

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
 89 SOUTH CALIFORNIA ST., SUITE 200
 OCEANA, CA 93001
 841-8142



Filed: 11/13/98
 49th Day: 1/1/99
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 Staff: J. Johnson
 Staff Report: 1/13/99
 Hearing Date: 2/4/99
 Commission Action:

RECORD PACKET COPY

STAFF REPORT: CONSENT

Item Th 3 b.

APPLICATION NO.: **4-98-071**

APPLICANTS: **William & Charlene Norred, AGENT: Karen Kirby**
GLC Trust, & Mr. and Mrs. Evans

PROJECT LOCATION: 27960, 28012, and 28006 Pacific Coast Highway (Sea Lane), City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Construct a mudflow deflection wall installed on an emergency basis to shore up hillside with 14 concrete and steel caissons and an above ground retaining wall. Dispose of 40 cubic yards of cut material on nearby lot and dispose of remaining 72 cubic yards outside the coastal zone.

Lot area:

27960 PCH	12,410 sq. ft.
28012 PCH	20,220 sq. ft.
28006 PCH	33,210 sq. ft.

Building coverage:

27960 PCH	1,860 sq. ft.
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Land Use Designation: Residential II

Density: 2 dwelling units/acre

Wall height abv. fin. grade: 6 1/2 ft.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending approval of the proposed mudflow deflection wall subject to a condition addressing an assumption of risk deed restriction. The existing residence is located above the sandy beach and below the coastal bluff at the end of a private driveway along Pacific Coast Highway east of Paradise Cove in the City of Malibu. The proposed project was constructed as a result of Coastal Emergency Permit No. 4-98-071-G.

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department Approvals in Concept for Plot Plan Review, dated 8/3/98; City of Malibu Geology and Geotechnical Engineering Review Sheet, Approved from Geotechnical Perspective, dated 6/18/98.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan. County of Los Angeles. 12/11/86; Geotechnical Observation and As-Built Report by Stoney-Miller Consultants, Inc., dated June 2, 1998; Coastal Permit No. 4-97-154, Doerken; Coastal Permit No. 4-96-206, Stems and Holiday House Homeowners Association; Coastal Permit No. 4-97-191, Kim; Coastal Permit No. 4-97-226, Felman.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Compliance.** All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Applicant's Assumption of Risk.

Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from landslides, erosion or flooding and the applicant assumes the risks from such hazards; and (b) that the applicant unconditionally waives any claim of liability against the Commission and agrees to indemnify and hold harmless the Commission and its officers, agents, and employees relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to the coastal development permit unless the Executive Director determines that no amendment is required.

IV. Findings and Declarations.

A. Project Description and Location

The project site is located on three parcels at 27960, 28012, and 28006 Pacific Coast Highway on the end of a private drive, Sea Lane east of Paradise Cove, Malibu. (*Exhibits 1 and 2*) The applicants propose to construct a mudflow deflection wall to shore up a hillside with 14 concrete and steel caissons and construct an above ground retaining wall (*Exhibit 3*). The hillside is the coastal bluff located landward of the subject residence at 27960 Pacific Coast Highway. In March 1998, a portion of the bluff failed and a mudflow crossed portions of the three properties and entered the residence at 27960 Pacific Coast Highway. This permit application is the follow-up application to Emergency Coastal Permit No. 4-98-071-G issued for the above development on March 12, 1998. This

deflection wall was completed in April 1998 as a result of the Emergency Coastal Permit.

The deflection wall is constructed north of and along the eastern side of the threatened residence. About 112 cubic yards of excavated material was disposed offsite. About 40 cubic yards of excavated material was compacted on a nearby lot (*Exhibit 4*) owned by the applicants (Norred) to fill ruts and depressions, while the remaining 72 cubic yards was disposed at a disposal site located outside the coastal zone. The fill lot is used by the applicants (Norred) for parking and has adequate site drainage.

The subject site is a 12,410 sq. ft. lot located at the base of a coastal bluff five lots seaward of Pacific Coast Highway. Most of the surrounding lots are built out with single family residences on beachfront or blufftop locations. Vertical public access at Paradise Cove is located to the west of the subject site about one third of a mile and at Escondido Beach to the east site about one mile. Since the deflection wall is located inland of the beach along a residence, the proposed development will not affect public access to or along the coast and is not visible from the beach or public tidelands due to the site topography, existing residence, and onsite landscape vegetation.

