

## CALIFORNIA COASTAL COMMISSION

4TH CENTRAL COAST AREA  
SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 641 - 0142

Request Filed: 9/13/99  
Staff: J Johnson  
Staff Report: 11/17/99  
Hearing Date: 12/9/99  
Commission Action:



### STAFF REPORT: REQUEST FOR RECONSIDERATION

**APPLICATION NO.:** 4-99-035-R

**APPLICANTS:** Sam and Marge Login **AGENTS:** Paula Login, Sherman Stacey,  
Michael Inman, & Roger Howard

**PROJECT LOCATION:** 26926 Pacific Coast Highway, Malibu, Los Angeles County

**PROJECT DESCRIPTION:** Construct a one and two story, 651 sq. ft. addition and pile foundation to existing 588 sq. ft. one bedroom residential unit to total 1,239 sq. ft., complete remedial slope restoration and repair, including new drains, revegetate slope with native plants, temporary relocation of the subject residential unit during slope restoration, demolish attached deck and construct covered patio attached to subject unit, demolish deck and construct three foundation piles to support foundation of adjacent residential unit, and remove all debris to an appropriate disposal location outside the coastal zone.

**COMMISSION ACTION:** The proposed one and two story 651 sq. ft. addition to the existing 588 sq. ft. one bedroom residential unit to total 1,239 sq. ft. and enlarge the covered patio was not approved as conditioned on August 13, 1999. The proposed remedial slope restoration and repair, including new drains, revegetate slope with native plants, temporary relocation of the subject residential unit during slope restoration, demolish attached deck and re-construct covered patio attached to subject unit, demolish deck and construction of three foundation piles to support foundation of adjacent residential unit, and the removal of all debris to an appropriate disposal location outside the coastal zone was approved with conditions.

#### SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission Deny the reconsideration request. The Commission approved a coastal permit for only part of the requested application; a portion of the project was conditioned to be eliminated in the revised project plans. The Commission made clear and supportable findings as to why the proposed residential addition was not consistent with the Coastal Act. The applicant argues three errors of law: 1) The Commission failed to continue the application for a vote; 2) The Commission failed to allow the applicants to be heard; and 3) The Commission failed to adopt findings. Staff has reviewed each of these contentions presented in the Stacey letter dated September 13, 1999 (Exhibit A) and the first supplement to the request for reconsideration presented in the Inman letter received November 12, 1999 (Exhibit B). Staff recommends that the Commission deny this request because these allegations are not supported by the information in the record nor in the record submitted by the applicants. Furthermore, the reason the proposed residential addition was not approved was because of cumulative adverse impacts of additional intensity of residential use and the geologic hazards on the site.

**Procedural Note:**

The Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of an application, or of any term or condition of a coastal development permit which has been granted (California Code of Regulations, Title 14, Sections 13109.1 et seq.)

The regulations state further that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627 which states in applicable part:

*The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.*

**Applicant's Contentions:**

The applicants contend that "No findings of fact have been adopted by the Commission setting for(th) the reason for the imposition of this Special Condition, and that three errors of law occurred which have the potential of altering the initial decision. The three errors of law were that:

1. The Commission failed to continue the application for a vote as required by Regulation Section 13085;
2. The Commission failed to allow the applicants to be heard as required by Regulation Section 13084;
3. The Commission failed to adopt findings and cannot adopt findings which would support Special Condition No. 5.

Each of these claims will be examined in detail in the findings below. The full text of the Applicant's reconsideration request is attached as two separate letters in Exhibits A and B. Staff has reviewed both of these letters.

**STAFF RECOMMENDATION:**

The Staff recommends that the Commission **DENY** the request for reconsideration.

**I. Motion and Resolution**

The staff recommends that the Commission vote "**NO**" on the following motion and adopt the following resolution.

**"I move that the Commission grant a reconsideration of the conditional approval of Coastal Permit No. 4-99-035."**

A majority of Commissioners present is needed to pass the motion.

**DENIAL:** The Commission hereby denies the request for reconsideration of the proposed project on grounds that no new relevant evidence has been presented nor has there been an error of fact or law with the potential of altering the Commission's initial decision.

## **II. Findings and Declarations**

The Commission finds and declares as follows:

### **A. Background:**

The subject site, accessed from Pacific Coast Highway, is located seaward of Pacific Coast Highway and landward of Malibu Colony Cove Drive about one third of a mile west of Latigo Canyon Road. The applicants submitted an application to construct a one and two story, 651 sq. ft. addition and pile foundation to existing one story 588 sq. ft. residential unit to total 1,239 sq. ft. (including expanded covered porch area totaling about 192 sq. ft.) after slope remediation is completed. This residential unit is one of eight (8) units located on the approximate 1.47 acre lot. The applicants also proposed to complete remedial slope restoration and repair, including new drains and revegetate the slope with native plants adjacent to this residential unit. The slope restoration and repair consists of about 2,700 cubic yards of cut and 2,700 cubic yards of fill to recompact and remediate the slope failure. As a result of the slope restoration, the subject residential unit will need to be temporarily relocated. In addition, the applicants propose to demolish an attached concrete deck and construct a covered patio attached to subject unit and a new pile foundation. Further, it is proposed to demolish a wood deck and construct three foundation piles to support the south-east corner of residential unit adjacent to subject residential unit. Lastly, the applicants propose to remove all debris to an appropriate disposal location outside the coastal zone.

The Commission's basis for eliminating the addition to the existing residential unit was because of the cumulative impacts of additional intensity of residential use and geologic hazards on the subject site. The Commission's proposed Revised Findings Staff Report for Coastal Permit No. 4-99-035 is attached in full as Exhibit C. These Revised Findings are scheduled for adoption by the Commission at the December 7 – 10, 1999 meeting. In the event the Commission modifies these proposed findings, the final adopted findings will replace the proposed Revised Findings in Exhibit C. For any references below to the Commission's Findings on this project, please refer to Exhibit C.

B. Contentions and Responses:

1. Applicant's First Claim of Legal Error

a. Text of Applicant's Claim:

The applicants letter dated September 13, 1999 requesting revocation, alleges that:

"This request for reconsideration is based upon three errors of law which occurred which have the potential of altering the initial decision. These errors of law are set forth below".

The applicant alleges that:

**"The Commission failed to continue the application for a vote as required by Regulation Section 13085."**

The applicant argues that:

"The Commission failed to continue the matter for a vote as required by California Code of Administrative Regulations, Title 14, Section 13085. Section 13085 gives to an applicant a right to postpone the consideration of a matter when the applicant is not prepared to respond to recommendations which are before the Commission."

"When the Commission modified the staff recommendation to include Special Condition No. 5, the Applicant's representative sought to have the matter continued." The applicant argues that: "Such a continuance was required both by principles of due process and by the letter of Section 13085."

b. Commission's Response:

There is no error in law relative to the allegation that the Commission failed to continue the application for a vote as required by Regulation Section 13085. The provisions of the California Code of Regulations that were in effect on August 13, 1999 state:

- (a) In addition to the procedures set forth in Section 13071 the applicant may request the commission to postpone consideration of the application pursuant to this section. Where the applicant determines that he or she is not prepared to respond to the staff recommendation at the meeting for which the vote on the application is scheduled, the applicant shall have one right, pursuant to this section, to postpone the vote to a subsequent meeting. Such a request shall be in writing or stated on the record in a commission meeting and shall include a waiver of any applicable time limits for commission action on the application.
- (b) An applicant's request for postponement, not made as a matter of right pursuant to Section 13085(a), shall be granted at the commission's discretion.

The request may be made in writing or in person at the commission meeting prior to the presentation provided for in Section 13084(b). The executive director shall establish procedures for notification, to the extent feasible, to all persons interested in the application, of the postponement.

As noted above, Section 13084(a) provides the applicant one right to postpone the vote to a subsequent meeting where the applicant determines they are not prepared to respond to the staff recommendation at the meeting where the vote on the application is scheduled. A review of the record indicates that the applicant did not request a postponement of the vote on this application prior to the presentation of the staff recommendation. The applicant testified at the hearing and presented their response to the staff recommendation. The record indicates that the applicant requested a postponement after the presentation of the staff recommendation, applicant's testimony, questions by the Commission, and the closure of the public hearing. In fact, Commission Chairperson Wan requested an opinion from the Commission's Chief Legal Counsel, Ralph Faust; does the applicant have a right to a postponement once a motion is on the table? In response to the Chairperson's request, Mr. Faust responded that:

"The applicant's right of postponement is, under your regulations, to respond to the staff recommendation and the Commission's interpretation of its regulations has always been that right needs to be exercised prior to the time the Commission hears the matter. In this case, you have closed the public hearing portion, the public testimony portion of this hearing and its back to you. This Commission may in its discretion choose to continue the matter. It has the discretion to do so but there is not at this point an applicants right to do so."

Therefore, as noted in the opinion of the Commission's Chief Legal Counsel, the applicant did not have the right for a postponement at the time it was requested after the staff recommendation was presented and the public hearing was closed. The Commission had the discretion to continue the matter. However, the Commission choose to act on the motion on the table, to approve the application with an additional condition rather than continue the application.

In conclusion, the Commission finds that the Applicant's first claim of error in law that "the Commission failed to continue the application for a vote as required by Regulation Section 13085" is not supported by the information in the record nor by that submitted by the applicants.

2. Applicant's Second Claim of Legal Error

a. Text of Applicant's Claim:

The applicants letter dated September 13, 1999 requesting revocation, alleges that:

**"The Commission failed to allow the applicants to be heard as required by Regulation Section 13084."**

The applicant argues that:

"The Commission failed to recognize the Applicant's representative to be heard even to comment on the inclusion of a new Special Condition as required by California Code of Administrative Regulations, Title 14, Section 13084(d). Section 13084(d) provides as follows:

(d) Where the commission moves to vote on an application with conditions different from those proposed by the applicant in the application or by the staff in the staff recommendation pursuant to subsection (a) above the parties who responded to the staff recommendation under subsection (b) above, shall have an opportunity to state their views on the conditions briefly and specifically. The order of presentation shall be as provided in subsection (b)."

"Once a motion to amend the staff recommendation had been made and the vote by the Commission would be to adopt Special Conditions which differed from those contained in the staff recommendation, the Commission was obligated to hear from the Applicant's representative. Although the Applicant's representative sought to be recognized by the chairperson of the Commission, the (representative) was not recognized and the Commission proceeded to a vote. Failure to give the Applicants an opportunity to state their views on the conditions was error."

c. Commission's Response:

A review of the tape recorded record indicates that Commissioner Reilly moved to adopt the staff recommendation to approve with conditions this application. Commissioner Detloff seconded this motion. Commissioner Reilly then amended this motion to deny the request for the expansion of the residential area. Commissioner Allgood seconded this amendment to the motion.

After the Commission concluded their discussion of this the motion with comments received from Chief Legal Counsel, Ralph Faust, Senior Deputy Director, Chuck Damm, and the applicant's representative, Don Schmitz, the Commission recognized Don Schmitz. At that time, Mr. Schmitz requested a postponement. This issue is discussed above in the applicant's first claim of legal error as noted above.

The record indicates that the applicant was recognized by the Chair and requested a postponement. The applicant did not request an opportunity to "state their views on the

conditions briefly and specifically" prior to the Commission's roll call on the motion. The issue of the addition to the one residential unit had already been discussed during the hearing. The applicant had already made their views known about this issue during their presentation.

There is no error in law because the applicant did not request an opportunity to "state their views on the conditions briefly and specifically. The Commission recognized the applicant and allowed the applicant to speak. However, instead of stating their views on the conditions briefly and specifically, the applicant requested a postponement.

In conclusion, the Commission finds that the Applicant's second claim of error in law that "the Commission failed to allow the applicants to be heard as required by Regulation Section 13084" is not supported by the information in the record nor by that submitted by the applicants.

### **3. Applicant's Third Claim of Legal Error**

The applicants letter dated September 13, 1999 requesting revocation, alleges that:

a. Text of Applicant's Claim:

The applicant alleges that:

**"The Commission failed to adopt findings and cannot adopt findings which would support Special Condition No. 5."**

The applicant argues that:

"The Commission did not adopt findings to support the imposition of Special Condition No. 5. It is difficult to imagine what the Commission will adopt for such findings. There is no policy contained in Chapter 3 of the Coastal Act which when applied to the Malibu area, prohibits the addition of 651 square feet to an existing building. No public access or recreational uses are affected. No marine or terrestrial habitat is affected. There are no present limitations on the size of structures located in the Malibu area and the Commission has not, in the past, ever limited the size of structures other than guest houses."

"Approval of the permit without Special Condition No. 5 would have meant only that one of the residential units on the property would be enlarged from 588 to 1,239 square feet in area. The number of residential units would remain the same. Additions of far larger size have been routinely approved on homes in Malibu for more than 20 years. This enlargement was approved by the City of Malibu and would have no impact whatsoever on any coastal resource. Any finding of fact that the addition of this small area would no(t) be consistent with any policy contained in Chapter 3 of the Coastal Act would be unsupported by any evidence whatsoever. The Commission's action was arbitrary and capricious."

**b. Commission's Response**

There is no error in law relative to the adoption of revised findings to support the imposition of Special Condition No. 5 consistent with Chapter 3 of the Coastal Act. The Commission routinely schedules the adoption of revised findings after the date the Commission acts on a project with additional conditions beyond those presented in the staff recommendation and report or takes a different action than recommended by staff. Revised findings are scheduled to be adopted by the Commission prior to action on this Reconsideration Request at the December 7 – 10, 1999 meeting. These Revised Findings will reflect the Commission's action on August 13, 1999 to approve Coastal Permit No. 4-99-035 with all recommended conditions including an additional Special Condition No. Five. The Revised Findings set forth the Commission's determination that the proposed addition is inconsistent with Chapter 3 policies. The addition is inconsistent with Coastal Act Section 30250 because it will increase the intensity of use of the residential unit resulting in adverse cumulative effect to coastal resources and public access to and along the coast. The proposed addition is also inconsistent with Coastal Act Section 30253 as it will not minimize risks to life and property in an area of geologic hazards.

In conclusion, the Commission finds that the Applicant's third claim of error in law that "the Commission failed to adopt findings and cannot adopt findings which would support Special Condition No. 5" is not supported by the information in the record nor by that submitted by the applicants.

FRED GAINES  
SHERMAN L. STACEY  
LISA A. WEINBERG

LAW OFFICES OF  
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September 13, 1999

BY FAX and HAND DELIVERY

Mr. Jack Ainsworth  
California Coastal Commission  
89 South California Street, 2<sup>nd</sup> Floor  
Ventura, CA 93001

Re: CDP No.4-99-035  
Request for Reconsideration

Dear Jack:

On behalf of Sam and Marge Login, the owner of the real property located at 26926 Pacific Coast Highway, Malibu, I hereby request reconsideration of the decision of the California Coastal Commission on August 13, 1999 to impose Special Condition No. 5 upon the approval of Permit No. 4-99-035. This request for reconsideration is made under the authority of Public Resources Code §30627 and California Code of Regulations, Title 14, §§13109.1, et seq. A check in the amount of \$400.00 in payment of the filing fee required by California Code of Regulations §13055(a)(11) is enclosed.

Special Condition No. 5 provided as follows:

5. REVISED PLANS

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit revised plans, for review and approval by the Executive Director showing the elimination of the addition to the existing residential unit.

No findings of fact have been adopted by the Commission setting for the reason for the imposition of this Special Condition and the Applicants reserve the right to set forth further reasons for reconsideration based upon any such findings of fact adopted by the Commission. The Applicants would have produced additional evidence which the Applicants could not have reasonably been expected to produce at the hearing since the imposition of such Special Condition had not previously been proposed.

EXHIBIT NO. A
APPLICATION NO. 4-99-035R
Applicants
Request (4 pages)

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SEP 15 1999  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Mr. Jack Ainsworth  
California Coastal Commission  
September 13, 1999  
Page 2

This request for reconsideration is based upon three errors of law which occurred which have the potential of altering the initial decision. These errors of law are set forth below.

1. **The Commission Failed to Continue the Application for a Vote as Required by Regulation §13085.**

The Commission failed to continue the matter for a vote as required by California Code of Administrative Regulations, Title 14, Section 13085. Section 13085 gives to an applicant a right to postpone the consideration of a matter when the applicant is not prepared to respond to recommendations which are before the Commission. Although it is most often applied when an applicant is responding to a staff recommendation, it still applies when the Commission modifies the staff recommendation. An applicant cannot be expected to anticipate each and every concept which a member of the Commission may choose to assert would apply to a particular application. Therefore, Section 13085 gives the applicant an opportunity to continue a matter when necessary to adequately respond.

Section 13085 to these facts is particularly applicable to the present application. When the Commission modified the staff recommendation to include Special Condition No. 5, the Applicants' representative sought to have the matter continued. Such a continuance was required both by principles of due process and by the letter of Section 13085. The Applicants were entitled to time to determine if there was new and additional evidence which they would like to present to the Commission before the Commission took final action on the application.

2. **The Commission Failed to Allow the Applicants to be Heard as Required by Regulation §13084.**

The Commission failed to recognize the Applicants' representative to be heard even to comment on the inclusion of a new Special Condition as required by California Code of Administrative Regulations, Title 14, Section 13084(d). Section 13084(d) provides as follows:

(d) Where the commission moves to vote on an application with conditions different from those proposed by the applicant in the application or by the staff in the staff recommendation pursuant to subsection (a) above the parties who responded to the staff recommendation under subsection (b) above, shall

have an opportunity to state their views on the conditions briefly and specifically. The order of presentation shall be as provided in subsection (b).

Once a motion to amend the staff recommendation had been made and the vote by the Commission would be to adopt Special Conditions which differed from those contained in the staff recommendation, the Commission was obligated to hear from the Applicants' representative. Although the Applicants' representative sought to be recognized by the chairperson of the Commission, she was not recognized and the Commission proceeded to a vote. Failure to give the Applicants an opportunity to state their views on the conditions was error.

3. **The Commission Failed to Adopt Findings and Cannot Adopt Findings which Would Support Special Condition No. 5.**

The Commission did not adopt findings to support the imposition of Special Condition No. 5. It is difficult to imagine what the Commission will adopt for such findings. There is no policy contained in Chapter 3 of the Coastal Act which, when applied to the Malibu area, prohibits the addition of 651 square feet to an existing building. No public access or recreational uses are affected. No marine or terrestrial habitat is affected. There are no present limitations on the size of structures located in the Malibu area and the Commission has not, in the past, ever limited the size of structures other than guest houses.

Approval of the permit without Special Condition No. 5 would have meant only that one of the residential units on the property would be enlarged from 588 to 1,239 square feet in area. The number of residential units would remain the same. Additions of far larger size have been routinely approved on homes in Malibu for more than 20 years. This enlargement was approved by the City of Malibu and would have no impact whatsoever on any coastal resource. Any finding of fact that the addition of this small area would not be consistent with any policy contained in Chapter 3 of the Coastal Act would be unsupported by any evidence whatsoever. The Commission's action was arbitrary and capricious.

Please set this matter before the Commission at the earliest possible date. As a result of the Commission's arbitrary action, the Applicants may be delayed in proceeding with the necessary slope remediation work. The Applicants do not want to delay this

Mr. Jack Ainsworth  
California Coastal Commission.  
September 13, 1999  
Page 4

work and Don Schmitz will be in touch with you as to how they can proceed before the winter rains while this request for reconsideration is pending.

Sincerely,

  
SHERMAN L. STACEY

SLS/sh

cc: Mr. & Mrs. Sam Login  
Mr. Don Schmitz

Law Offices of  
**MICHAEL H. INMAN**

7940 Blackburn Ave, Suite 100  
Los Angeles, CA 90048  
(323) 655-4333

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CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

November 9, 1999

Jack Ainsworth  
California Coastal Commission  
South Central Coast Area Office  
89 South California Street #200  
Ventura, CA 93001

Re: CDP No. 4-99-035  
First Supplement to Request For Reconsideration

EXHIBIT NO. <i>B</i>
APPLICATION NO. <i>4-99-035R</i>
<i>Proposed Revised</i>
<i>Findings 4-99-35</i>
<i>Pages 1-66</i>

Dear Commissioners:

I. INTRODUCTION

This is a First Supplement to the Request For Reconsideration submitted on September 13, 1999 on the California Coastal Commission's (the Commission) action to impose Special Condition No. 5 on Permit No. 4-99-035. This action was taken on an application (the Application) brought by Sam and Marge Login (the Applicant). The Application requested a permit for a slope repair and a 651 square foot addition to an existing unit on the property located at 26926 Pacific Coast Highway, Malibu, CA (the Property).

At a regular open hearing of the Coastal Commission held on August 13, 1999 (the Hearing), the Application was approved subject to the imposition of Special Condition No. 5, which denied the Application's proposed addition.

II. THE REQUEST FOR RECONSIDERATION

In the Request for Reconsideration (the Request), the Applicant cites three distinct errors of law which occurred at the Hearing which Applicant submits serve as grounds for the granting of the Request. The grounds cited in the Request are as follows: (1) The Commission failed to continue the Application for a vote as required by California Code of Administrative Regulations (the Regulations) Title 14, Section 13085; (2) The Commission failed to allow the Applicants to be heard as required by Regulation Section 13084; and (3) The Commission failed to adopt findings, and cannot adopt findings which would support Special Condition No. 5. These errors of law are more fully discussed in the Request For Reconsideration already submitted and are incorporated herein.

The Commission's refusal to scrupulously observe Applicant's due process rights, specifically its rights to 1) continue the vote, 2) to allow Applicant to be heard and 3) to adopt findings, are especially relevant in this case. Had Applicant been allowed these procedural rights, it could have and would have been afforded an opportunity to directly

address the concerns and issues raised by the Commissioners and staff in apparent justification of their imposition of the Special Condition Number 5. Had Applicant been afforded its procedural rights, the following issues would have been addressed.

III. **ISSUES RAISED AT HEARING APPLICANT NOT PERMITTED TO ADDRESS (AS WAS APPLICANT'S RIGHT UNDER REGULATION 13804)**

A. **CORRECTION OF RELEVANT MISSTATEMENTS MADE AT THE HEARING**

At the Hearing, several Commissioners and staff members made statements regarding the Application that were either untrue, misleading or mischaracterizations. As set forth more fully below, these statements significantly influenced the Commission's decision to deny the addition.

1. **Mischaracterization of the Property as "Double the Density"**

a. **Deputy Director's Statement that that the Density was "Double."**

On three occasions in his presentation, Senior Deputy Director Chuck Dam stated, when referring to the Property:

"...that the density is roughly double..."; "...that since this is already double the density.."; and "...because it is double the number of units..."

The Property is permitted two houses and two guesthouses per acre under the current Land Use Designation as described by James Johnson in the Staff Report and Chuck Damm in his oral presentation to the Commission.

According to the assessor's map, the Property consists of 1.47 acres. There are four houses and four guesthouses on the Property. When Mr. Dam states to the Commission that the Property is currently "double the density" he is patently misstating the facts. "Double the density" implies the current unit per acre density is 100% over the permissible limit, however, when properly computed, the actual current density of the Property is only 36% over the permissible limit, not 100% or "double" as erroneously represented at the Hearing. (See Exhibit A - Victor Beck, Civil Engineer, calculation of property density.)

The significance of this distinction can not be overstated since most of the Commissioners explicitly relied on this misrepresentation of density to justify their denial of the addition

b. Commissioner Daniels' Concern With the Density Issue

Specifically, Commissioner Daniels cites Mr. Damm's incorrect and misleading conclusion (that the Property density was double) when articulating her support to deny the addition. At the Hearing, Commissioner Daniels poses the question:

"If zoning restricts development in this area to a certain number of units, and this is already beyond that, why are we even allowing this particular unit to be preserved? My thinking is to deny this project because there is no basis to try to rescue a building that should not be there in the first place."

Apparently, Commissioner Daniels concurs that the current unit per acre density of the Property is not in conformity with the target density under the Land Use Designation. This belief presumably influences Ms. Daniels to characterize the unit as "a building that should not be there in the first place." Had the Applicant been allowed its right under Regulation 13084 to address the new imposed Special Condition, Applicant could have addressed the density issue, as set forth more fully below. Had Ms. Daniels been properly informed with respect to the density issue, she may very well have reached a different decision.

Had the Applicant been allowed her procedural right to address the imposition of the Special Condition, Applicant would have raised the following points:

- (1) Applicant Would Have Corrected the Record To Reflect that The Current Density of The Property -AS SUBMITTED-Is Not 100%, But Only 36% Over the Permissible Density

Applicant would have corrected the record to reflect the fact that the Property is not 100% over density but is in fact 36% over density, as set forth more fully throughout this document. Applicant would have further pointed out that the Staff recommended approval of the Addition when it believed the Property was "double the density." If the Staff was willing to approve the addition when it believed the Property was "100% over density" then surely, upon learning the actual density variation was only 36% over (considerably less), the Staff should have been even more committed to recommending approval the addition.

Since the Staff Report delivered to the Applicant on two occasions prior to the Hearing indicated that the Staff would approve the addition despite any concerns over density, the Applicant was logically led to believe that over-density would not be a crucial issue, and certainly, Applicant did not have notice density would be a determinative one. However, this issue was raised, it was fatally mischaracterized (100% v. 36%) and it then became the foundation for the Commission's decision to deny the addition. Accordingly, since this issue led directly to the imposition of the Special Condition, then the Applicant, by law (Regulation 13084), should have been allowed to address it. To do otherwise is patently unfair to this Applicant.

(2) Applicant Can Comply With Current Density Requirements By Appending An Adjacent Half-Acre Exclusive Easement

Applicant would have introduced the fact that the Property has an exclusive easement over an adjacent one half acre of land (2187 square feet, see Exhibit B, engineer's survey map; and Exhibit C-Grant Deed dated September 13, 1994). For purposes of complying with the density requirements, this half acre brings the Property to within 98.5% compliance of the required density (the Property would measure 1.97 acres). Supplementing Applicant's adjacent half acre exclusive easement to the main lot would satisfy the policy goals of the density provisions under the Land Use Designation since no other property owner may build on that land.

Given the weight placed on the alleged over-density by the Commissioners, the understanding that the Property can be easily made to conform, then such a position and its logical conclusion would surely have been persuasive in support of approval of the proposed modest addition. At the very least, the Applicant should have been permitted its procedural right to be heard on a crucial issue which could have significantly changed the outcome of the Hearing.

(3) Applicant Has The Right To Do A Lot Line Adjustment To Include The Adjacent One Half Acre Parcel

Applicant would have also introduced the fact that it has the right to do a lot line adjustment at any time (see Exhibit D - Agreement dated September 13, 1994). Applicant should have been allowed to point out that the right to gain title over the adjacent half acre parcel underscores the fact that no other property owner will ever build on this parcel. For purposes of promoting the density goals of the Land Use Designation, the right to do a lot line adjustment by the Applicant strongly supports the argument that the half acre should be added to the main lot with respect to density considerations. This would have provided the Commission an important factual basis necessary to making a fair and informed decision. More importantly, the Applicant was entitled, by law, to raise such a relevant point.

2. Commissioner Wan's Sole Stated Basis For Her Denial Was Factually Incorrect; No Additional Bedroom Is Proposed

A gross misstatement of fact made at the hearing was when Commissioner Wan stated that the proposed addition involved adding a bedroom. On this basis she argued that the "cumulative impact" of the addition would be significant. Ms. Wan stated at the hearing the following:

"My understanding is that, by the way, the addition would add an extra bedroom...we don't want additional bedrooms and that's the basis of our decision that, cumulatively, that creates an impact, but you can rent out a 500 or 600 square foot home for, in terms of the number of people versus one that's larger with an

extra bedroom is different and that's the cumulative impact. So, we look at that and it's on that basis that I would support the amending Motion."

Commissioner Wan's only stated objection to the proposed addition was that she mistakenly believed an extra bedroom was being added. No bedroom is being added. Clearly, had the Applicant been able to correct the record and remove the Commissioner's sole basis for denying the addition, Madam Chair would have logically been compelled to reverse her position.

Had the Applicant been allowed its right under Regulation 13084 to address Ms. Wan's erroneous observation, Applicant could have corrected the record:

- (1) Applicant would have introduced the floor plan which clearly shows a total of one bedroom in the existing unit and a total of one bedroom in the proposed unit. (see Exhibit E, floor plan for proposed addition).
- (2) Applicant could have corrected the record by introducing the Coastal Commission Card File 4-99-035 (see Exhibit F) which clearly states the proposed addition "will not be increasing bedrooms."

3. Commissioner Allgood's Concern Re: Alleged Geologic Hazard

Commissioner Allgood suggests that the addition should be denied because

"it is clearly a high hazard geological area and stuff...and anything you add above what's already in an illegal density only compounds that kind of problem."

Had the Applicant been allowed its right under Regulation 13084 to address Commissioner Allgood's basis for supporting the Special Condition, Applicant could have reminded Mr. Allgood that when the Commission approved Applicant's slope repair, it removed the hazard. Once the slope repair is properly fixed, there will be no hazard.

