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CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
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Staff: MB-V
Staff Report: 4/16/98
Hearing Date: 5/12-15/98

STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 4-97-223

APPLICANT: Donald L. Morton AGENT: Lynn Heacox

PROJECT LOCATION: 24752 Malibu Road, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Addition of new landing and stairway to beach for existing beachfront single family residence.

Lot Area 7410 sq. ft.
Project Density 5.8 u/a

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department Approval in Concept (11/6/97); City of Malibu, Geology Referral Sheet, project found geologically feasible, dated 10-8-94.

SUBSTANTIVE FILE DOCUMENTS: David Weiss, Wave Uprush and Design Beach Profile, stamped received by City of Malibu on Nov 17, 1994. Coastal Development Permits 4-95-085 (Morton), 5-88-342E (BJK Associates), 4-95-248 (Turner), and 4-96-121 (Barham Trust).

SUMMARY OF STAFF RECOMMENDATION:

The development is similar to proposals to add stairway improvements to existing single family beachfront residences located seaward of the Pacific Coast Highway such as approved in Coastal Development Permits 4-95-248 (Turner) and 4-96-121 (Barham Trust). The proposed development is an addition to the side of the residence within the stringline for beachfront development. Staff recommends approval with a special condition for applicant's assumption of risk.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit 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 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 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 Condition.

1. 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: (1) that the applicant understands that the site may be subject to extraordinary hazard from storm waves, 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, its officers, agents and employees 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.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Project Description and Background

The proposed project originally included a rebuilding of the existing rock revetment and its location further seaward and at a higher elevation. Staff had expressed a number of concerns concerning the application materials for this portion of the proposed improvements and the applicant deleted the shoreline protection portion of the proposal has been deleted. The proposal is now only for addition of new landing and stairway to the beach on the east side of the existing beachfront single family residence.

The development is located in the area of beachfront residential development in Malibu known as Puerco Beach. The development is similar to permits for adding stairway improvements to existing single family beachfront residences located seaward of the Pacific Coast Highway such as approved in Coastal Development Permits 4-95-248 (Turner) and 4-96-121 (Barham Trust). The area is characterized by residential land uses on the inland and seaward side of Highway 1. (Exhibit I) The applicant proposes an addition to the existing deck so that it will be located on the side of the residence within the stringline for beachfront development. (Exhibit II)

The property contains a four level, 4,600 sq. ft., thirty-five foot high single family residence approved under coastal development permit 4-95-085 (Morton) subject to conditions regarding assumption of risk, wildfire waiver of liability, and condition compliance. The permit was issued on January 29, 1996.

The review the State Lands Commission for the proposed changes to the existing revetment, now deleted, asserted no claims at this time relative to intrusion into sovereign lands or affecting a public easement of navigable waters.

B. Shoreline Development/Public Access/Coastal Views/Geologic Stability/Hazards.

The Coastal Act requires the Coastal Commission to ensure that each project provides maximum public access for every project. Applicable sections of the Coastal Act provide:

Section 30210:

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.

Section 30211:

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.

Section 30251:

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.

Section 30253 (in part):

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. ...

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 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 subject site is located in the area of beachfront residential development in Malibu known as Puerco Beach. As such, development of this site has been reviewed on many occasions with respect to Coastal Act sections relative to access and recreation. 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, however, the construction would be a stairway and landing in the side yard of a single family residence on a beachfront lot. The project would not exceed the seaward extension of the existing residence and located along the east side of the existing residence. It would not extend beyond the stringline of residences or decks of the adjacent residences in the area. The development would not include any changes to shoreline protective devices. An existing rock revetment is shown on the project plans and no changes are proposed. Thus, the project will have no individual or cumulative impacts on public access. Therefore, the Commission finds that a condition to require lateral access is not appropriate.

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. The proposed development is located on a sandy beach, and as such is subject to flooding and wave damage from storm waves and storm surge conditions.

