

## CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 4-98-056

APPLICANT: James & Marilyn O'Toole AGENT: Darren Domingue

PROJECT LOCATION: 19912 Pacific Coast Highway, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Construct a 962 sq. ft. upper level and 32 sq. ft. first level addition and remodel to an existing 2696 sq. ft., 28 ft. high, two story beachfront single family residence. Add 619 sq. ft. terrace. Replace and upgrade septic system. Add concrete underpinning to existing seawall with no seaward extension.

Lot Area	4,069 sq. ft.
Building Coverage	2,071 sq. ft.
Plan Designation	Residential IV B, 8 - 10 du/acre
Project Density	10.7 du/ acre
Ht. abv. fin. grade	28 feet

LOCAL APPROVALS RECEIVED: Project Approval in Concept, City of Malibu, dated 2/13/98; In-concept Approval, City of Malibu Environmental Health Department, dated Oct 16, 1997.

SUBSTANTIVE FILE DOCUMENTS: State Lands Commission Review letter, December 9, 1997; Malibu/Santa Monica Mountains Land Use Plan; Coastal Development Permits 4-88-107 (MacLeod), 4-95-053 (Patrick), and 4-98-067 (Baicoast); RJR Engineering Group, Inc., Geotechnical Engineering Report Proposed Second Story Addition, August 19, 1997; David C. Weiss: Coastal Engineering Report for Proposed Second Story Addition, August 6, 1998 and Investigation of Lower Floor Elevation at 19912 Pacific Coast Highway, October 13, 1997; Craig H. Everts, Moffatt & Nichol Engineers, Phase II "Opportunities and Constraints" Information, June 30, 1992; U.S. Army Corps of Engineers, Reconnaissance Report Malibu/Los Angeles County Coastline, April, 1994; Skidway Institute of Oceanography, Statement on Shoreline Protective Devices, 1981; State Department of Boating and Waterways, Shore Protection in California, 1976; Robert G. Dean, Coastal Sediment Processes: Toward Engineering Solutions, 1987.

SUMMARY OF STAFF RECOMMENDATION: Staff recommends approval of the proposed project with four (4) special conditions addressing the consulting geologist's and engineer's recommendations, applicant's assumption of risk, construction responsibilities and debris removal, and implementation of lateral access dedication offer.

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 on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth 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 GEOLOGIST'S AND ENGINEER'S RECOMMENDATIONS

Prior to the issuance of the permit the applicant shall submit, for the review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans. All recommendations contained in the RJR Engineering Group, Inc., Geotechnical Engineering Report Proposed Second Story Addition, August 19, 1997 and David C. Weiss, Coastal Engineering Report for Proposed Second Story Addition, August 6, 1998 and Investigation of Lower Floor Elevation at 19912 Pacific Coast Highway, October 13, 1997, including excavations, piles and footings, and lateral loads, must be incorporated into the final plans. All final design and foundation plans must be reviewed and approved by the engineering consultants.

The final plans approved by the consultants 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 a consultant shall require an amendment to the permit or a new coastal permit.

#### 2. ASSUMPTION OF RISK

Prior to issuance of 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 applicants understand that the site may be subject to extraordinary hazard from liquefaction, storm waves, wave run-up, erosion, and flooding, and the applicants agree to assume the risks from such hazards; and (b) the applicants unconditionally waive any claim of liability against 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 or destruction due to natural hazards.

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

#### 3. CONSTRUCTION RESPONSIBILITIES AND DEBRIS REMOVAL

The applicants shall, by accepting this permit, agree and 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 in the intertidal zone at any time; and (c) remove promptly from the beach any and all debris that results from the construction activities.

#### 4. Offer to Dedicate Lateral Public Access

In order to implement the applicant's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicant agrees to complete the following prior to issuance of the permit: the landowner will execute and

record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the mean high tide line landward to the foot of the seawall as illustrated on the site plan prepared by Darren Domingue dated January 8, 1998.

(a) Privacy Buffer

The area seaward of the foot of the seawall as illustrated on the site plan prepared by Darren Domingue dated January 8, 1998, shall be identified as a privacy buffer. The privacy buffer shall be applicable only if and when it is located landward of the mean high tide line and shall be restricted to pass and repass only, and shall be available only when no other dry beach areas are available for lateral public access. The privacy buffer does not affect public access should the mean high tide line move within the buffer area.

(b) Remaining Area

The remaining area shall be available for passive recreational use.

The document 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. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The recording document shall include legal descriptions of both the applicant's entire parcel and the easement area.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The applicant's property is a 4,069 sq. ft. lot located on a sandy and cobble beach with rock outcrops seaward of Pacific Coast Highway on Big Rock Beach west of Big Rock Drive. The site has residential development to the west and east and vacant hillside land across the Highway to the north.

The proposed project includes a 966 sq. ft. upper level addition and 32 sq. ft. first level addition and remodel to an existing 2696 sq. ft., 28 ft. high, two story beachfront single family residence, addition of a 619 sq. ft. terrace, and upgrade to the septic system. There is no record of previous coastal development permits on the subject property. The proposal will add in effect a new second story to the inland tier of development which is presently a single story, making the house a multi level configuration, with two stories on the oceanfront and two higher stories along the highway. The new second story will include the aforementioned terrace along its beach frontage.

The new improvements will include nine caissons and attached steel columns to support the existing and proposed improvements under the landward approximate 75% of the residence, while the seaward portion of the residence will remain supported by seven 1 ft. by 1 ft. timbers. The retained timber piles are estimated in the geotechnical report to be driven to within a few feet of bedrock.

The work on the septic system consists of a replacement 1000 gallon septic tank and leach field located seaward of the residence. The project requires that the septic tank be moved, but the system will be kept within the same size and capacity limits. A 1000 gallon tank will be replaced by another tank of the same size. The leach field will be reconstructed. The upgrade to the leach field will consist of 2 ft. of fill, 18 in. of rock, and 18 in. of cover. Below this, bedrock is encountered at approximately + 10 ft. according to the project architect. These improvements have been found by the City to constitute repair and maintenance of an existing system.

The subject property is fronted by a concrete and cobble seawall of unknown age. Based on the staff site visit, the seawall appears to be resting on cobbles and is slightly deteriorated at the base. The seawall extends from the approximate + 4 ft. to + 12 ft. elevation. The seawall is located approximately eight feet seaward of the seaward extent of the deck, and approximately twelve feet seaward of the residence and the closest wood pile. The seawall has a return feature of the same materials at either end. It merges on the eastern end with a twenty foot wide spillway for a 66 in. diameter storm drain combined with a landing for a private stairway to the beach. The seawall was evaluated by the applicants' coastal engineer and found to require a protective underpinning seven feet in vertical depth and extending six feet landward from the most seaward extent of the existing seawall, and extending along the entire ocean frontage.

The project site is designated in the certified Los Angeles County Malibu/Santa Monica Mountains Land Use Plan as Residential IV B which allows 8 - 10 dwelling units per acre. The project is slightly above the allowable density range at approximately 10.7 dwelling units per acre.

