

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
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Staff: mb-V *ja*
Staff Report: 10/13/99
Hearing Date: 11/2-5/99

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-98-115
APPLICANT: Larry and Lori Gray
PROJECT LOCATION: 27560 Winding Way, City of Malibu (Los Angeles County)

PROJECT DESCRIPTION: As-built remediation of landslide through slope repair and installation of monitoring/dewatering well, subdrains and drainage swales. Grading of 1,524 cu. yds. (1,312 cu. yds. cut and 212 cu. yds. fill).

Lot area: 3 acres

LOCAL APPROVALS RECEIVED: City of Malibu: Grading Permit # 9609 review letter, December 5, 1996.

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains certified Land Use Plan; C. Y. Geotech, Engineering Geologic Report and Geotechnical Report for Proposed Slope Repair and Addition to Single Family Residence, June 23, 1996; Donald B. Kowalewsky, Engineering Geologic Report and Geotechnical Report for Proposed Slope Repair and Addition to Single Family Residence, March 23, 1994, As-built Geologic Report and Geotechnical Engineering Report, August 25, 1996, and Update Geologic and Geotechnical Engineering Report, July 31, 1998. Emergency Coastal Development Permit 4-94-159 (Gray).

SUMMARY OF STAFF RECOMMENDATION

The development is proposed on a residential property in a low density residential and equestrian area north of Pacific Coast Highway and Escondido Beach. The proposed development is adjacent to flowing natural swale containing riparian vegetation which drains to the ocean. Staff recommends approval of the project with a special condition relating to: **landscape and erosion control, assumption of risk deed restriction and condition compliance.**

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, and will not have any significant adverse effects 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 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 development during construction, 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. Landscaping and Erosion Control Plans

Prior to issuance of a coastal development permit, the applicant shall submit a landscaping and erosion control plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping and erosion control plans shall be reviewed and approved by the consulting engineering geologist to ensure that the plans are in conformance with the consultants' recommendations. The plans shall incorporate the following criteria:

A) Landscaping Plan

- 1) All graded slopes approved pursuant to this permit shall be planted and maintained for erosion control purposes within thirty (30) days of issuance of the Coastal Development permit. The unpermitted pipe corral located on the graded slope below the midslope bench, as shown on exhibit 2, shall be removed within thirty (30) days of issuance of the coastal development permit. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- 2) Plantings should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;
- 3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- 4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be

reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

B) Monitoring.

Five years from the date of issuance of the coastal development permit the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

2. Applicant's Assumption of Risk

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from landsliding and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. Prior to issuance of the coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction 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 Commission amendment to this coastal development permit.

3. Condition Compliance

(a) Within 90 days of Commission action on this coastal development permit amendment application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

(b) Within 30 days of issuance of this permit the applicant shall remove the pipe horse corral located below the midslope bench, as shown on Exhibit 2. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The applicant proposes the as-built remediation of a landslide through slope repair, installation of a monitoring/dewatering well, drainage swales and grading of 1,524 cu. yds. (1,312 cu. yds. cut and 212 cu. yds. fill) on the west side of a three acre parcel (Exhibit 2). The project design includes subdrains and concrete swales draining to a flow (energy) dissipater on the southeast corner of the property. The as-built design includes an approximate 20 foot wide elliptical bench midway on the remediated slope. According to the 1996 engineering geologic report, cited under substantive file documents, the grading for the project took place between June 3 and August 16, 1995, after which the drainage control devices were installed.

The project is located in a low density residential and equestrian area north of Pacific Coast Highway and Escondido Beach. The proposed development is adjacent to a flowing natural swale containing riparian vegetation which drains to the ocean south of the highway. Existing development on the site consists of a single family residence barn and equestrian facilities.

There is no record of an earlier coastal development permit for the project location. On October 24, 1994 the Executive Director of the Commission issued an emergency permit (G-4-94-159) for the remediation of landslide with 2,167 cu. yds. of cut and 190 cu. yds. of fill and installation of subdrain pipes, a bench, and

drainage swales. The work was completed and follow up permit was not applied for within sixty days as was required under the emergency permit.

The applicant submitted a follow up permit on April 17, 1998. Staff requested additional information which was received and the permit application was filed on November 11, 1998. The application was inadvertently misfiled and the permit was not scheduled for Commission review until the November, 1999 meeting.

The project design submitted as part of the April 17, 1998 application was not the same as-built plan. The grading plan for the landslide remediation project was revised slightly in the construction phase. The as-built project design was prepared and a geotechnical engineering consultant supervised construction. The application has been amended since to request approval of the as-built design. A revised as-built design (Peak Surveys, dated 11/29/ 93) was submitted to Commission staff on October 8, 1999 and is the design currently under consideration. This design was reviewed by the geotechnical consultant in 1996, i.e. ; Donald B. Kowalewsky, As-built Geologic Report and Geotechnical Engineering Report, August 25, 1996 and Update Geologic and Geotechnical Engineering Report, July 31, 1998.