Commissioner Allgood's reference to "illegal density" further underscores the critical point that most commissioners relied on Chuck Damm's Mischaracterization of the density issue when they denied the addition. Undoubtedly, had Applicant been allowed its legal right to address the density issue, and the opportunity to disabuse the Commissioners of their incorrect position on density, the outcome of the hearing would have been significantly different.

Applicant asserts that the Property should be considered in total complete compliance with the density requirements based on the information provided above. In addition, there is fundamental support for approval of this addition on the following grounds, none of which require acceptance by the Commission of the above referenced density positions.

**B. RELEVANT CONSIDERATIONS APPLICANT WOULD HAVE RAISED IN RESPONSE TO DENIAL (AS WAS APPLICANT'S RIGHT UNDER REGULATION 13804)**

**1. The Coastal Commission Routinely Approves Applications For Additions to Non Conforming Properties**

Applicant could have introduced the fact that the Coastal Commission routinely approves applications for modest additions to structures that do not conform to the Land Use Designation. Applicant is currently reviewing the coastal permit files of the Malibu area and is awaiting files not currently available. Upon the completion of its review, Applicant will submit a summary of its findings in a further Supplement. However, a cursory review of currently available files discloses that the Commission has never denied a modest addition to a nonconforming property based on density issues.

In light of the fact that the instant Application proposes only a modest addition, and that such additions are routinely approved, the Commission's denial of the addition constitutes arbitrary and capricious enforcement of the Coastal Act and thereby denies Applicant basic rights of equal protection and due process. (See Exhibit G, letter dated October 29, 1999 from Commission staff analyst James Johnson when in response to request by Applicant for addresses of other projects analogous to hers in the Malibu area that were denied an increase in square footage based upon land use designation by the Coastal Commission, he replied that "there are none, that's why the staff recommended approval.")

Applicant would also have pointed out that the Commission in the past approved a two story building addition to the Property. (See Exhibit H, Permit No. 5-84-376). Since the time of this approval, there has been no change in the Coastal Act policy with respect to such additions. Due to this prior approval and absent a Coastal policy change, Applicant is entitled by law to expect a similar result.

**2. The Reasoning Underlying the Commission's Decision To Deny The Addition Would Set an Illogical and Impractical Precedent Which If Applied to Future Similar Applications Would Effectively Preclude Any New Development In Malibu Under the Soon To Be Adopted Local Coastal Plan**

Applicant would have raised the issue that the reasoning underlying the Commission's imposition of the Special Condition would set an illogical and unworkable precedent that when applied to future applications would effectively halt all new development and/or additions on 80% of all properties in the City of Malibu under the Local Coastal Plan soon to be adopted.

Under the new Local Coastal Plan to be adopted in the year 2000, the new unit per acre density limit has been significantly revised. It is estimated that under the new Plan, over 80% of the properties in Malibu will be non-conforming on the basis of density. If the Commission intends to apply this rule—that even modest additions to non conforming properties will be denied based on density—then the judicious application of such a rule in

future cases will preclude the Commission from approving applications for even one square inch on 80% of all Malibu properties.

Quasi-judicial and administrative bodies, like courts, are bound to apply rules evenly, i.e. they must treat like cases in a like manner. Either the Commission is creating a rule so strict that it will be impossible to apply to future similar cases, or they are disingenuous in applying this rule ad hoc to this situation without abiding their obligations to either legal duty or practical prerogatives.

3. Bifurcation of Permit Application Into Two Separate Permits: One for Slope Repair, Another For the Proposed Addition

The Commission surely appreciates the importance of slope repair both to the Applicant and the community at large. The Commission must also respect every citizen's right to due process and a fair hearing. Applicant formally requests the Commission to bifurcate the Application into two separate permits—one permit for slope repair only, and a separate permit for the modest addition. This solution will allow the important work of the slope repair to begin immediately, thus avoiding a potentially dangerous delay, while at the same time preserving Applicant's right to pursue all its administrative and judicial avenues to secure the right to build the proposed addition.

4. By Denying Applicant's Proposed Addition, Coastal Commission Has Exceeded Its Jurisdiction Under the Relevant Enabling Legislation

The decision making policies to which the Coastal Commission must adhere are outlined in Chapter Three of the California Coastal Act. There is no policy contained in Chapter Three which, when applied to the Property, prohibits the modest 651 square foot addition proposed. No public access or recreational uses are affected, nor will marine or terrestrial habitat areas be impacted. Importantly, this proposed addition was already approved by Craig Ewing, Planning Director of the City of Malibu Planning Department and Building and Safety. (See Exhibit I) Deference should be accorded such approval unless coastal resources are impacted, which is not the case here.

The Coastal Commission expressly does not have the authority to override the application of zoning laws by local governments when such decisions involve the promotion and/or maintenance of low and moderate income housing as specifically mandated by the enabling legislation. (See Exhibit J, Government Code, Section 65590 et seq. - the Mello Act.)

The California State Legislature directly addresses these issues in Section 65590 of the Mello Act, entitled Low and Moderate-Income Housing Within The Coastal Zone. The statute identifies the subjects it regards in its subheading: "Application of law; conversion or demolition; replacement; new housing developments; incentives; local coastal programs."

Relevant passages of this legislation are as follows:

Subsection(b) provides:

“The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income...shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low and moderate income...”

Subsection(d) states:

“New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income...In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modifications of zoning and subdivision requirements, accelerated processing of require applications and the waiver of appropriate fees.” (Emphasis added)

Subsection(i) states:

“No provision of this section shall be construed as increasing or decreasing the authority of a local government to enact ordinances or to take any other action to ensure the continued affordability of housing.” (Emphasis added)

Subsection(k) states:

“This section establishes minimum requirements for housing within the coastal zone for persons and families of low and moderate income. It is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government, as may otherwise be provided by law, to require or provide low- or moderate-income housing within the coastal zone which is in addition to the requirements of this section.” (Emphasis added)

The letter and spirit of the above cited Mello Act sections are especially applicable to this Application. It is clear that the intent of the legislature is to encourage local governments to establish, maintain and promote low and moderate income housing units in the coastal zone. Subsection (d) even suggests specific ways in which these goals can be achieved, including density bonuses, incentives, modifications of zoning requirements, accelerated processing of required applications and the waiver of appropriate fees.

As the Commission should be aware, the instant Application and Property involves eight units which provide rental housing to persons of moderate income. The construction of the proposed addition will have the direct result of allowing the Applicant an increased opportunity to continue to provide these eight units of affordable housing, a goal which the legislature clearly intends to promote. The Coastal Commission should welcome an opportunity to take actions which encourage the maintenance of moderate housing, and

most certainly should not act to reverse that trend. Accordingly, any action which would deny the proposed addition, would blatantly contradict the express intention of the state legislature as expressed through the cited statutes.

#### IV. CONCLUSION

The Applicant understands that the initial determination of whether a Request for Reconsideration ought be granted turns on whether the Commission committed errors of law in the action being appealed. The errors of laws being alleged have been briefed in the Request, and selectively reinforced in this Supplement. It is important for the Commission to remember that the denials of the procedural due process rights suffered by Applicant, – i.e. the denials of the right to a continuance of the vote, the right to be heard and the right that appropriate findings to be made—are significant not only in principle but in substance. Outlined above are the key substantive issues which Applicant, as a matter of right, should have been allowed to present to the Commission at the Hearing.

As set forth above, and as can be seen in the attached transcript of the Hearing (See Exhibit K), both the Staff and various Commissioners publicly stated issues crucial to their decision making which were either blatantly untrue or significantly mischaracterized. Since the Applicant had no notice that any alleged over density issue would become a crucial point, Applicant had no opportunity to address this crucial issue, but could have if allowed.

The Staff and several Commissioners assert that the Property is “100% over density” while in fact the Property does conform. Since several commissioners voted to deny the addition based on their belief the Property was over density, this issue’s importance can not be disputed; nor can Applicant’s right to correct the record (which right was denied!) and the significance such a correction to the outcome might have had.

Commissioner Wan’s statement that she was denying the proposed addition because it involved the addition of a bedroom is another significant misstatement and a misstatement of consequence. In simple fact, no additional bedroom is proposed; Applicant should have been allowed to correct this. However, Madam Chair, who carries influence with the Commission, expressly denied the addition based on a fact that wasn’t true.

Applicant should have been allowed to furnish the Commission with further relevant information: that their decision to deny the addition not only contradicted their rulings on applications for similar additions in the past, but would set a strict and impractical precedent if applied to future similar applications.

Additionally, Applicant should have been allowed to cite provisions of the Coastal Act and the Mello Act which establish clear parameters for the jurisdiction, policies and powers of the Commission and its decision making. When no coastal resources are impacted, a modest addition approved by the local government should not be disturbed, especially when it serves to promote and maintain affordable housing in coastal zones.

The Coastal Act insists that Commission hearings be conducted in an open, fair and just manner and that the decision making process be informed by all of the relevant facts. Can a hearing be fair when the undisputed record reveals that the reasons relied upon by the Commissioner to reach its decision were either untrue or significantly misstated? Can a hearing be fair when the persons affected by the Commission's decision are not allowed an opportunity to provide the Commissioners with the very information they need to reach a just decision?

The Property that is the subject of this Request was built in 1956, two decades before the Coastal Commission had conducted its first hearing. The Property was in compliance then, and through a reasonable application of current standards, it is in compliance now. The Logins, longtime participants in the Malibu Community, have suffered one disaster, a landslide, whose deleterious effects they are endeavoring to remedy. At the same time, they seek to enlarge one unit by less than ten percent, an addition which will help them to continue to provide eight units of affordable housing in Malibu.

The Logins do not believe the Commission, after considering all of the relevant facts and issues, will deny their addition. If a reasoned and fair discourse based on the true facts leads to such an outcome, they would accept it. What they can not accept would be the Commission's refusal to permit them their procedural rights to be heard on the crucial issues which underlie any decision to be rendered.

The Applicant hereby urges the Commission to grant its Request for Reconsideration for the reasons advanced in the initial Request, this First Supplement and it respectfully reserves the right to submit further Supplements as necessary and appropriate.

Dated:

LAW OFFICES OF MICHAEL H. INMAN

By:



MICHAEL H. INMAN,  
ATTORNEY FOR APPLICANT,  
PAULA LOGIN, OWNER, SAM  
AND MARGARET LOGIN, LOGIN  
FAMILY TRUST

cc:

Sherman Stacy, Esq.  
Roger Howard, Esq.  
Don Schmitz

EXHIBIT A

)

RECORD FILING & DELIVERY  
NOT SURE R.A.



FB. BY SPK. V. & T.  
PER C.C.S.F. 2962-109,  
TRACT NO. 37948  
M.S. 1046-23-28  
AND R.S. 116-21.

8 UNITS = 4DU + 4GH  
LAND - 36% OVER DENSITY  
W/EXCLUSIVE EASEMENT - 1.5% OVER DENSITY

ENCL. STA. 698-80.37  
FB. BY SPK. V. & T.  
PER C.C.S.F. 2962-109  
AND R.S. 116-21  
ACCEPTED AS E. OF  
O.R. 19289-348

S'LY LINE OF O.R.  
19289-348. ESTAB.  
PER R.S. 116-21

NELY LINE OF O.R. 20179-72  
ACCEPTED AS THE S'LY  
LINE OF O.R. 0318-12 AS  
SHOWN ON R.S. 116-21

N'LY LINE OF LOT 28,  
TRACT NO. 24084,  
M.S. 636-25-26.

FB. 1 1/4' LP. AND TAG L.S. 2743  
6" UP, PER R.S. 116-21. ACCEPTED  
AS THE N.V. COR. LOT 28,  
TRACT NO. 24084  
M.S. 636 - 25-26

FD. NOTHING  
ESTAB. BY PROP.  
PER R.S. 116-21  
APPLICABLE FOR SET  
BACKS FROM  
CITY TO FRONTAGE  
N04°48'48"E

P.I.Q.

FB. BY SPK. & V. STAMPED  
L.S. 2743 PER R.S. 116-21  
ACCEPTED AS S.V. COR.  
LOT 28, TRACT NO. 24084  
M.S. 636 - 25-26

S'LY LINE OF LOT 28,  
TRACT NO. 24084, M.S. 636-25-26

EXHIBIT B

13

FROM :

FAX NO. :

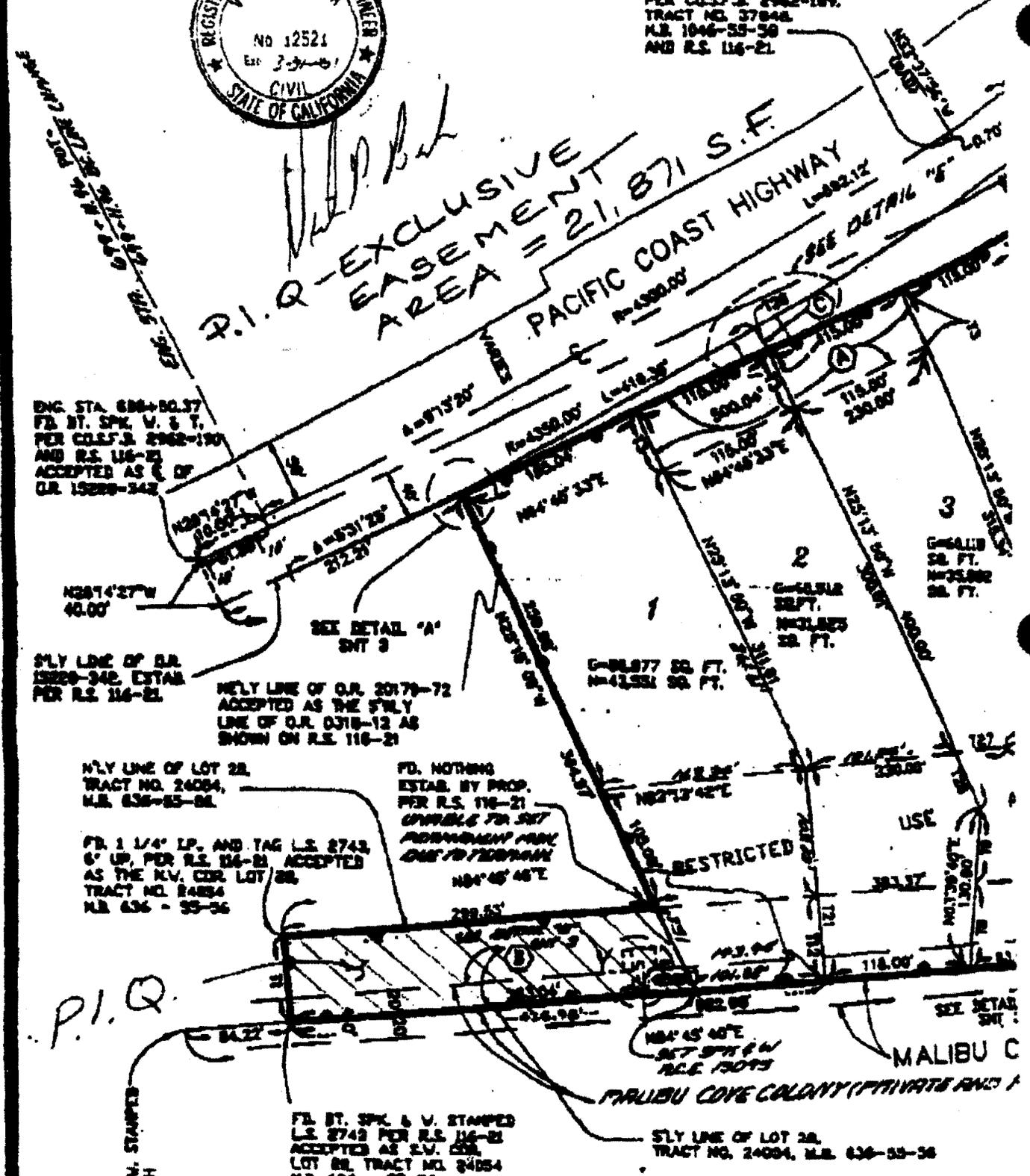
Feb. 07 1998 09:49PM P3

PER SAID R.P.



FD. BY SPK. V. & T.  
PER COL.F.S. 2962-189.  
TRACT NO. 37848.  
M.B. 1046-55-50  
AND R.S. 116-21

P.I.Q. - EXCLUSIVE  
EASEMENT  
AREA = 21,871 S.F.



ENG. STA. 686+80.37  
FD. BY SPK. V. & T.  
PER COL.F.S. 2962-189  
AND R.S. 116-21  
ACCEPTED AS E OF  
O.R. 15229-342

WLY LINE OF O.R.  
15229-342, ESTAB.  
PER R.S. 116-21

NELY LINE OF O.R. 20179-72  
ACCEPTED AS THE SWLY  
LINE OF O.R. 0318-12 AS  
SHOWN ON R.S. 116-21

NLY LINE OF LOT 28,  
TRACT NO. 24004,  
M.B. 636-55-56

FD. 1 1/4" LP. AND TAG L.S. 2743  
6" UP, PER R.S. 116-21 ACCEPTED  
AS THE NLY. COR. LOT 28,  
TRACT NO. 24004  
M.B. 636 - 55-56

FD. NOTHING  
ESTAB. BY PROP.  
PER R.S. 116-21  
APPLICABLE TO SWLY  
CORNER FOR PROPERTY  
OWNED BY FERRARI  
N87°13'42"E

FD. BY SPK. & V. STAMPED  
L.S. 2743 PER R.S. 116-21  
ACCEPTED AS S.V. COR.  
LOT 28, TRACT NO. 24004  
M.B. 636 - 55-56

WLY LINE OF LOT 28,  
TRACT NO. 24004, M.B. 636-55-56

EXHIBIT "A"

EXHIBIT C

15

RECORDING REQUESTED BY

Accom.

94 1752325

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENT TO:

Name Sam and Marge Login  
Street 947 Roscomare Road  
Address Los Angeles, CA 90077  
City & State  
Zip

RECORDED/FILED IN OFFICIAL RECORDS  
RECORDER'S OFFICE  
LOS ANGELES COUNTY  
CALIFORNIA  
1 MIN. 11 A.M. SEP 23 1994

Tale Order No. \_\_\_\_\_ Escrow No. \_\_\_\_\_

FEE \$ 10 J  
2

T 355 Legal (2-94)

SPACE ABOVE THIS LINE FOR RECORDED  
OF EASEMENT

### Grant Deed

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$ 0 \*  
 \_\_\_\_\_ unincorporated area  City of \_\_\_\_\_  
Parcel No. \_\_\_\_\_  
 computed on full value of interest or property conveyed, or  
 computed on full value less value of liens or encumbrances remaining at time of sale, and

\* This is a conveyance of an easement and the consideration and value is less than \$100, Cal. Rev. Tax Code Section 11911.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
Ian F. Robertson and Barbara J. Robertson, husband and wife

hereby GRANT(S) to Sam and Marge Login, Trustees of the Login Family Trust  
Dated May 15, 1986

the following described real property in the  
county of Los Angeles . state of California:

That certain ex'usive Easement for ingress, egress and any other lawful purpose as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

Dated September 13, 1994

*[Signature]*  
Ian F. Robertson

STATE OF CALIFORNIA } S.S.  
COUNTY OF Los Angeles

On September 13, 1994 before me.

*[Signature]*  
Barbara J. Robertson

Leslie Diane Emge  
a Notary Public in and for said County and State, personally appeared  
Ian F. Robertson and Barbara J. Robertson

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) appears subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the party(ies), or the entity upon behalf of which the party(ies) acted, executed the instrument.



WITNESS my hand and official seal  
Signature *[Signature]*

(This area for official notary seal)

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

Name

Street Address

City & State

A0248140

✓

THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 21895, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 231, PAGES 25 THROUGH 27 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE:  
BEGINNING AT THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN SOUTHWESTERLY LINE OF SAID PARCEL 1 HAVING A BEARING AND DISTANCE OF NORTH 25 DEGREES 15 MINUTES 08 SECONDS WEST 384.97 FEET; THENCE SOUTH 25 DEGREES 15 MINUTES 09 SECONDS EAST 74.62 FEET TO THE SOUTHERLY LINE OF SAID PARCEL.



EXHIBIT "A"

94 1752325

RECORD MAPS & DELTA  
PER SAID P.M.



FD. BT SPK. V. & T.  
PER C.O.S.F.B. 2962-189,  
TRACT NO. 37848,  
M.B. 1046-55-58  
AND R.S. 116-21.

ENG. STA. 699+11.90 BC. DUNE CHANGE  
POT. LINE CHANGE

*Handwritten signature: Victor P. Beck*

ENG. STA. 698+50.37  
FD. BT. SPK. V. & T.  
PER C.O.S.F.B. 2962-190  
AND R.S. 116-21  
ACCEPTED AS E. OF  
O.R. 15228-342

S'LY LINE OF O.R.  
15228-342. ESTAB.  
PER R.S. 116-21.

NE'LY LINE OF O.R. 20178-72  
ACCEPTED AS THE S'LY  
LINE OF O.R. D318-12 AS  
SHOWN ON R.S. 116-21

N'LY LINE OF LOT 28,  
TRACT NO. 24054,  
M.B. 636-55-56.

FD. 1 1/4' LP. AND TAG L.S. 2743  
6" UP, PER R.S. 116-21 ACCEPTED  
AS THE N.V. COR. LOT 28,  
TRACT NO. 24054  
M.B. 636 - 55-56

FD. NOTHING  
ESTAB. BY PROP.  
PER R.S. 116-21  
UNABLE TO SET  
PERMANENT MON.  
DUE TO TERRAIN  
N84°45'48"E  
299.53'

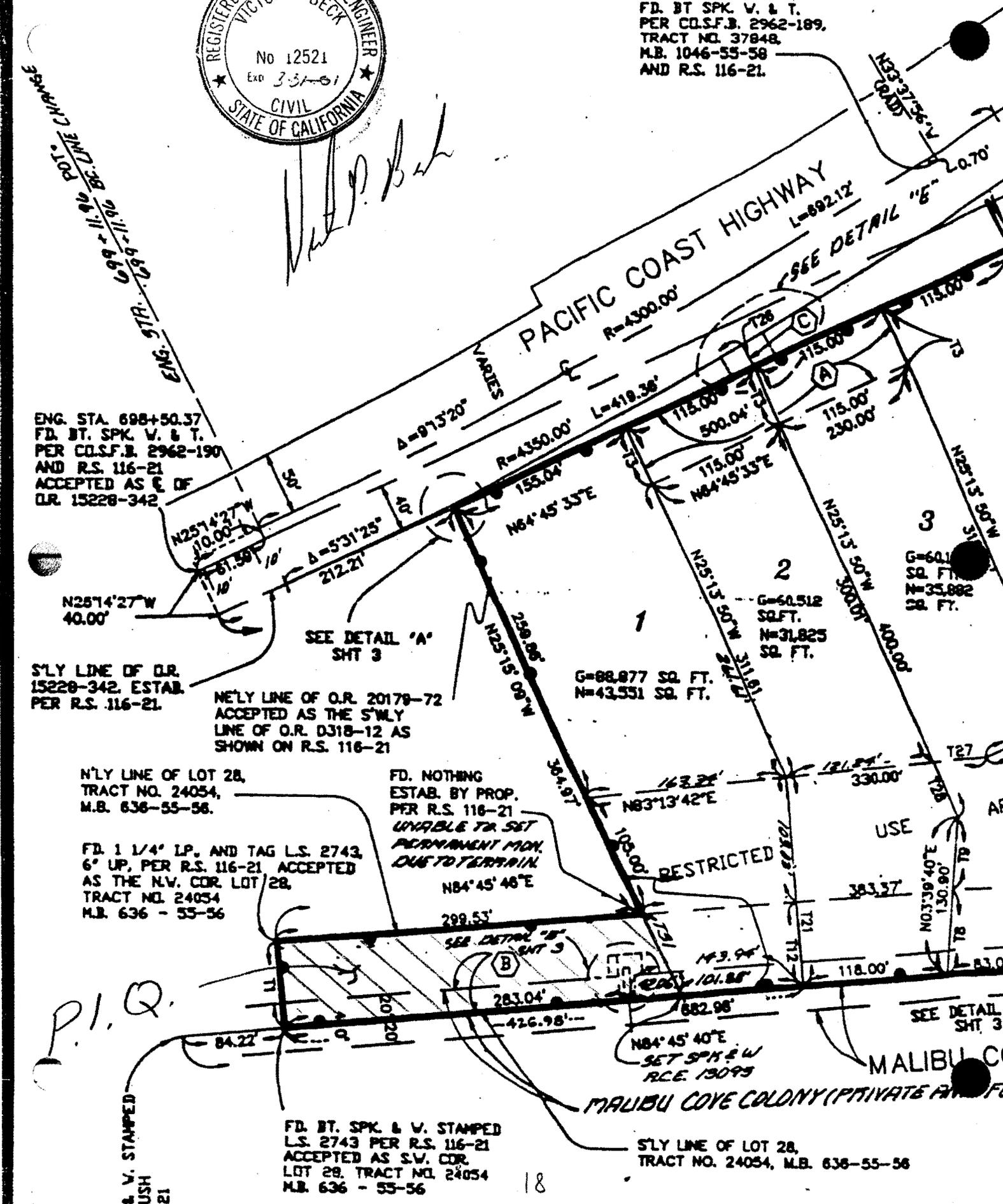
SEE DETAIL "B"  
SHT 3

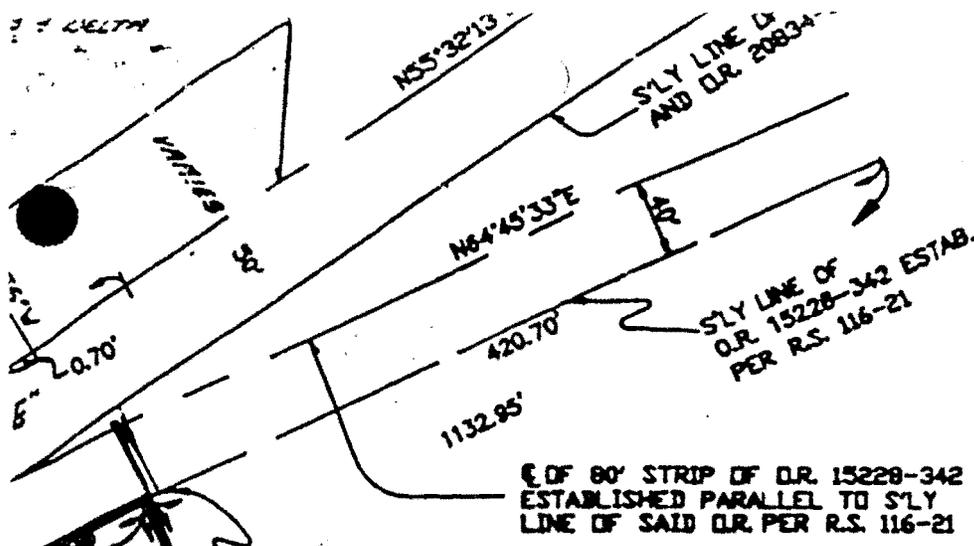
N84°45'40"E  
SET SPK & W  
R.C.E. 13099

FD. BT. SPK. & V. STAMPED  
L.S. 2743 PER R.S. 116-21  
ACCEPTED AS S.V. COR.  
LOT 28, TRACT NO. 24054  
M.B. 636 - 55-56

S'LY LINE OF LOT 28,  
TRACT NO. 24054, M.B. 636-55-56

C. & V. STAMPED  
FLUSH  
6-21





NO.	BEARING	DISTANCE
T1	N05°11'13\"V	70.03'
T2	N84°45'40\"E	55.00'
T3	N25°13'50\"V	50.00'
T4	N05°14'59\"V	50.00'
T5	N30°48'29\"E	24.75'
T6	N30°48'29\"E	75.51'
T7	N30°48'29\"E	100.26'
T8	N03°39'40\"E	70.87'
T9	N03°39'40\"E	60.03'
T10	N05°14'59\"V	70.01'
T11	N05°14'20\"V	70.00'
T12	N05°14'59\"V	70.02'
<del>T13</del>	<del>N25°13'50\"V</del>	<del>69.79'</del>
<del>T14</del>	<del>N05°14'59\"V</del>	<del>70.00'</del>
<del>T15</del>	<del>N05°14'59\"V</del>	<del>70.00'</del>
<del>T16</del>	<del>N64°46'40\"E</del>	<del>45.99'</del>
T17	N25°13'50\"V	69.79'
T18	N51°47'44\"V	44.72'
<del>T19</del>	<del>N64°46'40\"E</del>	<del>45.99'</del>
<del>T20</del>	<del>N25°13'50\"V</del>	<del>69.79'</del>
T21	N05°14'59\"V	173.05'
<del>T22</del>	<del>N30°48'29\"E</del>	<del>75.51'</del>
<del>T23</del>	<del>N05°14'59\"V</del>	<del>70.00'</del>
<del>T24</del>	<del>N84°45'40\"E</del>	<del>55.00'</del>
<del>T25</del>	<del>N05°14'59\"V</del>	<del>70.00'</del>
T26	N30°45'52\"V	20.29' (GRAD)
T27	N83°13'42\"E	45.42'
T28	N25°13'50\"V	49.99'
T29	N65°30'17\"E	71.93'
T30	N25°13'50\"V	74.66'
T31	N05°15'09\"W	79.52'

FD. 1\" LP.  
W/TAG L.S.  
2743, 6\" DEEP  
PER R.S. 116-21

6\" OF 60\" STRIP OF D.R. 15228-342  
ESTABLISHED PARALLEL TO SLY  
LINE OF SAID D.R. PER R.S. 116-21

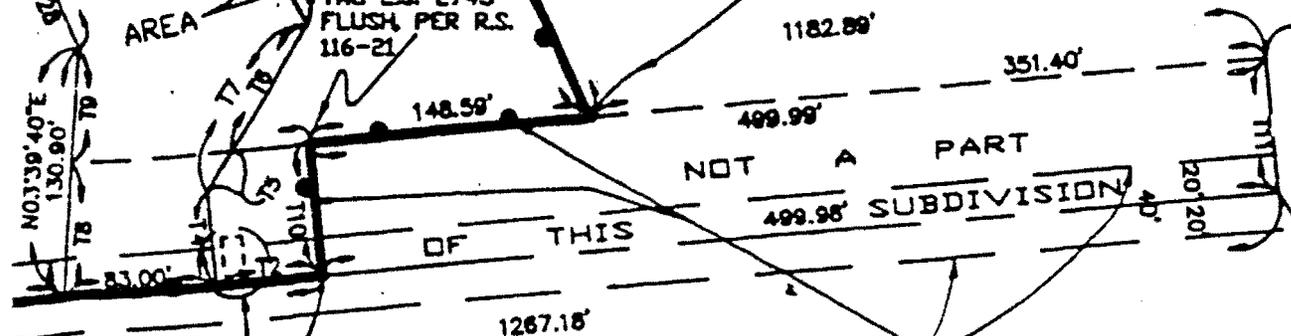
G=66,217  
SP. FT.  
N=42,100  
SP. FT.

