

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA

SOUTH CALIFORNIA ST., SUITE 200

MALIBU, CA 93001

(805) 641-0142

Filed: 12/4/98  
49th Day: 1/22/99  
180th Day: 6/2/99  
Staff: S. Hudson *CD*  
Staff Report: 3/25/99  
Hearing Date: April 15, 1999  
Commission Action:



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**STAFF REPORT: REGULAR CALENDAR****APPLICATION NO.:** 4-97-215**APPLICANT:** Arthur and Joy Addis**PROJECT LOCATION:** 32766 Pacific Coast Highway, City of Malibu; Los Angeles County.**PROJECT DESCRIPTION:** Construction of a 3 ft. wide, 7 ft. deep, concrete remedial underpinning below an existing 200 ft. long concrete seawall.**LOCAL APPROVALS RECEIVED:** Approval by City of Malibu Planning Department.

**SUBSTANTIVE FILE DOCUMENTS:** Engineering Geology Report Addendum by Howard Spellman, Consultant Geologist dated 10/29/98; Update Geologic Observation Report by Howard Spellman, Consultant Geologist dated 9/24/98; Geologic Observation Report by Converse Consultants West dated 11/19/93; Engineering Response Letter by David Weiss, Structural Engineer & Associates dated 11/2/98; Coastal Engineering Report by David Weiss, Structural Engineer & Associates dated 10/6/98; Coastal Engineering Report by David Weiss, Structural Engineer & Associates dated 8/3/98; Emergency Response Letter by David Weiss, Structural Engineer & Associates dated 11/3/97; and California State Lands Commission Determination Letter dated 7/23/98.

**SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends ~~approval~~ of the proposed project with two (2) special conditions regarding required approvals and the applicant's assumption of risk. The applicant is requesting approval for the construction of a 3 ft. wide, 7 ft. deep, concrete remedial underpinning below an existing 200 ft. long concrete seawall. The proposed repair is remedial in nature and has been previously constructed under an emergency coastal development permit.

**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 the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act

**II. Standard Conditions**

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

Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, evidence of all necessary approvals or an executed lease agreement from the California State Lands Commission for the proposed development, or evidence that such approvals are not required.

#### **2. Assumption of Risk, Waiver of Liability and Indemnity**

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from extraordinary hazard from storm waves, erosion, or flooding; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

### **IV. Findings and Declarations**

The Commission hereby finds and declares as follows:

#### **A. Project Description and Background**

The applicant proposes to construct a new 3 ft. wide, 7 ft. deep, concrete remedial underpinning below an existing 200 ft. long concrete seawall that has become undermined. The subject site is a blufftop/beach front parcel located approximately 250 ft. west of El Pescador State Beach and approximately 250 ft. east of La Piedra State Beach (Exhibit 1). The subject site has been previously developed with a single family

residence, swimming pool, and a 200 ft. long concrete seawall. The existing seawall was constructed in 1967 prior to the passage of the Coastal Act. The proposed repair is remedial in nature and has been previously constructed under an emergency coastal development permit issued on November 11, 1997 (CDP 4-97-215-G). All work authorized under the emergency permit has been completed. In compliance with Condition Four (4) of the emergency permit, the applicant has submitted the pending application for a regular coastal development permit to have the emergency work considered permanent.

## **B. Public Access and Seaward Encroachment**

Coastal Act Section 30210 states that:

*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.*

Coastal Act Section 30211 states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Coastal Act Section 30212(a) provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.*
- (2) adequate access exists nearby, or,*
- (3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30235 of the Coastal Act states:

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

Finally, 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.*

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 adequate public access to the sea be provided to allow 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. In past permit actions, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline. The major access issue in such permits is the occupation of sand area by a structure in contradiction of Coastal Act policies 30210, 30211, and 30212.

In addition, Section 30235 of the Coastal Act allows for the construction of a shoreline protection device when necessary to protect existing development and coastal dependent uses and when designed to eliminate or mitigate adverse impacts to the shoreline sand supply. In the case of the proposed project, the applicant is proposing to repair an existing seawall. The Commission notes that the proposed repair of the existing seawall will not result in any new adverse effects to shoreline processes or beach profile.