B. Geologic Hazards and Visual Resources

The Coastal Act requires that new development be located to minimize risks to life and property and assure stability while protecting scenic and visual qualities of the coast. Section 30253 of the Coastal Act states in part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to

restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253 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. Section 30251 requires that public views of new development be protected to and along the coast and that the alteration of natural landforms be minimized.

The proposed development is located in the Malibu area, 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, Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. Coastal bluffs, such as this one are unique geomorphic features that are characteristically unstable. By nature, coastal bluffs are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. The bluffs along this stretch of the coast are not subject to erosion from wave action at the base of the bluff as residential development is located between the base of the coastal bluff and the sandy beach. However, due to the geologic structure and soil composition, these bluffs are susceptible to failure, especially with excessive water infiltration. In addition, these bluffs are subject to erosion from runoff at the top of the slope.

The proposed project includes the construction of a mudflow deflection wall to shore up a hillside with 14 concrete and steel caissons and construct an above ground retaining wall. The applicant's letter report titled: "Emergency Mudflow Deflection Wall" by Stoney-Miller Consultants dated March 12, 1998 states:

Based on our knowledge of site conditions, the referenced report, and discussion with the Structural Engineer, there has been recent landslide activity adjacent the subject property. Landslide movements have been detected to the immediate north and east of the subject property. To date these landslides have not severely impacted this property. In our profession opinion, the upslope hillside is unstable with a factor of safety against landsliding of near 1.0. Future rainfall or a groundwater rise could result in landsliding and significant damage to the subject property. Therefore immediate construction of the deflection wall is deemed necessary to mitigate against future landsliding onto the subject property.

The applicant's geotechnical consultant has identified the subject property at risk due to landsliding and recommends immediate construction of the deflection wall to mitigate against future landsliding.

In addition, the applicant's report titled: "Geotechnical Observation and As-Built Report" by Stoney-Miller Consultants dated June 2, 1998 states:

Based on our observations as presented herein, the subject earthwork was performed in accordance with our recommendations and with the City of Malibu Building Code. The subject installation is considered to be geotechnically suitable for the intended use and for further construction.

...

The purpose of the soldier piles is to provide a foundation to support a mud deflection shield around the northern and eastern boundary of the Norred property.

...

The work performed should not adversely impact nor be adversely impacted by adjoining properties.

Therefore, the applicant's consultant has determined that the proposed project is geotechnically suitable for the intended use as a mud deflection shield around the northern and eastern boundary of the subject site, owned by the Norreds located at 27960 Pacific Coast Highway. The geotechnical consultant has determined that their recommendations to increase the stability and safety of the site are incorporated into the project plans and have been completed on site.

Due to the history and potential hazardous geologic conditions of this site, the Commission can only approve the proposed project if the applicants assume the liability from the associated risks as required by Special Condition Number One (1). This responsibility is carried out through the recordation of a deed restriction. The assumption of risk deed restriction, when recorded on the three properties comprising the subject site, will show that the applicants are aware of and appreciate the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development or existing residence and agree to assume any liability for the same.

It is also noted that the Commission has approved similar development projects with the requirement of such assumption of risk deed restrictions throughout the Malibu - Santa Monica Mountains region. These deed restrictions addressing hazardous geologic conditions are commonly required for new development throughout the Malibu - Santa Monica Mountains region in areas where there

exist potentially hazardous geologic conditions, or where previous geologic activity has occurred either directly upon or adjacent to the site in question. In this case geologic activity, as landslide or mud flow, has occurred on the subject site.

Regarding scenic and visual quality issues visible to the public, the proposed deflection wall will not be visible from the sandy beach, public tidelands, nor Pacific Coast Highway. The soldier piles and retaining wall will be visible only six and one half feet above the surface level of the site. The wall will be located along the northern and eastern portions of the existing residence located above the sandy beach at 27960 Pacific Coast Highway. As viewed from the nearest publicly visible location along the beach and public tidelands, the existing residence and existing landscaping vegetation adequately blocks public views of the proposed development. Further, since the purpose of the deflection wall is to retain the hillside in place and only six and one half feet of the wall is visible above ground, the alteration of the hillside landform will be minimized. Therefore, the Commission finds that the scenic and visual quality of the coast will be protected and the alteration of landforms will be minimized with the proposed project.