The applicant requested a State Lands Commission (SLC) review of the proposed project relative to its location to state sovereign lands and public easements in navigable waters. The applicants submitted a SLC letter dated December 9, 1997 addressing these issues. The letter concludes that there is insufficient information to determine whether this project will intrude upon state sovereign lands or interfere with other public rights. In addition, the SLC asserts no claims that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters. However, as discussed below, since this project extends the life of a seawall in an area of eroding beach, the Commission must further examine if it will affect on State sovereign lands or public rights.

## B. Shoreline Protective Devices

As noted previously, the application was modified to include underpinning of the existing seawall (shoreline protective device) to prevent scouring. The underpinning will extend from the base of the existing seawall at the

approximate 2 ft. elevation above mean sea level (MSL) to approximate - 4 ft. elevation MSL and will be 6 ft. in depth, measured landward 6 ft. from below the seaward extent of the existing seawall and will only be exposed for a few days only during major storm events.

The proposed seawall augmentation is necessary to protect development on the property and especially the leach field located between the existing residence and the beach front. Such protection is needed because projected wave uprush as described by the coastal engineer, David Weiss, could threaten the structural integrity of the seawall and its ability to sustain itself against a projected design wave. This will also ensure protection during wave uprush which is shown as extending inland approximately 75 ft. landward to within the vicinity of the most seaward of the existing pilings, and inland of the existing seawall.

There is evidence, as described below, that residential development along this section of Big Rock Beach will require some form of shoreline protection that will impact natural processes. In this case, an existing protective device requires augmentation to prevent scouring and protect development inland of the existing seawall, especially the septic system and the Coast Highway. Since subject property and numerous other properties on the beachfront in the project vicinity have found it necessary to construct and/or augment shoreline protective devices, that could impact natural shoreline processes, it is necessary to review the proposed project for its consistency with Sections 30235 and 30250 (a) of the Coastal Act and with past Commission action.

PRC Section 30235 states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

PRC Section 30250 (a) states [in part]:

(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.

The first test under Section 30235 is whether or not the augmentation of the existing shoreline protective device is needed to protect either coastal dependent uses, existing structures, or public beaches in danger or erosion. The subject property is currently developed with a concrete and cobble

seawall, septic system, and single family residence. The proposed addition results in a 37 % increase in the size of the residence. The project beach erosion engineering consultant (David Weiss) has found that the proposed wall upgrade will be needed to adequately protect the existing and proposed upgrade to the septic system. The consultant however found that upgrade was not needed to protect the existing timber piles supporting the existing residence. Therefore, the Commission finds that the proposed project meets the first test of Coastal Act Section 30235.

The second test under Section 30235 is whether or not the augmentation of the shoreline protective device is designed to mitigate or eliminate adverse impacts on shoreline sand supply. In past permit actions, the Commission has found that shoreline protective devices which are subject to wave action tend to exacerbate or increase beach erosion. The following quotation summarizes a generally accepted opinion within the discipline of coastal engineering that "seawalls usually cause accelerated erosion of the beaches fronting them and an increase in transport rate of sand along them" (Skidway Institute of Oceanography, 1981). Ninety-four experts in the field of coastal geology, who view beach processes from the perspective of geologic time, signed the following succinct statement of the adverse effects of shoreline protective devices:

These structures are fixed in space and represent considerable effort and expense to construct and maintain. They are designed for as long life as possible and hence are not easily moved or replaced. They become permanent fixtures in our coastal scenery but their performance is poor in protecting community and municipalities from beach retreat and destruction. Even more damaging is the fact that these shoreline defense structures frequently enhance erosion by reducing beach width, steepening offshore gradients, and increasing wave heights. As a result, they seriously degrade the environment and eventually help to destroy the areas they were designed to protect. (Skidway Institute of Oceanography, 1981)

The above 1981 statement signed by 94 respected coastal geologists indicates that sandy beach areas available for public use can be harmed through the introduction of seawalls. Thus, in evaluating an individual project, the Commission assumes that the principals reflected in that statement are applicable. To do otherwise would be inconsistent with the Commission's responsibilities under the Coastal Act to protect the public's interest in shoreline resources and to protect the public's access along the ocean and to the water, as discussed in more detail in the subsequent public access section.

The impact of seawalls as they related to sand removal on sandy beaches is further documented by the State Department of Boating and Waterways:

While seawalls may protect the upland, they do not hold or protect the beach which is the greatest asset of shorefront property. In some cases, the seawall may be detrimental to the beach in that the downward forces of water, created by the waves striking the wall rapidly remove sand from the beach. (Shore protection in California, 1976).

Finally, This observation was underscored more recently in 1987 by Robert G. Dean in "Coastal Sediment Processes: Toward Engineering Solutions":

Armoring can cause localized additional scour, both in front of and at the

ends of the armoring...Under normal wave and tide conditions, armoring can contribute to the downdrift deficit of sediment through decreasing the sand supply of an eroding coast and interruption of supply if the armoring projects into the active littoral zone.

Big Rock Beach is located with the Dume Littoral Cell, which extends geographically from Point Dume to Redondo Beach, with Malibu Creek and Topanga Canyon Creek as major contributors of sand. Big Rock beach in the location of the proposed project extremely narrow with a thin veneer of sand. In the winter season this beach is eroded down to cobbles. The existing seawall on-site is subject to frequent wave impact during both summer and winter high tides.

Overall, the beaches in this area have been found by the Corps of Engineers to fluctuate depending on fluvial discharge, i.e. depending on sediment yield resulting from changes in rainfall. An average annual retreat was determined of one foot per year (1971 to 1989) for most beaches in Malibu, including this beach. In addition, Craig H. Everts, Moffatt & Nichol Engineers, has found, based on aerial photographs, that the area of the proposed development was where the shoreline was retreating slightly (less than approximately .2 ft. per year) between 1938 and 1988.

The consulting coastal engineer indicates that the proposed underpinning will be well below the existing sand level and will have "no effect on scour at the base, if there were any in the first place, or in any way contribute to sand loss of the beach. Underpinning the wall will have no effect on public access to an along public tidelands." The new concrete piles sunk into bedrock are proposed landward of the existing piles. Weiss notes that these piles will have "... no effect on the beach process, adjacent properties, or public access." However, the consulting engineer did not provide any evidence to support his conclusion that the proposed underpinning will have no impacts on beach process, or public access.

A key factor in determining the impact of the proposed augmentation of the bulkhead on the shoreline is the location of the proposed protective device in relationship to the expected wave action. The information provided by the applicant shows that the position of the proposed underpinning will intrude into a historical areas of wave run-up and beach sediment transport. For example, the reference David Weiss report notes that the wave uprush calculation shows a projected line seventy-five feet inland (north) of the existing bulkhead. Weiss notes that the Mean High Tide Line (MHTL) is seaward of the existing bulkhead based on two MHTL surveys from 1967 and 1969.

The 1969 MHTL survey indicates that the MHTL is approximately 5 feet seaward of the toe of the existing wall. This MHTL survey was done in June of 1969 and represent a summer beach profile which is typically wider than a winter profile. Therefore, during an eroded winter beach profile the mean MHTL would be even closer to the existing wall. Furthermore, given that this is an eroding beach the current summer and winter MHTLs are expected to to be even closer to the existing seawall than what was surveyed in 1969.

