

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
SOUTH CALIFORNIA ST., SUITE 200  
SANTA ANA, CA 93001  
(805) 641-0142

Filed: 1/3/99  
49th Day: 2/21/99  
180th Day: 7/2/99  
Staff: CAREY  
Staff Report: 5/20/99  
Hearing Date: 6/7/99  
Commission Action:

**STAFF REPORT: AMENDMENT**

**APPLICATION NO.:** 4-98-312-A1 (Formerly Permit A-10-28-76-9250)  
**APPLICANT:** Sheila Orvis Trust and Allan Lerner  
**PROJECT LOCATION:** 25200 West Malibu Road, City of Malibu, Los Angeles County

**DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:** Conversion of 8-unit apartment building to a 5-unit apartment building.

**DESCRIPTION OF AMENDMENT:** Deletion of special condition of approval, which required the recordation of a deed restriction, limiting the use of the structure to a 5-unit dwelling.

**PROCEDURAL NOTE:** The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) *The Executive Director determines that the proposed amendment is a material change,*
- 2) *Objection is made to the Executive Director's determination of immateriality, or*
- 3) *The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.*

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Code of Regulations Section 13166.

**Summary of Staff Recommendation:**

Staff recommends that the Commission approve the proposed amendment. While the required deed restriction was recorded and the permit issued the physical conversion from an eight-unit to a five-unit building was not actually carried out. The amendment to delete the condition, as proposed, does not raise issue with §30250 of the Coastal Act because no increase in density would result. The structure existed as eight units prior to the inception of Proposition 20. Therefore, the deletion of the deed restriction would not permit any increase in the existing density of the development. As such, no cumulative impacts to coastal resources would result, consistent with §30250 of the Coastal Act.

**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

**I. Approval with Conditions**

The Commission hereby approves the amendment to the coastal development permit on the grounds that as modified the development 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 effects on the environment within the meaning of the California Environmental Quality Act.

**Findings and Declarations.**

The Commission hereby finds and declares:

**A. Project Description and Background.**

The applicant proposes to amend Permit A-10-28-76-9250 (Parker) to delete a deed restriction required as the only special condition of that approval. The subject permit was approved in 1976 under the provisions of Proposition 20. (Staff notes that a new file number 4-98-312-A1 was assigned to this file for tracking purposes.) This request has been scheduled as a material amendment because it affects a condition.

The project site is a 100-foot wide beachfront parcel on Malibu Road in the City of Malibu. The beach in this area is known as Puerco Beach.

The subject permit was approved for the conversion of an existing 8-unit apartment building into a 5-unit apartment building. At the time of the project's original approval, the Commission required the recordation of a deed restriction which would provide notice to potential future purchasers of the property the building's status as a 5-unit building. The condition requiring the deed restriction stated as follows:

Prior to issuance of permit, applicant shall submit evidence that a deed restriction has been recorded limiting the use of the structure to a 5-family dwelling.

The applicant submitted a copy of the Administrative Permit (Exhibit 3). According to this document, the required condition was met and the permit was issued on December 27, 1976.

Unfortunately, staff was unable to retrieve additional Commission records, if any, relating to the original approval of Permit A-10-28-76-9250. Files that are older than ten years are archived in the State Records Center in Sacramento. Staff requested the return of the subject file from archives, but staff of the Records Center was unable to locate it after a thorough search was undertaken.

The subject development was built in 1963, prior to the inception of Proposition 20. Therefore, no coastal development permit was required for the building's original construction. According to plans submitted by the applicant, the two-story structure was designed with three units and eight garage spaces on the ground floor and five units on the second floor. In 1976, the owners wanted to combine and remodel four of the upstairs units into one unit that they would occupy, while maintaining four units as rentals. To accomplish this, they applied for Permit A-10-28-76-9250 to convert the eight existing units into five, one as their residence, and four as rental units.

The applicant has stated that while the deed restriction was recorded and the permit issued, the actual conversion of eight units to five units was never carried out. The only minor modification made, according to the applicant, was the removal of a portion of a wall separating Unit 6 and Unit 7 on the second floor and the insertion of a door between these two units. The original owner of the property has occupied both units as one dwelling since this modification. The applicant has stated that all other units are unaltered and that the number of actual units remains at eight, with two being connected by this additional door.