SWLY LINE OF O.R. 220044-234  
ACCEPTED AS THE  
NELY LINE OF D.R. 1318-12  
AS SHOWN ON R.S. 116-21

FD. 1\" LP. WITH TAG  
L.S. 2743 FLUSH  
PER R.S. 116-21

B.C. IN NLY LINE OF LOT 27,  
TRACT NO. 24054, M.B. 636-55-56.  
ESTAB. AT RECORD ANGLE AND DIST.  
FROM ANGLE PT. IN SLY LINE OF SAID  
LOT 27.

FD. 1\" LP. WITH  
TAG L.S. 2743  
FLUSH PER R.S.  
116-21



LIBU COVE COLONY DRIVE  
(PRIVATE STREET)

WLY AND NLY LINES OF LOT 27,  
TRACT NO. 24054, M.B. 636-55-56.

FD. BT. SPK. & V. STAMPED  
L.S. 2743, FLUSH  
PER R.S. 116-21 ACCEPTED  
AS ANGLE PT. IN SLY LINE OF LOT 27  
TRACT NO. 24054, M.B. 636-55-56

FD. SQ. HD. SPK. & V.  
STAMPED L.S. 2743, FLUSH  
PER R.S. 116-21  
ACCEPTED AS THE S.E. COR  
LOT 28, TRACT NO. 24054  
M.B. 636-55-56

THAT PORTION OF PARCEL 1 OF PARCEL MAP NO. 21895, IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 231, PAGES 25 THROUGH 27 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE FOLLOWING DESCRIBED LINE:  
BEGINNING AT THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN SOUTHWESTERLY LINE OF SAID PARCEL 1 HAVING A BEARING AND DISTANCE OF NORTH 25 DEGREES 15 MINUTES 09 SECONDS WEST 384.87 FEET; THENCE SOUTH 25 DEGREES 15 MINUTES 09 SECONDS EAST 74.52 FEET TO THE SOUTHERLY LINE OF SAID PARCEL.



*Victor P. Beck*

EXHIBIT D

21

## AGREEMENT

THIS AGREEMENT (the "Agreement") is made effective as of this 13th day of September, 1994, by and between SEA MESA, LTD., a California limited partnership ("Sea Mesa" or "Partnership"), IAN and BARBARA ROBERTSON (collectively, "Robertson"), and SAM and MARGE LOGIN (collectively, the "Logins"), with reference to the following facts:

### RECITALS

WHEREAS, Sea Mesa is currently the owner in fee of that certain real property located in Malibu, California ("Property"), which Property is comprised of parcels which are legally referred to as "Parcel 1," "Parcel 2," "Parcel 3," "Parcel 4," and "Parcel 5," but which shall be hereinafter referred to as "Lot 1", "Lot 2", "Lot 3", "Lot 4" and "Parcel 5", each as more particularly set forth on Exhibit A as attached hereto and incorporated herein by reference;

WHEREAS, the general partners of Sea Mesa are Robertson and the Login Family Trust (the "Trust");

WHEREAS, Robertson desires to resign as general partner and to withdraw as a partner of Sea Mesa, and the Trust desires to remain as the sole general partner of Sea Mesa and to consent to Robertson's departure as partner pursuant to the terms and conditions set forth in this Agreement;

WHEREAS, Robertson owns a one-half ( $\frac{1}{2}$ ) interest in that certain seven (7) unit apartment complex located at 26926 Pacific Coast Highway, and known as "Carmel By The Sea" (the "Carmel Property") as more fully described in Exhibit B as attached hereto and incorporated herein by reference;

WHEREAS, Robertson desires to obtain and Sea Mesa desires to distribute certain parcels of the Property to Robertson upon the terms and conditions set forth herein;

WHEREAS, the Logins have heretofore loaned to Robertson certain funds (as described hereinafter) and as payment for said loans Robertson shall convey to the Logins the Robertson's one-half ( $\frac{1}{2}$ ) interest in the Carmel Property;

WHEREAS, the parties desire to engage in the various transactions described herein with the ultimate goal of Robertson owning Lot 1 and Lot 2, Sea Mesa retaining ownership of the remainder of the Property (including Lots 3 and 4 and Parcel 5), and the Login Family Trust obtaining ownership of the Carmel Property, subject to the terms and conditions herein.

ORIGINAL

(d) Payment to ESCO. The parties acknowledge and agree that there are outstanding payments in the amount of Six Thousand Six Hundred Dollars (\$6,600) due and owing to ESCO (the "ESCO Payment") in connection with the Property. As consideration for the mutual promises and obligations contained herein, and as full and final payment to ESCO, the parties agree that Robertson shall timely pay to ESCO the ESCO Payment.

(e) Payment for Common Gate and Wall. Within ten (10) business days from the execution of this Agreement, Robertson shall deposit into a separate account at Charter Pacific Bank the sum of \$10,000 (representing \$5,000 per Lot) and Sea Mesa shall deposit the sum of \$5,000 (representing Lot 3), which funds shall be used for the construction of the common gate and wall as more particularly described in Paragraph 4 of those certain Declaration of Covenants, Easements, Conditions, and Reservations, dated September \_\_, 1994 to be executed by the parties hereto (the "CC&R's"), which draft of said CC&R's is attached hereto as Exhibit "I" and incorporated herein by this reference.

(f) Payment of Legal Fees. The Logins shall assume full responsibility to pay all legal fees with respect to the preparation of the within Agreement, and all exhibits thereto. Concurrently with the execution of this Agreement, Robertson shall pay to the Partnership the additional sum of \$3,500, with respect to partially reimburse the Partnership for the legal and engineering fees incurred with respect to the preparation of the CC&R's and all exhibits hereto. The Partnership and Robertson agree to share equally all engineering fees with respect to the Property

3. Transfer of Carmel by The Sea. As partial consideration for the mutual promises contained herein, Robertson shall transfer all right, title and interest of Robertson in and to the Carmel Property to the Login Family Trust by quit claim deed concurrent with execution of this Agreement, and in the form of Exhibit F attached hereto and incorporated herein by reference.

(a) Easement. In connection with the transfer by Robertson of the Carmel Property, Robertson hereby grants to the Login Family Trust, as owner of the Carmel Property, an exclusive easement for ingress, egress and any other lawful purpose over that portion of Lot 1 next to Malibu Colony Road ("Easement"), as described on Exhibit G attached hereto and incorporated herein by reference (the "Carmel Easement"), which Easement shall be included in the CC&R's. Notwithstanding anything to the contrary contained herein, at any time in the future the Trust (or the Logins' successor in interest as owner of the Carmel Property) shall have the right (at their sole and absolute discretion) to cause to have a lot line adjustment at any time in the future so that the Carmel Easement shall become a part of the Carmel Property, which lot line adjustment shall be at the sole cost and expense of the then owners of the Carmel Property.

THAT ROBERTSON SHALL NOT BE LIABLE FOR ANY ADDITIONAL LEGAL AND ENGINEERING FEES

R. L. RO  
B. K.

15. Execution in Counterparts. This Agreement may be executed and delivered in two or more counterparts, each of which, when so executed and delivered, shall be deemed an original.

IN WITNESS WHEREOF, the undersigned do hereby execute this Master Agreement.

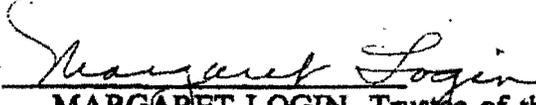
Executed as of the date first above written.

"Sea Mesa"

SEA MESA, LTD., a California limited partnership

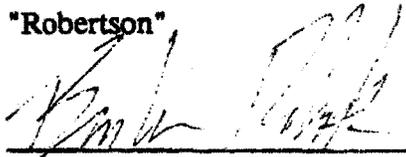
By: 

SAM LOGIN, Trustee of the Login Family Trust  
Its: General Partner

By: 

MARGARET LOGIN, Trustee of the Login Family Trust  
Its: General Partner

"Robertson"

  
BARBARA ROBERTSON

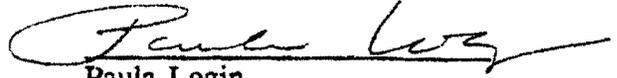
  
IAN ROBERTSON

  
SAM LOGIN, INDIVIDUALLY

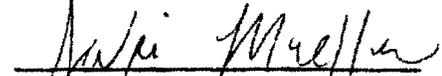
  
MARGE LOGIN, INDIVIDUALLY

The within Agreement is hereby approved and accepted by the following limited partners of Sea Mesa, Ltd., a California limited partnership

Dated: 9-13, 1994

  
Paula Login

Dated: 9/14, 1994

  
Julie Mueller

Dated: 9/14, 1994

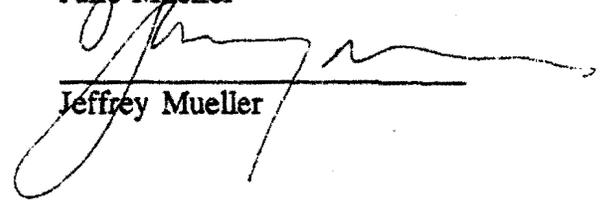
  
Jeffrey Mueller

EXHIBIT E

26

LOAN FAMILY TRUST  
 447 ROSCOYANE RD.  
 LOS ANGELES CA 90007  
 (310) 457 0180

CARVER BY THE SEA  
 26426 PCH  
 MALIBU CA

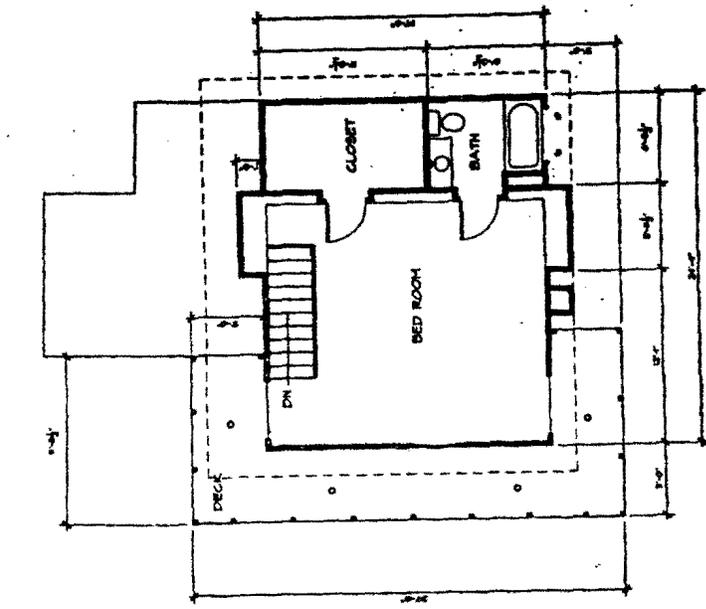
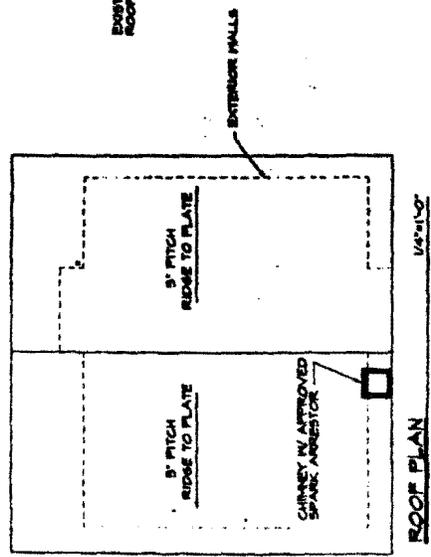
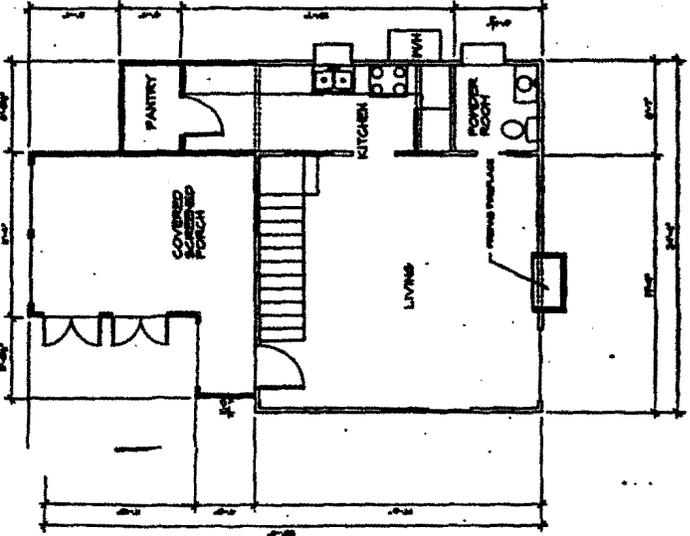
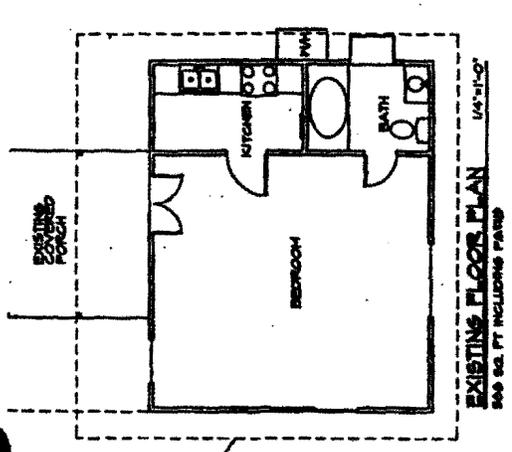
TERRY A. KRITZEL  
 DESIGNER  
 1800 CALLENDOR BLVD  
 ROSELAND CA 90081  
 (323) 582-1884

RECEIVED  
 FEB 11 1998  
 CITY OF MALIBU  
 Planning Department  
 10000 WILSON BLVD  
 MALIBU CA 90263  
 (310) 350-8000

SSC-0-98-055

TOTAL ALLOWABLE SQUARE FOOTAGE 1,994  
 TOTAL EXISTING SQUARE FOOTAGE 6,900  
 TOTAL SQUARE FOOTAGE ADDED 1,058  
 PROPOSED SQUARE FOOTAGE 7,958

PROPOSED FIRST FLOOR SQUARE FOOTAGE 146  
 PROPOSED SECOND FLOOR SQUARE FOOTAGE 444



**EXHIBIT NO. 86**

**APPLICATION NO.**  
 4-98-035

**Floor Plans**

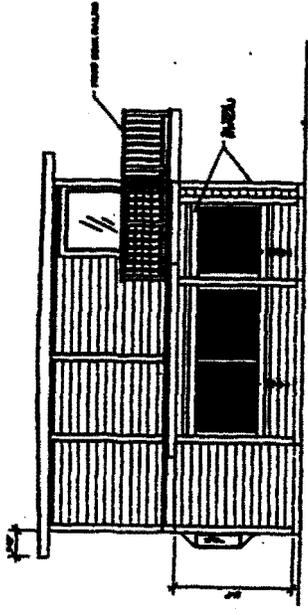
TERRY A. WITZEL  
DESIGNER  
3045 CLARENCE ST. #207  
FARMINGTON, CT 06031  
Phone (810) 882-1000

CARMEL BY THE SEA  
MALIBU, CA  
447 R. ONYX RD.  
LOS ANGELES, CA 90007  
(810) 810-1000

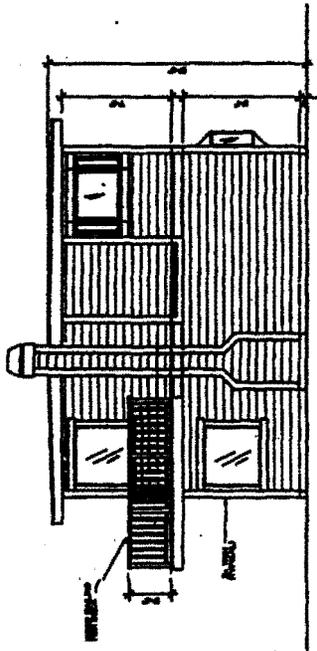
LOAN FAMILY TRUST  
447 R. ONYX RD.  
LOS ANGELES, CA 90007  
(810) 810-1000

CITY OF MALIBU  
APPLICANT'S INFORMATION  
PROJECT: [blank]  
DATE: [blank]  
PROJECT NO.: [blank]  
CITY OF MALIBU  
10000 WILSON BLVD.  
MALIBU, CA 90263

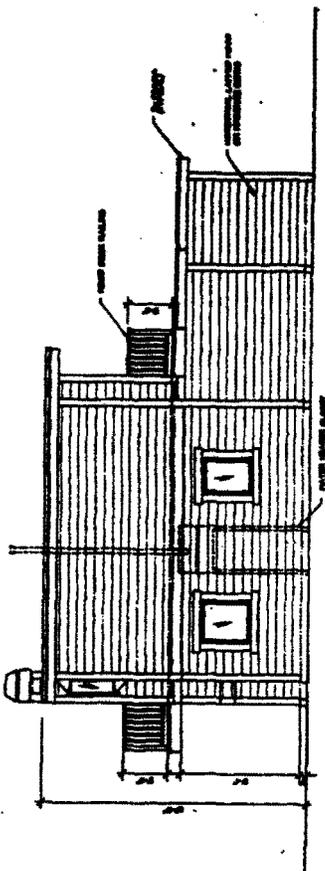
Geo-arch  
FEB 11 1999  
[Signature]



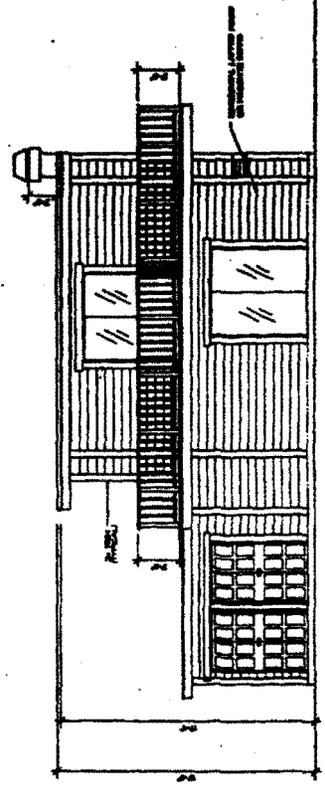
FRONT ELEVATION 1/4"=1'-0"



REAR ELEVATION 1/4"=1'-0"



RIGHT SIDE ELEVATION 1/4"=1'-0"



LEFT SIDE ELEVATION 1/4"=1'-0"

EXHIBIT NO. 8  
APPLICATION NO.  
4-99-035  
Elevations

EXHIBIT F

29

**4-99-035**

Project Name:

Fees Paid: \$600

Applicant(s): Sam & Marge Login

Agent(s): Paula Login

Project Location: 26926 Pacific Coast Hwy, Malibu (Los Angeles County)

Project Description: 1) 651 sq. foot addition to 1 bedroom unit (494-2nd floor + 157 1st floor). 2) Slope restoration repair remedial. 3) Revegetation w native plants. \*(will not be increasing bed rooms)

**PERMIT CHIEF**

REC: 2-19-99

APD: 4460-024-08

EXHIBIT G

31

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
MALIBU, CA 93001  
341 - 0142



October 20, 1999

Paula Login  
26500 W. Agoura Road # 326  
Calabasas, Ca 91303

RE: Coastal Permit No. 4-99-035, Login, 26926 Pacific Coast Highway, Malibu

Dear Ms. Login;

This letter is in response to your letter received on September 27, 1999 addressing your telephone call to me on September 23, 1999. Your letter addresses a portion of our conversation, appears to misstate a portion of our conversation, and adds an additional request that was not discussed. We also received a letter on October 8, 1999 addressing this project and Coastal Emergency Permit No. 4-99-205-G that we respond in this letter to the issue of condition compliance.

Regarding the first letter, my recollection of our conversation did include your request to separate out the two portions of the proposed project into two separate coastal permits; one for the residential addition, the other for the landslide remediation. Let me confirm that I responded that I was not aware of how to separate the permit since the Commission has only approved the landslide remediation portion of the project. The portion of the project that included the residential addition was not approved by the Commission.

You did ask about addresses of other projects similar to yours where additional square footage was denied. I responded that I was not aware of any such projects. I did say that one of the reasons staff recommended approval was that the additional square footage was relatively small compared to the total square footage on the project site.

Your letter additionally requests that "if subsequently you find projects in my area that have been denied for the above mentioned reason, please notify me in writing of their existence forthwith. Due to other work priorities, Staff are unable to provide such a service. Our office is open Monday through Friday 8:00 am to 5:00 pm if you wish to review our permit records.

Lastly, your letter received October 8, 1999 indicates that you plan to submit corrected plans, landscape plans and a recorded covenant to meet most of the conditions of the permit approval with one exception regarding the deletion of the second story. This exception is related to Special Condition number five as noted in the Notice of Intent to Issue Permit sent to you on September 1, 1999. For your information, if additional submitted plans are received that do not meet Special Condition number five, which requires revised plans showing the elimination of the addition to the existing residential unit, Staff will be unable to issue Coastal Development Permit No. 4-99-035 to you.

Application No. 4-99-035  
Paula Login

Page 2

Sincerely,



James Johnson  
Coastal Program Analyst

499035loginletterconditioncompliance

EXHIBIT H

34

**COASTAL COMMISSION PRESIDENT**

**PERMITTED IN 1984**

**"2 STORY BUILDING ADDITION TO SERVE 8 UNIT APT BUILDING"  
ON A WAIVER**

COPY OF CARD  
IN COASTAL COMMISSION FILE

26928 PCH Malibu

2-story bldg. to  
serve 8 unit apt. bldg.

**Waived**  
Charles Ferrate, Open Supply  
5-84-376 Ed.

SETTING POLICY FOR FUTURE EXPANSION

EXHIBIT I

36

CITY OF MALDEN  
PLANNING DEPARTMENT

**PLAN CHECK ONLY**

Signature: *[Handwritten Signature]*  
 Date: 2/16/99  
 Planning Review: PPR 98-295

This concurrent submission authorization shall not constitute final Planning Department approval until a final coastal development permit has been issued by the California Coastal Commission.  
 \*This approval is effective only while the "Approval-in-Concept" is effective.

RECEIVED  
 JAN 08 1999  
 PLANNING DEP

*Slope Restoration/Revegetation  
 Required*

**PPR 98-295**

ARN. 1160-029-0

<b>BECK</b>	<b>ENGINEERING &amp; SURVEYING CO., INC.</b> 21500 WYANDOTTE ST., SUITE 103	<b>FAX/TEL (818)</b> <b>CANOGA PARK</b>
<b>FOR: MS. PAULA LOGIN</b>	<b>(310) 457-0180</b>	
<b>TITLE: PARTIAL TOPO MAP</b>		
<b>LOCATION: 28928 PACIFIC COAST HWY.</b>		
<b>JOB NO: 98-056</b>	<b>SCALE: 1" = 16'</b>	<b>DATE:</b>

PLAN CHECK WORKSHEET

*Extension 5/19/99*

PLAN CHECK #: 8004 DATE: 5-24-99 EXP. DATE: 11-21-99

ADDRESS: 26926 PCH

OWNER: LOGIN PHONE #: \_\_\_\_\_

CONTACT PERSON: PAULA LOGIN PHONE #: (310) 457-0180

JOB DESCRIPTION: 1ST & 2ND STORY ADDITION  
W/CAISSONS & GRADE BEAM FDN. SYSTEM

AGENCY APPROVAL DATE	
<input checked="" type="checkbox"/> PLANNING	PLANNING # <u>PPR 98-295</u>
<input checked="" type="checkbox"/> GEOLOGY	<u>Correction</u>
<input checked="" type="checkbox"/> SOILS (GEOTECH)	<u>6-16-99</u>
<input checked="" type="checkbox"/> HEALTH	
<input type="checkbox"/> FIRE	CONCEPT <input type="checkbox"/> FIRE SPRINKLERS REQ. <input type="checkbox"/>
<input checked="" type="checkbox"/> PUBLIC WORKS	Paid <input checked="" type="checkbox"/> \$25.00
<input type="checkbox"/> AQMD	
<input type="checkbox"/> PARKLAND FEES	Paid <input type="checkbox"/> \$2073.00
<input checked="" type="checkbox"/> SCHOOL FEES	<u>651#</u> Received Form <input type="checkbox"/>
<input checked="" type="checkbox"/> DRAINAGE	
<input type="checkbox"/> GRADING	
<input type="checkbox"/> OTHER	

PLAN CHECK STATUS:

PICKED UP BY:

	OUT	IN	APPLICANT NOTIFIED	INIT	PRINT NAME & SIGN	DATE
1st	<u>5/25/99</u>	<u>6/21/99</u>	<u>Approved</u> <u>copy msg.</u>	<u>PL</u>	<u>Paula Login</u>	<u>7/6/99</u>
2nd						
3rd						
4th						

DATE PLANS APPROVED: 6-21-99

DATE PERMIT ISSUED: \_\_\_\_\_ PERMIT NUMBER: \_\_\_\_\_

EXHIBIT J

39

§ 65589.8

PLANNING AND ZONING  
Title 7

requiring that any housing development contain a fixed percentage of affordable housing units.

(Added by Stats. 1983, c. 787, § 1.)

Library References

Constitutional Law § 228.3, 278.3.  
WESTLAW Topic No. 92.  
C.J.S. Constitutional Law §§ 936, 1270.

Article 10.7

**LOW- AND MODERATE-INCOME HOUSING  
WITHIN THE COASTAL ZONE**

Section

65590. Application of law; conversion or demolition; replacement; new housing developments; incentives; local coastal programs.  
65590.1. Application of requirements of § 65590; time; proceedings.

*Heading of Article 10.7 was added by Stats. 1982, c. 43, § 2, eff. Feb. 17, 1982.*

**§ 65590. Application of law; conversion or demolition; replacement; new housing developments; incentives; local coastal programs**

(a) In addition to the requirements of Article 10.6 (commencing with Section 65580), the provisions and requirement of this section shall apply within the coastal zone as defined and delineated in Division 20 (commencing with Section 30000) of the Public Resources Code. Each respective local government shall comply with the requirements of this section in that portion of its jurisdiction which is located within the coastal zone.

(b) The conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income. Replacement dwelling units shall be located within the same city or county as the dwelling units proposed to be converted or demolished. The replacement dwelling units shall be located on the site of the converted or demolished structure or elsewhere within the coastal zone if feasible, or, if location on the site or elsewhere within the coastal zone is not feasible, they shall be located within three miles of the coastal zone. The replacement dwelling units shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition of the residential dwelling unit. In the event that an existing residential dwelling unit is occupied by more than one person or family, the provisions of this subdivision shall apply if at least one such person or family, excluding any dependents thereof, is of low or moderate income.

For purposes of this subdivision, a residential dwelling unit shall be deemed occupied by a person or family of low or moderate income if the person or

AND ZONING  
Title 7  
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2, eff. Feb.