Thus, based on the above wave uprush information and MHTL locations in relation to the seawall, it is clear that the existing seawall is exposed to frequent wave action. As discussed above, seawalls exposed to frequent wave action can cause localized sand scour and affect the beach profiles. In this



case, given the narrow beach width, sand scour is most likely occurring at the base of this wall adversely impacting the long term sand supply on this beach.

Given the evidence, cited above, that Big Rock Beach is subject to long-term erosional trends which indicate that the beach is eroding, the frequency of wave exposure to the bulkhead is expected to increase over time which will adversely impact sand supply and beach profiles. Although the proposed underpinning will not extend further seaward than the existing seawall the proposed improvement will extend the useful life of the existing seawall in an area exposed increasing wave action. The increased life of the seawall will in the long term result additional scour and adverse impacts to beach sand supply on this beach.

The impacts of potential long term beach scour is important relative to beach use for two reasons. The first reason involves public access. If the beach scours at the base of the seawall, even minimal scouring in front of the seawall will translate into a loss of beach at an accelerated rate than would otherwise occur under a normal seasonal conditions. This loss of beach would adversely impact access over the public portion of the beach below the MHTL. The second impact relates to the potential turbulent ocean condition. Scour at the face of a seawall will result in greater interaction with the wall and thus, make the ocean along Big Rock beach more turbulent than it would along an unarmoured beach area.

In past permit actions, the Commission has required a lateral public access easement for shoreline protection devices to mitigate adverse impacts to beach sand supply and public access. In this case, the applicant has designed a underpinning which will not extend further seaward than the existing seawall which will minimize the scour effects associated with the proposed improvement. However, the proposed underpinning will extend the life of this seawall on an eroding beach exposed to frequent wave action which will result in long term adverse impacts on sand supply.

In order to mitigate long term erosion impacts resulting from the proposed seawall upgrade to the maximum extent feasible, the applicant has proposed to offer a public lateral access easement dedication over the beach fronting the seawall. Special Condition number four (4) has been included in order to implement the applicant's proposal of an offer to dedicate a lateral public access easement. Therefore, as conditioned, the project will minimize the long term adverse impacts resulting from the upgrade of the existing seawall and is consistent with the applicable Coastal Act sections.

#### C. Public Access, Seaward Encroachment and Scenic and Visual Quality

Coastal Act Section 30210 states that:

In carry out the requirements 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 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.

Further, 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.

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 beach area by a structure, in contradiction of Coastal Act policies 30210, 30211, and 30212.

In the case of the proposed project, augmentation of the existing seawall extends the life of the structure in an area subject to beach erosion and wave action. This will result in changes in beach profile in an area of receding shoreline. Augmentation of the seawall has a number of effects on the dynamic shoreline system and the public's beach ownership interests:

- o Changes in the shoreline profile result, particularly changes in the slope of the profile which alters the beach width, and affects the area under public ownership and the area where the public can pass and repass.
- o A progressive loss of sand is created by the dissipation of materials offshore where some materials are lost offshore and outside the littoral drift system where they are no longer available to nourish the beach.

- o There is a cumulative adverse impact on public beaches because of accelerated and increased erosion.
- o During severe storm events, beach scour is accelerated because the waves are higher and there is less beach area to dissipate the wave's energy.

In such a location, the beach profile will change as the improvements to the seawall affect the structure of the beach seaward of the project and, consequently, affect the opportunity of the public to use the beach for lateral access. Because the beach is receding, creation of additional hard surfaces such as the proposed seawall augmentation will increase the rate of depletion of the beach over time and decrease access opportunities.

The beaches in Malibu including the subject beach are used extensively by visitors of both local and regional origin and planning studies indicate that the use of recreational sites will continue and increase over time. The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access of such projects raises the following issues, among others: potential encroachment on lands subject to the public trusts and thereby 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 thereby causing adverse impacts on public access such as above.

The Commission has the responsibility to protect the right to use the shoreline under the Coastal Act, the public trust doctrine, the California Constitution and California common law. The applicants have submitted a SLC letter dated, as previously noted, which concludes that there is insufficient information to determine whether this project will intrude upon state sovereign lands or interfere with other public rights, and asserts no claims that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters. However, as noted, the Commission must further examine if will affect on State sovereign lands or public rights since this is project extends the life of a seawall in an area of eroding beach. The Commission must protect those public rights by assuring that any proposed shoreline development does not interfere with or will only minimally interfere with those rights. In the case of this project, this impact on the width and profile of an eroding beach constitutes an interference to use for access contrary to the intent of PRC Sections 30210 and 30212(a) which requires mitigation to preserve the access opportunity as recommended below.

However, a conclusion that access may be mandated does not end the Commission's review. 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 proposed construction of a split/upper level addition with concrete caissons as an addition to an existing 2,696 sq. ft. two story, single family residence, upgrade to the septic system, and construction of underpinning to an existing concrete seawall with no seaward extension, does constitute new development under the provisions of PRC Section 30212(a). In this case, the applicants have offered to dedicate an access easement for

lateral public access and passive recreational use along the shoreline. This offer, if implemented through a condition of approval as recommended below, will mitigate the individual and cumulative impacts which substantially impede the achievement of the State's legitimate interest in protecting access.

According to the Commission's access records, there are no existing offers to dedicate public access easements recorded on the applicant's property. The coastal engineer (David C. Weiss) has noted that the underpinning will be located at a depth of 6.5 ft. below normal sand level and that his calculations show that the seawall will be able to withstand storms equivalent to the magnitude of 1982-83. Although the project does not result in a seaward extension of the existing seawall, it will extend the life of the structure in an area subject to beach erosion and wave action and will result in changes in beach profile in an area of receding shoreline.

In past Commission actions, there has been a requirement for lateral public access easements where new shoreline protective devices interfere with public access. However, the applicant proposes the offer to dedicate public lateral access to mitigate the impact of the augmentation of the existing shoreline protection device on public access.

Because the applicant has submitted an offer to dedicate lateral access, it is not necessary for the Commission to engage in an extensive historical analysis requiring site-specific studies of shoreline processes and public access. Rather, the above condition four (4) is recommended to preserve public access opportunities and recognize the private rights to privacy of the proposed residence. The recommended condition preserves access in a reasonable location seaward of the existing seawall, which corresponds approximately to a privacy buffer measured ten feet from the seaward extension of the deck of the existing residence.

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 build-out 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 adjacent structures and 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 scenic quality of the shoreline as required by Section 30251 of the Coastal Act.

The applicant has submitted a plan with a stringline connecting the existing residences and decks on either side of the project site. The plan indicates that no portion of the proposed development extends beyond the stringline with the adjacent buildings and decks. Therefore, the Commission finds that the proposed project does conform to this setback. As proposed, the addition to

this project will not extend new development further seaward than adjacent development, minimizing potential impacts to public access opportunities, public views and the scenic quality along the sandy beach.