Taken literally, Section 30253 might require denial of any beachfront development, because on an eroding coast, no development can be assured of safety. While this decision would free the developer from the hazard of periodic storm waves, it would deny the applicant use of his property during the years when there are no storms, and deny the applicant the same use presently enjoyed by his neighbors. To carry out this policy, the Commission has generally required new development including additions to conform to a stringline, and in some cases to extend no further seaward than the existing house. As applied to beachfront development in past Commission actions, the stringline, in most situations, limits extension of a structure to a line drawn between the nearest corners of adjacent structures and/or decks.

The Commission has also found the stringline policy to be 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.

In this case, the applicant is proposing a small addition in the side yard of an existing residence extending no further seaward than the residence and consistent with the stringline for both residences and decks on adjacent properties. This minor increase in the footprint of ground coverage of the residence and ancillary development will not result in seaward intrusion of the residence nor extend beyond the stringline.

Even in relatively small additions of this nature, an evaluation of the potential hazard is necessary under PRC Section 30253. The proposed development has been reviewed by the City geologist who has found that the project is geologically feasible on November 17, 1994.

The Commission finds, however, that due to the the unforeseen possibility of wave attack, flooding, erosion inherent in the Malibu coastal area, the applicant shall assume these risks as a condition of approval. The applicant has hired a consultant which has prepared a wave uprush map which indicates that the proposed improvements are within the area of such influence. (David Weiss, Wave Uprush and Design Beach Profile, stamped received by City of Malibu on Nov 17, 1994) Because this risk of harm cannot be completely eliminated, the Commission is requiring the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, 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 of safety of the proposed development. With the assumption of risk and the applicant's understanding of the nature of the hazard, the proposed development can be found consistent with PRC Section 30253 provisions to minimize risk to life and property, assure structural integrity, and not contribute to erosion or require construction of protective devices.

Therefore, for all of the reasons set forth above, the Commission finds that only as conditioned is the proposed development consistent with Section 30210, 30211, 30251 and 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 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 and the Santa Monica Mountains 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 by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the activity may have on the environment.

The proposed development would cause no adverse environmental effects which would not be adequately mitigated by the project conditions required herein. Therefore, the proposed project, as conditioned, is found to be consistent with CEQA and the policies of the Coastal Act.

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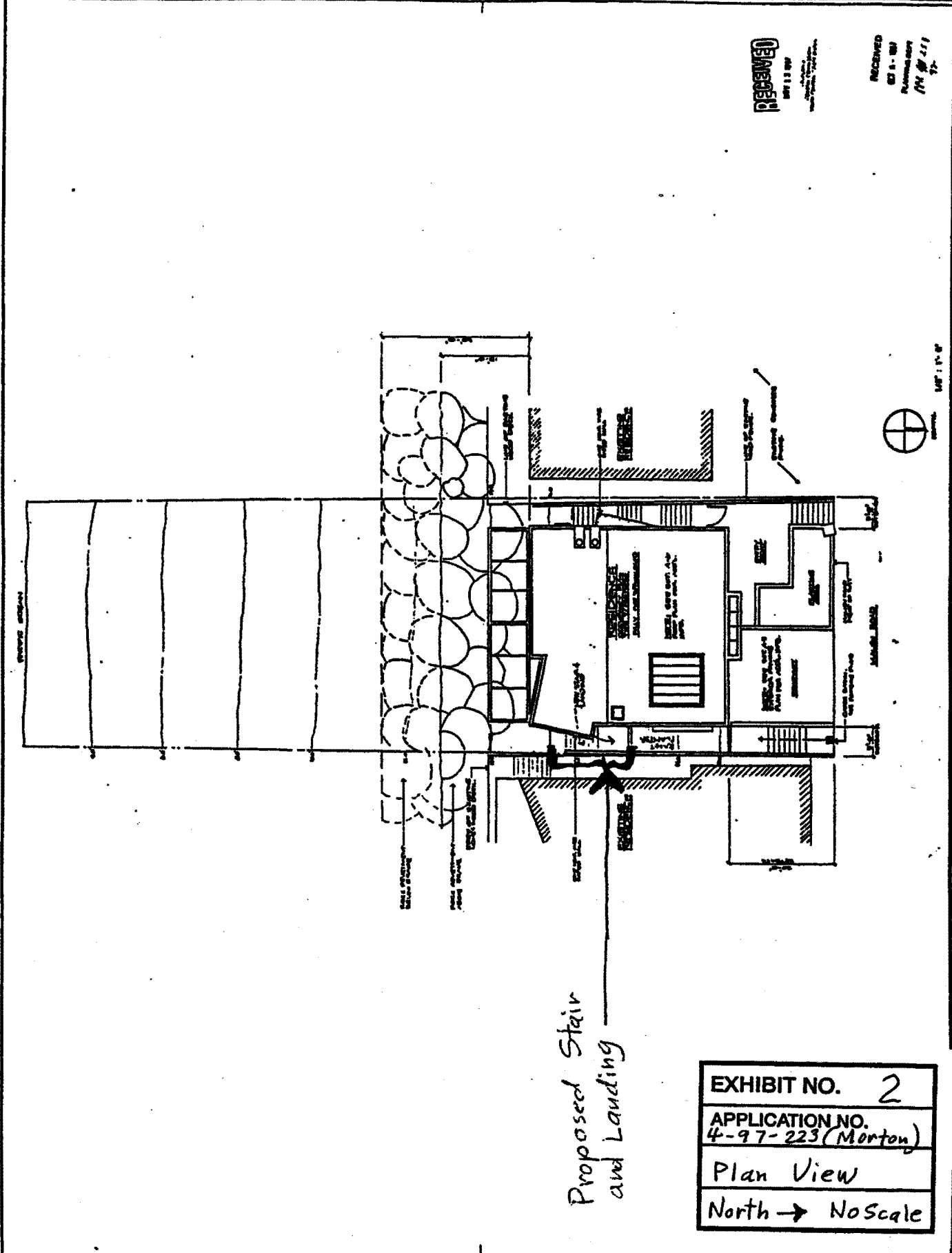
Kanner Associates
Architecture & Planning
10274 Le Conte Avenue
Los Angeles, California 90024
213 208-0028