The proposed remedial development consists of the installation of new concrete underpinning below an existing concrete seawall. The existing seawall is located at the base (toe) of a steep coastal bluff. Due to the location of the existing seawall directly seaward of the bluff, the applicant's engineering consultant has indicated that it is not possible to construct the proposed underpinning landward of the existing wall without significant excavation of the bluff slope. The applicant has submitted an Engineering Response Letter by David Weiss, Structural Engineer & Associates dated 11/2/98 which indicates that there are no feasible engineering alternatives which would allow for the construction of the proposed underpinning any further landward than proposed without resulting in destabilization of the bluff slope.

In past permit actions, the Commission has required a lateral public access easement for new shoreline protection devices to mitigate adverse effects to beach sand supply and public access. In the case of the proposed project, the Commission notes that the construction of the remedial underpinning to repair and stabilize an existing seawall will

not result in new adverse effects to lateral public access. In addition, the California State Lands Commission (CSLC) has determined that the existing seawall, at times, is located seaward of the mean high tide line and within public tidelands. The Commission further notes that public tidelands are available for public use and, thus, that a condition to require lateral access is not necessary since all beach area located seaward of the existing seawall is already available for public use.

In addition, the Commission also notes that the beach area seaward of the existing seawall can become impassable during high tide events. Although the underpinning will extend approximately 2 ½ ft. seaward of the existing toe of the seawall, the Commission notes that the underpinning will be located below the normal sand elevation of the beach and will only become exposed during storm events and periods of low beach elevations. When the underpinning is covered by sand, the area 2 ½ ft. directly seaward of the existing wall will be available for public use. In the event that the proposed underpinning is exposed during a high tide event, the Commission notes that the low-lying concrete underpinning is able to be walked on and that the 2 ½ ft. wide area of beach occupied by the underpinning would still be accessible for lateral public access. Further, although the proposed underpinning will not be visible except during periods of low-beach elevations and storm conditions, the Commission notes that the underpinning, when exposed, will be visually subordinate to the existing seawall and will not result in any new adverse effects to public views. Thus, the Commission notes that the proposed remedial development will not result in adverse effects to lateral public access or to visual resources. However, the California State Lands Commission has indicated in a letter dated July 23, 1998, that the applicant will be required to obtain a lease for the proposed development from the CSLC (Exhibit 5). Therefore, Special Condition One (1) has been required to ensure that the necessary lease from the CSLC is obtained for the proposed development prior to the issuance of a coastal development permit.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Sections 30210, 30211, 30212, 30235, and 30251.

### **C. Geologic Stability**

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

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*(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.*

The proposed remedial development consists of the installation of new concrete underpinning below an existing concrete seawall. All proposed emergency work has

been completed under Emergency Coastal Development Permit 4-97-215. Prior, to the issuance of the emergency permit, the applicant submitted an Emergency Response Letter by David Weiss, Structural Engineer & Associates dated 11/3/97 which indicated that the existing seawall was in eminent danger of failure if not immediately underpinned. The applicant has submitted plans prepared and certified by David C. Weiss, Structural Engineer & Associates dated 10/20/97 for the emergency repair work. In addition, the applicant has also submitted an Engineering Geology Report Addendum by Howard Spellman, Consultant Geologist dated 10/29/98 which indicates that the repaired seawall is now stable and will serve to protect the existing development on site. The Engineering Report dated 10/29/98 also indicates that the proposed remedial repairs will not result in any adverse effects to the geologic stability of the project site or adjacent properties. Thus, the Commission notes that the proposed development, as submitted, is consistent with the requirements of Coastal Act Section 30253 that require the assurance of the structural integrity of proposed development.

However, the Commission further notes that the proposed development is located on a beachfront/blufftop lot in the City of Malibu. The Malibu coast has historically been subject to substantial damage as the result of storm and flood occurrences--most recently, and perhaps most dramatically, during the past El Nino severe winter storm season that gave rise to the emergency permit request underlying the applicant's current proposed application.

The subject site is clearly susceptible to flooding and/or wave damage from storm waves, storm surges and high tides. Past occurrences have not only damaged the subject bulkhead and threatened the existing teahouse, but have caused property damage resulting in public costs through emergency responses and low-interest, publicly-subsidized reconstruction loans in the millions of dollars in Malibu area alone from last year's storms.

In the winter of 1977-1978, storm-triggered mudslides and landslides caused extensive damage along the Malibu coast. According to the National Research Council, damage to Malibu beaches, seawalls, and other structures during that season caused damages of as much as almost \$5 million to private property alone.