The applicant has also constructed pipe horse stables on the "bench" area and a pipe corral area on the descending slope below the bench without the benefit a coastal development permit. The applicant has not proposed to retain these equestrian facilities under this permit application. The equestrian facilities located on the bench area will be the subject of a separate enforcement and/or permit action. However, as described below, the graded slopes of the remediation area, as recommended by the geotechnical consultants and as required under special condition No.1 of this permit, shall be revegetated and the corral area removed from the slope. The geotechnical consultant has indicated that the bench area is not underlain by landslide debris and that this area is suitable for non-habitable accessory structures such as horse corrals. However, there are outstanding issues relative to non-point source pollution associated with the stable area that requires further investigation. These non-point source pollution issues could not be resolved in the context of this permit because of the time limitation for the Commission to act on this permit under the Permit Streamlining Act.

B. Geologic Stability and Hazards

Section 30253 of the Coastal Act states in part that new development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the***

site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

The site is located on a coastal terrace inland of Pacific Coast Highway. The prominent geomorphic features in the area are Escondido Canyon to the east, Ramirez Canyon to the west, and Escondido Beach to the south. The site descends to the previously noted natural swale to the east.

1. Geology

The applicant has submitted a Donald B. Kowalewsky, As-built Geologic Report and Geotechnical Engineering Report, August 25, 1996. The 1996 report indicates that the purpose of the project is to stabilize the slope to a safe and stable condition. The Report found that the landslide was contributed to by a paleo stream channel acting as a plunging syncline focusing gravitational forces and water seeping from the base of terrace deposits.

The geotechnical consultant's and engineering geologists have addressed the specific geotechnical conditions on the site and states that:

... the stabilization of the rear yard is acceptable from an engineering geology standpoint. Fill placement is in conformance with City of Malibu grading ordinances. The fill slope will be safe from future landslide provided that the drainage system and erosion control devices are periodically checked and properly maintained. Grading did not have an adverse effect on offsite properties and should not have an adverse effect on offsite properties in the future. Conversely, grading eliminated a potential threat to offsite properties through landslide stabilization.

Given the findings and recommendations of the consulting engineering geologist for the project as-built, the Commission finds that the development is consistent with Section 30253 of the Coastal Act.

2. Erosion

Surface drainage on site is by sheet flow to the noted natural swale. The Commission finds that the project will channelize erosion from an artificial slope into a natural swale vegetated with riparian species and draining into a blue line stream south of the Pacific Coast Highway. The project will increase the amount of runoff volume and velocity, which if not controlled will result in increased erosion on and off the site and affect site stability. However the project includes a drainage system which conveys runoff from the remediated landslide area in a non-erosive manner.

Although the applicant has submitted a drainage plan for permanent drainage control, landscaping the slopes of the graded area will minimize erosion and enhance site stability. In addition, the applicant's geotechnical consultant recommended that:

In order to minimize the surface erosion and minor sloughing, the fill slope should be properly vegetated and maintained. Landscape watering shall be kept to a minimum amount which is required for vegetation growth.

As previously mentioned, the applicant has constructed a horse corral on the slope of the remediation area just downslope of a midslope bench. This area is completely devoid of vegetation. The lack of vegetation on the slope will result in erosion and destabilization of this slope. In addition, erosion of this slope will result in the sedimentation of the adjacent drainage and downstream blue line creek. Therefore, the Commission finds that it is necessary to require the applicant to remove the horse pipe corral from the slope below the bench area and landscape the slope with native/drought resistant plants, as required under Special Condition One and Three (1 & 3). This requirement is necessary to ensure site stability and avoidance of the potentially adverse impacts of erosion and sedimentation of the natural drainage in a manner consistent with PRC Section 30253.

Although the landslide has been stabilized there still remains some risk associated with such a remediation project, therefore, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by special condition two (2). This responsibility is carried out through the recordation of a deed restriction. The assumption of risk deed restriction, when recorded against the property, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.

It should be noted that an assumption of risk deed restriction for hazardous geologic conditions is commonly required for new development throughout the greater Malibu/Santa Monica Mountains region in areas where there exist potentially hazardous geologic conditions, or where previous geologic activity has occurred either directly upon or adjacent to the site in question. The Commission has required such deed restrictions for other development throughout the Malibu/Santa Monica Mountains region.

Therefore, the Commission finds that as conditioned the project is consistent with PRC Section 30253.

D. Violation

The landslide remediation project was completed under an emergency coastal development permit and a follow-up coastal development permit was not applied for in a timely manner. Therefore, the as-built landslide remediation project as well as the horse corral on the grade slope is considered unpermitted development. To ensure the project site is landscaped and unpermitted horse corral is removed in a timely manner, special condition Three (3) requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within ninety (90) days of Commission action and removal of the pipe horse corral with thirty (30) days of issuance of the coastal development permit.