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## LOCAL PLANNING Div. 1

§ 65590

family was evicted from that dwelling unit within one year prior to the filing of an application to convert or demolish the unit and if the eviction was for the purpose of avoiding the requirements of this subdivision. If a substantial number of persons or families of low or moderate income were evicted from a single residential development within one year prior to the filing of an application to convert or demolish that structure, the evictions shall be presumed to have been for the purpose of avoiding the requirements of this subdivision and the applicant for the conversion or demolition shall bear the burden of proving that the evictions were not for the purpose of avoiding the requirements of this subdivision.

The requirements of this subdivision for replacement dwelling units shall not apply to the following types of conversion or demolition unless the local government determines that replacement of all or any portion of the converted or demolished dwelling units is feasible, in which event replacement dwelling units shall be required:

(1) The conversion or demolition of a residential structure which contains less than three dwelling units, or in the event that a proposed conversion or demolition involves more than one residential structure, the conversion or demolition of 10 or fewer dwelling units.

(2) The conversion or demolition of a residential structure for purposes of a nonresidential use which is either "coastal dependent," as defined in Section 30101 of the Public Resources Code, or "coastal related," as defined in Section 30101.3 of the Public Resources Code. However, the coastal-dependent or coastal-related use shall be consistent with the provisions of the land use plan portion of the local government's local coastal program which has been certified as provided in Section 30512 of the Public Resources Code. Examples of coastal-dependent or coastal-related uses include, but are not limited to, visitor-serving commercial or recreational facilities, coastal-dependent industry, or boating or harbor facilities.

(3) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has within the area encompassing the coastal zone and three miles inland therefrom, less than 50 acres, in aggregate, of land which is vacant, privately owned and available for residential use.

(4) The conversion or demolition of a residential structure located within the jurisdiction of a local government which has established a procedure under which an applicant for conversion or demolition will pay an in-lieu fee into a program, the various provisions of which, in aggregate, will result in the replacement of the number of dwelling units which would otherwise have been required by this subdivision. As otherwise required by this subdivision, the replacement units shall, (i) be located within the coastal zone if feasible, or, if location within the coastal zone is not feasible, shall be located within three miles of the coastal zone, and (ii) shall be provided and available for use within three years from the date upon which work commenced on the conversion or demolition.

The requirements of this subdivision for replacement dwelling units shall not apply to the demolition of any residential structure which has been declared to

§ 65590

PLANNING AND ZONING  
Title 7

be a public nuisance under the provisions of Division 13 (commencing with Section 17000) of the Health and Safety Code, or any local ordinance enacted pursuant to those provisions.

For purposes of this subdivision, no building, which conforms to the standards which were applicable at the time the building was constructed and which does not constitute a substandard building, as provided in Section 17920.3 of the Health and Safety Code, shall be deemed to be a public nuisance solely because the building does not conform to one or more of the current provisions of the Uniform Building Code as adopted within the jurisdiction for new construction.

(c) The conversion or demolition of any residential structure for purposes of a nonresidential use which is not "coastal dependent", as defined in Section 30101 of the Public Resources Code, shall not be authorized unless the local government has first determined that a residential use is no longer feasible in that location. If a local government makes this determination and authorizes the conversion or demolition of the residential structure, it shall require replacement of any dwelling units occupied by persons and families of low or moderate income pursuant to the applicable provisions of subdivision (b).

(d) New housing developments constructed within the coastal zone shall, where feasible, provide housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code. Where it is not feasible to provide these housing units in a proposed new housing development, the local government shall require the developer to provide such housing, if feasible to do so, at another location within the same city or county, either within the coastal zone or within three miles thereof. In order to assist in providing new housing units, each local government shall offer density bonuses or other incentives, including, but not limited to, modification of zoning and subdivision requirements, accelerated processing of required applications, and the waiver of appropriate fees.

(e) Any determination of the "feasibility" of an action required to be taken by this section shall be reviewable pursuant to the provisions of Section 1094.5 of the Code of Civil Procedure.

(f) The housing provisions of any local coastal program prepared and certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code prior to January 1, 1982, shall be deemed to satisfy all of the requirements of this section. Any change or alteration in those housing provisions made on or after January 1, 1982, shall be subject to all of the requirements of this section.

(g) As used in this section:

(1) "Conversion" means a change of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, to a condominium, cooperative, or similar form of ownership; or a change of a residential

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**LOCAL PLANNING**

**§ 65590**

**Div. 1**

dwelling, including a mobilehome, or a mobilehome lot in a mobilehome park, or a residential hotel to a nonresidential use.

(2) "Demolition" means the demolition of a residential dwelling, including a mobilehome, as defined in Section 18008 of the Health and Safety Code, or a mobilehome lot in a mobilehome park, as defined in Section 18214 of the Health and Safety Code, or a residential hotel, as defined in paragraph (1) of subdivision (b) of Section 50519 of the Health and Safety Code, which has not been declared to be a public nuisance under Division 13 (commencing with Section 17000) of the Health and Safety Code or any local ordinance enacted pursuant to those provisions.

(3) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technical factors.

(h) With respect to the requirements of Sections 65583 and 65584, compliance with the requirements of this section is not intended and shall not be construed as any of the following:

(1) A statutory interpretation or determination of the local government actions which may be necessary to comply with the requirements of those sections; except that compliance with this section shall be deemed to satisfy the requirements of paragraph (2) of subdivision (c) of Section 65583 for that portion of a local government's jurisdiction which is located within the coastal zone.

(2) A limitation on the program components which may be included in a housing element, or a requirement that a housing element be amended in order to incorporate within it any specific provision of this section or related policies. Any revision of a housing element pursuant to Section 65588 shall, however, take into account any low- or moderate-income housing which has been provided or required pursuant to this section.

(3) Except as otherwise specifically required by this section, a requirement that a local government adopt individual ordinances or programs in order to implement the requirements of this section.

(i) No provision of this section shall be construed as increasing or decreasing the authority of a local government to enact ordinances or to take any other action to ensure the continued affordability of housing.

(j) Local governments may impose fees upon persons subject to the provisions of this section to offset administrative costs incurred in order to comply with the requirements of this section.

(k) This section establishes minimum requirements for housing within the coastal zone for persons and families of low or moderate income. It is not intended and shall not be construed as a limitation or constraint on the authority or ability of a local government, as may otherwise be provided by law, to require or provide low- or moderate-income housing within the coastal zone which is in addition to the requirements of this section.

(Added by Stats 1981, c. 1007, § 1. Amended by Stats 1982, c. 43, § 3, eff. Feb. 17, 1982; Stats 1982, c. 1246, § 1.)

## § 65590

## PLANNING AND ZONING Title 7

### Historical and Statutory Notes

Section 3 of Stats. 1982, c. 1246, provided:

"A new time-share project, estate or use as defined in Section 11003.5 of the Business and Professions Code shall be deemed to comply with subdivision (c) of Section 65590 of the Government Code if it provides for replacement of all residential dwelling units occupied as a primary residence by persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code with an

equivalent number of residential dwelling units for persons and families of low or moderate income prior to any demolition or conversion of the existing residential use.

"This provision shall remain in effect until January 1, 1985."

Another § 65590, added by Stats. 1990, c. 1145 (A.B. 325), § 1, was renumbered § 65591 and amended by Stats. 1991, c. 1091 (A.B. 1487), § 60.

### Library References

Health and Environment § 32.  
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 28 to 36, 52.

### Notes of Decisions

Administrative mandate 3  
Discretion of local agency 2  
Duty of local agency 1  
Exhaustion of administrative remedies 4  
Pleadings 5  
Standing 6

Los Angeles (App. 2 Dist. 1996) 55 Cal. Rptr. 2d 465, 47 Cal. App. 4th 1547, 48 Cal. App. 4th 1246A, modified on denial of rehearing, review denied.

#### 3. Administrative mandate

Town council, neighborhood association, and tenant challenging city's enforcement policies under the Mello Act, requiring replacement housing for approval of conversion or demolition of low and middle income housing units, did not have to seek review through administrative mandate, despite city's claim that each project must be reviewed on case-by-case basis, where complaint alleged that city often failed to make preliminary and ministerial factual determinations. Venice Town Council, Inc. v. City of Los Angeles (App. 2 Dist. 1996) 55 Cal. Rptr. 2d 465, 47 Cal. App. 4th 1547, 48 Cal. App. 4th 1246A, modified on denial of rehearing, review denied.

#### 4. Exhaustion of administrative remedies

Village council, neighborhood association, and tenant were not required to exhaust administrative remedies prior to filing suit, where complaint sought review of city's overarching policies in implementing requirements of Mello Act, which required replacement housing as condition of conversion or demolition of low or moderate income housing unless certain express factual determinations were made, and sought to correct city's interpretation of its responsibilities under that statute, rather than challenging any particular decision. Venice Town Council, Inc. v. City of Los Angeles (App. 2 Dist. 1996) 55 Cal. Rptr. 2d 465, 47 Cal. App. 4th 1547, 48 Cal. App. 4th 1246A, modified on denial of rehearing, review denied.

Any challenge by village council, neighborhood association, and tenant at administrative level would have been futile, and they were not required to exhaust administrative remedies before filing suit challenging city's interpretation

#### 1. Duty of local agency

Mello Act imposes mandatory duty on city to require replacement housing or in-lieu fee as condition of approval of conversion or demolition of low or moderate income housing, unless city makes certain express factual determinations that project falls within specific statutory categories and that replacement housing is not feasible. Venice Town Council, Inc. v. City of Los Angeles (App. 2 Dist. 1996) 55 Cal. Rptr. 2d 465, 47 Cal. App. 4th 1547, 48 Cal. App. 4th 1246A, modified on denial of rehearing, review denied.

Local government is not required to adopt any ordinances or programs to implement provisions of Mello Act, which imposes duty on city to require replacement housing or in-lieu fee as condition of approval of conversion or demolition of low or moderate income housing, unless city makes certain express factual determinations. Venice Town Council, Inc. v. City of Los Angeles (App. 2 Dist. 1996) 55 Cal. Rptr. 2d 465, 47 Cal. App. 4th 1547, 48 Cal. App. 4th 1246A, modified on denial of rehearing, review denied.

#### 2. Discretion of local agency

City has no discretion to allow developer to escape requirement of providing affordable replacement units whenever dwelling units occupied by low or moderate income persons or families are replaced by noncoastal dependent commercial uses, as replacement of these units or payment of an in-lieu fee is mandatory under Mello Act and is not dependent on finding replacement of units is feasible with certain exceptions. Venice Town Council, Inc. v. City of

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**LOCAL PLANNING**

**Div. 1**

of Mello Act, where city at all times maintained whether it would require replacement housing under Mello Act depended on whether replacement of low or moderate income housing was "feasible." Venice Town Council, Inc. v. City of Los Angeles (App. 2 Dist. 1996) 55 Cal.Rptr.2d 465, 47 Cal.App.4th 1547, 48 Cal.App.4th 1246A, modified on denial of rehearing, review denied.

**5. Pleadings**

Complaint stated cause of action for traditional writ of mandate, where complaint alleged that city had specific, mandatory, ministerial duties under Mello Act to require replacement housing or in-lieu fee when city approves conversion or demolition of low or moderate income housing and that city failed to make required factual determinations or to require replacement housing. Venice Town Council, Inc. v. City of Los Angeles (App. 2 Dist. 1996) 55 Cal.Rptr.2d 465, 47 Cal.App.4th 1547, 48 Cal.App.4th 1246A, modified on denial of rehearing, review denied.

Argument that city's enforcement of Mello Act did not violate Act and that factual allegations of complaint were not borne out by official records was irrelevant on appeal from order sustaining demurrer without leave to amend, as factual allegations of complaint are deemed true by demurrer. Venice Town Council, Inc. v. City of Los Angeles (App. 2 Dist. 1996) 55 Cal.Rptr.2d 465, 47 Cal.App.4th 1547, 48 Cal.App.4th 1246A, modified on denial of rehearing, review denied.

**§ 65590.1. Application of requirements of § 65590; time; proceedings**

Any local government which receives an application as provided in Section 30600.1 of the Public Resources Code to apply the requirements of Section 65590 to a proposed development shall apply these requirements within 90 days from the date on which it has received that application and accepted it as complete. In the event that the local government has granted final discretionary approval to the proposed development, or has determined that no such approval was required, prior to receiving the application, it shall, nonetheless, apply the requirements and is hereby authorized to conduct proceedings as may be necessary or convenient for the sole purpose of doing so.

(Added by Stats.1982, c. 43, § 3.5, eff. Feb. 17, 1982.)

**Library References**

Health and Environment §32.  
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 28 to 36,  
52.

**§ 65590.1**

Complaint challenging city's interpretation of Mello Act, which required replacement housing as condition of conversion or demolition of low or moderate income housing unless certain express factual determinations are made, and alleging that city had informal policy of nonenforcement of Act stated action for declaratory relief, and judicial economy strongly favored use of declaratory relief to avoid multiplicity of actions, despite city's claim that allegations failed to demonstrate present and actual controversy over any particular decisions made by city. Venice Town Council, Inc. v. City of Los Angeles (App. 2 Dist. 1996) 55 Cal.Rptr.2d 465, 47 Cal.App.4th 1547, 48 Cal.App.4th 1246A, modified on denial of rehearing, review denied.

**6. Standing**

Town council, neighborhood association, and low-income tenant had standing to seek preliminary injunction to enforce requirements of Mello Act, which mandates that city require replacement housing as condition of approval of conversion or demolition of low or moderate income housing unless certain express factual determinations are made, although they did not allege that they or their members were affected by city's failure to comply with its responsibilities, as issue involved important public right to preserve affordable housing in coastal zone and they were interested as citizens in having laws executed and duly in question enforced. Venice Town Council, Inc. v. City of Los Angeles (App. 2 Dist. 1996) 55 Cal.Rptr.2d 465, 47 Cal.App.4th 1547, 48 Cal.App.4th 1246A, modified on denial of rehearing, review denied.

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**POLICY AND GENERAL PROVISIONS**

**§ 50093**

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**§ 50092. Owner-occupied housing development**

"Owner-occupied housing development", for the purpose of housing assisted by the department, means a housing development containing not more than four residential units, one of which is occupied by the owner of the housing development.

(Added by Stats.1977, c. 610, § 2. Amended by Stats.1979, c. 96, p. 209, § 4, eff. June 6, 1979; Stats.1981, c. 1031, p. 3957, § 6; Stats.1981, c. 1165, p. 4670, § 7.)

**Historical and Statutory Notes**

Effect of amendment of section by two or more acts at the same session of the legislature, see Government Code § 9605. Derivation: Former § 41055.5, added by Stats.1975, 1st Ex.Sess., c. 1, p. 3868, § 7.

**§ 50092.1. Owner-occupied housing unit**

"Owner-occupied housing unit", for the purpose of Part 6 (commencing with Section 52500), means a single-family dwelling situated in California which is occupied by the owner, and includes a dwelling unit in a stock cooperative, as defined by Section 11003.2 of the Business and Professions Code, a community apartment project, as defined by Section 11004 of the Business and Professions Code, or a condominium project, as defined by subdivision (c) of Section 11004.5 of the Business and Professions Code.

(Added by Stats.1982, c. 320, p. 1008, § 8, eff. June 29, 1982.)

**§ 50093. Persons and families of low, moderate, and median income; definitions; filing and publication of standards and criteria**

"Persons and families of low or moderate income" means persons and families whose income does not exceed 120 percent of area median income, adjusted for family size by the department in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. However, the agency and the department jointly, or either acting with the concurrence of the Secretary of the Business and Transportation Agency, may permit the agency to use higher income limitations in designated geographic areas of the state, upon a determination that 120 percent of the median income in the particular geographic area is too low to qualify a substantial number of persons and families of low or moderate income who can afford rental or home purchase of housing financed pursuant to Part 3 (commencing with Section 50900) without subsidy.

"Persons and families of low or moderate income" includes very low income households, as defined in Section 50105 and lower income households as defined in Section 50079.5, and includes persons and families of low income, persons and families of moderate income, and middle-income families. As used in this division:

(a) "Persons and families of low income" or "persons of low income" means persons or families who are eligible for financial assistance specifically provid-

§ 50093

HOUSING AND HOME FINANCE  
Div. 31

ed by a governmental agency for the benefit of occupants of housing financed pursuant to this division.

(b) "Persons and families of moderate income" or "middle-income families" means persons and families of low or moderate income whose income exceeds the income limit for lower income households.

(c) "Persons and families of median income" means persons and families whose income does not exceed the area median income, as adjusted by the department for family size in accordance with adjustment factors adopted and amended from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937.

As used in this section, "area median income" means the median family income of a geographic area of the state, as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937. In the event these federal determinations of area median income are discontinued, the department shall establish and publish as regulations income limits for persons and families of median income for all geographic areas of the state at 100 percent of area median income, and for persons and families of low or moderate income for all geographic areas of the state at 120 percent of area median income. These income limits shall be adjusted for family size and shall be revised annually.

For purposes of this section, the department shall file, with the Office of Administrative Law, any changes in area median income and income limits determined by the United States Department of Housing and Urban Development, together with any consequent changes in other derivative income limits determined by the department pursuant to this section. These filings shall not be subject to Article 5 (commencing with Section 11346) or Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code, but shall be effective upon filing with the Office of Administrative Law and shall be published as soon as possible in the California Regulatory Code Supplement and the California Code of Regulations.

The department shall establish and publish a general definition of income, including inclusions, exclusions, and allowances, for qualifying persons under the income limits of this section and Sections 50079.5 and 50105, to be used where no other federal or state definitions of income apply. This definition need not be established by regulation.

Nothing in this division shall prevent the agency or the department from adopting separate family size adjustment factors or programmatic definitions of income to qualify households, persons, and families for programs of the agency or department, as the case may be.

(Added by Stats. 1977, c. 610, § 2. Amended by Stats. 1979, c. 96, p. 210, § 5, eff. June 6, 1979; Stats. 1988, c. 1174, § 1.)

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# Public Resources Code

## FINDINGS AND DECLARATIONS Ch. 1

§ 30012

### CALIFORNIA COASTAL ACT Div. 20 property; legislative declara-

this division is not intended, mission, port governing body, ion to exercise their power to c or damage private property nation therefor. This section ts of any owner of property the United States.

991, c. 285 (A.B.1270), § 2.)

ment Domain §§ 5, 21, 22,  
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and in petition for writ of admin-  
strative Commission was not legisla-  
ed to consider much of evidence  
issues relevant to inverse condem-  
n. *Healing v. California Coastal*  
2 Dist. 1994) 27 Cal.Rptr.2d 752,  
1158, review denied.

ers of coastal land had not tested  
of acquiring such land by seeking  
ld thereon, and therefore had not  
d in their ability to use their land,  
emation of land was absent as  
w. *People v. Superior Court of*  
ity (App. 1 Dist. 1979) 154 Cal.  
al.App.3d 95.

divider's loss of income was not  
threat of taking of his loss but by  
ainly as to terms on which devel-  
s would be permitted throughout  
area under Coastal Zone Conserva-  
tional commission's conditioning  
nt permit on dedication of ease-  
ment welfare, particularly for ac-  
benches along coast and to pro-  
tecting of common areas, could  
be more serious than change in  
not entitle subdivider to recover  
inverse condemnation. *Prisco*  
Co. v. State (App. 1 Dist. 1977)  
120, 74 Cal.App.3d 736, certiorari  
2263, 436 U.S. 918, 56 L.Ed.2d

res Code requires that compen-  
to billboard owner if Coastal  
includes billboard removal certifi-  
cate. *Patrick Media Group,*  
in Coastal Com'n (App. 2 Dist.  
1978) 224, 9 Cal.App.4th 592

### 4. Permit conditions

Condition imposed by the coastal commission in granting application of petitioner for permit to demolish an existing structure in a recreational area and erect a restaurant in its place and which operated to require petitioner to dedicate property for free public parking until

5:00 p.m. daily was unreasonable and unfair in that it imposed a burden on petitioner to an extent beyond his own use and shifted government's burden unfairly to a private party. *Liberty v. California Coastal Commission* (App. 4 Dist. 1980) 170 Cal.Rptr. 247, 113 Cal.App.3d 491.

### § 30011. Requirements of Government Code § 65590; review of local government's application; evidence of compliance; information concerning status of action to apply

Nothing in this division shall authorize the commission to review a local government's application of the requirements of Section 65590 of the Government Code to any development. In addition, the commission shall not require any applicant for a coastal development permit or any local government to provide certification or other evidence of compliance with the requirements of Section 65590 of the Government Code. The commission may, however, solely in connection with coastal development permit applications described in subdivision (c) of Section 30600.1, require information about the status of a local government's action to apply the requirements of Section 65590 of the Government Code. This information shall be used for the purpose of determining time limits for commission action on these applications as provided in that subdivision (c).

(Added by Stats.1982, c. 43, p. 109, § 5, eff. Feb. 17, 1982.)

#### Library References

Health and Environment — 25.5(9).  
WESTLAW Topic No. 199.

C.J.S. Health and Environment §§ 65  
103, 107, 140 et seq.

### § 30012. Legislative findings and declarations: public education programs

(a) The Legislature finds that an educated and informed citizenry is essential to the well-being of a participatory democracy and is necessary to protect California's finite natural resources, including the quality of its environment. The Legislature further finds that through education, individuals can be made aware of and encouraged to accept their share of the responsibility for protecting and improving the natural environment.

(b)(1) The commission shall, to the extent that its resources permit, carry out a public education program that includes outreach efforts to schools, youth organizations, and the general public for the purpose of promoting understanding of, fostering a sense of individual responsibility for, and encouraging public initiatives and participation in programs for, the conservation and wise use of coastal and ocean resources. Emphasis shall be given to volunteer efforts such as the Adopt-A-Beach program.

(2) In carrying out this program, the commission shall coordinate with other agencies to avoid duplication and to maximize information sharing.

(c) The commission is encouraged to seek funding from any appropriate public or private source and may apply for and expend any grant or endowment funds for the purposes of this section without the need to specifically

EXHIBIT K

49

Coastal Commission Hearing: August 12th/13th, 1999.

**Staff Member:**

**CHUCK DAMM:** Next matter on your agenda Madam Chair is Item 8(d), Application 499-035 and this does involve the construction of a 1 and partial 2 story addition of 651 square feet to an existing 588 square foot, one bedroom unit. It also involves the remediation and restoration of a slope that experienced a landslide a number of years ago and the Applicant is now proposing to resolve issues associated with that landslide through the remediation plan. The project site is 26926 Pacific Coast Highway and is actually located between the highway and Malibu Colony Cove Drive. It is not an ocean-front piece of property; it is located inland of Malibu Colony Cove Drive. The staff is recommending approval of this slope remediation project and the addition to the existing unit, subject to special conditions that are outlined in your Staff Report and they are the fairly typical ones dealing with assumption of risk and compliance with the Geology Reports as well as landscaping and erosion control and we are also imposing a featured development deed restriction. There are really two parts to this project. The first is related to the slope remediation, the deal with the landslide, and staff feels that the solution that the Applicant is

proposing is an appropriate solution to deal with this landslide and certainly we are recommending that you approve that. The second portion of the project deals with the addition of 651 square feet to the existing residential unit and again the staff is recommending approval, but the issue that you're going to hear today, is that there are 8 units on this property - existing units that pre-date the Coastal Act - and that density is roughly double, in the Staff's opinion what would be allowed under current standards for that property today. Nevertheless, Staff is recommending approval of this addition; we feel it's a modest addition to a very small residence. We have reviewed the property with regards to what impacts, if any, would occur in relation to Chapter 3 policies of the Coastal Act and, in our opinion, there will be no adversary impacts that occur as a result of this addition to the residential unit. The density of 8 units on the property remains unchanged. There will be, admittedly, a slight increase in intensity of use, but the staff did not feel, in this case, it will set an adverse precedent in that the Commission simply doesn't deal with many of these kinds of projects in the Malibu area. The more typical concern the Commission has is with the size of guest homes

associated with single family residential development. In this particular case, having an 8 unit project, and a very small addition to one of those units, in Staff's opinion, will not result in a precedent that will lead to adverse cumulative impacts, but we certainly understand that there can be opposing opinion in that regard and we are prepared to address questions that the Commission may have, but having said that, we are recommending your approval.

**WAN:** All right. With that, I'll open the public hearing. First, I'll call for ex parte communication. Seeing none, Mr. Schmitz, you are the only speaker on this item, how long will you need?

**SCHMITZ:** Madam Chair, I would request 15 minutes in the agenda.

**WAN:** Fine.

**SCHMITZ:** Commissioners, my name is Don Schmitz, representing the Applicants for the project before you today. Sam and Marge Login, who would like to begin our presentation by thanking Staff for their usual professionalism and accessibility. We are in agreement with all the special conditions and we appreciate their recommendation of their approval to the Commission. As the Staff has presented to the Commission, the landslide remediation seems to

be an issue which is not an issue before the Commission of significant concern. That does not mean, however, that the Commission Staff did not put us through a rigorous test to ascertain definitively that our proposal was, in fact, the most environmentally sensitive proposal. The exhibits and handout which has been presented to you, which is Exhibits 11 through 14, highlight a number of those different alternatives that Staff require the Applicants to analyze and submit to the Coastal Commission for its deliberations. I don't intend to get into them in any great depth, I believe its fairly self evident that a crib wall, or a retaining wall or more massive grading project which would fill the gully would not be the preferred alternative under the Chapter 3 Policies of the Coastal Act. The proposal that is before you today is simply to remove and re-compact the existing landslide in the exact same location of the original slope and it will be lushly landscaped with native landscaping and we concur with the Staff Report that, that proposal is consistent with Section 30253 of the Coastal Act, which leaves the remaining issue of the modest addition of some 650 square foot to the existing unit. We did have extensive meetings and discussions with Staff on this matter. They had the concern and they

required a high test to come to the conclusion that, in fact, it would not be deleterious impacts upon the environment in the protective resources as to find in Chapter 3 of the Coastal Act. A couple of important points: there is some 6,120 square foot of structure - 5 buildings existing on the property. The additional 650 square feet represents less than 10%. This is an important because, keep in mind that under the Coastal Act, that if some sort of natural disaster destroyed all these structures; if a wild fire blew through here, jumped to PCH and burned down these structures, the property owners would be able to build the 6,120 square feet, plus the 650 square feet that we are proposing today, and it would be exempt. The Applicant would not be required to come back before the Coastal Commission under the Disaster Replacement Clause of the Coastal Act. Also the addition will be limited to 18 feet in height, not the 28 feet allowed by the City of Malibu, or certainly not the 35 feet allowed under the Coastal Plan. The majority of the addition will be on top of the existing structure. The addition will represent an extremely modest 150 square foot of additional footprint. That's less than many people's front door-way entrance that they have on their house. It's also extremely important that

the Commission is cognizant of the fact that the proposed addition will not represent an increase in the intensity of the use of the site. I would draw your attention to Exhibit "B" in the handout which was given to you which shows the floor plan. The existing unit is a studio unit which means that the bedroom, the living room, and the dining room and the whole thing is all one room. The only addition is that the second floor will be constructed with a small one bedroom, and whoever lives in this particular unit, will have the luxury of, if they have company over, that they won't have to sit on the bed while they have a cup of coffee. They will have a separate living area. However, this demonstrably will not increase the intensity of use. There will be no increase on septic demand. There will be no increase in the amount of parking. There will, accordingly, be no increase in the number of people using Pacific Coast Highway, or using the beaches in Malibu. Now, it is true this is a legal non-conforming lot, but Commissioners, some 95% of the properties in the City of Malibu's General Plan are legal non-forming structures. In fact, if you have a single family home and you live in Big Rock, or Carbon Mesa, or Malibu Knolls, or any of the many neighborhoods within Malibu, your property right now is legal non-conforming. All

those properties are allowed consistently to make additions to their homes and to their structures. What they would not be allowed to do is to subdivide their property or to increase the intensity of use and that is not what is happening here today. In fact, it's important for the Commission to note that there was a permitting action which is shown in the handout for an addition to the structure, I believe it is Exhibit "D" in your handout, there was a waiver back in 1984, it was for a 2 story structure in addition to the existing 8 units on this property. It was waived under 5-84-376 by the Coastal Commission and the Executive Director; and I'd like to point out that an exemption under 30624.7 is granted by the Commission on proposed developments that are diminimus if the Executive Director, which reports to the Commission, determines that it involves no potential for any adverse affect, either individually or cumulatively, on Coastal resources. Accordingly, that seems to be pretty compelling that not only are our arguments sound, but the Commission has found those arguments to be sound in the past and has established a precedent. As we have addressed, there will be no increase in septic demand; the project will be consistent with Section 30231 of the Coastal Act. As there will be no

increase in the number of people using the property, or the density of parking, there will be no deleterious impacts on 3021 of the Coastal Act in regards to access; and as the proposed improvement is completely invisible from Pacific Coast Highway or any designated public viewing area, the project is also consistent with Section 30251 of the Coastal Act. Although the density issue is important, we believe that we have addressed it and, as always, the Chapter 3 policies are the controlling policies for determining appropriateness of Applications before the Commission, and accordingly we would request that you follow the Staff recommendation of approval and approve our Application. We are available for any questions that you may have.