And lastly, the Commission reviews the publicly accessible locations along adjacent public roads and the sandy beach where the proposed development is visible to assess visual impacts to the public. The Commission examines the building site and the size of the building. The existing residence along Pacific Coast Highway already blocks public views from the highway to the beach and ocean. Although the proposed seaward additions to the residence will be visible from the public beach that is part cobble, part bedrock and part sandy beach, most of this view is blocked by the existing residence. Albeit some view of the higher elevations will be lost, this is in a manner no more adverse than surrounding development allowed to be up to two stories and/or thirty five feet in height. Moreover, the more scenic inland views of the Santa Monica Mountains as viewed from the water are well above the proposed development. Thus, the proposed addition and remodel will not adversely affect existing public views.

For all of these reasons, the Commission finds that, as conditioned, the project would have no individual or cumulative adverse impacts on public access, nor will it adversely affect scenic and visual quality. Therefore, the Commission finds that the project, as conditioned is consistent with Coastal Act Sections 30210, 30211, 30212, and 30251.

#### D. Beachfront 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, 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.

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 in the Malibu area, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu area include landslides, erosion, flooding and storm waves. Further, oceanfront sites are also subject to liquefaction, flooding, and erosion from storm waves.

The Commission reviews the proposed project's risks to life and property in areas where there are geologic, flood and fire hazards. The Coastal Act recognizes that new development, such as the proposed project, may involve some risk. Coastal Act policies also require the Commission to establish the appropriate degree of acceptable risk for the proposed development and to determine who should assume the risk.

The proposed project is located along Big Rock Beach, a narrow and eroding beach as discussed above. Regarding the hazards, the applicant submitted the RJR Engineering Group, Inc., Geotechnical Engineering Report Proposed Second Story Addition, August 19, 1997 and David C. Weiss, Coastal Engineering Report for Proposed Second Story Addition, August 6, 1998 and Investigation of Lower Floor Elevation at 19912 Pacific Coast Highway, October 13, 1997. These reports indicate that the development of the property with the proposed development is feasible from engineering geologist, geotechnical engineering, and coastal engineering standpoints. The RJR Engineering Group, Inc. report states that:

The reports reviewed indicated the projects were feasible from a geologic and geotechnical standpoint provided recommendations were implemented. ... Based on the results of this investigation, the proposed second story addition is feasible from a geologic and geotechnical engineering standpoint.

In summary, the applicant's consultants determined that the proposed project site is suitable from engineering geology, geotechnical engineering, and coastal engineering standpoints for construction of the proposed project, provided their recommendations are followed. Condition number one (1) provides for final review and approval by the consulting engineering geologist, geotechnical and coastal engineers of the final project design and foundation plans for the project prior to the issuance of the permit.

Even though the consultants have determined that the project site is feasible for the proposed development, the Commission cannot absolutely acknowledge that the proposed residential development will be safe during all future storms, and from the potential for liquefaction, or be constructed in a structurally sound manner and be properly maintained to eliminate any potential risk to the beach going public. The Commission acknowledges that many of the oceanfront parcels in Malibu, such as the subject property, are susceptible to liquefaction, flooding and wave damage from waves and storm conditions. As an example, past occurrences have resulted in public costs (through low interest loans) in the millions of dollars in the Malibu area alone. Storms during the winter of 1982-83 caused over six million dollars in damage to private property in Los Angeles County and severely damaged existing bulkheads, patios, decks, and windows along the Malibu coastline. Further extensive damage was caused during the 1998 "El Nino" storms.

The applicant may decide that the economic benefits of development outweigh the risk of harm that may occur from the identified hazards. Neither the Commission nor any other public agency that permits development should be held liable for the applicant's decision to develop. Therefore, since the proposed project located on a beach front lot subject to tidal influence, is in an area subject to extraordinary potential for damage or destruction from liquefaction, storm waves, wave run-up, erosion, and flooding, the Commission can only approve the project if the applicant assumes the liability from the associated risks.

Through Commission requirement of a waiver of liability, the applicant acknowledges and appreciates that this nature of the natural hazards that exist on this beachfront site may affect the stability of the proposed development. Condition number two (2), therefore, is necessary to require the applicant to assume these risks of the proposed residential development from

liquefaction, storm waves, wave run-up, erosion, and flooding hazards by waiving all Commission liability.

Lastly, as noted above, the project involves some demolition and construction on a beachfront lot subject to tidal influence where construction equipment, materials and demolition debris could pose a significant hazard if used or stored where subject to wave contact or situated in a manner that a hazard is created for beach users. Therefore, the Commission finds it necessary to impose condition number three (3) requiring construction responsibilities and debris removal. This condition will ensure that the construction of the proposed project will minimize risks to life and property in this public beach area which is subject to wave hazards.

The Commission finds that only as conditioned to incorporate all recommendations by the applicant's consulting geologist and engineers, an applicant's assumption of risk, and a construction responsibilities and debris removal condition will the proposed project be consistent with Section 30253 of the Coastal Act.

#### E. Septic System

The Commission recognizes that the potential build-out of lots in the Santa Monica Mountains, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards. The Coastal Act includes policies to provide for adequate infrastructure including waste disposal systems. 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, and minimizing alteration of natural streams.

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

New residential, ... development, ... shall be located within, ... existing developed areas able to accommodate it ... and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

The proposed development includes upgrading the septic system. A 1000 gallon tank will be replaced by another tank of the same size. The leach field will be reconstructed. As noted above, this upgrade does not increase the capacity of the system, but is within the category of repair and maintenance which requires a permit under provisions of the Coastal Act and Administrative Regulations.

This system was subject to review by the City of Malibu Environmental Health Department for in-concept approval, which includes a review of the safety of the system relative to wave runup and erosion. The Commission has found in

past permit actions that compliance with the City of Malibu health and safety codes will minimize any potential for waste water discharge that could adversely impact coastal waters and streams. Therefore, the Commission finds that the proposed septic system is consistent with Sections 30231 and 30250 of the Coastal Act.

F. 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 Malibu that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

G. 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)(A) 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 effects that the activity may have on the environment.

The proposed 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 project, as conditioned to mitigate the identified impacts, is consistent with the requirements of CEQA and the policies of the Coastal Act.