Although construction has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

In addition, during the course of processing this application, staff has discovered other development on the subject site which appears to have occurred without the required coastal development permit including the construction of pipe horse stables on the bench area of the slope remediation site. This additional unpermitted development is not included as part of this application and will require a future follow-up application for a coastal development permit that seeks to resolve the unpermitted horse stables.

E. Local Coastal Program

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

Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal 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 effects 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 which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

F. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects which the activity would have on the environment.

The proposed development would not cause significant, adverse environmental effects which would not be adequately mitigated by the conditions imposed by the Commission. Therefore, the proposed project, as conditioned, is found consistent with CEQA and with the policies of the Coastal Act.

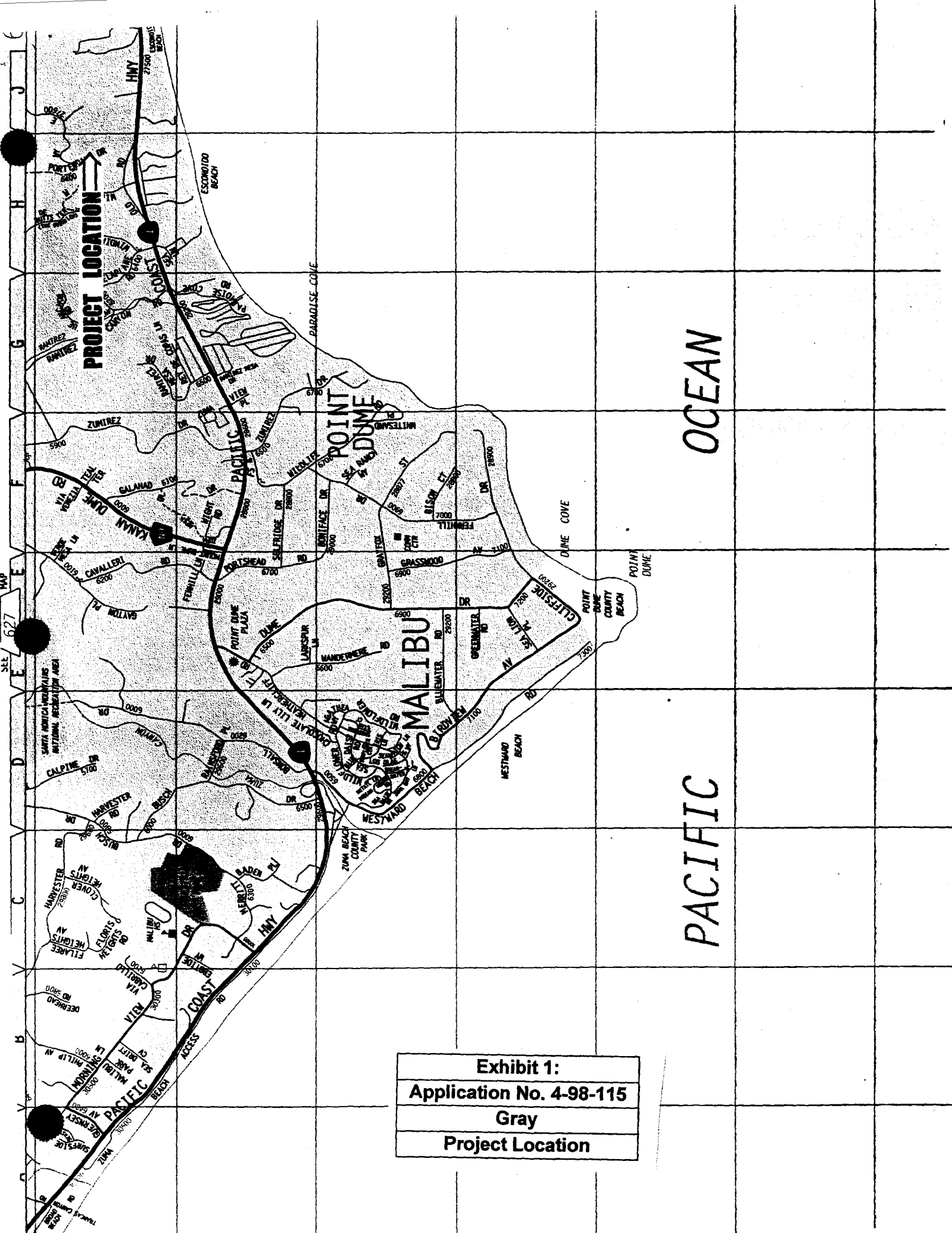


Exhibit 1:
Application No. 4-98-115
Gray
Project Location

6 - 12" PEPPER TREES AND BUCKS, IMAGELY ON PROPERTY LINE

Fields 1" 240' P.P.M. 0.77" 1000' and 0.64" 1000'

TOPOGRAPHIC SURVEY

LARRY GRAY
 57860 WINDING WAY
 MALIBU, CA. 90265

THAT REAL PROPERTY DESCRIBED IN DEED BY
 S.A. 88 878-38 IN THE RECORDS OF LOS ANGELES
 COUNTY, CALIFORNIA.