The El Nino storms recorded in 1982-1983 caused high tides of over 7 feet, which were combined with storm waves of up to 15 feet. These storms caused over \$12.8 million to structures in Los Angeles County, many located in Malibu. The severity of the 1982-1983 El Nino storm events are often used to illustrate the extreme storm event potential of the California, and in particular, Malibu coast. The 1998 El Nino storms also resulted in widespread damage to residences, public facilities and infrastructure along the Malibu Coast.

Thus, ample evidence exists that all beachfront development in the Malibu area is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. The existing development on site, even after the

completion of the remedial repair work, will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future, as will the existing single family residence that the bulkhead helps to protect. The Coastal Act recognizes that development, such as the new underpinning to the seawall, even as designed and constructed to incorporate all recommendations of the consulting coastal engineer, may still involve the taking of some 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 the subject property.

The Commission finds that due to the possibility of liquefaction, storm waves, surges, erosion, and flooding, the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission 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. The applicant's assumption of risk, as required by Special Condition Two (2), when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the proposed development.

The Commission finds, for the reasons set forth above, that the proposed development, as conditioned, is consistent with Section 30253 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 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).



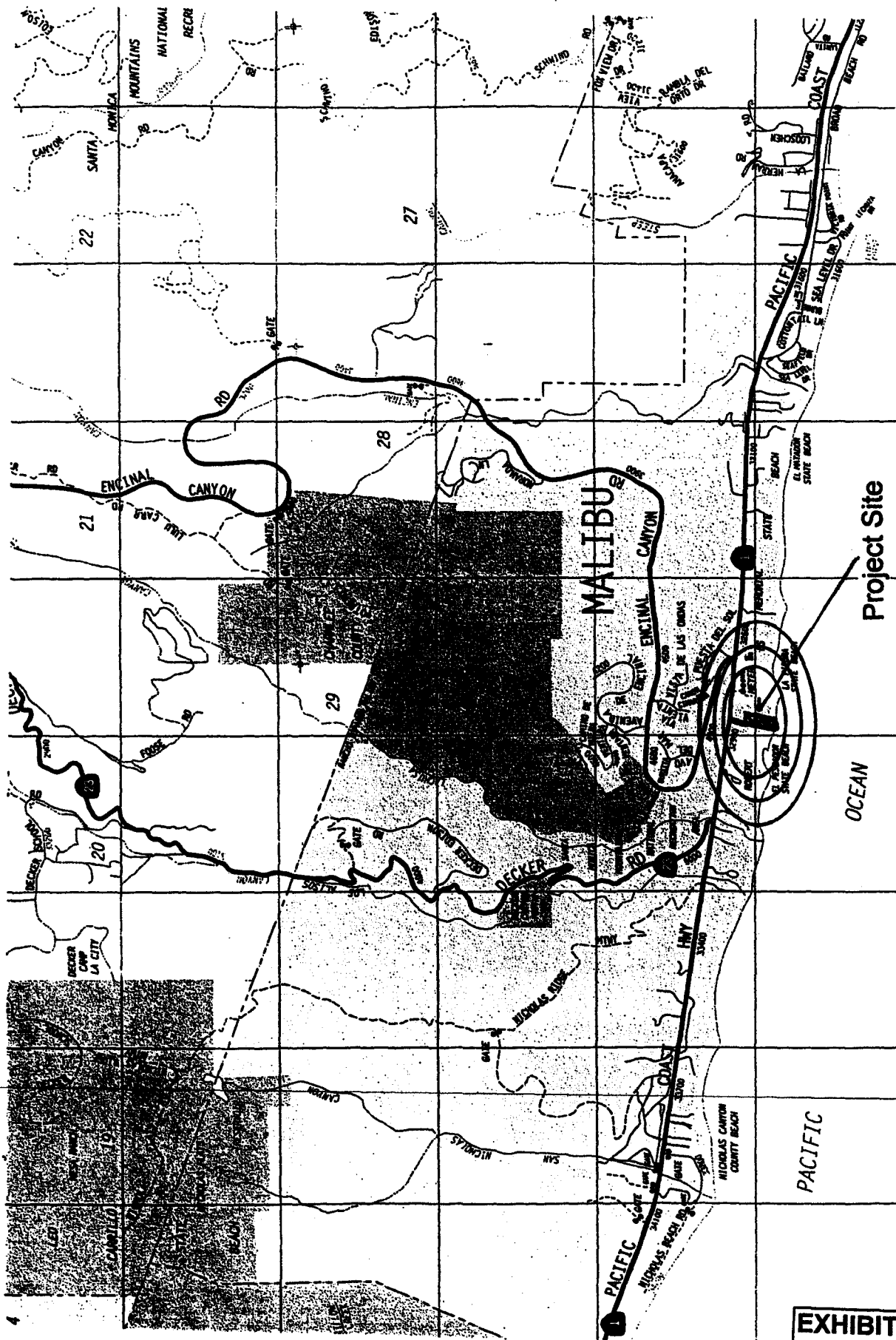
**E. CEQA**

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.