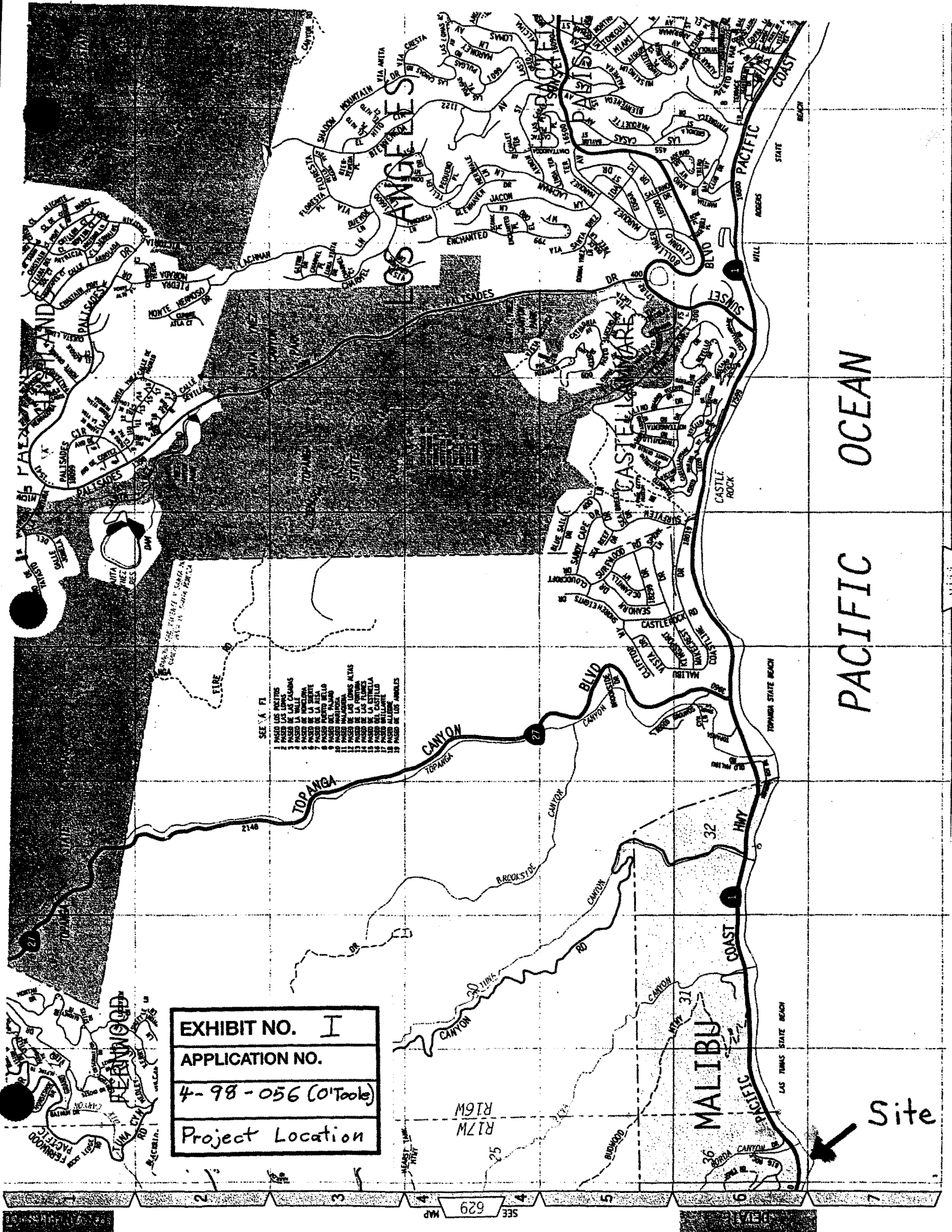
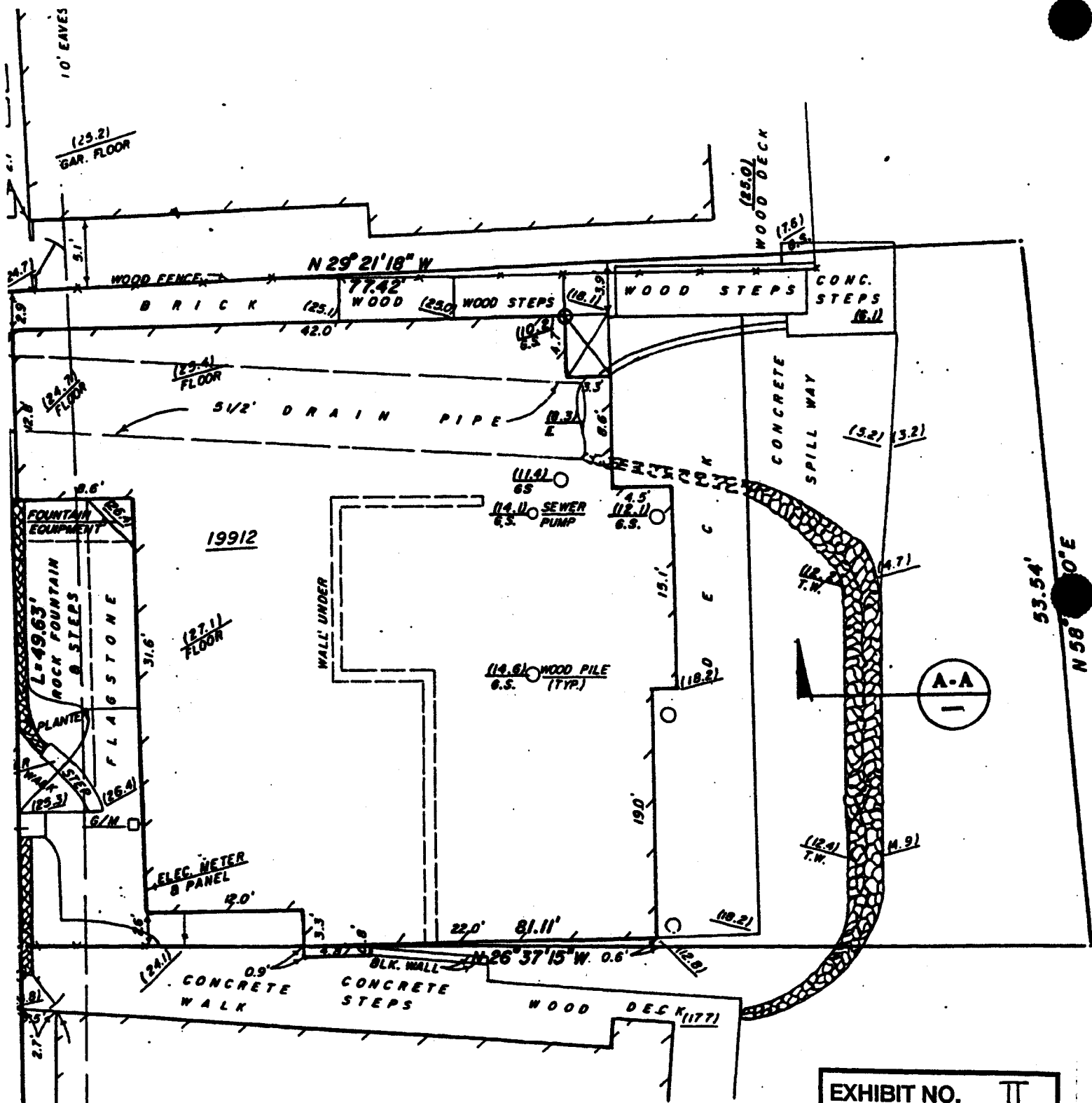