Therefore, the Commission finds that based on the findings of the geotechnical reports identified above, that the proposed development, as conditioned, is consistent with Section 30253. The Commission finds that based on a review of the site and surrounding area that the proposed development, as conditioned, is consistent with Section 30251 of the Coastal Act.

C. Public Access and Shoreline Development

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. New development on a beach or between the nearest public roadway to the shoreline and along the coast raise issue with the public access policies of the Coastal Act.

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:

...

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby... Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

1. Public Access

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.

All beachfront projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. The Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline. The major access issue in such permits is the occupation of sand area by a structure, in contradiction to Coastal Act policies 30210, 30211, and 30212. However, a conclusion that access may be mandated does not end the Commission's inquiry. As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with ... the need to protect ... rights of private property owners..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the U.S. Supreme Court's decision in the case of Nollan vs. California Coastal Commission. In that case, the court ruled that the Commission may legitimately require a lateral access easement where the proposed development has either individual or cumulative impacts which substantially impede the achievement of the State's

legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate these impacts.

The 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.

As proposed, this project will not extend any further seaward than the existing residence it is designed to protect and the majority of the caissons/soldier piles are located separated from the sandy beach by the residence. The development is located landward and to the side of the existing residence. Therefore, the proposed project will not affect lateral access along the beach.

Regarding vertical public access, the proposed project will not affect any vertical public accessways to the beach from Pacific Coast Highway to the beach. The project site is located about one third of a mile east of a vertical public access at Paradise Cove and about one mile west of a vertical public access at Escondido Beach. Therefore, Commission finds that the proposed project, as conditioned, will have no adverse effect on public access and is consistent with Sections 30210, 30211, and 30212 of the Coastal Act.

D. 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 effects and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