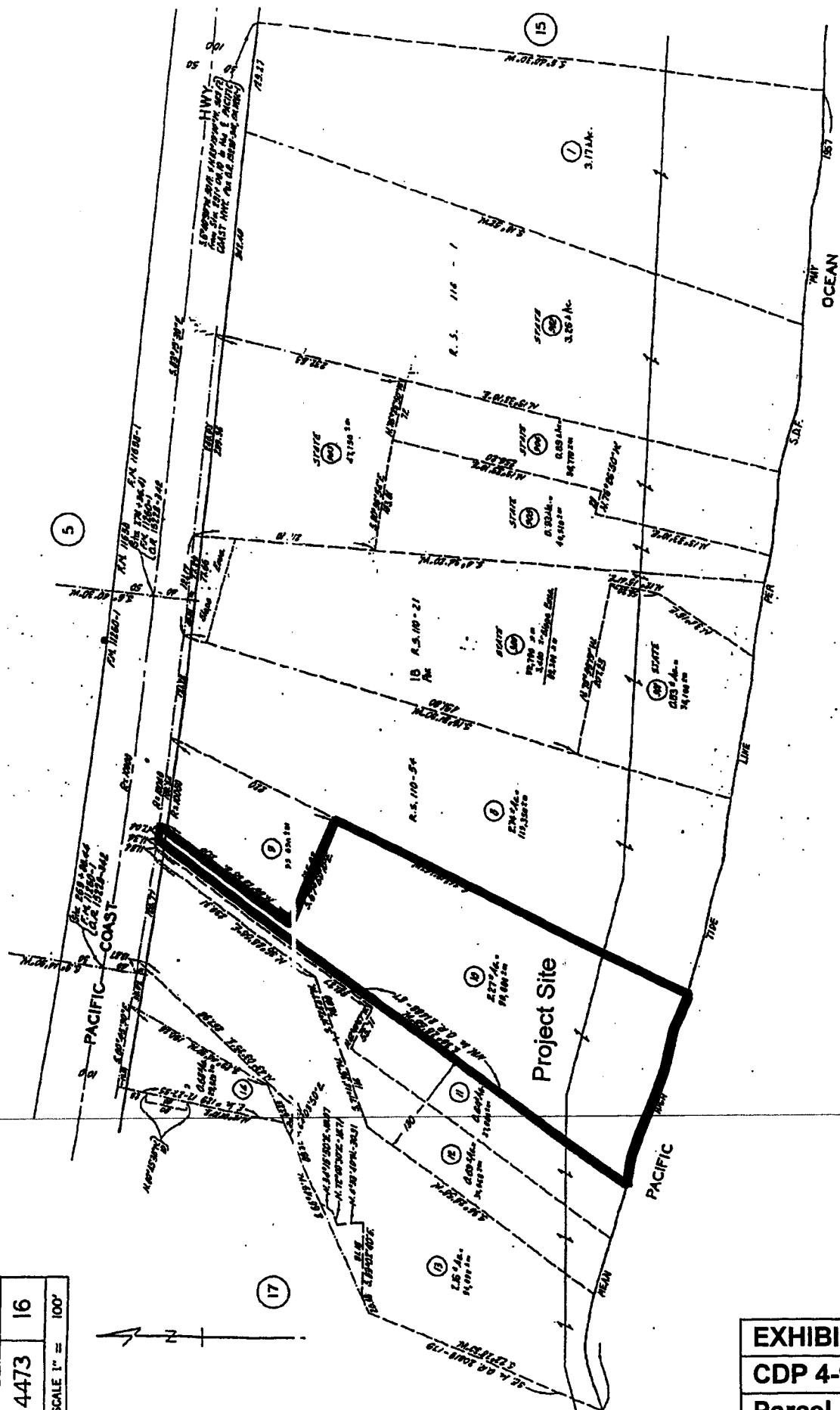
The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be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

