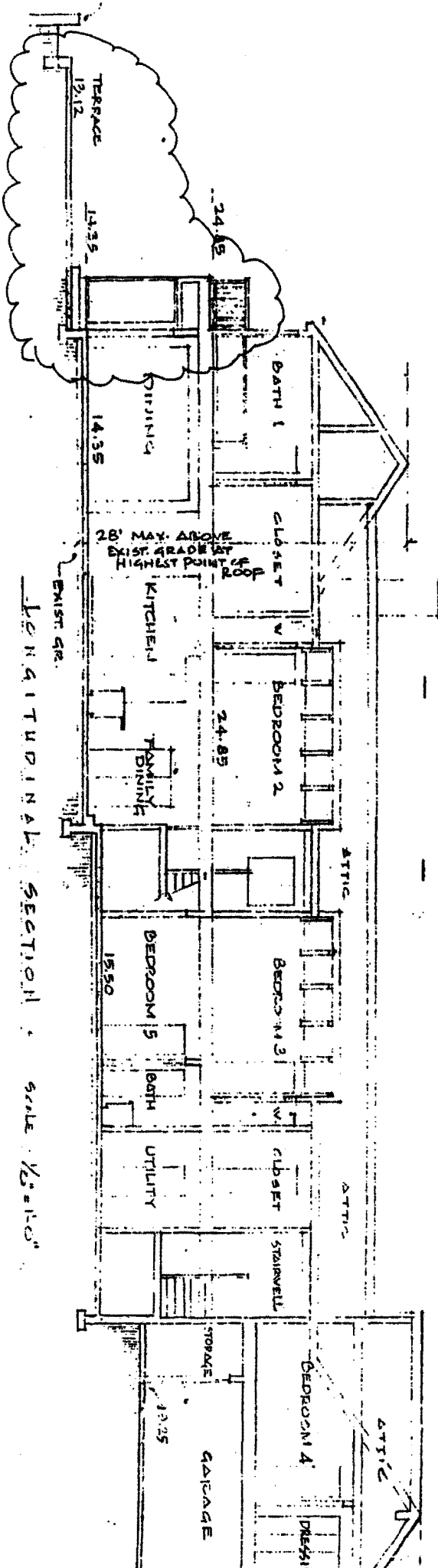
**✓ NORTH**

First Floor Plan  
Scale - 1/8" = 1'-0"

Scale - 1/8" = 1'-0"

PROPOSED RES

EXHIBIT NO. 4
APPLICATION NO.
4-97-128A (SAM TRUST)
LEFT FLOOR PLAN



SECTION A-A

LONGITUDINAL SECTION Scale 1/8"=1'-0"

PROPOSED RESIDENCE FOR MR. & MRS. PERLEY LEFF

EDWARD GREENLEACH ARCHITECT, LOS ANGELES, CA.

CDP# 5-87-093 (LEFF)  
 CCC Approved: 4/24/87  
 Effective Date: 6/4/87

EXHIBIT NO. 5  
 APPLICATION NO.

447-126A (SAM TRUST)

LEFT RESIDENCE