EXHIBIT NO. I  
APPLICATION NO.  
4-98-056 (O'Toole)  
Project Location

Site



**ARCHITECTURAL SURVEY**  
 1992 PACIFIC COAST HIGHWAY  
 LOT 34, TRACT NO. 24026

EXHIBIT NO. II
APPLICATION NO.
4-98-056 (O'Toole)
Site Plan Existing

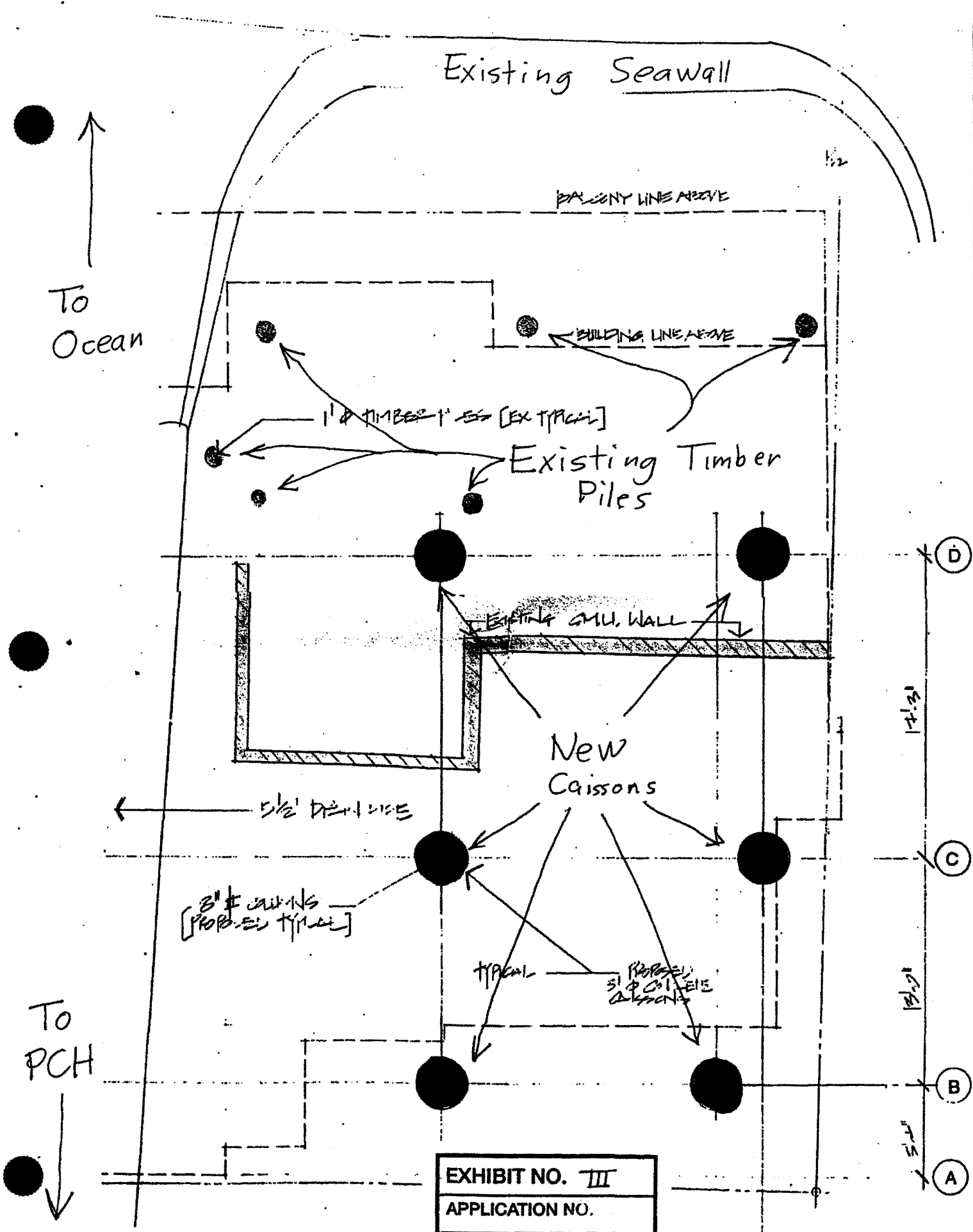


EXHIBIT NO. III
APPLICATION NO.
4-98-056 (O'Toole)
Proposed Caissons

2 1

RECEIVED

MAY 12 1998

OTOOLE COASTAL EXHIBIT

DARREN G. DOMINGUE, AIA  
ARCHITECT

Date:  
Scale:  
Draw:

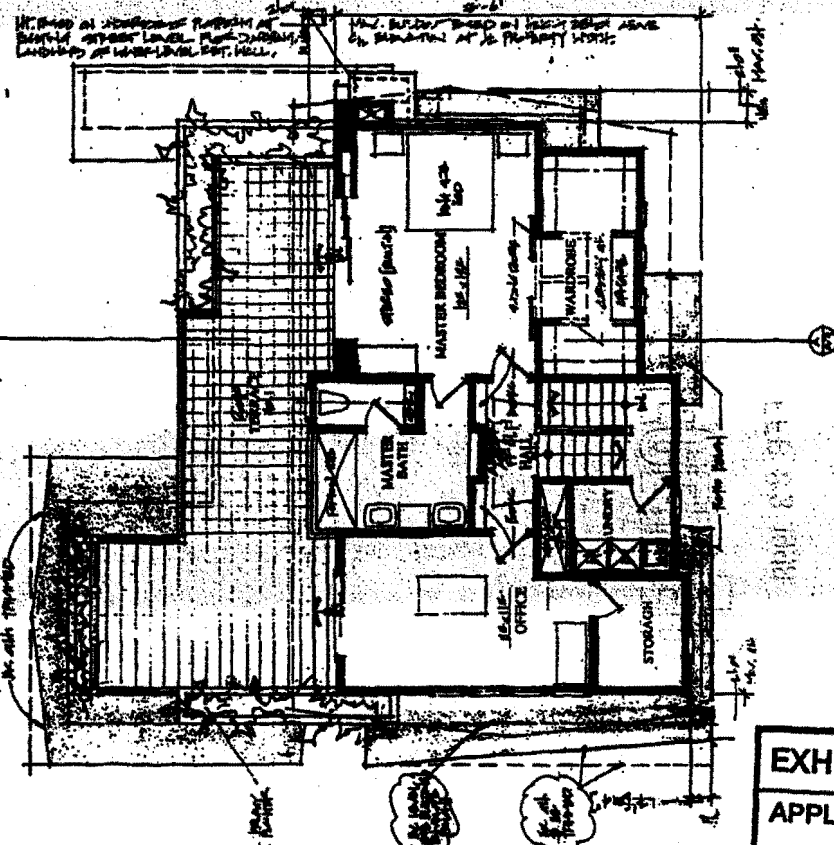
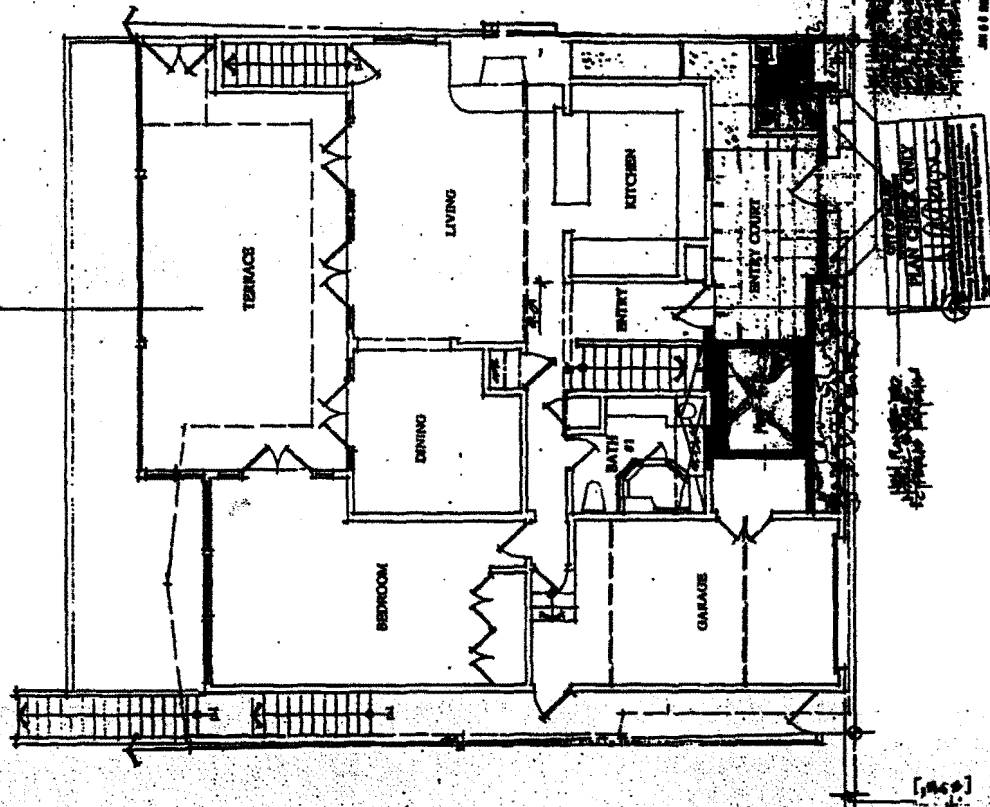