E. California Environmental Quality Act (CEQA)

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

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

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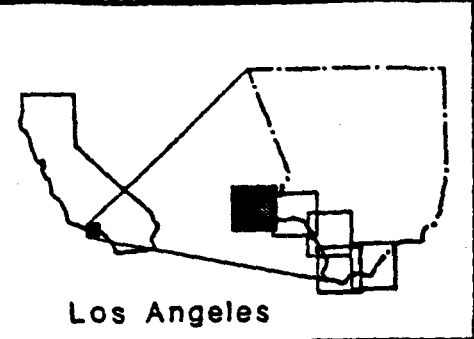
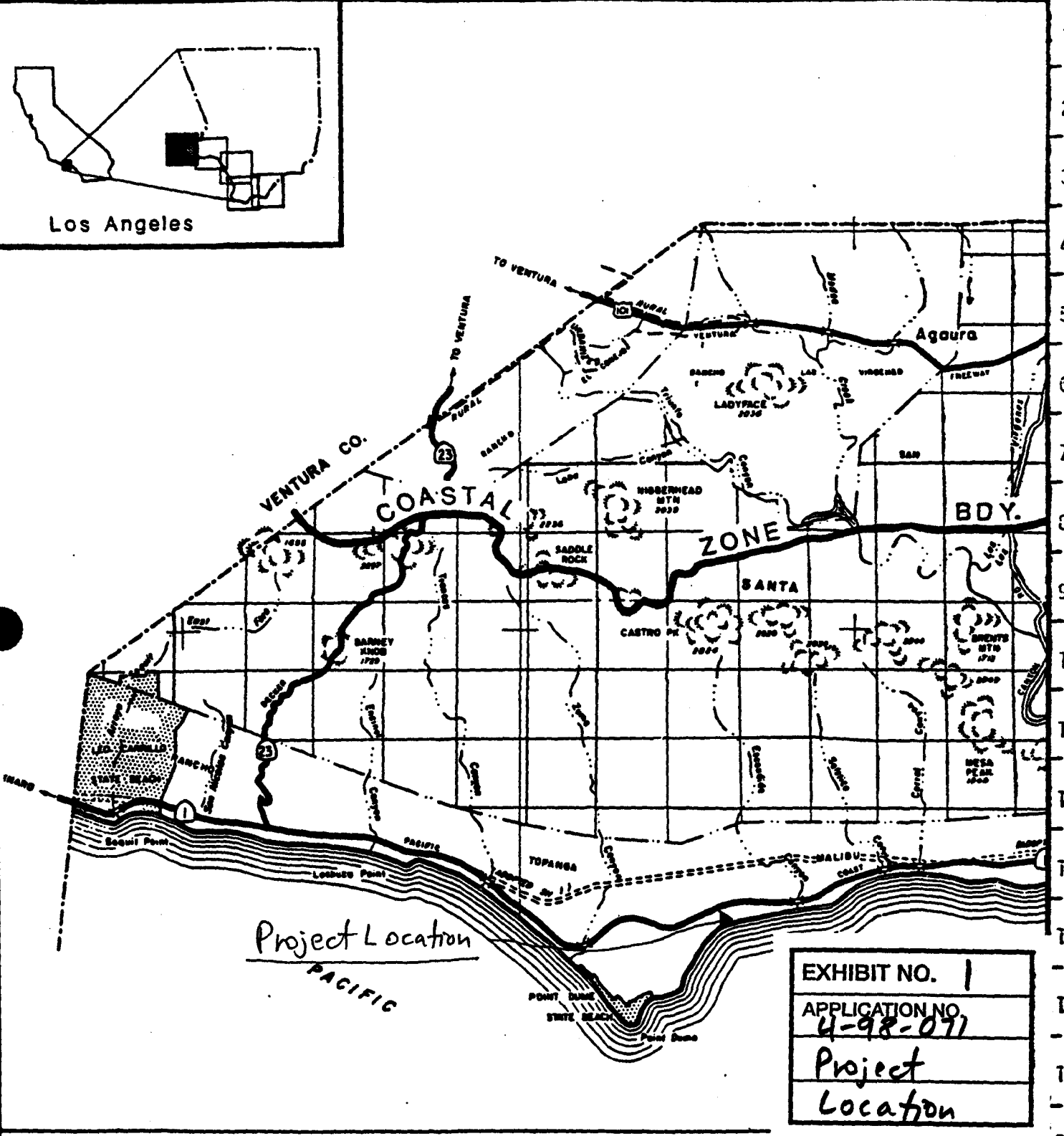
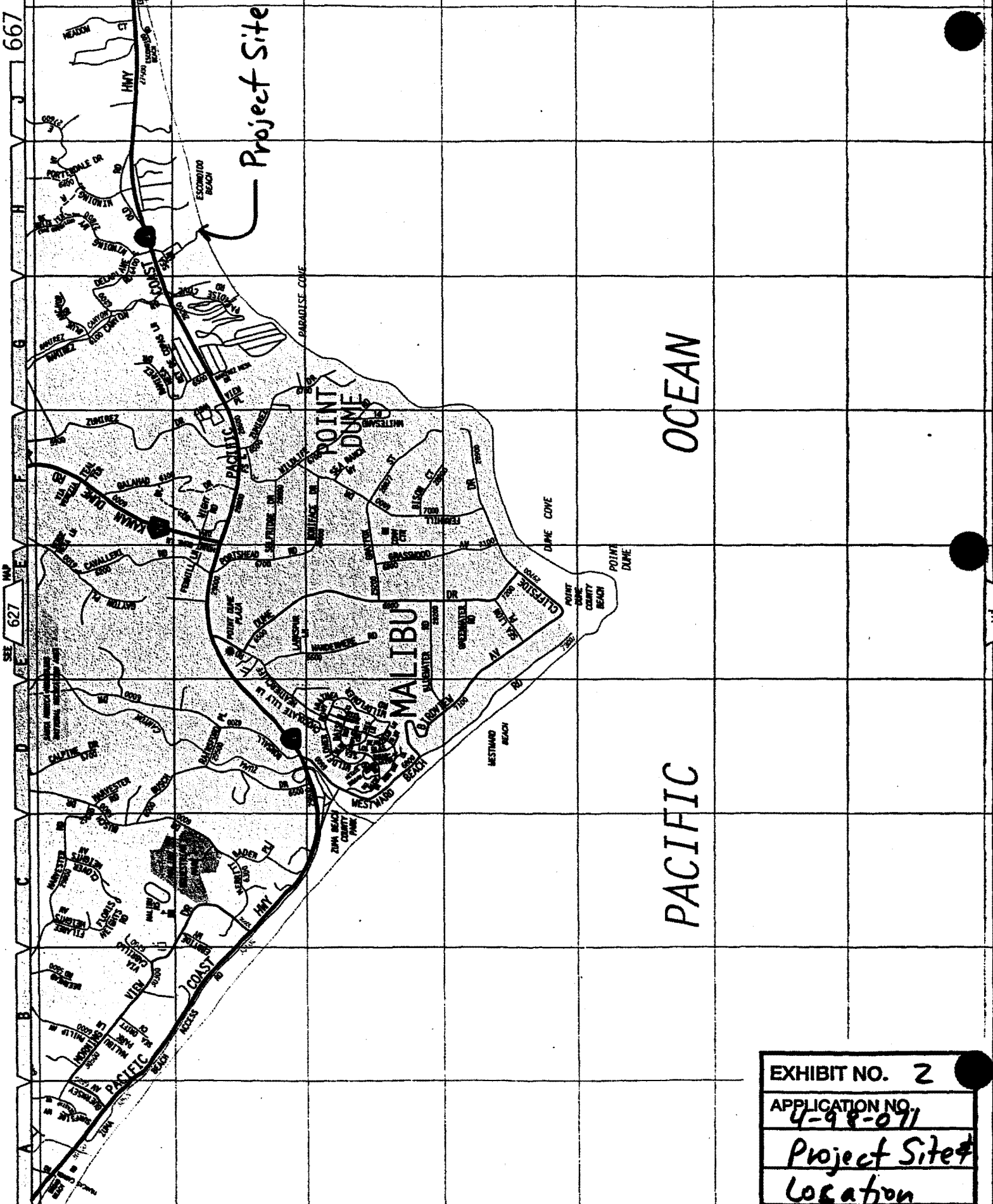