**WAN:** With that, I'll close the public hearing and return to staff.

**DAMM:** Thank you Madam Chair. With regards to the comment that the Applicant's representative made concerning fire rebuilds, in Staff's opinion, that's just really not relevant here. Deliberation on this matter as far as the addition to the existing unit. If there was a wild fire that went through this area that destroyed these 8 units, indeed they could rebuild, but that's not a basis for your considering whether or not to approve the addition

to this unit. In Staff's opinion, the issue before the Commission is whether or not the 651 square foot addition to the existing 588 square foot studio unit will have, either individual or cumulative impacts. The Staff concluded that we did not believe that it will and for that reason we are recommending approval, but as I said earlier, there can be an argument made that since this is already double the density that would be allowed by today's standards, that on no additions of any size be allowed. We simply looked at Chapter 3 policies and did not feel there was a conflict with Chapter 3 policies and for that reason we are recommending approval. Certainly with regard to the slope remediation, Staff did review that and we feel it is an appropriate solution so what ever your decision is on the addition to the existing unit, we certainly strongly recommend that the slope remediation be approval.

**WAN:** Commissioner Daniels?

**DANIELS:** Thank you. I have some questions. I'm really curious, and I came in here wondering whether or not we should approve this project because of the fact of the zoning issue that was raised. It seems to me that if, I think you said in the Report that there is really supposed to be 2 dwelling units on this acre, but that there are 8. I'm not clear as

to why we should be approving some development that's beyond what's is only allowed. To that extent, I guess I have a question of Staff's perhaps legal counsel as to what our position is in that regard. If the zoning restricts development in this area to a certain number of units, and this is already beyond that, why are we even allowing this particular unit to be preserved. My thinking is to deny this project because there is no basis to try to rescue a building that shouldn't be there in the first place.

**WAN:** Could you do me a favor and remove this Exhibit because we can't see the Staff table so let's take a minute and get that done ...

**DAMM:** Thank you.

**WAN:** That helps.

**DAMM:** From the perspective of your Planning Staff, in this particular instance, there is not a certified local coastal program. This project does have to go through the City of Malibu and have their approval and does have conceptional approval from the City of Malibu for allowing this addition. So, again when we reviewed the project, we reviewed it as to conformity with Chapter 3 policies and I really want to emphasize that the slope remediation portion, again Staff strongly recommends its approval. I think it's a judgment call whether or

not the Commission feels that any type of increase in square footage to the unit should be allowed because it is double the number of units that would be allowed on that site pursuant to the guidance in the certified Malibu Land Use Plan. That is, guidance, that when we cite that there would only be 2 residential units with 2 guest units allowed, that's based on the guidance in the certified Malibu Land Use Plan. Your decision is whether or not it conforms to Chapter 3 policies.

**DANIELS:** One other question I had is -- I don't know which way this will go - but let's say we approve it which, I'm actually not inclined to do personally, but let's say we do, is there some sort of a restriction we can put in as we had in others that no -- like a deed restriction/waiver as to no future protective devices. Isn't this right near a beach area?

**DAMM:** No. There is a road, and a row of homes separating this from the beach.

**WAN:** Commissioner Allgood.

**ALLGOOD:** My understanding from Staff is that we can approve the slope repair and we don't necessarily have to approve the expansion of the residential unit.

**STAFF:** That is correct. Staff just wanted to emphasize that if your not inclined to approve the addition to the home, don't deny the portion dealing with

the slope remediation.

**WAN:** Any other Commissioner comments? Commissioner Reilly.

**REILLY:** In order to get this before us for potential amendments, I would move for Staff for approval with conditions.

**WAN:** Ruled by Commissioner Reilly; seconded by Commissioner Dettloff. Did you have an amending Motion?

**STAFF:** Yes. I'd like to propose an amendment that would deny the request for the expansion of the residential area in this proposal.

**WAN:** Do I have a second to that amendment?

**ALLGOOD:** Yes, I'll second.

**WAN:** Seconded by Commissioner Allgood. Do you want to speak to the Motion Commissioner?

**ALLGOOD:** No. I think the facts are evident before us. In terms of findings, I think the issues cited by Staff in terms of the density of the parcel would certainly be a key issue for findings on this and I think another issue is that it is clearly a high hazard geological area and stuff and anything you add above what's already in an illegal density, only compounds that kind of a problem. But, Fastun may also have some comments on this.

**WAN:** Mr. Fastun, then Commissioner Dettlof.

**FASTUN:** Thank you Madam Chair. I just wanted to clarify

first with regard to the amending Motion, subject to suggestions from Mr. Damm, we would just then, when this comes back to the Commission, if it passes, phrase this in terms of a condition for revised plans which would show a deletion of the development that the Commission, if it votes that way, intends to eliminate. Commissioner Reilly is in the process, or has taken care of, the other thing I was going to say, which was some indication of the basis for the action and if other Commissioners have anything to add, that would be appropriate as well.

**WAN:** Commissioner Dettloff.

**DETTLOFF:** Yes. My question to Staff: How many homes are actually being used as homes? This addition appears to make this a home that someone can live in. On this site, there are other residential properties. How many of them are actually being used for living areas?

**DAMM:** Commissioner, it is my understanding is there are a total of 8 residential units.

**DETTLOFF:** All of them being occupied as homes? Maybe the Applicant could help us with that. So we have ...

**Voice:** Mr. Schmitz ...

**DETTLOFF:** I want to know the number of actual homes where people are living.

**SCHMITZ:** They are all used as individual residences. There

are 8 now and there would be 8 after the addition to the single structure.

**DETTLOFF:** So, currently the structure, the homes that are currently on the site, were done pre-coastal act.

**SCHMITZ:** That is correct Commissioner.

**DETTLOFF:** Thank you.

**WAN:** Just a quick comment on the findings. My understanding is that, by the way, the addition would add an extra bedroom, that the expansion. Mr. Schmitz made the comment that there is about 6,000 some odd square feet of development on here and this site and this would be a small addition, but the same thing would be true every time we look at a large home in Malibu with a guest house which we can stream to a maximum of 750 square feet because we don't want additional bedrooms and that's the basis of our decision that, cumulatively, that creates an impact, but you can rent out a 500 or 600 square foot home for, in terms of the number of people versus one that's larger with an extra bedroom is different and that's the cumulative impact. So, we look at that and it's on that basis that I would support the amending Motion. Any further discussion or comments?

**SCHMITZ:** Madam Chair, I'm going to exercise our right for postponement under 10385 of the Administrative

Regulations. I am really somewhat surprised by the level of concern expressed by the Commission and we're going to need a little more time to deal with Staff.

**WAN:** Mr. Fastun, do you want to comment on whether or not he has a right once we have a Motion on the table to seek a continuance.

**FASTUN:** Madam Chair, the Applicant's right of postponement is under your regulations to respond to the Staff recommendations and the Commissions' interpretation of its regulations has always been that right needs to be exercised prior to the time that the Commission hears the matter. In this case, you've closed the public hearing portion, or the testimony portion of this hearing, and it's back to you. This Commission may, in its discretion, choose to continue the matter. It has the discretion to do so but there is not at this point an Applicant's right to do so.

**WAN:** I have a request - I have a call for the question right here from Commissioner Reilly. Can you ... Call the roll. And this is on the amending Motion, the Maker of the Motion is recommending a "Yes" vote. This is to delete the expansion.

**Woman** : Commissioner Daniels?

**DANIELS** : Yes.

**Woman** : Commissioner Desser?

DESSER : Yes.

Woman : Commissioner Dettloff?

DETTLOFF: No.

Woman: Commissioner Allgood?

ALLGOOD: No., I'm sorry, repeat the ... Yes. Sorry.

Woman: Commissioner Fleming?

FLEMING: No.

Woman: Commissioner Kehoe?

KEYHOE: No.

Woman: Commissioner Nava?

NAVA: I'm sorry, You're going to have to refresh. I was reading .. this Motion is what.

WAN: To delete the expansion, and the maker of the Motion is recommending a "yes" vote.

NAVA: Oh..., yes, yes, yes.

Woman: Commissioner Reilley?

REILLY: Yes.

Woman: Chairman Wan?

WAN: Yes.

Woman: Six-Three.

WAN: New Motion. You want to call the roll? This would allow the remediation and all the other conditions but would require that they, I believe, that they would come back with a recommended (or amending) plan.

DAMM: That is correct. The staff, what the Commission just voted on the Amendment, the Staff's

understanding is that it requires the Applicant to submit revised plans showing the elimination of the addition to the existing unit and that becomes a condition.

WAN: All right.

FASTUN?: If I might add Madam Chair, and we will work with Staff to, there may be necessary to slightly adjust some of the other conditions to deal with the fact that some of them may have been named purely at the expansion. We will do that in the process of bringing back revised findings.

WAN: Allright. Thank you very much. Would you call the roll on the main Motion.

Woman: Commissioner Desser?

WAN: You were recommending a "yes" -- this would approve the project?

Woman: Yes.

Woman: Commissioner Dettloff?

DETLOFF: Yes.

ALLGOOD: Yes.

FLEMING: Yes.

KEHOE: Yes.

NAVA: Yes.

REILLY: Yes.

DANIELS: Yes.

WAN: YES.

Nine - Zero.

# Th-17a

STATE OF CALIFORNIA - THE RESOURCES AGENCY

GRAY DAVIS, Governor

## CALIFORNIA COASTAL COMMISS

TH CENTRAL COAST AREA  
89 SOUTH CALIFORNIA ST., SUITE 200  
VENTURA, CA 93001  
(805) 841-0142

EXHIBIT NO. C
APPLICATION NO. 4-99-035R
Revised Findings
Report#4-99-035

Filed: 5/7/99  
Original Comm Action: 8/13/99  
Staff: J Johnson-V  
Staff Report: 11/17/99  
Hearing Date: 12/7-10/99  
Commission Action:



### STAFF REPORT: REVISED FINDINGS

**APPLICATION NO.:** 4-99-035

**APPLICANTS:** Sam and Marge Login

**AGENT:** Paula Login

**PROJECT LOCATION:** 26926 Pacific Coast Highway, Malibu, Los Angeles County

**PROJECT DESCRIPTION:** Construct a one and two story, 651 sq. ft. addition and pile foundation to existing 588 sq. ft. one bedroom residential unit to total 1,239 sq. ft., complete remedial slope restoration and repair, including new drains, revegetate slope with native plants, temporary relocation of the subject residential unit during slope restoration, demolish attached deck and construct covered patio attached to subject unit, demolish deck and construct three foundation piles to support foundation of adjacent residential unit, and remove all debris to an appropriate disposal location outside the coastal zone.

**DATE OF COMMISSION ACTION:** August 13, 1999 in Los Angeles

**COMMISSIONERS ON PREVAILING SIDE:** Commissioners Daniels, Desser, Dettloff, Allgood, Flemming, McClain-Hill, Nava, Reilly, and Chair Wan.

#### SUMMARY OF COMMISSION ACTION

Staff recommends that the Commission adopt the following revised findings in support of the Commission's decision on August 13, 1999, to approve the proposed project subject to five (5) special conditions addressing plans conforming to geologic recommendation, drainage plans and maintenance responsibility, landscape and erosion control plans, assumption of risk, waiver of liability and indemnity, and revised plans. Page two identifies the recommended motion. The Commission found that the proposed one and two story residential addition to one of the existing eight residential units on the property was inconsistent with the Coastal Act on the basis of cumulative impacts and geologic hazards. The Commission approved the applicant's request to remove about 2,700 cubic yards of material and recompact about 2,700 cubic yards of material to remediate the slope failure. The project also includes the temporary relocation of the residential unit during the remediation. Once the slope remediation is complete, the unit will be relocated to the original site on a new pile foundation without the proposed residential addition, as conditioned. As conditioned, the slope will be landscaped with native plant species. Therefore, the proposed project, as conditioned, is consistent with applicable resource protection policies of the Coastal Act.

**PROCEDURAL NOTE:**

The Commission approved the proposed project with conditions, including adding a condition requiring revised plans eliminating the proposed one and two story residential addition to one of the residential units. Because staff originally recommended approval of this proposed project, including the proposed residential addition, revised findings are necessary to reflect the action taken by the Commission. Staff therefore recommends that the Commission adopt the following resolution and the revised findings in support of its action to approve this permit with conditions on August 13, 1999. The findings regarding cumulative impacts and the reasons why the addition to the one residential unit is inconsistent with Sections 30250 and 30253 of the Coastal Act are found on page 11 and pages 16 – 22. Comments from the public concerning the findings will be limited to discussing the adequacy of the findings to support the Commission's action of August 13, 1999.

**LOCAL APPROVALS RECEIVED:** Approval in Concept, dated 2/10/99, Planning Department, City of Malibu; Approved in Concept, dated 1/20/99, Geology and Geotechnical Engineering Review Sheet: Approval, City of Malibu Environmental Health Department, dated December 24, 1998; Waiver, City of Malibu Archaeologist, dated January 19, 1999.

**SUBSTANTIVE FILE DOCUMENTS:** Report of Limited Engineering Geologic Investigation, dated October 19, 1998, by Pacific Geology Consultants; Soils Engineering Investigation, Landslide Evaluation and Second Story Addition to Studio, dated November 3, 1998, Response to City of Malibu Geology and Geotechnical Review Sheet, dated January 5, 1998, and Response to California Coastal Commission Letter, dated March 25, 1999, by SubSurface Designs Inc.: Coastal Permit Application No. 4-98-315, Hayles & Moore; Coastal Permit Waiver No. 5-84-376, Tarrates; Coastal Permit No. 4-97-246, Hanyecz; Coastal Permit No. 4-98-084, Taylor; Coastal Permit No. 4-99-035, Login.

**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

**I. Commission Resolution for Adopting Revised Findings for Approval with Conditions of Coastal Development Permit No. 4-99-035**

Motion

***I move that the Commission adopt the following revised findings in support of the Commission's approval with conditions of Coastal Development Permit No. 4-99-035.***

## Staff Recommendation

Staff recommends a **YES** vote, and the adoption of the following findings. An affirmative vote by a majority of the Commissioners present who voted on the prevailing side is needed to pass the motion. (List of Commissioners on page 1.)

## 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. Plans Conforming to Geologic Recommendation

All recommendations contained in the Report of Limited Engineering Geologic Investigation, dated October 19, 1998, by Pacific Geology Consultants; Soils Engineering Investigation, Landslide Evaluation and Second Story Addition to Studio, dated November 3, 1998, Response to City of Malibu Geology and Geotechnical

Review Sheet, dated January 5, 1998, and Response to California Coastal Commission Letter, dated March 25, 1999, by SubSurface Designs Inc., shall be incorporated into all final design and construction plans as revised by Special Condition No. Five including issues related to foundation support, retaining walls, excavation characteristics, surficial stability, site drainage, drainage and maintenance, grading and earthwork, temporary excavations, erosion control, excavation erosion control plan review and plan notes. All plans must be reviewed and approved by a geologic/geotechnical engineer as conforming to said recommendations. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

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 to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

## **2. Drainage Plans and Maintenance Responsibility**

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a revised drainage and erosion control plan designed by a licensed engineer which assures that run-off from the roofs of all the residential units, patios, and all other impervious surfaces on the subject property are collected and discharged in a non-erosive manner which avoids ponding on the within the site, impound against structures, or flow in a concentrated or uncontrolled manner down the descending slopes. Site drainage shall not be accomplished by sheetflow runoff. With acceptance of this permit, the applicant agrees that should any of the project's surface or subsurface drainage structures fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

## **3. Landscaping and Erosion Control Plan**

Prior to issuance of a coastal development permit, the applicant shall submit revised landscaping and erosion control plans, 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 & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residential unit (to be relocated). 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. All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting 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) Interim Erosion Control Plan**

1. The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access routes, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.

2. The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geo-fabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless

removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill material.

3. The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geo-textiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

**C) Monitoring.**

Five years from the date of the receipt of the Certificate of Occupancy for the residential unit (to be relocated) 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.

**4. Assumption of Risk, Waiver of Liability and Indemnity**

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site(s) may be subject to hazards from extraordinary hazard from landslides or slope failures, erosion, mud and/or debris flows, and wildfires; (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, and landowner(s), 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.

**5. Revised Plans**

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit revised plans, for the review and approval by the Executive Director showing the elimination of the proposed addition to the existing residential unit.

**STAFF NOTE:** The initially recommended Special Condition # 5 was a Future Development Deed Restriction. Since the Commission's action added a Special Condition eliminating the proposed addition to the residence, the Future Development Deed Restriction was not necessary for the project as approved by the Commission.

**IV. Findings and Declarations**

The Commission hereby finds and declares:

**A. Project Description and Background**

The subject site is located seaward of Pacific Coast Highway and landward of Malibu Colony Cove Drive about one third of a mile west of Latigo Canyon Road (Exhibits 1 – 3). The site is accessed from Pacific Coast Highway.

The applicants propose to construct a one and two story, 651 sq. ft. addition and pile foundation to an existing 588 sq. ft. one bedroom residential unit to total 1,239 sq. ft. (including expanded covered porch area totaling about 192 sq. ft.) after slope remediation is completed. This residential unit is one of eight (8) units located on the approximate 1.5 acre lot. The applicants also propose to complete remedial slope restoration and repair, including new drains and revegetate the slope with native plants adjacent to this residential unit (Exhibits 4 - 7). The slope restoration and repair consists of about 2,700 cubic yards of cut and 2,700 cubic yards of fill to recompact and remediate the slope failure. Heavy equipment and construction access to the site will be from the subject property on the terrace and not from Malibu Colony Cove Drive. As a result of the slope restoration, the subject residential unit will need to be temporarily relocated. In addition, the applicants propose to demolish an attached concrete deck and construct a covered patio attached to subject unit and a new pile foundation (Exhibits 8 and 9). Further, it is proposed to demolish a wood deck and construct three

foundation piles to support the south-east corner of residential unit adjacent to subject residential unit. Lastly, the applicants propose to remove all debris to an appropriate disposal location outside the coastal zone.

The project site is a developed hillside parcel situated at an elevation of about 100 feet above mean sea level. The improvements on the property consist of four separate one and two story residential buildings with eight residential units and a three car garage located on the central and southeastern portions of the site. These structures are located on the flat terrace portion of the parcel that slopes gently to the south. A paved driveway extending along the eastern portion of the site directly from Pacific Coast Highway provides access to these structures. A paved parking area is located along the southern portion of the terrace. From this parking area, the slope descends about 80 feet at 1 ½ :1 ratio to Malibu Cove Colony Drive. This portion of the bluff appears to be the historic ocean bluff.

It is important to note that the parcel also slopes along the eastern portion to a north-south trending drainage ravine. This is the site of subject landslide proposed to be remediated and repaired. This ravine is considered ephemeral in nature as it flows only during the rainy season. These eastern slopes range from 1 ½ : 1 to 2 : 1 ranging in height from 10 feet at the northeast corner of the property to about 60 feet on the southeast corner of the property.

According to the Los Angeles County Sensitive Resources Map, the project site is not located within an environmentally sensitive habitat area (ESHA) and no blue line designated streams cross the project site. The City of Malibu Archaeologist reviewed the subject site on January 14, 1998 and issued a waiver. No recorded archaeological sites or archaeological resources were identified on the subject site. Although the subject parcel is visible from Pacific Coast Highway, the subject slope remediation and residential unit improvements will not be visible due to the topography and the substantial existing landscaping on the site. The subject slope is visible to a limited extent from the beach due to existing residences along Malibu Colony Cove Drive and substantial existing landscaping on the subject site. Therefore, the project will not result in adverse effects to visual resources as seen from the public highway and the beach. According to the Los Angeles County Land Use Plan Map, the subject parcel is designated as Residential II allowing two dwelling units per acre; the existing eight (8) dwelling units on the approximate one and one half acre parcel are considered non-conforming regarding residential density.

## **B. Hazards and Alteration of Natural Landforms**

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 30251 of the Coastal Act states that:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

The proposed development is located in the Santa Monica Mountains, an area that 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.

Section 30253 of the Coastal Act mandates that new development provide for geologic stability and integrity and minimize risks to life and property in areas of high geologic, flood, and fire hazard. In addition to Section 30253 of the Coastal Act, the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) includes several policies and standards regarding hazards and geologic stability. These policies have been certified as consistent with the Coastal Act and used as guidance by the Commission in numerous past permit actions in evaluating a project's consistency with Section 30253 of the Coastal Act. For example, Policy 144 of the LUP, suggests that the Commission continue to provide information concerning hazards and appropriate means of minimizing the harmful effects of natural disasters on persons and property.

Section 30251 of the Coastal Act requires that the scenic and visual qualities of coastal areas be considered and protected as a resource of public importance and that permitted development minimize the alteration of natural landforms, and be visually compatible with the character of surrounding areas.

The subject property includes three distinct landslides. A relatively large ancient landslide is located along the south facing slope that descends from the southern margin of the parking area on the terrace to Malibu Colony Cove Drive below. Two smaller landslides are located immediately east of the subject residential unit on the southeastern portion of the property adjacent to the drainage ravine. The applicant's consulting engineering geologist has identified these as similar in geometry but of different ages. It is important to identify that the more recent of these two landslides occurred in February 1990 after a water heater and water line located near the subject residential unit at the top of the slope leaked for 10 to 15 days. The resulting landslide is about 70 feet long, 55 feet wide, and 14.5 feet thick.

The remainder of the site is Monterey Formation Bedrock overlain by fill and natural soil where most of the structures are located. However, the subject residential unit and an adjacent unit located at the southeast corner of the parcel are located at the top of the descending slope that has been affected by the slope failure, i.e. the landslide.

The applicants propose to stabilize the slope failure by removing and recompacting all landslide debris (Exhibits 4 - 7). To accomplish the slope remediation, the subject residential unit will need to be temporarily relocated about 15 to 20 feet to the parking area. After the slope is repaired, the residential unit will be placed in the former location on a friction pile and grade beam foundation supported on the underlying bedrock (Exhibits 8 and 9). The applicants also propose to construct an addition to the first and second floors of the residential unit, demolish an attached deck and construct a new covered patio attached to unit. The existing sewage disposal system is approved in concept by the City of Malibu for the proposed residential addition to the existing residence. On the adjacent residential unit, the applicants propose to demolish a deck and construct three foundation piles to support the southeast corner of the structure adjacent to the landslide.

To remediate the slope failure, the applicants are requesting approval to remove about 2,700 cubic yards of material and recompact about 2,700 cubic yards of material. The slide area is approximately 5,000 sq. ft. in size and is located on a slope between the subject residential unit on the terrace portion of the subject site and the base of a drainage ravine.

### **1. Geologic Stability**

The applicants submitted two reports and two update letters addressing an engineering geologic investigation and soils engineering investigation of the subject site. The City of Malibu reviewed and 'Approved in Concept' these reports in a Geology and Geotechnical Engineering Review Sheet, dated 1/20/99.

The Report of Limited Engineering Geologic Investigation, by Pacific Geology Consultants dated October 19, 1998 concluded:

*It is the professional geologic opinion of the undersigned that stabilization of the failed slope area on the southeastern portion of the site is feasible from a geologic standpoint. Slope stabilization may be achieved by removing and recompacting all landslide debris (Qlso and Qlsa). The existing studio adjacent to the headscarp of the active slide will need to be removed prior to grading. Upon completion of grading, the studio may be placed in the same location provided it is supported by a new foundation that derives support from the underlying site bedrock. Due to the anticipated depths of removal and recompaction of fill in this area, foundations to support the studio are anticipated to consist of friction piles and grade beams.*

*Providing the recommendations contained in this report, in addition to those of the Geotechnical Engineer are followed, the studio and grading will be safe from landslide hazard, settlement and slippage. In addition, the proposed construction will not adversely affect off-site properties from a geological standpoint. All specific elements of the City of*

**Malibu Building Code shall be followed in conjunction with design and future construction work.**

The Soils Engineering Investigation Landslide Evaluation and Second Story Addition to Studio, by SubSurface Designs, Inc. dated November 3, 1998 states:

***The existing recent and older landslides, Q1sa and Q1so, may be removed and replaced with engineered compacted fill slopes. The placement of this fill slope will require the temporary relocation of the existing Studio Building. After the grading is completed the Studio Building may be moved back to its original location. The foundation system for the studio will be replaced by a series of drilled cast in place friction piles and grade beams. The new foundation system will be placed into the site bedrock.***

***The proposed second story for the Studio Building may be constructed over the existing studio building, as all of the loads will be transferred to the site bedrock.***

The applicant also provided two updated letters titled: Response to City of Malibu Geology and Geotechnical Review Sheet, dated January 5, 1998, and Response to California Coastal Commission Letter, dated March 25, 1999, by SubSurface Designs Inc.

These reports and update letters developed a set of recommendations based on their analysis to minimize the risk of geologic and soil engineering hazards for the following issues related to: foundation support, retaining walls, excavation characteristics, surficial stability, site drainage, drainage and maintenance, grading and earthwork, temporary excavations, erosion control, excavation erosion control plan review and plan notes. However, the Commission is concerned that the southern and eastern portions of the subject site have the potential to be geologically unstable due to three landslide features identified in the geology reports. As an example, the subject residential unit will be temporarily relocated from its existing site to allow the landslide to be remediated and a new pile foundation to be constructed into bedrock to provide adequate support for the studio unit to be relocated back to this hazardous area. Therefore, further intensification of the subject residential unit located near these landslide features will not minimize risks to life and property. Thus, the Commission cannot find the proposed project consistent with Coastal Act Section 30253 which requires that the project minimize risks to life and property in areas of high geologic hazard and assure stability and structural integrity. Special Condition Number five (5) is necessary to make the proposed project minimize risks to life and property in areas of high geologic hazard and assure structural and site stability as required by Section 30253 of the Coastal Act.

Based on the findings and recommendations of the consulting geotechnical engineer and engineering geologist, the Commission finds that the proposed development, without the residential addition as eliminated by Special Condition Number five (5), is consistent with Section 30253 of the Coastal Act so long as all of the consultant's recommendations regarding the proposed development, as conditioned, are incorporated into the project plans. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by the consulting geotechnical engineer and engineering geologist as conforming to their recommendations, as noted in Special Condition Number One (1) for the final project

plans. 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 to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

## 2. Alternatives

The Pacific Geology Consultants, Inc. report identified two alternatives to the slope remediation, but provided no analysis or conclusions about them. The report states:

*One alternative for slope repair would be to infill a portion of the drainage canyon within the failure area. A keyway extending into in-place bedrock would be excavated at the toe of slope. A 2:1 (26 degree) fill slope would then be constructed at the top of slope. A second alternative would be to construct a retaining wall along the toe of the slope. All landslide debris behind the wall would be removed and replaced as recompacted fill. A 2:1 (26 degree) fill slope would then be constructed from the top of the wall to the top of slope. The fill slope may be constructed to a 1½:1 (33 degree) ratio provided approval is obtained from the Project Geotechnical Engineer, SubSurface Designs, Inc.*

In a letter dated March 17, 1999, staff requested the applicant to provide an analysis of these alternatives and any others that minimize the alteration of natural landforms. In response, the applicants provided plans identifying four slope stabilization alternatives to the proposed project for Commission review (Exhibits 10 – 13). In addition, a letter was provided by the applicant's consulting geotechnical engineer addressing the potential for relocating the subject residential unit to a new location on the subject site, a fifth alternative.

The first two alternatives consist of filling the drainage gully at two different slope configurations (Exhibit 10). The first alternative consists of filling both sides of the gully to the center of the gully with steep 2:1 slopes. A total of about 7,791 cubic yards of fill would need to be imported to the site. The second alternative consists of filling both sides of the gully with a more gently 1½:1 slope again to the center of the gully. A total of nearly twice as much fill would need to be imported to the site, about 13,102 cubic yards. Alternatives 1 and 2 are considered an excessive amount of landform alteration.

A third alternative was identified as constructing a crib wall located about half way down the slope face (Exhibit 11). The crib wall would be constructed of concrete blocks stacked on top of each other and filled with gravel and or soil. Although the crib wall could be planted to screen the concrete blocks over time, it is considered an excessive amount of landform alteration that also visually degrades the drainage gully with its engineered appearance.

The fourth alternative identified was a large retaining wall that could be constructed near the top of the slope, a short distance from the subject residential unit (Exhibits 12 and 13). The area at the top of the slope would be backfilled to create a flat pad area. Although the flat area at the top and the earthen slope below the retaining wall could be landscaped, this alternative is also considered an excessive amount of landform

alteration that also visually degrades the drainage gully with the engineered appearance of a large vertical wall.