EXHIBIT NO. IV  
APPLICATION NO. [REDACTED]  
4-98-056 (O'Toole)  
Floor Plan

SOUTH ELEVATION

NORTH ELEVATION

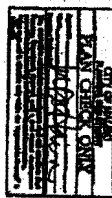
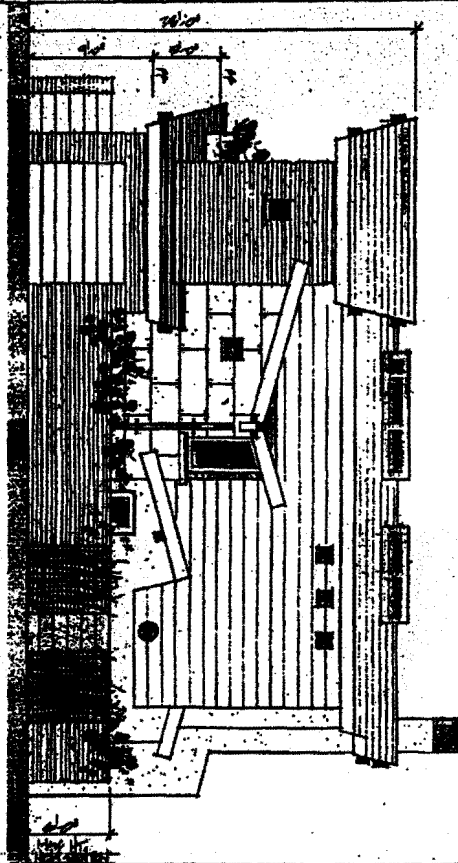
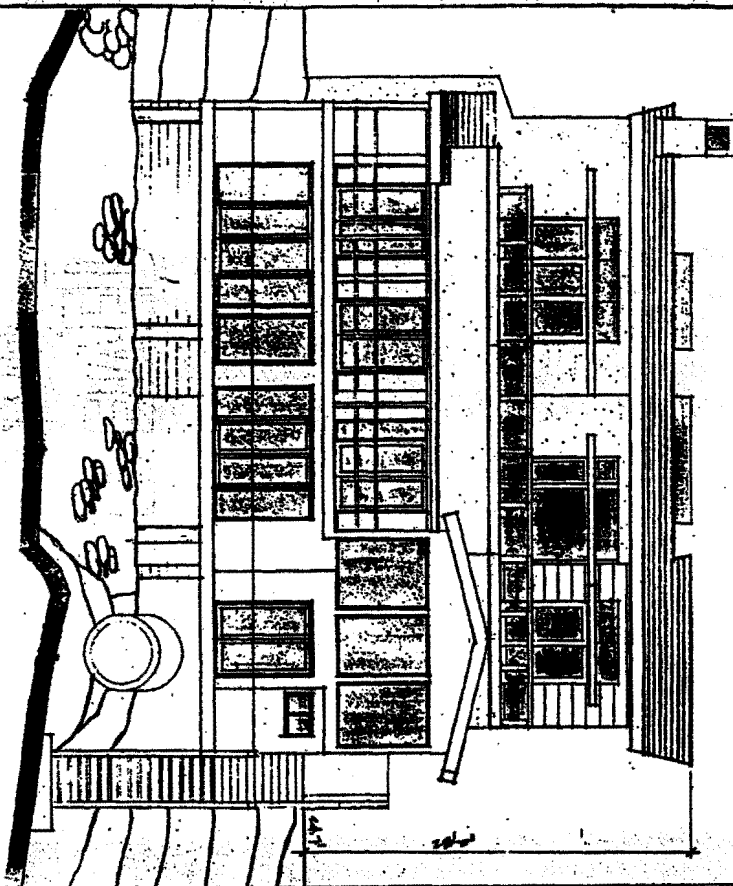


EXHIBIT NO. *Va.*

APPLICATION NO.

4-98-056 (O'Toole)