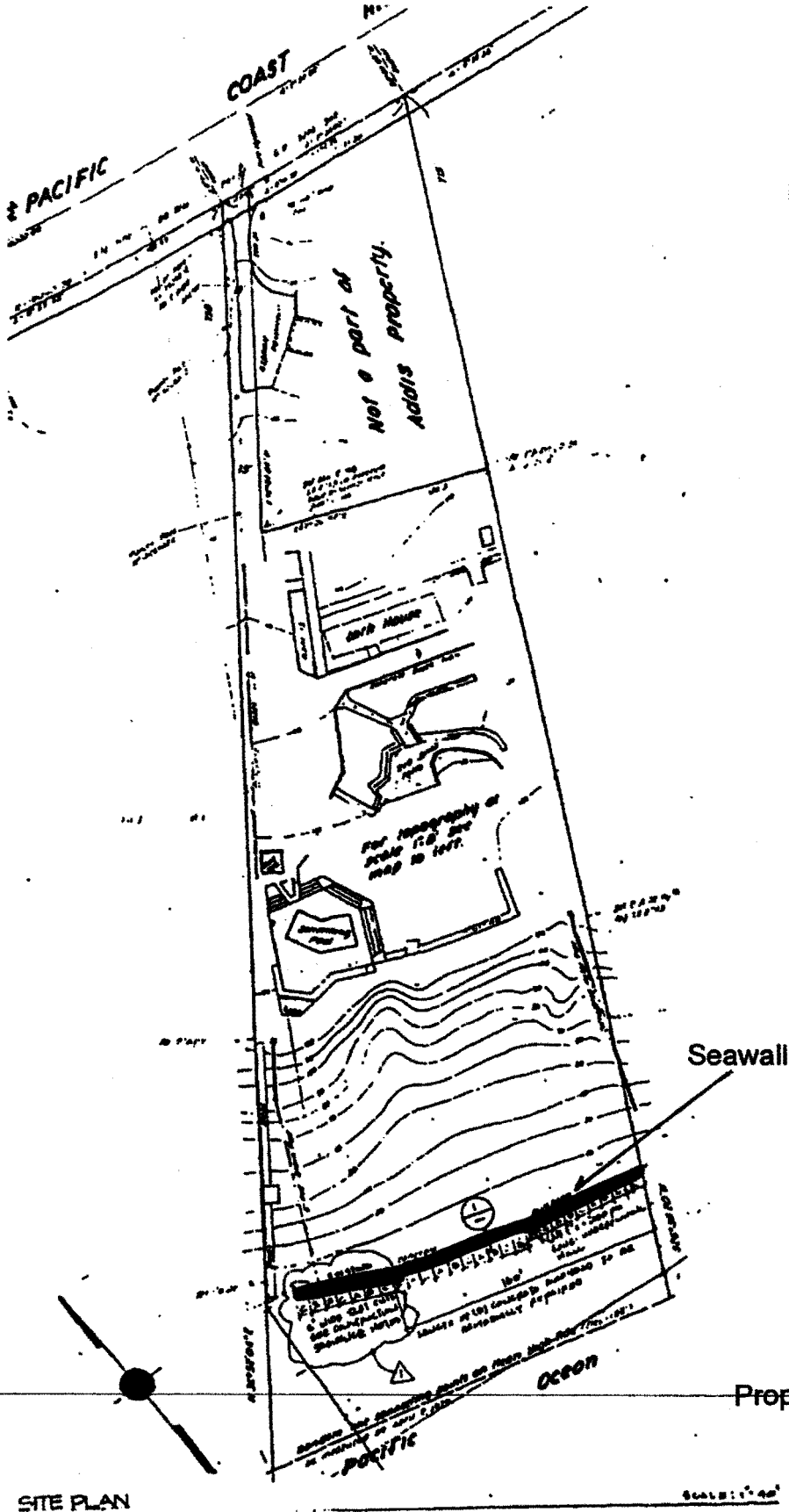
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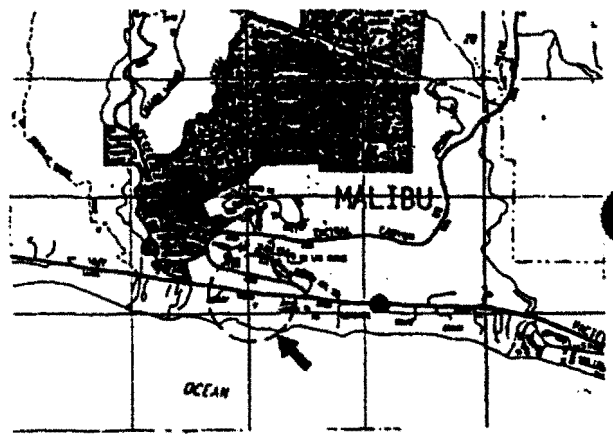