EXHIBIT NO. 1
APPLICATION NO. 4-98-071
Project
Location



California Coastal Commission

LOCATION MAP

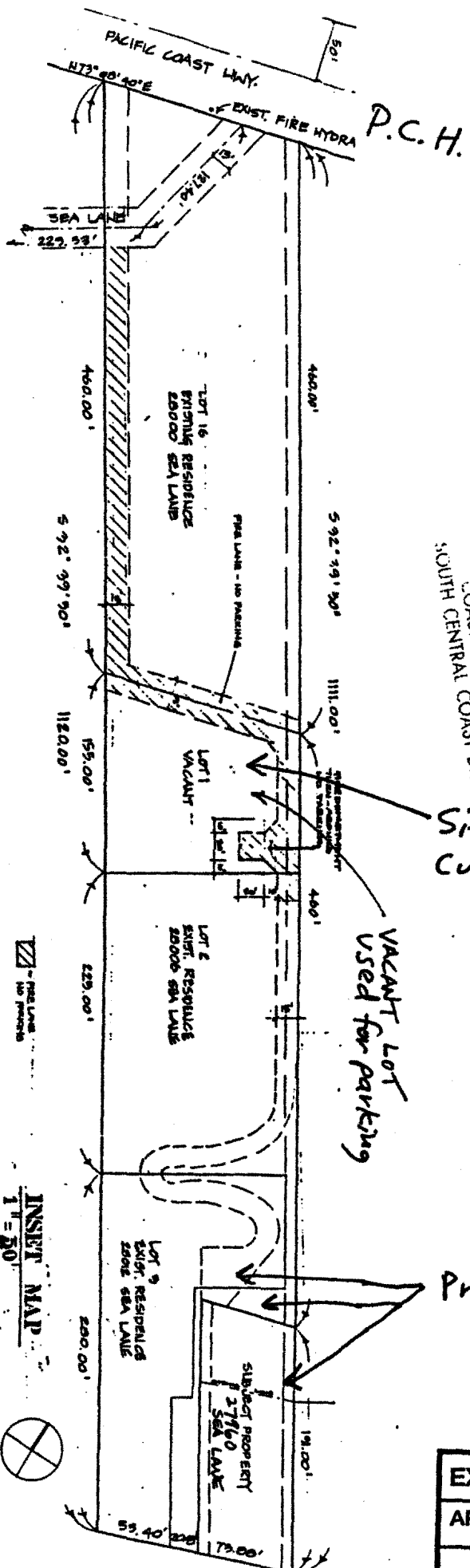


Project Site

OCEAN

PACIFIC

EXHIBIT NO. 2
APPLICATION NO. 4-98-011
Project Site #
Location



P.C.H.

RECEIVED
 OCT 15 1998
 COASTAL COMMISSION
 SOUTH CENTRAL COAST DISTRICT

Site for Disposal
 Cut Material (Part 2)

VACANT LOT
 USED FOR PARKING

Project Site

Pacific OCEAN

EXHIBIT NO. 4
APPLICATION NO. 4-98-017
Disposal
Site - (Partial)