DESIGNED FOR: [illegible] 11/18/93

24752 MALIBU ROAD

MALIBU, CA
SITE PLAN

DATE: 11/18/93
DRAWN BY: [illegible]
CHECKED BY: [illegible]
SCALE: A-2



KANNER

Kanner Associates
Architecture & Planning
10821 Le Conte Avenue
Los Angeles, California 90024
213 208-0028

34151 MALIBU RD

DATE: 4/1/77
DRAWN BY: FB

bottom of lower floor
of residence at
 ± 15 ft. MLLW

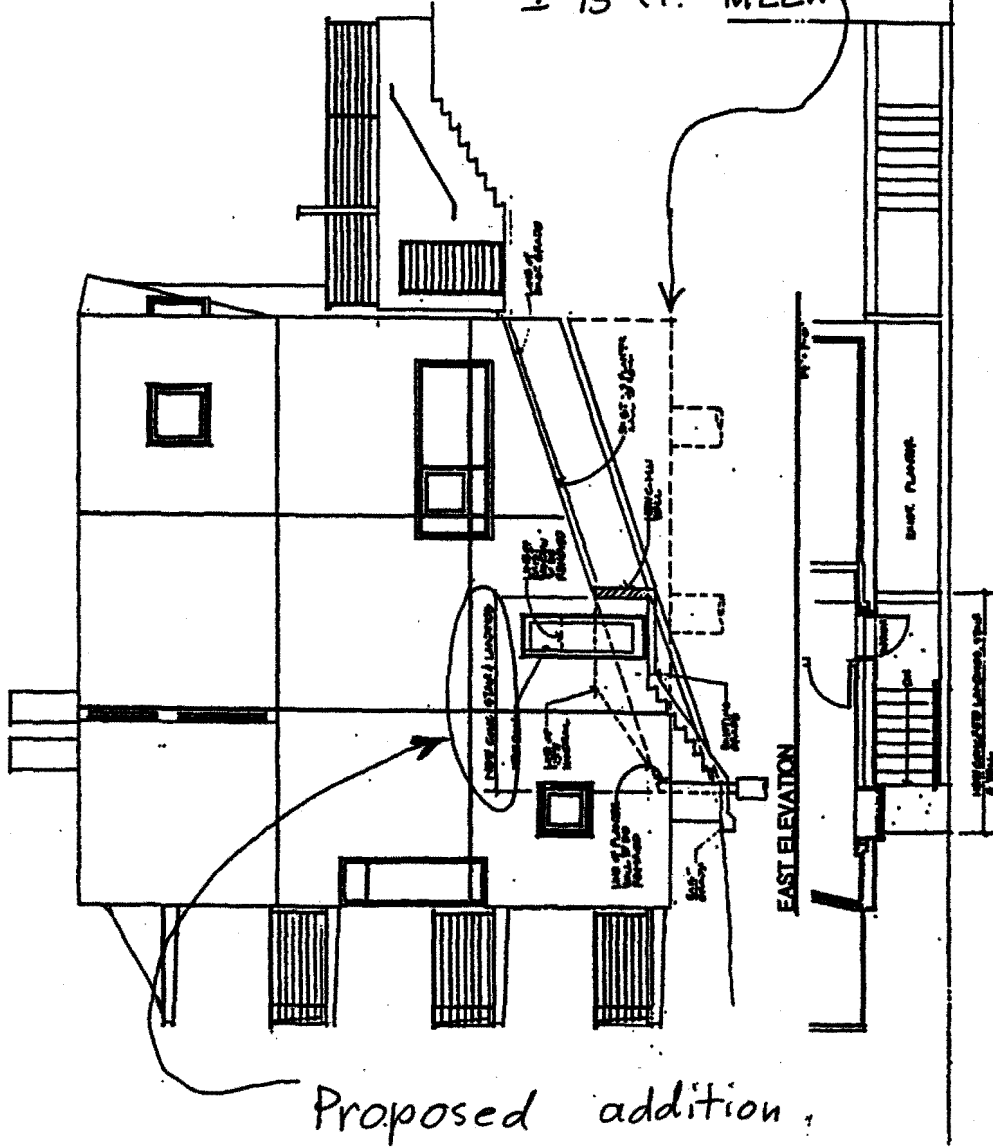
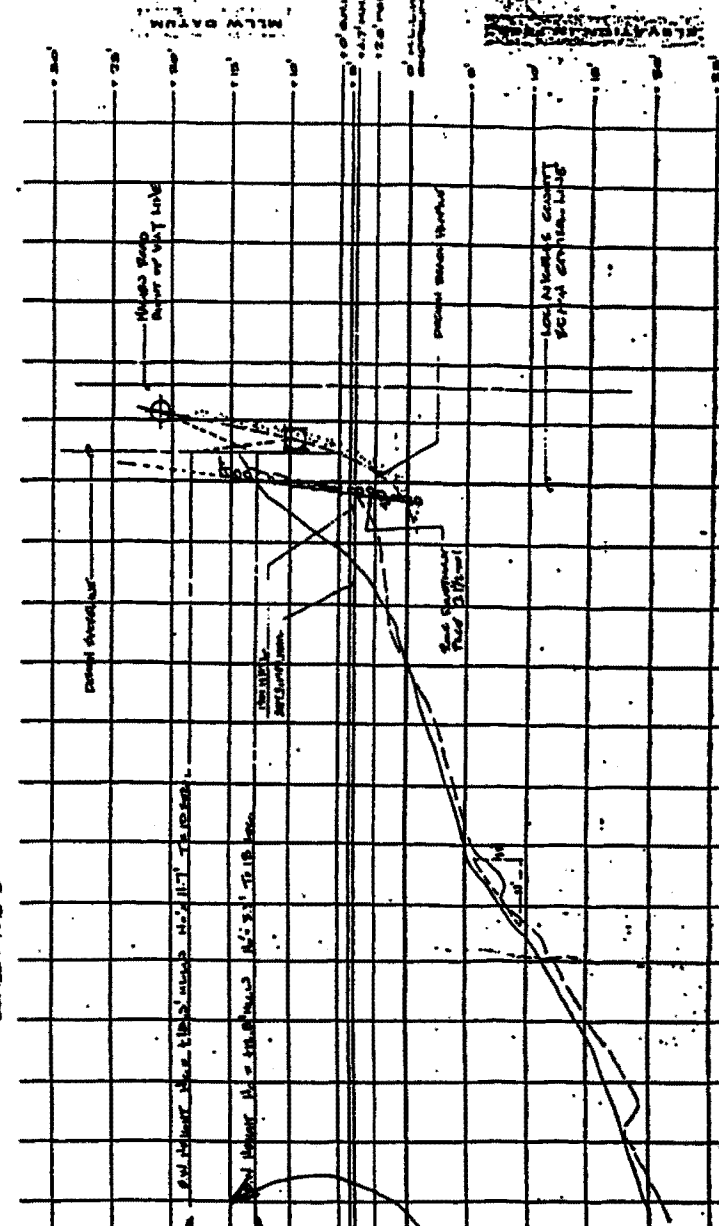
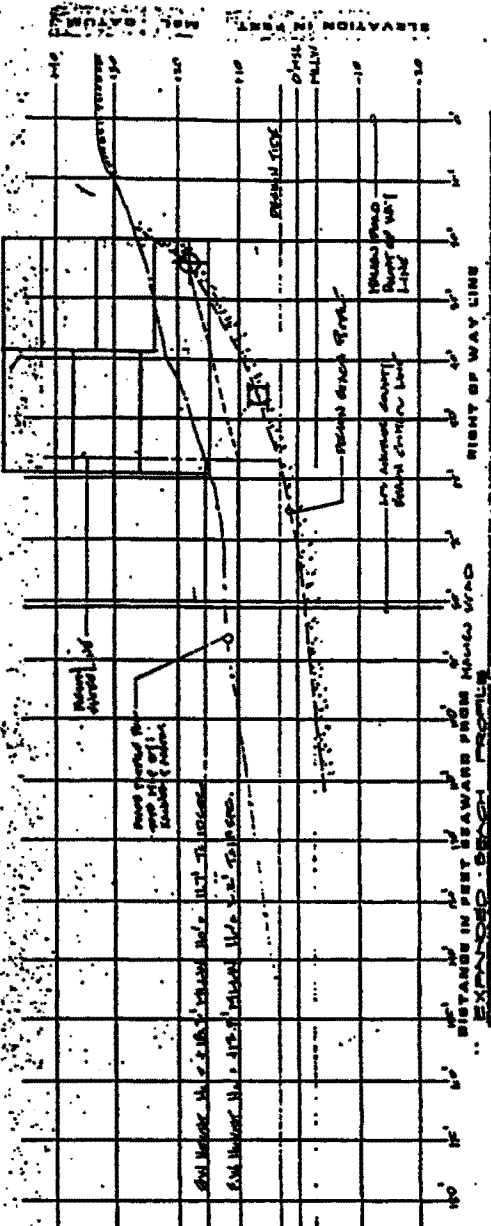


EXHIBIT NO. 3
APPLICATION NO.
4-97-223 (Morton)
Elevation
No Scale

GENERAL NOTES
 1. ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.
 2. ALL DISTANCES ARE MEASURED FROM THE RIGHT OF WAY LINE UNLESS OTHERWISE NOTED.
 3. ALL DISTANCES ARE MEASURED FROM THE RIGHT OF WAY LINE UNLESS OTHERWISE NOTED.



Wave uprush lines
 bottom of lower floor
 of residence ± 15 ft. MLLW

EXHIBIT NO. 4
APPLICATION NO. 4-97-223 (Morton)
 Wave Uprush
 Cross-section

RECEIVED
 COUNTY BEACH RESTORATION PROJECT
 DISTANCE IN FEET FROM LOS ANGELES COUNTY BEACH RESTORATION LINE
 DISTANCE IN FEET FROM LOS ANGELES COUNTY BEACH RESTORATION LINE
 DISTANCE IN FEET FROM LOS ANGELES COUNTY BEACH RESTORATION LINE
 DISTANCE IN FEET FROM LOS ANGELES COUNTY BEACH RESTORATION LINE