The fifth alternative identified is to relocate the subject residential unit to another location on the property to avoid the need to remediate the slope failure area. In a letter dated March 25, 1999, from SubSurface Designs, Inc., Gary Masterman, a geotechnical engineer states:

This slide will adversely affect the studio building and the residence to the north if not repaired. The most effective means of remedial repair is to re-grade the slide. This re-grading requires the temporary relocation of the studio building. The studio building will be temporarily relocated over the existing on site ancient landslide that exists on the ocean facing bluff. Once the recent landslide has been repaired the studio must be relocated over the non landslide affected portion of the site. There is no other reasonable location on the site that can be safely utilized for the subject structure from a geotechnical standpoint.

Staff's review of the property indicates that there may be other locations landward on the property where the residential unit could be relocated. However, other locations would require either the relocation of existing parking areas or the removal of existing vegetation or mature trees. A minor relocation of the residential unit on a permanent basis is not possible due to building and safety setback requirements relative to the south and east facing slopes and between the subject residential unit and the adjacent residence to the north. In addition, without the proposed slope remediation, the second residential unit located next to the subject residential unit may also be adversely affected, as noted by the geotechnical engineer in the March 25, 1999 letter. The applicants provided an additional response to the issue of the fifth alternative in a letter from the construction company indicating that it is not possible to move the residential structure to locations further than the proposed location which is about 15 to 20 feet. In a letter dated March 21, 1999, C. S. Rainey of Kegger Construction states:

This letter is in response to your request for a determination on the viability for the relocation of the residence located at 26926 Pacific Coast Highway.

It has been determined that the structure which now sits precariously at a slope failure must be moved in order to repair the damaged slope and construct a new foundation. It is advisable that the structure be moved as little as possible, just enough to allow for access to properly repair the slope and provide enough room to construct a caisson and grade beam foundation.

The structure will be moved with steel beams, rollers and hydraulic lifts. I understand your desire to relocate the structure. However, due to the fragility of the building and to insure its structural integrity, I would not recommend it being moved any further than the bare minimum necessitated by the work I have just described.

In conclusion, the applicants have reviewed these alternatives and are proposing to remediate the slope failure by removing the earthen landslide material from the slope and then recompacting it on the slope as a 1 ½:1 fill slope (Exhibits 14 and 15). The slope will be reinforced with a geo-textile placed at two foot intervals as the compacted fill is placed. In addition, the eight foot base of the slope will include 3% cement fill and backdrains at ten foot vertical rise intervals. The applicants also propose to landscape the slope with native plant species that will also retard erosion. To allow for the slope remediation, the subject residential unit will be temporarily relocated a short distance to a site with an ancient landslide. Once the slope is remediated, the unit will be relocated to the prior location which is the only reasonable location for the long term placement of the residential unit. A review of the alternatives to this proposed project leads to the conclusion that the proposed project minimizes the alteration of natural landforms, will be visually compatible with the character of surrounding areas, and is the only feasible location for the relocated residential unit on the property. Therefore, the Commission finds that the proposed slope restoration project is the environmentally preferred alternative that will minimize the effects of the project on coastal resources.

### 3. Erosion

The subject site is located on a terrace area of a former coastal bluff. The subject residential unit and the adjoining unit on the southeast portion of the property are located at about the 100 foot elevation above sea level. A south-facing slope, the former coastal bluff, drops down to Malibu Cove Colony Drive while an east-facing slope drops down to a drainage gully. The subject residential unit is setback about twenty-five feet landward of the edge of this coastal bluff. Slope drainage at the two subject residential units is by sheet flow runoff directed in part toward the east into a drainage catch basin leading to a pipe draining to the bottom of the drainage gully and in part sheet flow into the gully.

A properly designed drainage system to convey runoff offsite in a controlled manner will minimize erosion and enhance site stability. The applicant's consulting geotechnical engineer and engineering geologist recommend that all pad and roof drainage should be collected and transferred to an approved location in non-erosive drainage devices. A conceptual drainage plan was submitted by the applicant that partially addressed the recommendations of the applicant's consulting engineering geologist and geotechnical engineer (Exhibit 6). The drainage plan needs to be revised to assure that run-off from the roofs of all the residential units, patios, and all other impervious surfaces on the subject property are collected and discharged in a non-erosive manner which avoids ponding on the within the site, impound against structures, or flow in a concentrated or uncontrolled manner down the descending slopes. Therefore, given the potential for uncontrolled run-off to contribute towards soil erosion and possibly larger instability problems, the Commission finds it necessary to require a revised drainage and erosion control plan as recommended by the applicant's consultants as noted in Special Condition Number Two (2). This condition requires the drainage and erosion control plan to be completed by a licensed engineer. Further, to ensure that the project's drainage structures will not contribute to further destabilization of the project site or

surrounding area and that the project's drainage structures shall be repaired should the structures fail in the future, Special Condition Number Two (2) also requires that the applicants agree to be responsible for any repairs or restoration of eroded areas should the drainage structures fail or result in erosion.

In addition, the slope remediation area and any other disturbed areas on the subject lot as a result of this project should be planted according to a landscape and irrigation plan with drought tolerant, deep rooted, erosion retardant native plant ground cover, to be selected by a landscape architect to reduce the potential for future erosion and soil slippage along the slope. The applicants have submitted a conceptual landscape plan that indicates native plant species will be planted in the vicinity of the slope remediation (Exhibits 14 and 15). The applicants need to submit a revised landscape plan, stamped and signed by the applicant's consulting landscape architect, that includes all disturbed areas on the terrace area in the vicinity of the two residential units will also be planted with primarily native drought resistant plant species. The goal of the revised plan is to minimize and control erosion, as well as screen and soften the visual impact of the slope remediation to be visually compatible with the surrounding area. An interim erosion control plan is needed to minimize erosion during grading and construction, particularly if conducted during the rainy season. A monitoring plan is needed to ensure that the landscaping meets the approved landscaping plan after a five year time period from the time of occupancy of the residential unit. In addition, in the event the proposed grading occurs during the rainy season (November 1 – March 31) sediment basins need to be installed on the project site prior to or concurrent with grading operations and maintained through the development process to minimize sediment from runoff waters during construction. Therefore, the Commission finds it necessary to require a revised landscape plan, interim erosion control plan, and a monitoring plan to further minimize and control erosion as noted in Special Condition Number Three (3).

The Commission further notes that 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 submitted Engineering Geologic Investigation and Soils Engineering Investigation Reports indicate that three landslides are located on the subject site. The Coastal Act recognizes that certain development, such as the proposed project to remediate a slope failure, temporarily relocate the subject residential unit, replace and enlarge the residential unit, and construct a new foundation to the adjoining residential unit, may all involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project

site and the potential cost to the public, as well as the individual's right to use his property.

As such, the Commission finds that due to the foreseeable possibility of landslides or slope failures, erosion, mud and/or debris flows, and wildfires, the applicant shall assume these risks as a condition of approval. Therefore, Special Condition Number Four (4) requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development and to indemnify and hold harmless the Commission with respect to the Commission's approval of the project against any and all liability. The applicant's assumption of risk, 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.

Therefore, for the reasons discussed above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30251 and 30253 of the Coastal Act.

### **C. Cumulative Impacts of Development**

The Coastal Act requires that new development be located in areas with adequate public services where it will not have significant adverse effects on either an individual or cumulative basis on coastal resources. Sections 30250 and 30252 of the Coastal Act address the cumulative impacts of new developments. Section 30250 (a) of the Coastal Act states:

*(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.*

Section 30105.5 of the Coastal Act defines the term "cumulatively" as it is used in Section 30250(a), to mean that:

*The incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.*

Section 30252 of the Coastal Act states:

*The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public*

*transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.*

In addition in 1986, the Commission certified the Malibu/Santa Monica Mountains Land Use Plan (LUP) that included many policies addressing development. The LUP policies cited below addressing development have been found consistent with the Coastal Act, and therefore may be looked to as guidance by the Commission in determining consistency of the proposed project with the Coastal Act.

The LUP provides guidance with a "New Development Policy" which states that new development in the Malibu Coastal Zone will be guided by the LCP Land Use Plan map and associated development standards and a program for the retirement of the development rights and mitigation of the effects of non-conforming parcels. LUP Policy 271 states in part that:

New development in the Malibu Coastal Zone shall be guided by the Land Use Plan Map and all pertinent overlay categories. ... All properties are designated for a specific use. These designations reflect the mandates of the California Coastal Act, all policies contained in this Local Coastal Plan, and the constraints and sensitivities of resources present in the coastal zone.

The land use plan map presents a base land use designation for all properties. Onto this are overlaid three resource protection and management categories: (a) significant environmental resource areas, (b) significant visual resource areas, and (c) significant hazardous areas. For those parcels not overlaid by a resource management category, development can normally proceed according to the base land use classification and in conformance with all policies and standards contained herein. Residential density shall be based on an average for the project; density standards and other requirements of the plan shall not apply to lot line adjustments.

a. Land Use Designation

The following describes each land use designation and its principal permitted uses:

- (1) Residential II. Low-density suburban residential areas.

Residential II – the maximum residential density standard is two dwelling units per acre average.

b. Land Use Designation

The land use plan map provides a framework within which new development can be accommodated within the Malibu Coastal Zone. Generally, it recognizes the

presence of existing urban areas and concentrates new development at these locations. ... The following describes the principal provisions of the land use plan map.

**(1) Coastal "Terrace"**

Historically, the majority of development in the 65,000-acre Malibu Coastal Zone has occurred along the 27-mile beach frontage and adjacent inland slopes. Physically, this area is a "terrace" at the base of the Santa Monica Mountains. The plan provides for focusing of new development in this area, approximately eight percent of the coastal zone, as it contains the most extensive infrastructure and services. Conceptually, the Plan provides for the infilling of existing developed areas at prevailing densities and some intensification of the major "centers" along the "coastal terrace".

In 1981, the Commission adopted District Interpretive Guidelines titled, "South Coast District, Malibu - Santa Monica Mountains. These guidelines state that a basic goal of the Coastal Act is to concentrate development in or near developed areas able to accommodate it, thereby promoting infilling and avoiding sprawl into areas with significant resource value. Generally, the Malibu-Santa Monica Mountains coastal zone is not able to accommodate substantially intensified development due to a constrained road network, severe geologic, fire and flood hazards, a large number of special and sensitive habitat areas and a growing importance as a recreational and scenic resource to the metropolitan Los Angeles area. Further, residential and recreational uses must be carefully balanced due to the inherent competition for a limited amount of environmental and services carrying capacity. The area of highest priority for the allocation of residential development should go to existing parcels within existing developed areas. The Malibu Cove Beach area is considered an existing developed area by the Guidelines.

Coastal Act Section 30250 provides for three tests to determine whether new development is appropriately located from the standpoint of cumulative impacts. The first test is whether or not the proposed new development is located within, contiguous or in close proximity to an existing developed area. The second test is whether or not the location of the new development is in an area able to accommodate it or with adequate public services. The third test is whether or not the proposed project will or will not have significant adverse effects, either individually or cumulatively, on coastal resources.

The applicant proposes to increase the intensity of residential use on the site, while retaining the existing density of use at eight dwelling units. The applicable new development proposed in this project consists of a 651 sq. ft. addition to an existing 588 sq. ft. residential unit located on an approximate 1.47 acre parcel with a total of eight (8) residential units. Regarding the first test, the proposed project is located on a blufftop parcel along the Malibu Cove Beach area. The coastal strip along the seaward side of

Pacific Coast Highway from Dan Blocker State Beach on the east to Escondido Road on the west is developed with residential, commercial and public recreational land uses. The Commission considers the Malibu 'Terrace' area to be a developed area, including the subject site. Because eight residential units already exist on the subject lot and most of the surrounding properties are already developed with residential development, the Commission finds that the new development proposed in this application meets the first test since it will be located within an existing developed area.

Regarding the second test, these eight existing residential units are already provided with public services, (i.e. public road access, water, electricity, and telephone), therefore, the development meets the second test by being located in an area able to accommodate it. The third test of Section 30250 examines whether or not the proposed project will have significant adverse effects, either individually or cumulatively, on coastal resources is discussed below.

As noted above, the applicants propose to construct an addition to an existing residential unit on a lot with eight residential units (*Exhibit 4*). There are eight existing one and two story residential units (totaling about 6,120 sq. ft.), a three car garage (about 680 sq. ft.), and about 20 parking spaces on the existing lot. As a result of the proposed project the total residential and garage development will be about 7,451 sq. ft.

Regarding individual impacts on coastal resources, the applicant does propose grading to remediate a landslide as discussed above. There are no designated environmentally sensitive resources on the site, and the site is not located within a sensitive watershed area. Regarding public visual issues, the existing residences are substantially screened from public views to and along the coast by existing mature vegetation. The new development, the small addition proposed to the subject residential unit, will not affect any public views because existing vegetation on the subject property already blocks public views to and along the coast from Pacific Coast Highway.

Therefore, the proposed new construction, the 651 sq. ft. addition to the subject residential unit and the other identified minor development, will not adversely affect coastal resources on an individual basis. Thus, the Commission finds that the proposed project, as conditioned, will not create impacts to coastal resources on an individual basis.

However, the new development raises coastal issues related to cumulative impacts on coastal resources. The construction of the 651 sq. ft. addition to the subject residential unit totaling 1,239 sq. ft. on the site where eight (8) residential units exist, has the potential to intensify the use of a parcel raising potential impacts on public services, such as water, sewage, electricity and roads. New development also raises issues regarding the location and amount of new development maintaining and enhancing public access to the coast.

The Commission has found that minimizing the cumulative impacts of new development is especially critical in the Malibu/Santa Monica Mountains area because of the large

number of lots which already exist, many in remote, rugged mountain and canyon areas. From a comprehensive planning perspective, the potential development of thousands of existing undeveloped and poorly sited parcels in these mountains would create cumulative impacts on coastal resources and public access over time. Because of the larger number of existing undeveloped parcels and potential future development, the demands on road capacity, public services, recreational facilities, and beaches is expected to grow tremendously.

The Los Angeles County Land Use Plan, certified by the Commission, provides guidance for the Commission to consider in this application. The LUP includes a New Development Policy, which notes that new development in the Malibu coastal zone will be guided by the LCP Land Use Plan map and associated development standards and a program for the retirement of the development rights and mitigation of the effects of non-conforming parcels. The LUP land use designation for this site is Residential II. The Residential II designation applies to residential areas generally characterized by single-family detached development. In the Residential II land use category, residential use is the principal permitted use at a density of 2 dwelling units per acre on the subject site. As an example, this means that one acre of land may be divided into 2 lots, each with a residential unit and a guest house. In this case, the size of the existing lot is rounded down to a whole number to calculate density potential. Thus, the guidance provided in the LUP allows the subject lot of about 1.47 acres in size to be divided into two (2) lots with the potential for two residential dwelling units each with a guest house, allowing a total of four (4) residential units. The applicants are requesting an addition to an existing residential unit on a lot with eight residential units. These eight residential units were constructed prior to the adoption of the Coastal Act. Given the density potential allowed by the LUP for the existing lot is two (2) dwelling units each on separate lots with two (2) guest houses (a land division is not proposed by the applicant), the Commission finds that the existing eight residential units are non-conforming with respect to the LUP density guideline for this parcel.

The City of Malibu has adopted an Interim Zoning Ordinance (IZO) in 1993 that provides for a Rural Residential Zone with a five (5) acre minimum. However, since the City has not prepared a Local Coastal Program and its Zoning Ordinance has not been certified by the Commission, the City's IZO is not binding on the Commission.

It is important to identify that the issue of additional and expanded residential units on lots with primary residences has been the subject of past Commission action in the certifying the Malibu Land Use Plan (LUP). In its review and action on the Malibu LUP, the Commission found that placing an upper limit on the size of second units (750 sq. ft.) was necessary given the traffic and infrastructure constraints which exist in Malibu and given the abundance of existing vacant residential lots. Furthermore, in allowing these small units, the Commission found that the small size of units (750 sq. ft.) and the fact that they are likely to be occupied by one or at most two people, such units would have less impact on the limited capacity of Pacific Coast Highway and other roads (as well as infrastructure constraints such as water, sewage, electricity) than an ordinary

single family residence. (certified Malibu Santa Monica Mountains Land Use Plan 1986, page 29 and P.C.H. (ACR), 12/83 page V-1 - VI-1).

The second unit issue has also been raised by the Commission with respect to statewide consistency of both coastal development permits and Local Coastal Programs (LCPs). Statewide, additional dwelling units on single family parcels take on a variety of different functions which in large part consist of: 1) a second unit with kitchen facilities including a granny unit, caretaker's unit, and farm labor unit; and 2) a guesthouse, without separate kitchen facilities. Past Commission action has consistently found that both second units and guest houses inherently have the potential to cumulatively impact coastal resources. As such, conditions on coastal development permits and standards within LCP's have been required to limit the size and number of such units to ensure consistency with Chapter 3 policies of the Coastal Act (Certified Malibu Santa Monica Mountains Land Use Plan 1986, page 29). Therefore as a result, the Commission has found that guest houses, pool cabanas, or second units can intensify the use of a site and impact public services, such as water, sewage, electricity, and roads.

In this case the applicants propose to construct a one and two story 651 sq. ft. addition to an existing one story 588 sq. ft. studio residential unit on the site. The resulting residence will consist of a new bedroom, closet and bathroom upstairs, and a living room, an expanded kitchen and new pantry and an expanded screened porch downstairs. Therefore, the proposed addition consists of a bedroom, closet, pantry and half bath to the subject residence and site. Staff review indicates that the incremental contribution to cumulative impacts would be the additions to the existing studio residential unit thereby increasing the habitable square footage from the existing 588 square feet to a total of 1,239 square feet. In the comparable case of residential development with a guest residential unit, the proposed 1,239 square feet is well beyond the 750 square feet allowed in the past by the Commission for guest or second residential unit development on a lot with a large primary residence. The impacts such as additional traffic, sewage disposal, public access and recreational use needs, associated with the development of the residential addition in this area are applicable in this case. The existing lot is already developed with eight residential units. Potential impacts to traffic, parking, sewage disposal, public access and recreational use needs, and other coastal resources would be correspondingly increased by the addition proposed on site. It is unclear if there is adequate covered and uncovered parking on the site for all of the existing eight (8) residential units including the proposed addition to the subject unit. Because, the applicants are proposing to double the size of the existing residential unit, additional occupants beyond the anticipated one person are expected. A residence with over 1,200 square feet will likely include more occupants than a smaller residence with only between 500 to 600 square feet of habitable space. Therefore in this case, the increase in square footage beyond the maximum 750 square feet and the addition of a bedroom and new residential related rooms to this studio residential unit will increase the intensity of use of this unit and will result in adverse cumulative impacts to coastal resources and public access to and along the coast.

Special Condition number five (5) requires the applicant to submit revised plans to eliminate the residential addition to this existing residential unit which is proposed to be moved on a temporary basis and relocated on the same site after the slope remediation and a new foundation is completed. The elimination of the residential addition will ensure that this residential unit will not include new residential related rooms and will remain less than the maximum 750 square feet allowed by the Commission for second units approved in the past on lots with other residential development.

The Commission finds that the proposed project, as conditioned, will not create impacts to coastal resources on an individual or cumulative basis, and therefore, the Commission finds the project meets the third test of Section 30250. Thus, Commission finds that the proposed project, as conditioned, is consistent with Sections 30250 and 30252 of the Coastal Act.

#### **D. Public Access**

One of the basic mandates of the Coastal Act is to maximize public access and recreational opportunities along the coast. The Coastal Act has several policies that address the issues of public access and recreation along the coast.

##### **Section 30210 of the Coastal Act states:**

*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 of the Coastal Act 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.*

##### **Section 30212 of the Coastal Act states (in part):**

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*

...

*(2) adequate access exists nearby...*

##### **Section 30220 of the Coastal Act states:**

*Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the

public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that public access to the sea be provided, except where adequate access exists nearby. Section 30211 provides that development not interfere with the public's right of access to the sea including the use of dry sand and rocky coastal beaches. Section 30220 of the Coastal Act requires coastal areas suited for coastal recreational activities, that cannot be provided at inland water areas, be protected.

All projects located between the first public road paralleling the coast and the coast that require 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. As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with ... the need to protect ... rights of private property owners..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the U.S. Supreme Court's decision in the case of Nollan vs. California Coastal Commission. In that case, the court ruled that the Commission may legitimately require a lateral access easement where the proposed development has either individual or cumulative impacts which substantially impede the achievement of the State's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate these impacts.

The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access from such projects can include among others: encroachment on lands subject to the public trust, thus, physically excluding the public; interference with natural shoreline processes which are necessary to maintain publicly-owned tidelands and other beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's ability to use beach access and cause adverse impacts on public access.

The subject property is located seaward of the first public road paralleling the coast, Pacific Coast Highway, and the coast. However, the property is not directly on the coast as a private road is located at the base of the bluff, Malibu Cove Colony Drive, and a series of beachfront residences are developed seaward of the private road. As proposed by the applicants, this project will not extend residential development any further seaward than the existing residential unit located on the terrace area above the former coastal bluff.

The proposed project must be judged against the public access and recreation policies of the State Constitution, Sections 30210, 30211, 30212, and 30220 of the Coastal Act. The beaches of Malibu are extensively used by visitors of both local and regional origin and most planning studies indicated that attendance of recreational sites will continue to significantly increase over the coming years. The Commission must protect those

potential public rights to and along the coast by assuring that any proposed development along the shoreline does not interfere with or will only minimally interfere with those rights. Because the subject site is located on the terrace of a former coastal bluff and other residential properties and development exists between the subject property and the shoreline, this project has no effect on lateral public access along the coast.

Regarding parking on-site for the residents of this property, the site appears to include adequate covered and uncovered parking for the existing residential units. As required by special condition number five (5), no additional residential square footage or bedrooms are allowed on this site. Therefore, public parking along the frontage road, Pacific Coast Highway will not be affected by the proposed project. Thus, the proposed project will not affect public parking on public roads located along the beach for the public wishing to access the beach in this area.

Regarding vertical public access from Pacific Coast Highway to the beach, the project site is located about 2,000 feet west of a vertical public accessway, Escondido Beach that has historically been used by the public to access Escondido, Malibu Colony, and Paradise Cove Beaches. Additionally, there is one vertical accessway that leads from Latigo Shore Drive to the Beach located about a half mile to the east of the subject site. A second vertical access from Pacific Coast Highway to Corral Beach is located further to the east, about one mile of the subject site. These two accessways lead to Latigo Beach and Corral State Beach. Therefore, vertical access to the beach exists nearby. The subject property is not adjacent to the beach as Malibu Cove Colony Drive, and a series of beachfront residences are developed seaward of the private road, all of which is located seaward of the subject property. Therefore, vertical access to the beach from the subject property is not possible.

Therefore, the Commission finds that the proposed project, as conditioned, will have no individual or cumulative impacts on public access to or along the coast, and is thus, consistent with Sections 30210, 30211, 30212, and 30220 of the Coastal Act.

### **E. Septic System**

The Commission recognizes that the potential build-out of lots in Malibu, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area. 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, 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 disconnecting and reconnecting the subject residential unit from an existing septic system to provide for adequate sewage disposal. The applicants propose to reconnect the subject residential unit to the septic system after the slope remediation and new pile foundation is constructed and the residential unit is relocated to its former site. The applicants have also submitted a conceptual approval for the sewage disposal system from the Department of Environmental Health Services, City of Malibu, dated December 24, 1998. This approval indicates that the sewage disposal system for the project in this application complies with all minimum requirements of the City of Malibu Plumbing Code.

The Commission has found in past permit actions that compliance with the health and safety codes will minimize any potential for waste water discharge that could adversely impact coastal waters. 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 the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).***

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

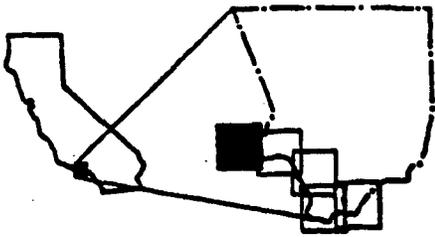
## **G. California Environmental Quality Act (CEQA)**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of 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 effect which the activity may have on the environment.

The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

499035loginreportrevisedfindings

A B C D E F G H I J K L N N O



Los Angeles

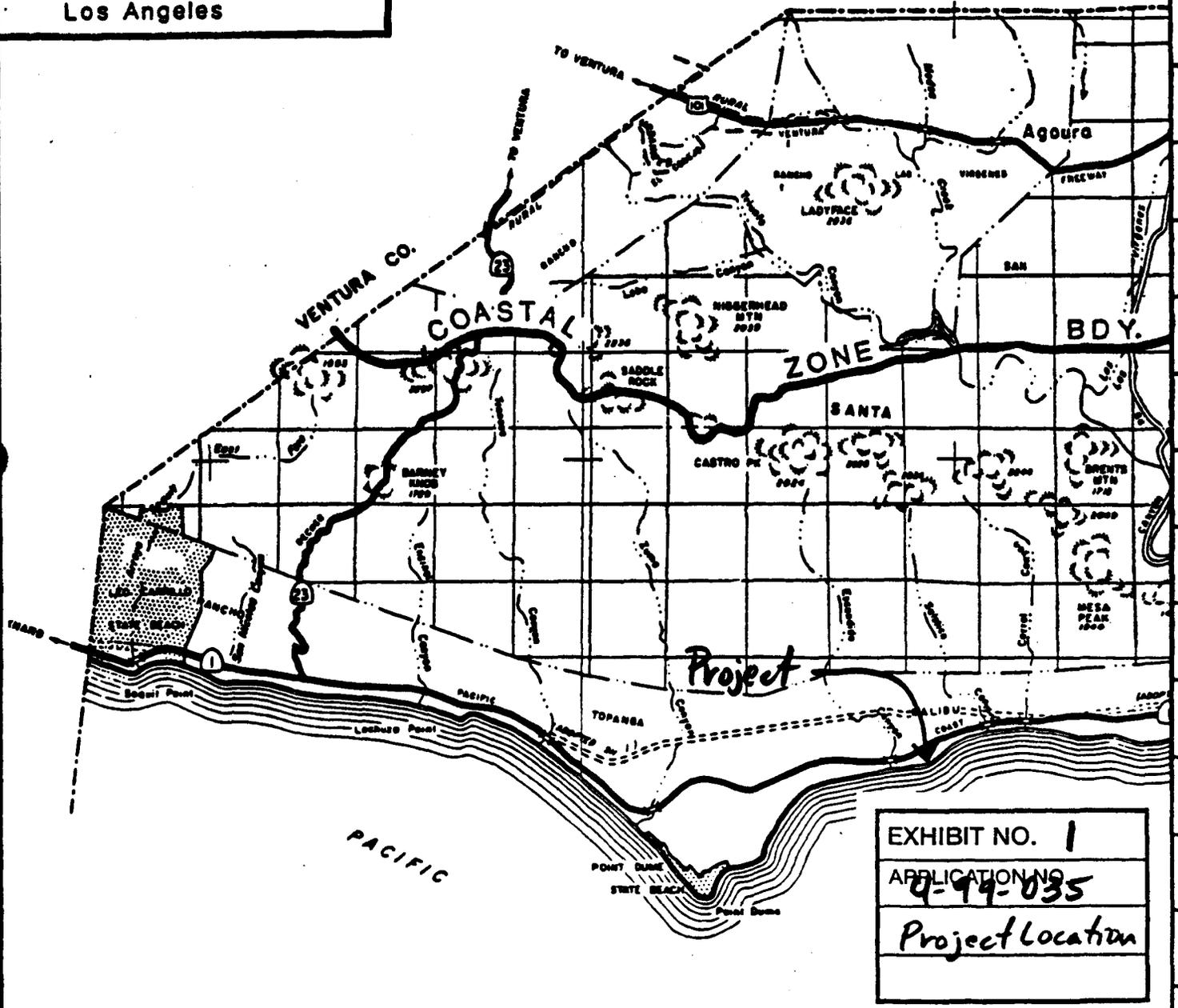
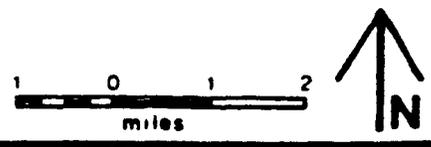
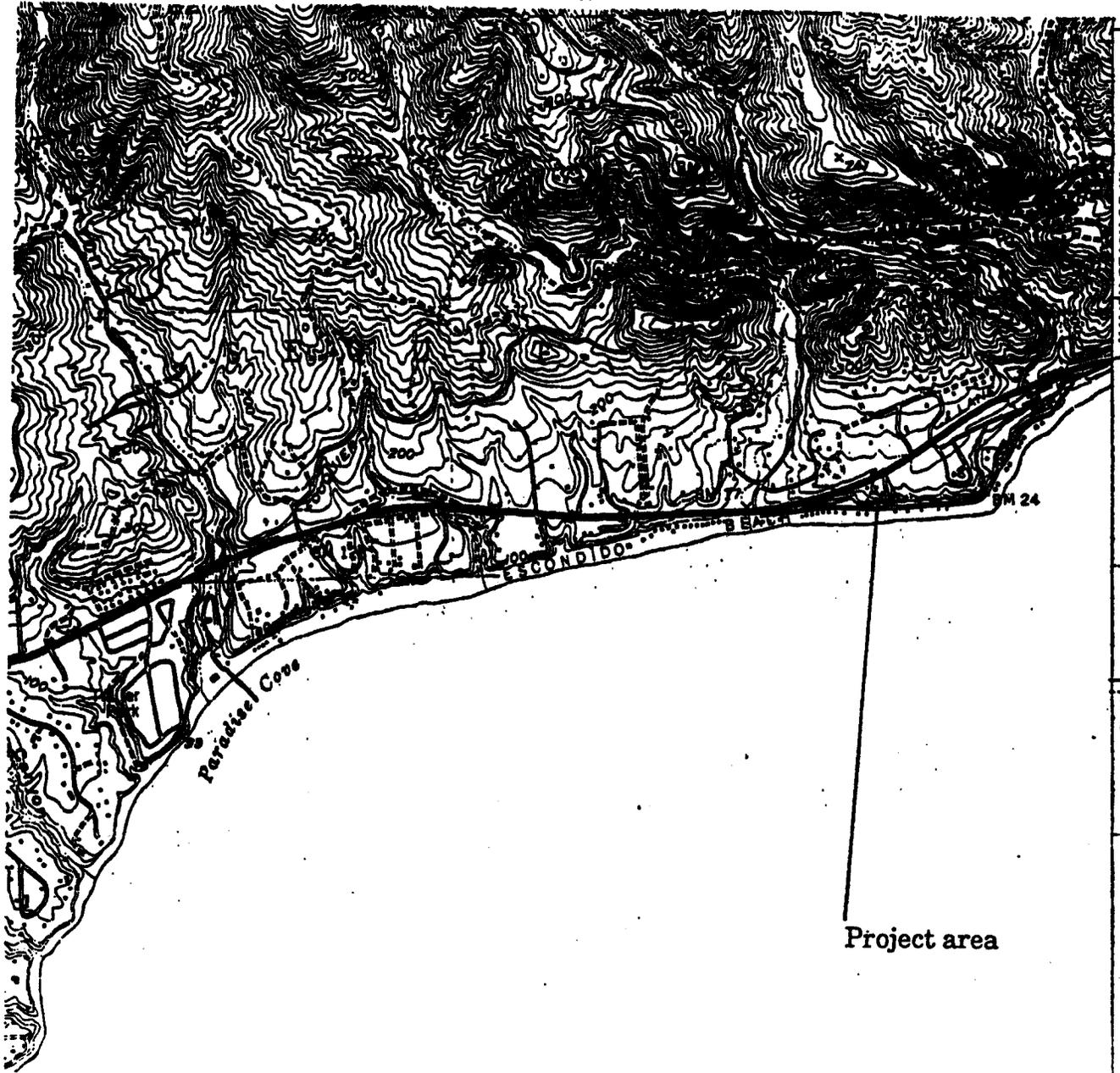