57860 WINDING WAY... MALIBU

1" = 15'

11/28/88

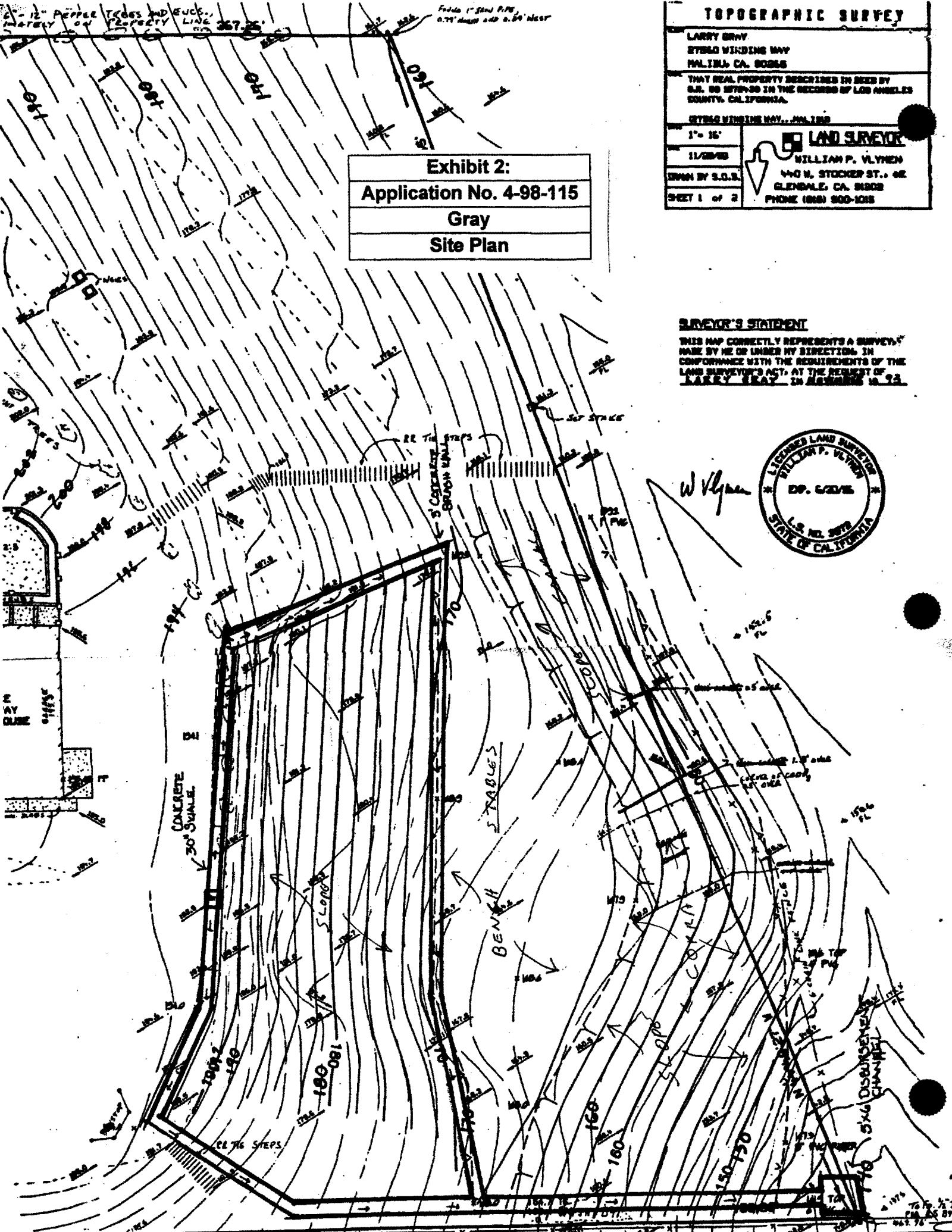
DRAWN BY S.O.S.

SHEET 1 of 2

LAND SURVEYOR
 WILLIAM P. VLYMEN
 440 W. STOCKER ST., 6E
 GLENDALE, CA. 91208
 PHONE (818) 900-1035

Exhibit 2:
Application No. 4-98-115
Gray
Site Plan

SURVEYOR'S STATEMENT
 THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT, AT THE REQUEST OF LARRY GRAY, IN ACCORDANCE 18-92.



W. Vlymen

SIX DISBURSEMENT CHANNEL