Front & Rear Elevations

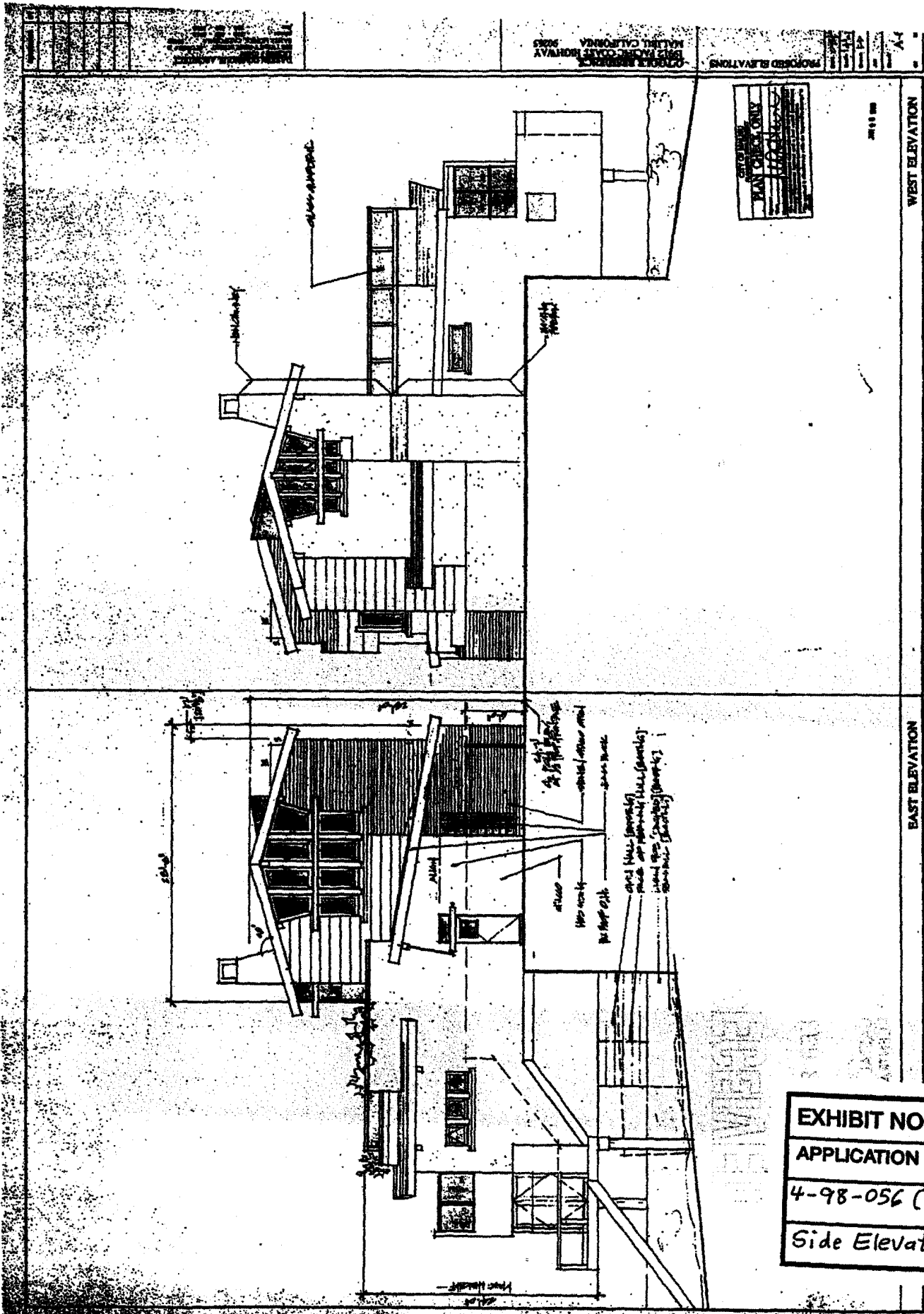


EXHIBIT NO.	V.b.
APPLICATION NO.	4-98-056 (O'Toole)
Side Elevations	

WEST ELEVATION

EAST ELEVATION

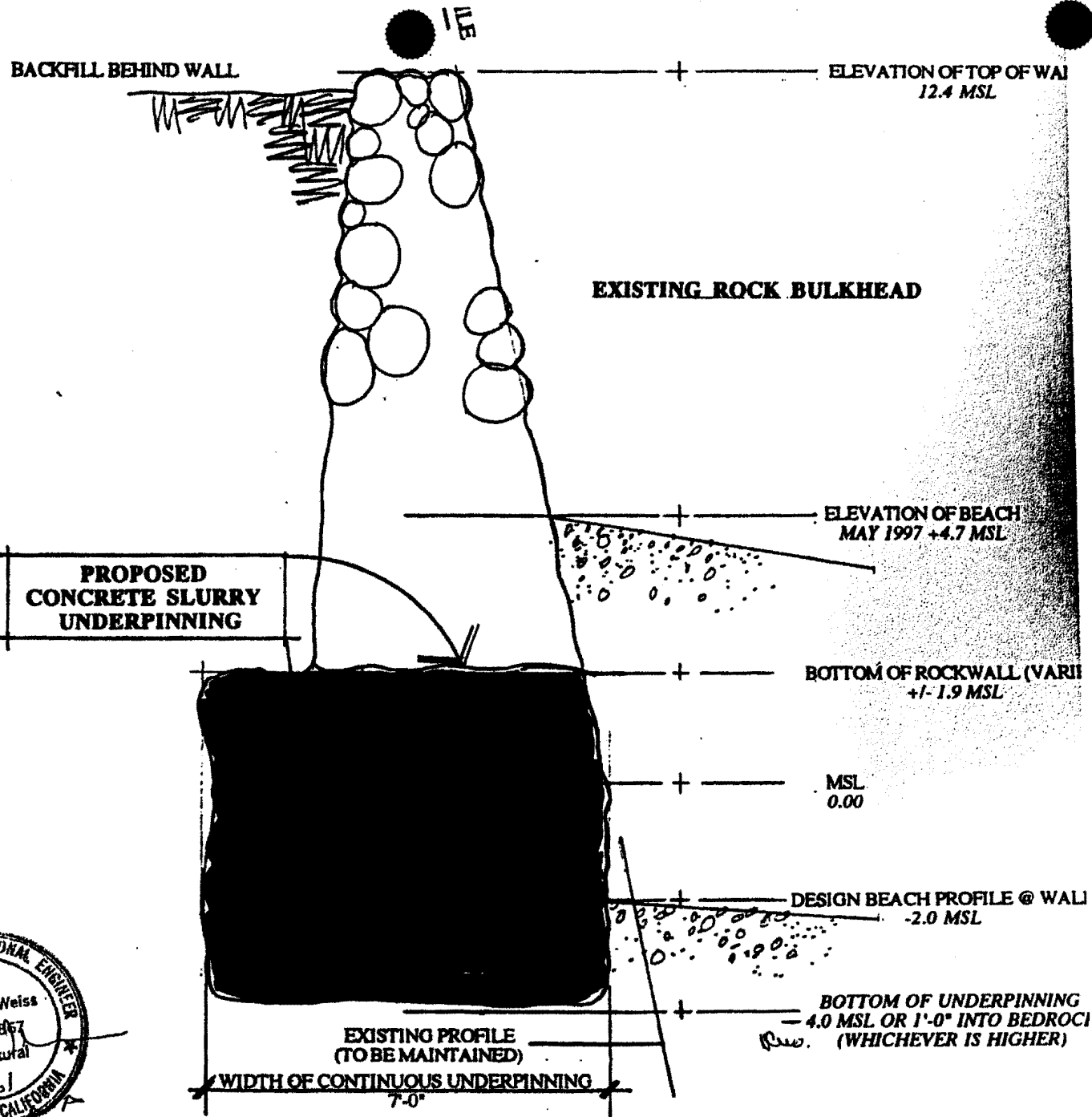
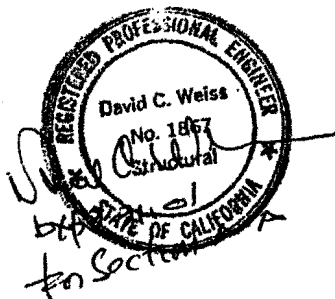
PROPOSED ELEVATIONS  
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OTTOLE & ASSOCIATES  
 1000 CALIFORNIA AVENUE  
 SAN FRANCISCO, CALIFORNIA 94108

Annotations on the East Elevation drawing:

- 2nd Floor
- 3rd Floor
- 4th Floor
- 5th Floor
- 6th Floor
- 7th Floor
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- 100th Floor

EXHIBIT NO. <u>VI</u>
APPLICATION NO. <u>4-98-056 (O'Toole)</u>
Cross Section of Seawall Augmentation



A-A

SECTION THRU EXISTING ROCK BULKHEAD