EXHIBIT NO. 1
APPLICATION NO. 9-94-035
Project Location



# LOCATION MAP



Scale 1: 24.000

EXHIBIT NO. 2
APPLICATION NO. G-99-838
Project Location

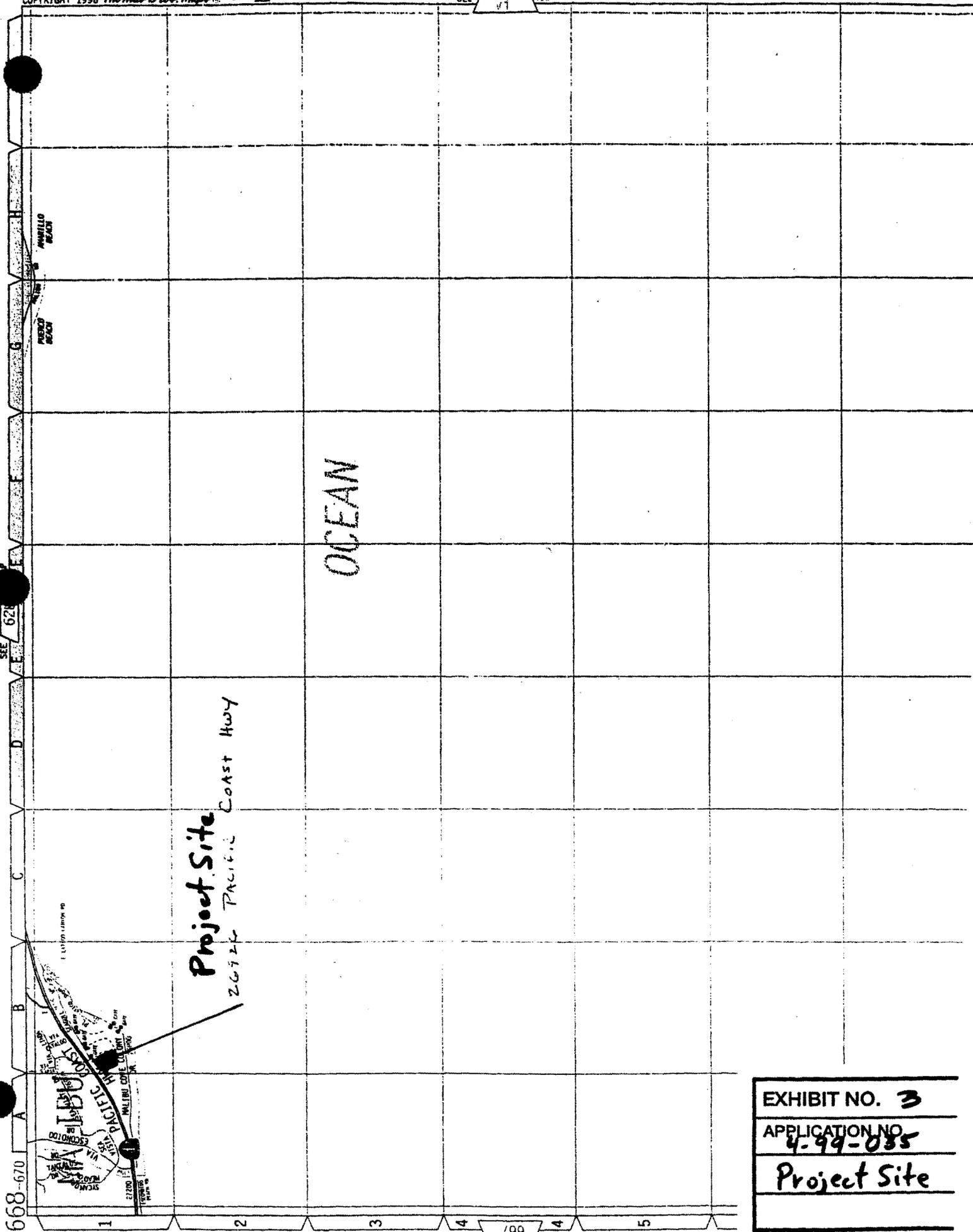
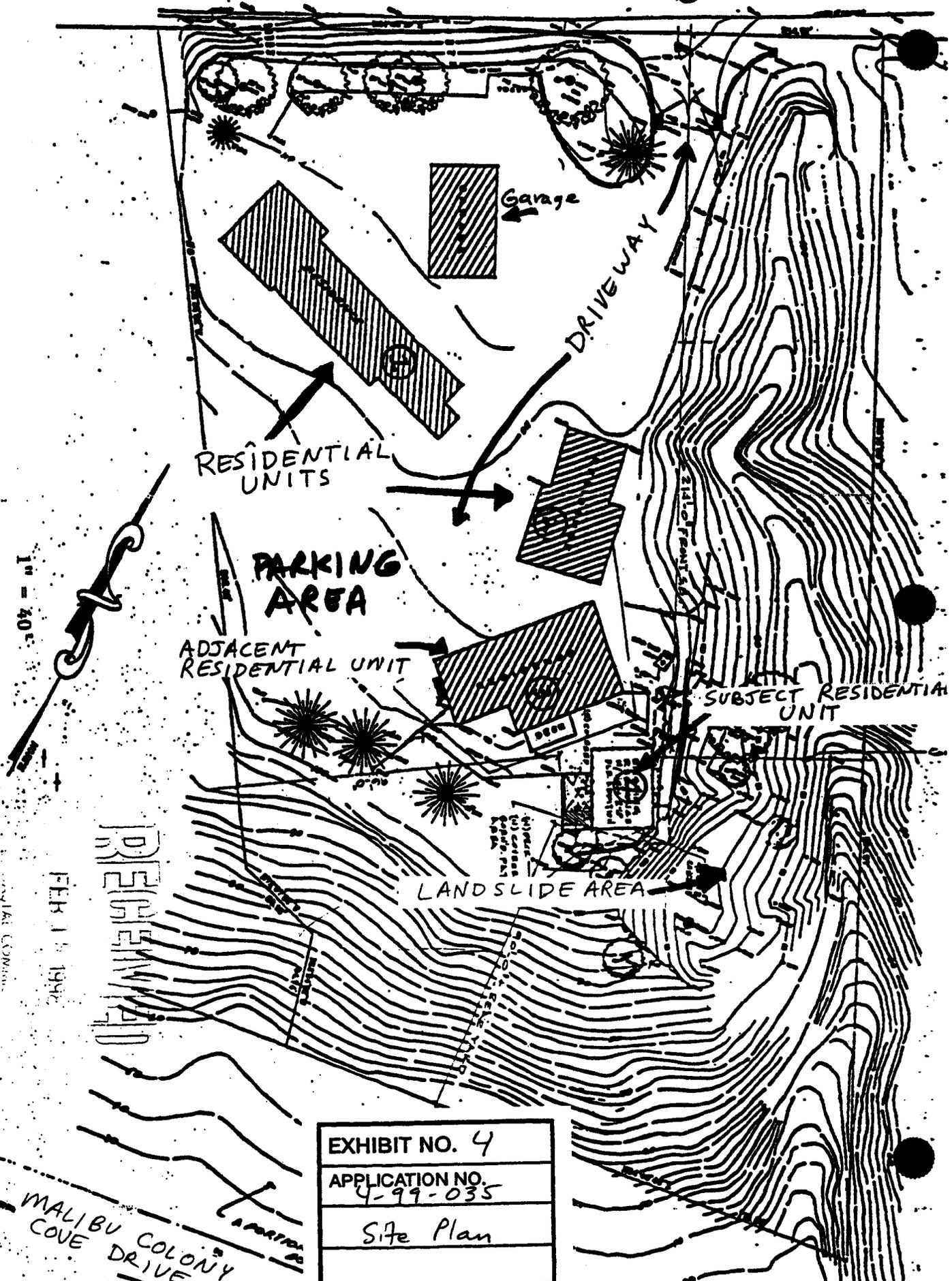


EXHIBIT NO. <b>3</b>
APPLICATION NO. <b>4-99-035</b>
<b>Project Site</b>

PACIFIC COAST  
HWY.



1" = 40'

FEB 15 1992

Malibu Colony  
South Central Coast Div.

REHEWALL

RESIDENTIAL  
UNITS

PARKING  
AREA

ADJACENT  
RESIDENTIAL UNIT

Garage

DRIVEWAY

SUBJECT RESIDENTIAL  
UNIT

LANDSLIDE AREA

EXHIBIT NO. 4
APPLICATION NO. 4-99-035
Site Plan

MALIBU COLONY  
COVE DRIVE

**CITY OF WASHINGTON  
ENGINEER NOTES**

**REQUIREMENTS**

1. The proposed design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
2. Any foundation or structure supporting the building shall be designed in accordance with the applicable provisions of the Building Code of the District of Columbia.
3. A copy of the design, engineering, and construction shall be submitted to the Building Department for review and approval.
4. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
5. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
6. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
7. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
8. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
9. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
10. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
11. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
12. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
13. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
14. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
15. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
16. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
17. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
18. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
19. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.
20. The design, engineering, and construction shall be in accordance with the applicable provisions of the Building Code of the District of Columbia.

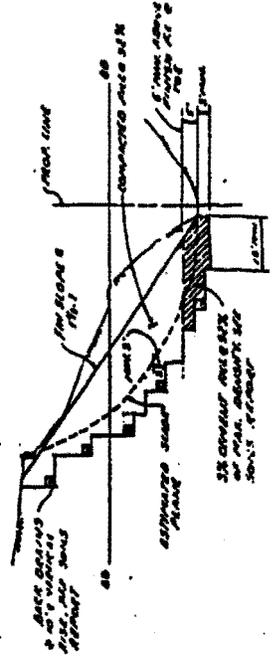
**GENERAL NOTES:**

1. THE "RECOVERING GEOLOGIC INVESTIGATION" REPORT BY MICHAEL BROWN ENGINEERING, INC. DATED OCT 19, 1988 IS ATTACHED AND IS A PART OF THIS PLAN.
2. THE "SOIL INVESTIGATION INVESTIGATION" REPORT BY MICHAEL BROWN ENGINEERING, INC. DATED OCT 19, 1988 IS ATTACHED AND IS A PART OF THIS PLAN.
3. ESTIMATED QUANTITIES: (NOT FOR BIDDING PURPOSES) SEE SHEET, REMOVE AND RECONSTRUCT 2000 CFS AS SHOWN, NO CHANGE.

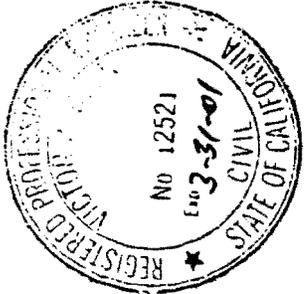


**VICINITY MAP  
NO CHANGE**

**CROSS SECTION B-B  
SCALE 1/4" = 1'-0"**



**EXHIBIT NO. 5**  
**APPLICATION NO.**  
**4-99-035**  
**Remediation**  
**Elevation**



*[Handwritten signature]*

**SMITHSONIAN DESIGN, INC.**  
1875 BOSTON BLVD.  
SYRACUSE, NY 13212  
(315) 438-1935

**PACIFIC GEOLOGY CONSULTANTS AND**  
1875 BOSTON BLVD.  
SYRACUSE, NY 13212  
(315) 438-1935

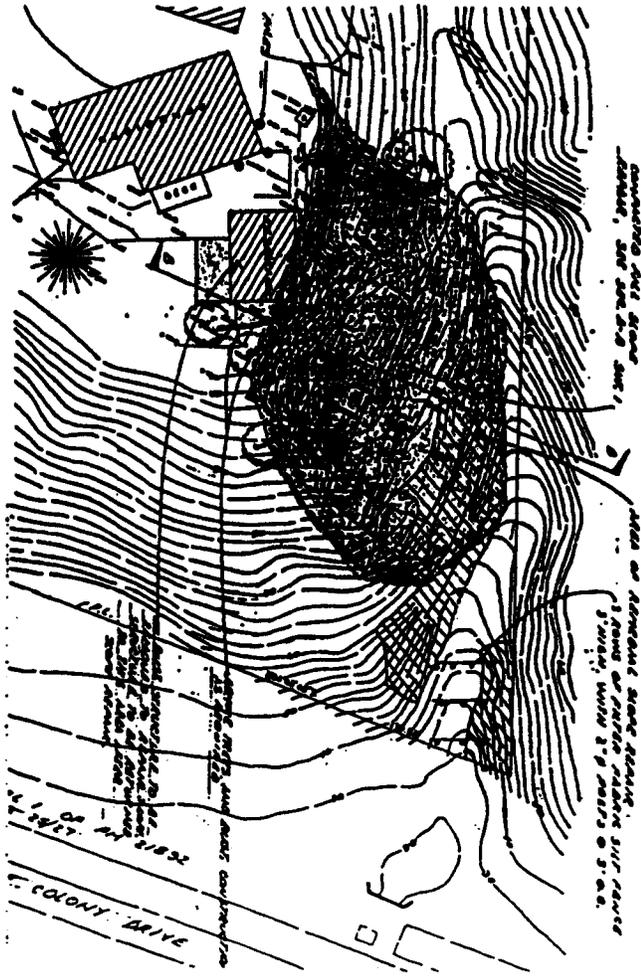
**OWNER: PACIFIC GEOLOGY (300) 457-0000**  
CARRIED BY ARCADE ROAD  
COLUMBIAS ON 3/20/02  
JOB ADDRESS: 2532 ARCADE ROAD  
ANNAPOLIS, MD  
LOCAL DESIGN: A PORTION OF THE ANNAPOLIS ARCADE  
IMPROVEMENT AS CONDUCTED BY MICHAEL  
BROWN ENGINEERING

**BECK** ENGINEERING  
1875 BOSTON BLVD.  
SYRACUSE, NY 13212  
(315) 438-1935



**LIST OF SYMBOLS**

1. Symbols for drainage and erosion control measures to be used as follows:
2. Storm Water Management Plan: Responsibility of the applicant. The applicant shall submit a plan for the control of erosion and sedimentation on the project site. The plan shall include, but not be limited to, the following:
  - a. A plan for the control of erosion and sedimentation on the project site.
  - b. A plan for the control of erosion and sedimentation on the project site.
  - c. A plan for the control of erosion and sedimentation on the project site.
3. Storm Water Management Plan: Responsibility of the applicant. The applicant shall submit a plan for the control of erosion and sedimentation on the project site. The plan shall include, but not be limited to, the following:
  - a. A plan for the control of erosion and sedimentation on the project site.
  - b. A plan for the control of erosion and sedimentation on the project site.
  - c. A plan for the control of erosion and sedimentation on the project site.
4. Proposed and existing drainage and erosion control measures to be used as follows:
5. Proposed and existing drainage and erosion control measures to be used as follows:
6. Proposed and existing drainage and erosion control measures to be used as follows:
7. Proposed and existing drainage and erosion control measures to be used as follows:
8. Proposed and existing drainage and erosion control measures to be used as follows:
9. Proposed and existing drainage and erosion control measures to be used as follows:
10. Proposed and existing drainage and erosion control measures to be used as follows:



**EROSION CONTROL PLAN**  
SCALE 1" = 20'

VICINITY MAP

EXHIBIT NO. 7
APPLICATION NO. 4-99-035
Concept Erosion Control Plan

REGISTERED PROFESSIONAL ENGINEER  
VICTOR P. BECK  
No 12521  
Exp. 3-31-01  
CIVIL  
STATE OF CALIFORNIA



OWNER: Pacific Coast, (S&B) 937-C18  
1800 W. ASQUITA AVE. #200  
CAGANASAS CA 91301  
JOB ADDRESS: 6536 PACIFIC COAST HIGHWAY  
MIRAMONTE, CA  
LOCAL OFFICE: A DIVISION OF HANCOCK ROSS & SMITH  
MIRAMONTE, CALIFORNIA 91301-1070

GFC NO. APR 1980-021-008  
BECK, Victor P. 12521  
1800 W. ASQUITA AVE. #200  
CAGANASAS, CALIFORNIA 91301  
TEL: 626-291-1070  
FAX: 626-291-1071  
MIRAMONTE, CALIFORNIA 91301-1070

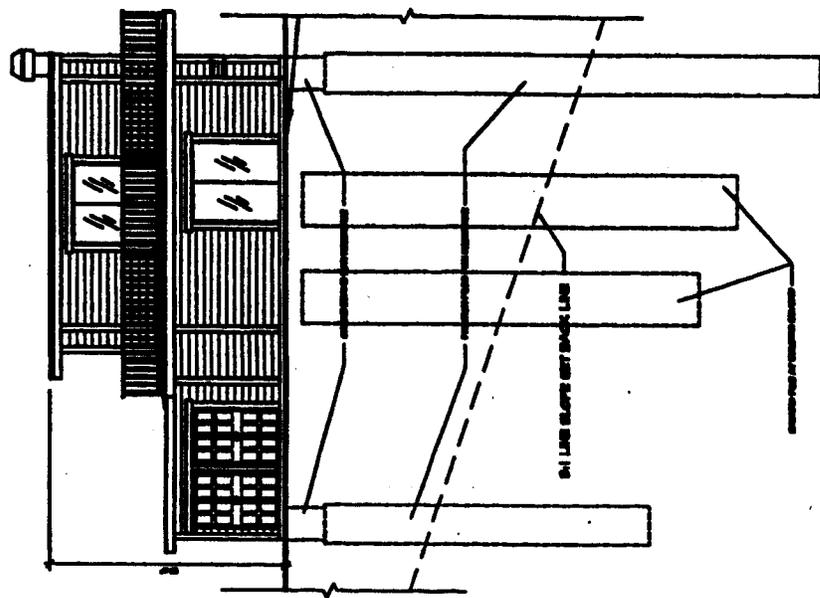
81-038 INSET 30-3

LOAN PARTY TRUST  
 447 HOOVER RD  
 LOS ANGELES CA 90007  
 (NO) 487 080

JOHN  
 GARRETT BY THE SEA  
 PALM BEACH  
 FLA 33480

JOHN A. BAKER  
 CIVIL ENGINEER  
 1000 W. 10TH ST  
 LOS ANGELES CA 90007

DAVID C. WILSON  
 STRUCTURAL ENGINEER & ARCHITECT  
 200 W. 10TH ST  
 LOS ANGELES CA 90007



LEFT SIDE ELEVATION  
**CONCEPTUAL FRICTION PILE FOUNDATION PROFILE**

[Faint, illegible text, possibly a stamp or signature]

9  
 Sam Ball

EXHIBIT NO.  
 APPLICATION NO.  
 4-99-035  
 Conceptual  
 Foundation Profile

OWNER  
 LOAN FAMILY TRUST  
 441 ROSCOMBE RD.  
 LOS ANGELES CA 90077  
 (310) 457-0100

ARCHITECT  
 CARMEL BY THE SEA  
 3042A P.O. BOX  
 MALIBU, CA

DESIGNER  
 TERRY A. WITZEL  
 2640 GARDNER ST. #201  
 BOULDER HILLS, CA 91017  
 (818) 528-1064



4-98-035  
 PERMIT

TOTAL ALLOWABLE SQUARE FOOTAGE 1294  
 TOTAL EXISTING SQUARE FOOTAGE 6400  
 TOTAL SQUARE FOOTAGE ADDED 153  
 PROPOSED SQUARE FOOTAGE

PROPOSED FIRST FLOOR SQUARE FOOTAGE 148  
 PROPOSED SECOND FLOOR SQUARE FOOTAGE 444

ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF MALIBU ORDINANCES AND THE CALIFORNIA BUILDING CODE. THE ARCHITECT'S RESPONSIBILITY IS LIMITED TO THE DESIGN OF THE WORK SHOWN ON THESE PLANS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES. THE ARCHITECT SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OF ANY INFORMATION PROVIDED BY OTHERS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES. THE ARCHITECT SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OF ANY INFORMATION PROVIDED BY OTHERS.

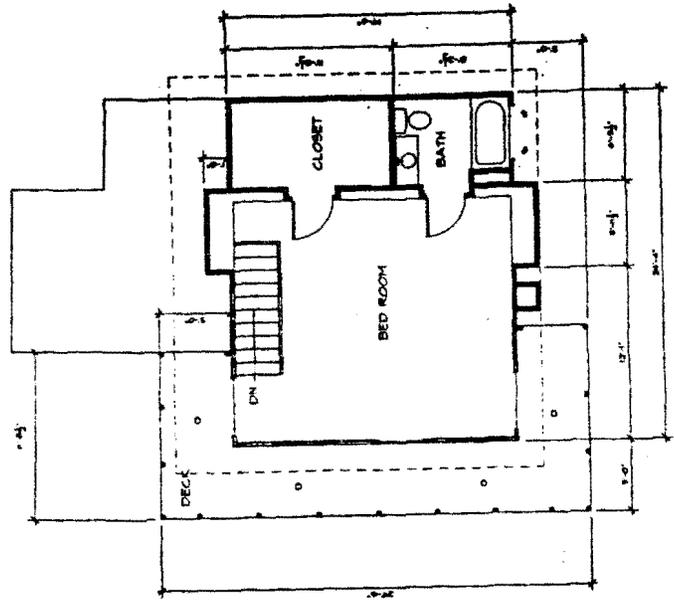
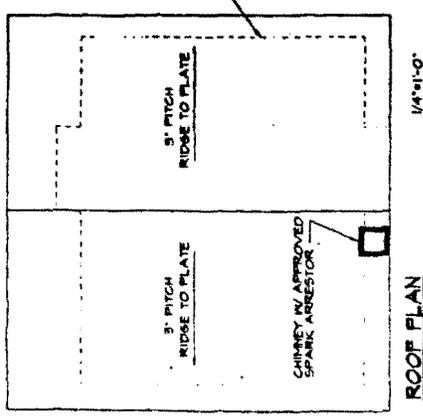
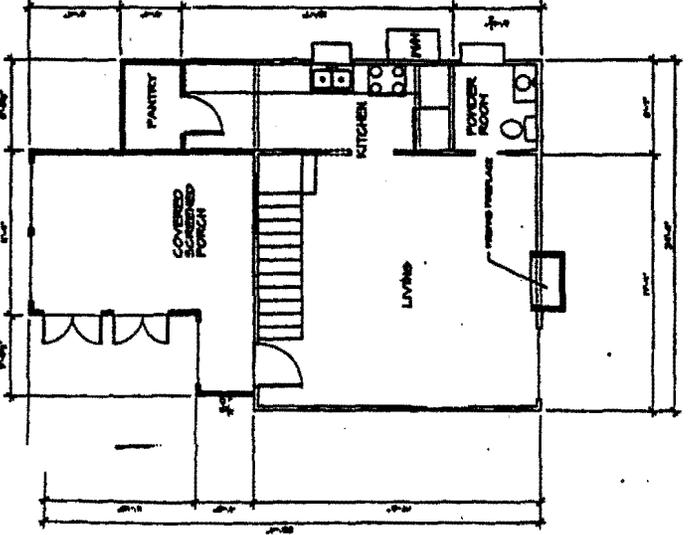
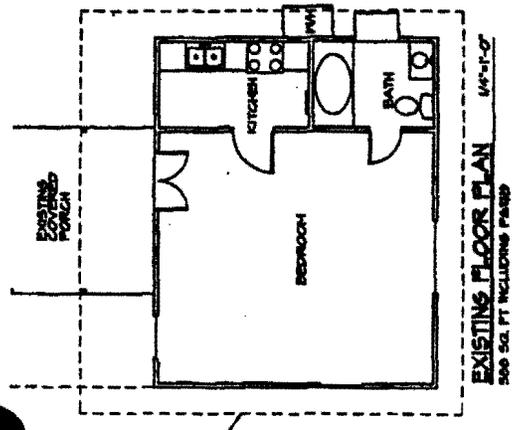


EXHIBIT NO. 86
APPLICATION NO. 4-98-035
Floor Plans

CONSTRUCTION NUMBER 94

JERRY A. WYVET  
DESIGNER  
3045 CLAYTON ST. #202  
LOS ANGELES, CA 90007  
Phone (818) 988-1884

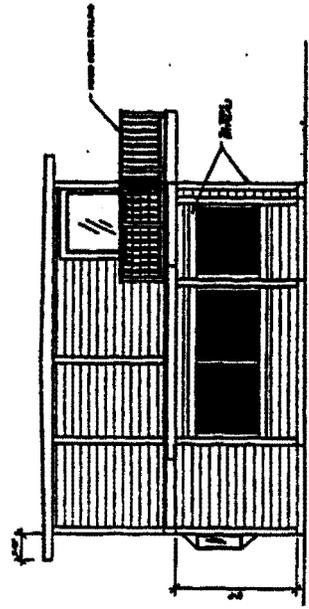
CAROL BY THE SEA  
28126 PCH.  
MALIBU, CA  
(310) 457-0180

LOON FAMILY TRUST  
447 ROSCOMARE RD.  
LOS ANGELES, CA 90007  
(310) 457-0180

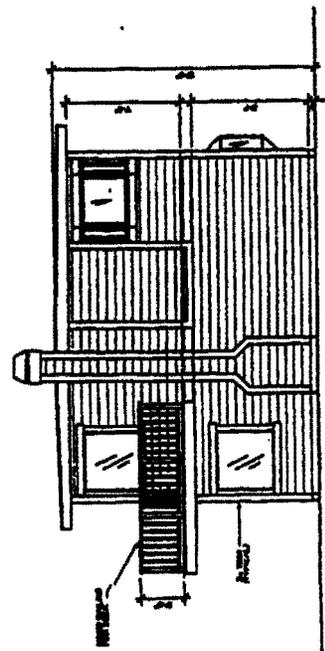
DATE	1/24/81
SCALE	1/4" = 1'-0"
PROJECT	LOON FAMILY TRUST
NO.	4-99-035
3	