**EXHIBIT 1**  
**CDP 4-97-215 (Addis)**  
**Location Map**





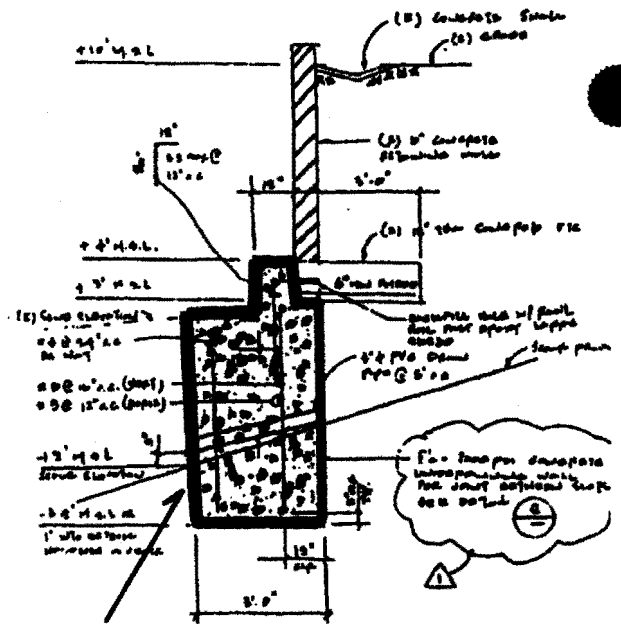
SITE PLAN



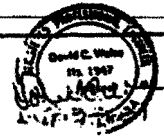
VICINITY MAP

NOTES:

1. CONCRETE UNDERPINNING WALL DESIGNED FOR  $F_c = 3000 \text{ PSI @ 28 DAYS}$
2.  $F_c = 4000 \text{ PSI CONCRETE PER CONCRETE NOTE 13 SHALL BE USED FOR CONCRETE UNDERPINNING WALL DUE TO HARMFUL MARINE ATMOSPHERE. CONTRACTOR SHALL PROVIDE ALL TEST TICKETS VERIFYING  $F_c = 4000 \text{ PSI @ 28 DAYS}$ .$
3. SPECIAL INSPECTION NOT REQUIRED
4. CONTRACTOR SHALL SHORE ALL EXCAVATIONS OVER 5' IN DEPTH INTO WHICH A MAN MUST DESCEND, IN ACCORDANCE WITH LOCAL, STATE AND FEDERAL SAFETY REQUIREMENTS.



Proposed Underpinning



CALIFORNIA STATE LANDS COMMISSION  
100 Howe Avenue, Suite 100 South  
Sacramento, CA 95825-8202



ROBERT C. HIGHT, Executive Officer  
(916) 574-1800 FAX (916) 574-1810  
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July 23, 1998

RECEIVED

File Ref: W 25460

Steve Hudson  
California Coastal Commission  
89 S. California Street  
Ventura, CA 93001

JUL 27 1998

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Dear Steve:

SUBJECT: Existing Retaining Wall Adjacent to the Pacific Ocean at 32766  
Pacific Coast Highway, Malibu

Pursuant to our recent conversation, this will confirm that the staff of the California State Lands Commission (CSLC) is processing an application on behalf of Arthur Addis for a protective structure lease to authorize the repair and maintenance of his existing seawall. It is my understanding that Mr. Addis' application for a coastal development permit (No. 4-97-215) is incomplete as of January 23, 1998, for lack of a CSLC determination, a geotechnical report, wave uprush study, and a detailed geology report on bluff slope conditions. It is also my understanding that you have spoken with Mr. Addis and he is working on getting the information needed.

Please consider this letter as complying with your requirement for a CSLC determination. I intend to schedule this matter for consideration by the CSLC at such time as you have received the additional information requested and have determined Mr. Addis' application to be complete. Please notify me when you have scheduled his application for consideration by the Coastal Commission.

Enclosed for your file is a copy of the final inspection report of the City of Malibu.  
If you have any questions, please feel free to contact me at (916) 574-1892.

Sincerely,

Jane E. Smith  
Public Land Management Specialist  
Southern California Region

Enclosure  
cc: Arthur Addis

EXHIBIT 4
CDP 4-97-215 (Addis)
State Lands Letter