RECEIVED  
FEB 13 1981  
4-99-035

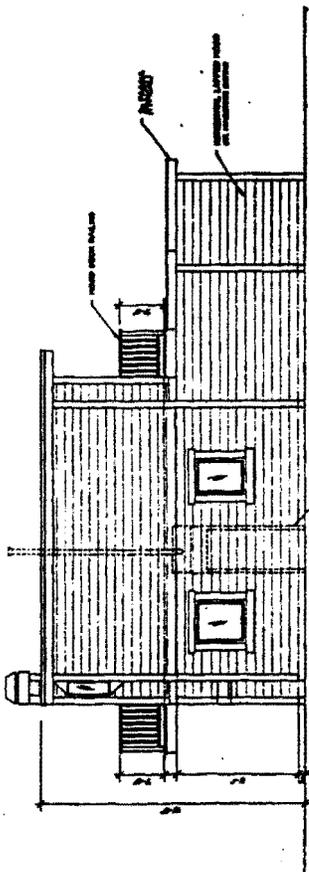
CITY OF LOS ANGELES  
PLANNING DEPARTMENT  
1200 N. GARDEN ST.  
LOS ANGELES, CA 90012  
APPLICANT: LOON FAMILY TRUST  
PROJECT NO. 4-99-035



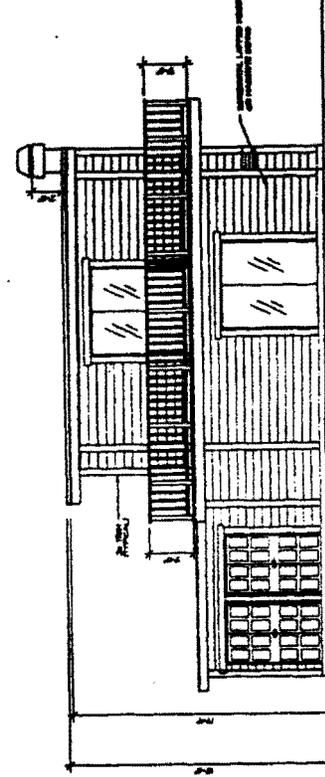
FRONT ELEVATION 1/4" = 1'-0"



REAR ELEVATION 1/4" = 1'-0"



RIGHT SIDE ELEVATION 1/4" = 1'-0"



LEFT SIDE ELEVATION 1/4" = 1'-0"

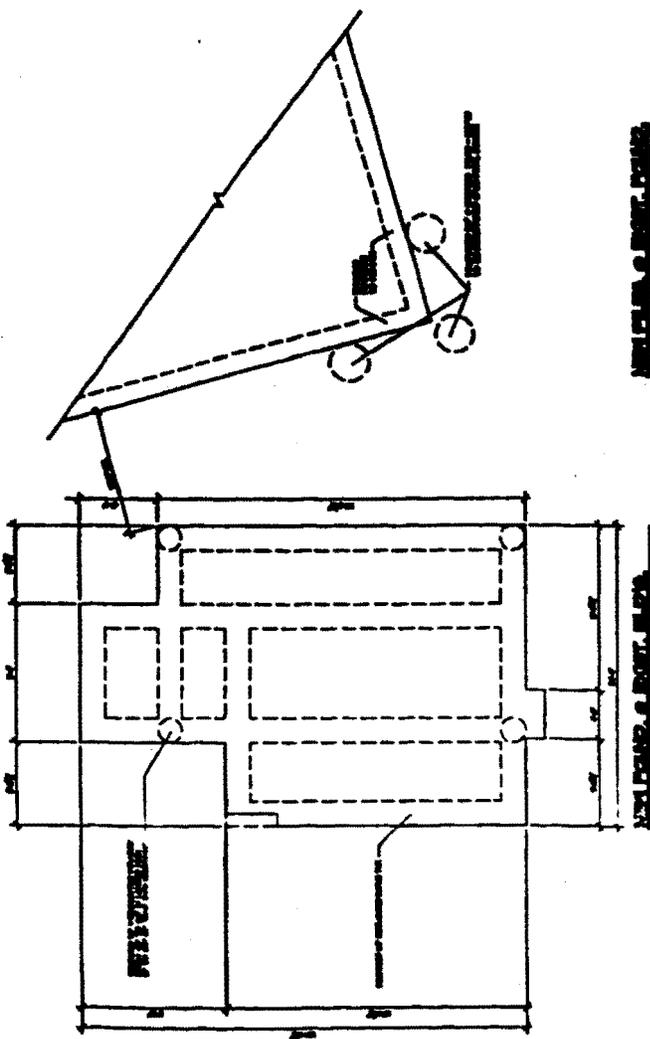
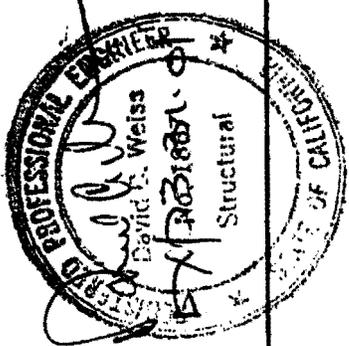
EXHIBIT NO.	8
APPLICATION NO.	4-99-035
Elevations	

LARRY FINEBY, TRUST  
 1201 N. GARDEN ST.  
 LOS ANGELES, CALIF. 90017  
 (213) 487-0100

DAVEY BY THE SEA  
 3000 PCH.  
 MALIBU, CA

JOHN A. WEISS  
 1000 W. 10TH ST.  
 LOS ANGELES, CALIF. 90057

DAVEY O. WEISS  
 1000 W. 10TH ST.  
 LOS ANGELES, CALIF. 90057



CONCEPTUAL FOUNDATION PLAN

EXHIBIT NO. 9  
 APPLICATION NO.  
 4-99-035  
 Concept Found. Plan  
 Two Residential Units

SLOPE REPAIR REMEDIATION ALTERNATIVES  
For 26926 Pacific Coast Hwy.  
#4-99-035

Conceptual Fill Gully

Cross Section

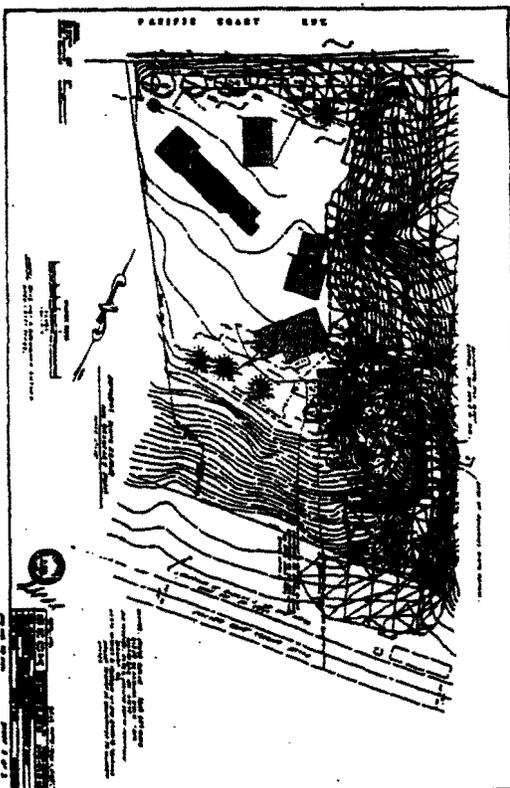
Birds Eye View



Color Key

Green, represents existing land form.  
black, represents new fill.

2 : 1 Fill from both sides of gully, to center of gully.  
7,791 cu. yds.



1 1/2 : 1 Fill from both sides of gully, to center gully  
13,1021 cu. yds.

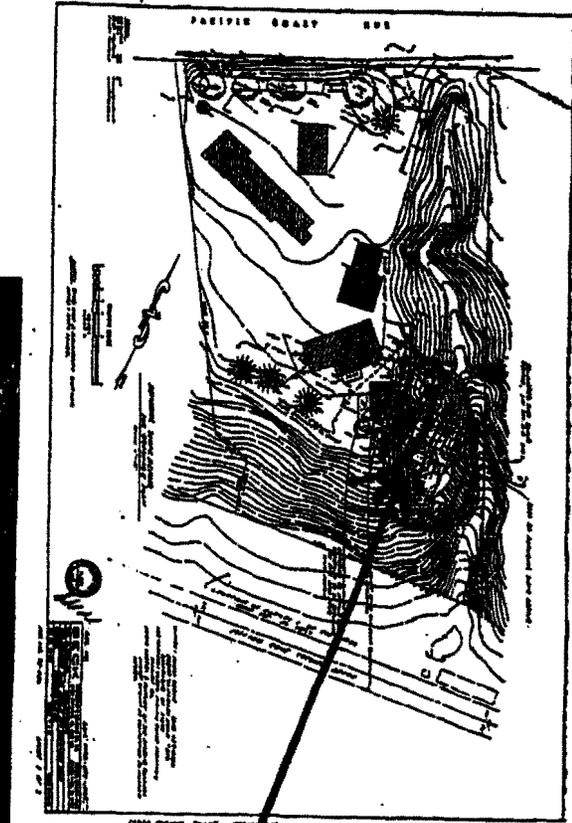
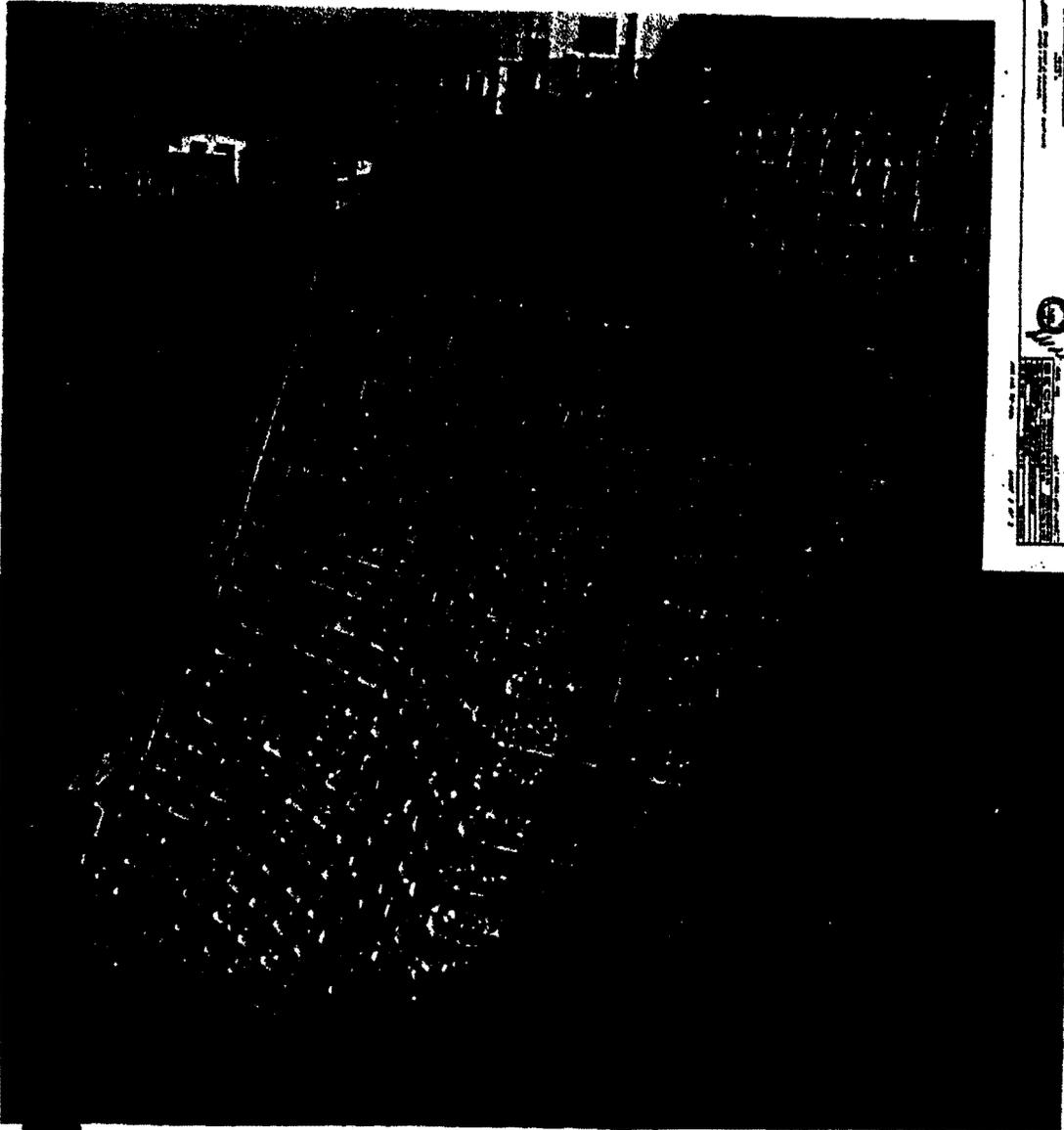
EXHIBIT NO. 10

APPLICATION NO.  
4-99-035

Alternatives 1 & 2

Fill Gully

SLOPE REPAIR REMEDIATION ALTERNATIVES  
For 26926 Pacific Coast Hwy.  
#4-99-035  
Conceptual Crib Wall



Crib wall Location

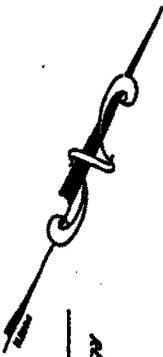
EXHIBIT NO. 11
APPLICATION NO. 4-99-035
Alternative 3
Crib wall

Photo taken in San Diego of different property with similar condition

NOTE: THIS MAP A SUMMARY SURVEY  
AREA: AREA 1772 ACRES.



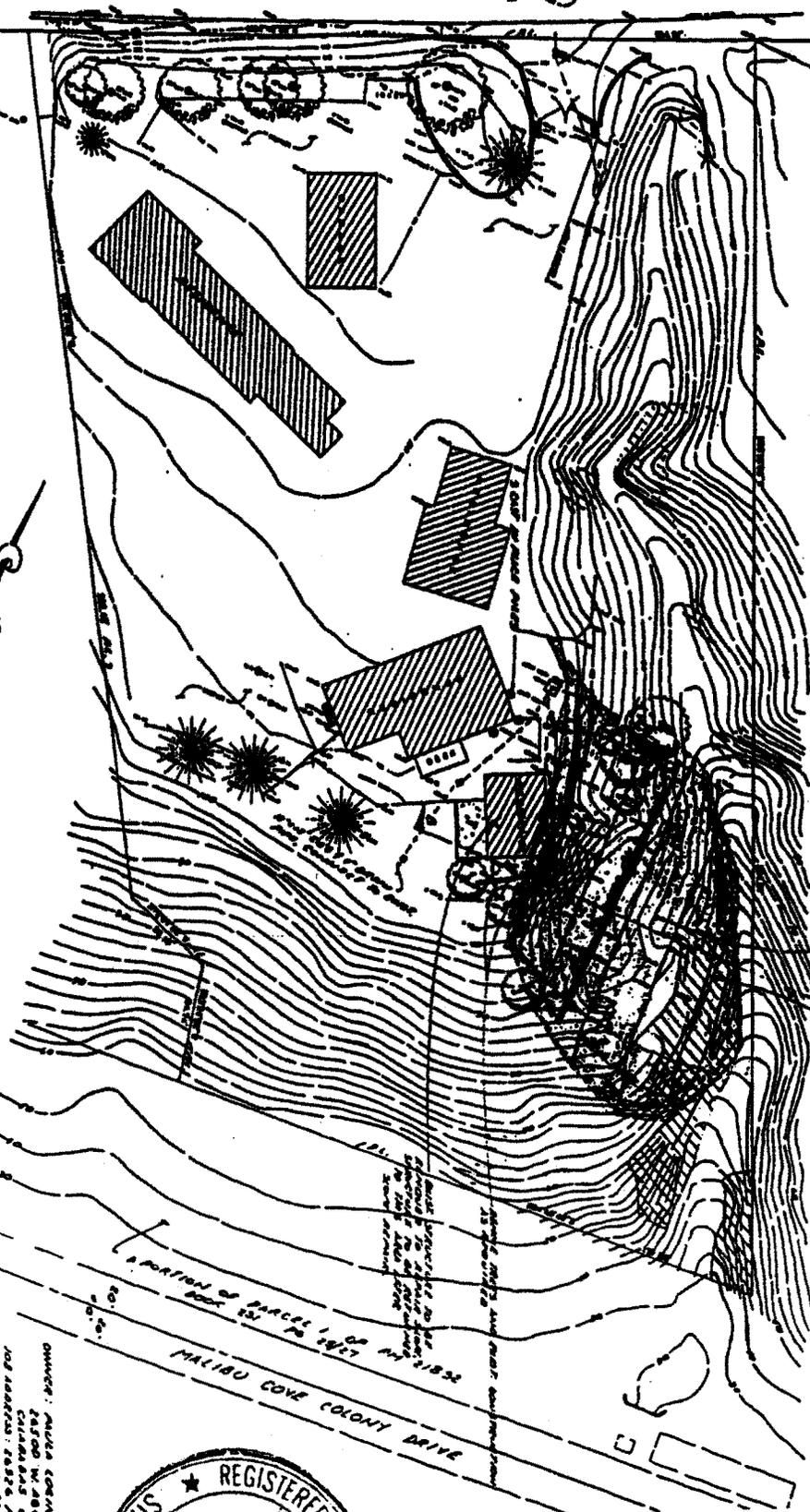
GRAPHIC SCALE



REINFORCING SCREW  
AND DRAINAGE PILE  
SHEET 2 OF 3

Retaining Wall  
Location

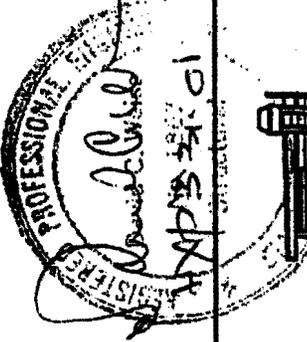
AREA OF REINFORCING SCREW REMAIN



OWNER: MALIBU COVE (INC) 1974-80  
2820 W. 28th Street, Suite 310  
Santa Monica, CA 90405  
JOB NUMBER: 100-100-000  
DATE: 10/1/80  
SCALE: 1" = 100'  
SHEET 2 OF 3

EXHIBIT NO. 17
APPLICATION NO. 4-99-035
Alternative 4
Retaining Wall

# Retaining Wall



I AM A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF CALIFORNIA LICENSE NO. 47253 EXPIRES 10/15/01	I AM A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF CALIFORNIA LICENSE NO. 47253 EXPIRES 10/15/01	I AM A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF CALIFORNIA LICENSE NO. 47253 EXPIRES 10/15/01	I AM A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF CALIFORNIA LICENSE NO. 47253 EXPIRES 10/15/01
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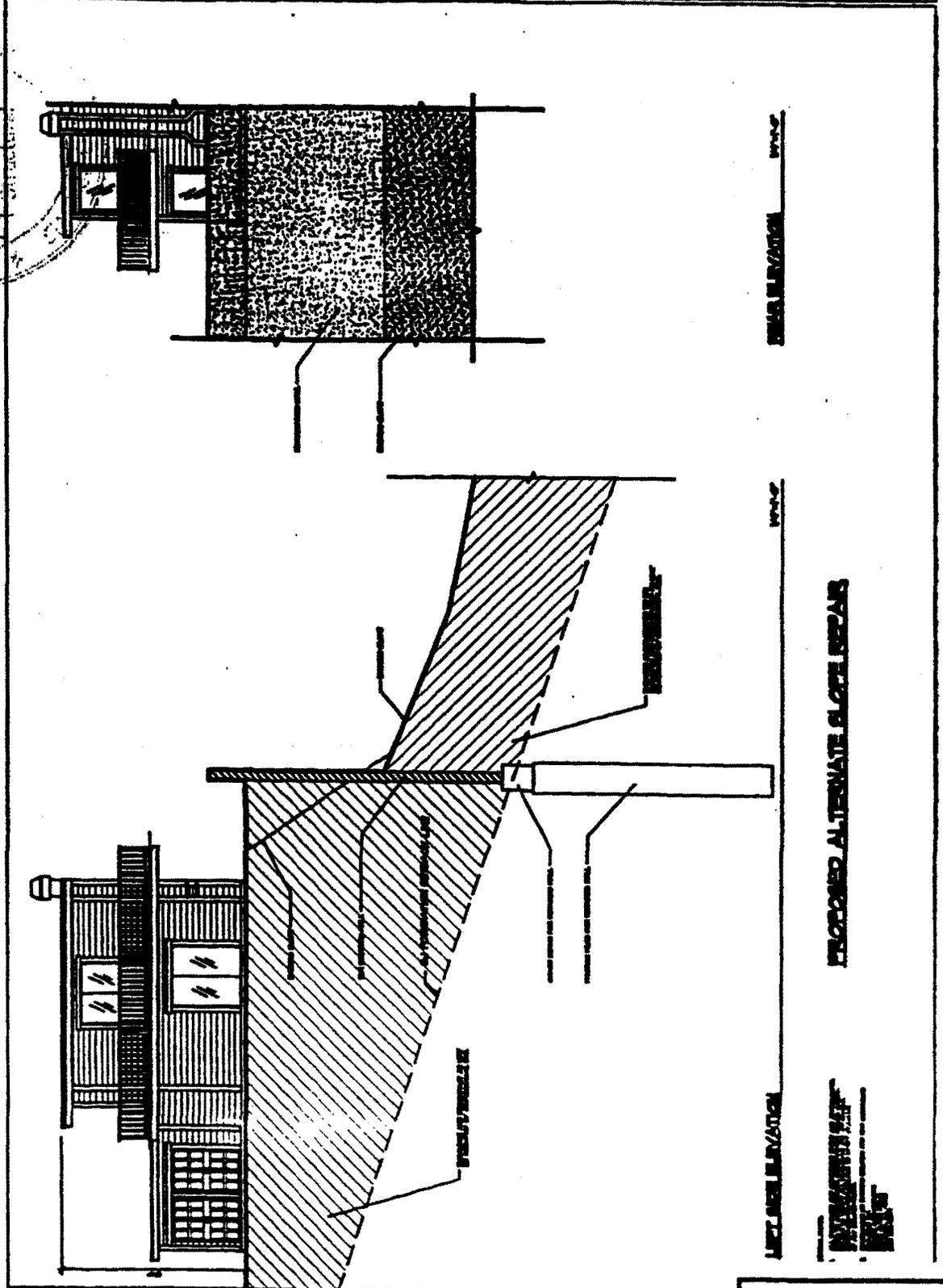


EXHIBIT NO. 13
APPLICATION NO. 4-99-035
Alternative 4
Retaining Wall

PROPOSED SLOPE REPAIR MEDIATION

For 26926 Pacific Coast Hwy.

#4-99-035

Conceptual Reconstruction & Restoration with Native Plants

1 of 2

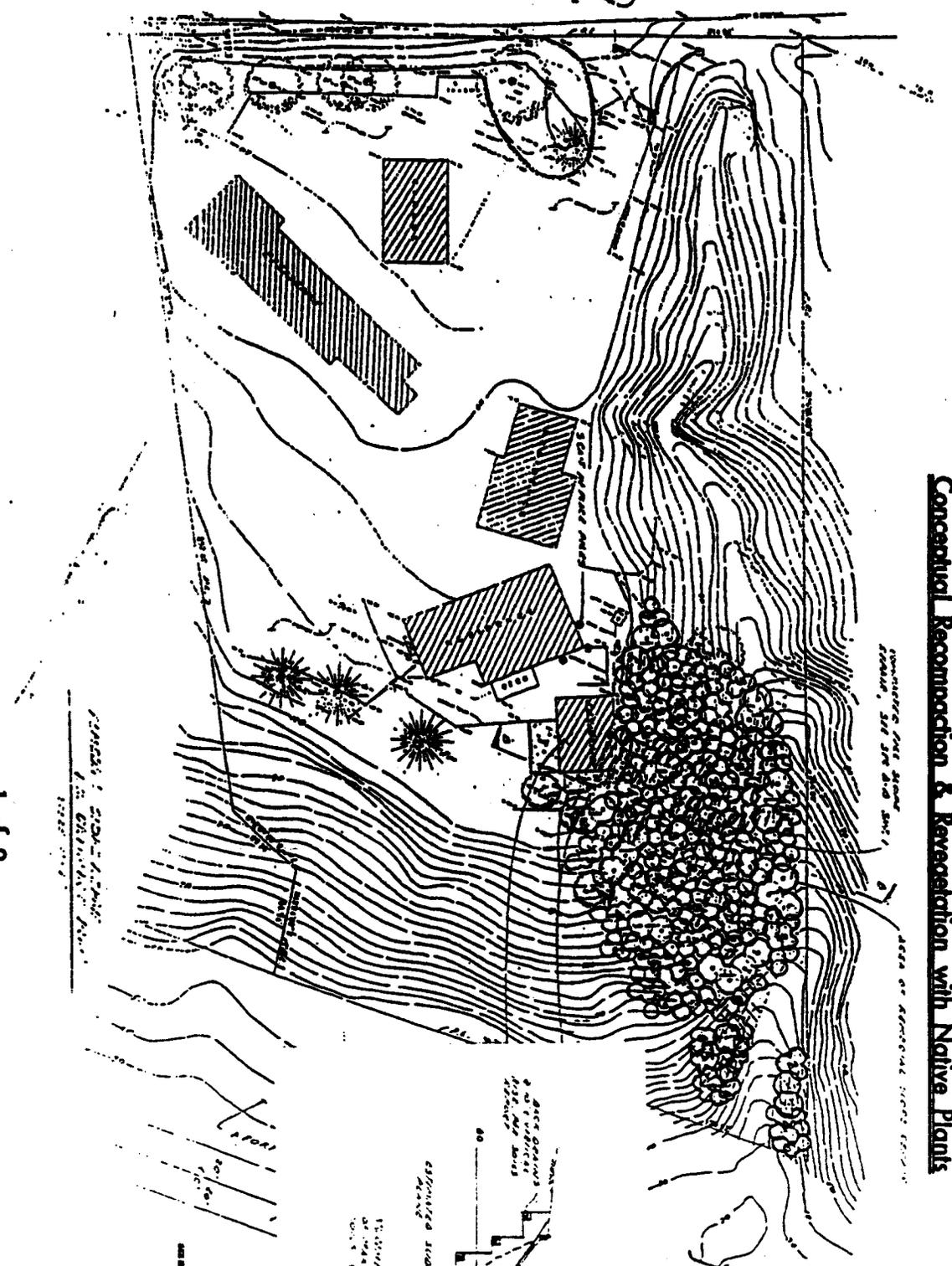
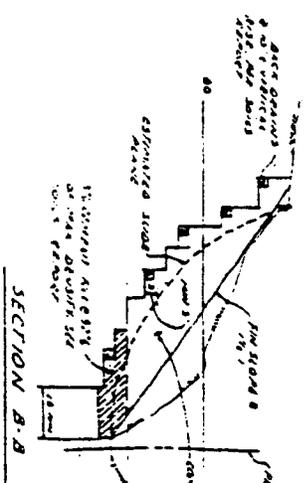


EXHIBIT NO. 14
APPLICATION NO. 4-99-035
Proposed Project



CARMEL PROJECT  
 26926 PACIFIC COAST HIGI  
 MALIBU, CALIF. 90265

RANDALL LANDSCAPE DESIGN  
 909 EUCLID ST., SUITE 6  
 SANTA MONICA, CALIF. 90403  
 310-395-2615 / FAX: 310-395-2368

NO. 1
NO. 2

PROPOSED SLOPE REPAIR REMEDIATION  
For 26926 Pacific Coast Hwy. #4-99-035

Conceptual Recompaction & Revegetation with Native Plants

SLOPE PLANT MATERIALS LIST

<u>SYMBOL</u>	<u>SIZE/SPACING</u>	<u>BOTANICAL/COMMON NAME</u>
1	5G.	HETEROMELES ARBUTIFOLIA/TOYON, OR, MYRICA CALIFORNICA/PACIFIC WAX MYRTLE
2	1G. @4'-0" O.C.	RHUS INTEGRIFOLIA/LEMONADEBERRY
3	SEED	ENCELIA CALIFORNICA/COAST SUNFLOWER
4	SEED	ERIOGONUM PARVIFOLIUM/COAST BUCKWHEAT
5	SEED	ERIOGONUM CINEREUM/ASHY-LEAF BUCKWHEAT
6	1G. @5'-0" O.C.	ATRIPLEX LENTIFORMIS BRÉWERI/ QUAIL BUSH
7	1G. @5'-0" O.C.	ELYMUS CONDENSATUS/GIANT WILD RYE
8	1G. @3"-0" O.C.	LUPINUS LONGIFOLIUS/BUSH LUPINE

NOTE: A SEED MIX MAY BE ADDED TO THE MATERIALS ABOVE WHICH WOULD CONSIST OF:  
ESCHSCHOLZIA CALIFORNICA/CALIFORNIA POPPY;  
LUPINUS SUCCULENTUS/SUCCULENT LUPINE;  
PHACELIA PARRYI/PARRY'S PHACELIA;  
AND, NEMOPHILA MENZIESII/BABY BLUE EYES

EXHIBIT NO. 15
APPLICATION NO. 4-99-035
Proposed Plant
List