Staff has consulted several sources of information to establish the number of units currently existing on the proposed project site, and to verify whether the work permitted by the Commission was ever accomplished. Assessor's Parcel information provided by TRW, Inc. indicates that the building was constructed in 1963 and contains eight units with a total of 15 bedrooms and 13 bathrooms. This information is consistent with the plans provided by the applicant. Additionally, staff has inquired about the subject development with staff of the Planning and Building Departments of the City of Malibu. City staff has indicated that all information they have available indicates that the subject development is considered an existing eight-unit apartment building. Finally, as described below, the Commission considered other development on this site. In the application materials for Permit 5-88-920 (Parker), the building on the site is noted as an existing 8-unit apartment building.

#### **Additional Commission Actions**

The Commission has also considered an emergency permit and a follow-up permit application for development on the subject project site. Emergency Permit 5-88-085G was granted in February 1988 for the installation of a rock revetment in front of an existing timber bulkhead damaged in a storm. The Commission subsequently approved Permit 5-88-920 (Parker) to retain this revetment permanently. The permit was approved with conditions requiring the recordation of a lateral access easement offer to

dedicate, assumption of risk deed restriction, and maintenance. The access easement and assumption of risk deed restriction were recorded.

## **B. Cumulative Impacts of New Development.**

The Commission has consistently emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area.

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

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.

As described above, the applicant proposes to delete a condition from Permit A-10-28-76-9250 that required the recordation of a deed restriction limiting the use of an existing structure for five units. The structure in question was constructed as an eight-unit apartment in 1963. In 1976, the owners at that time planned to convert the building to a five-unit building by remodeling and combining four of the existing units into one large unit that they would occupy.

The Commission approved Permit A-10-28-76-9250 for the conversion to five units with a condition requiring a deed restriction limiting the structure to five units. No records reflecting the Commission's findings supporting this condition are available to pinpoint the reason that the condition was imposed, if in fact the reason was anything other than confirming notice through a deed restriction of the 5-unit status of the building. However, it is apparent, at the time of the original permit approval, multi-family development on a 12,000 sq. ft. beachfront parcel would potentially raise issues with cumulative impacts on coastal resources, such as parking, traffic, septic disposal, visual resources, public access, and beach processes. Clearly, a reduction in the overall number of units on the site from eight to five would reduce potential impacts. The use of the converted unit by one family instead of four would reduce the number of vehicle trips, parking demand to on-street parking available for the public, and the amount of septic effluent generated. As an example, the Commission has consistently found in permit decisions in the Malibu area, that even the construction of a second unit on the site where a primary residence exists intensifies the use of a parcel increasing impacts on public services, such as water, sewage, electricity and roads as well as raising issues as to whether the location and amount of new development maintains and enhances public access to the coast.

In this case, the subject structure existed as eight units prior to Proposition 20. While the use of the structure for only five units would minimize potential impacts to coastal resources by reducing traffic, septic effluent, etc., the Commission could not compel the owner to reduce the number of units in an existing structure. The applicant proposed to do so in 1976. On the basis of that request, the Commission required the applicants to assure that once the building had been reduced to five units, there would be no return to a higher density. It appears from the information available to the Commission that this was to insure that the proposed reduction in potential cumulative impacts, once realized, would be permanently maintained on the project site.

However, as discussed above, the applicants did not actually carry out the conversion of the building to fewer units, even though they did comply with the condition and did receive their permit. Only minor work consisting of insertion of a connecting door between two units was done. Since the existing structure was never reduced to five units, the deed restriction limiting the use of the structure to five units is not required. The current applicant would like to remove the deed restriction from the property since it does not reflect the existing situation.

The Commission finds, based on the unique facts and circumstances discussed above, it is permissible to allow the applicant to remove the deed restriction limiting the use of the subject property to five units. The approved conversion of the use of the building from eight units to five units was never actually carried out (even though a minor alteration was undertaken for the owner to occupy two units as one). As such, the deed restriction does not reflect the existing situation. The Commission further finds that the amendment to delete the condition, as proposed, does not raise issue with Section 30250 of the Coastal Act because no increase in density would result. The structure existed as eight units prior to the inception of Proposition 20. Therefore, the deletion of the deed restriction would not permit any increase in the existing density of the development. As such, no cumulative impacts to coastal resources would result. Therefore, the Commission finds that the project, as proposed to be amended, is consistent with §30250 of the Coastal Act.

### **C. Local Coastal Program**

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

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having

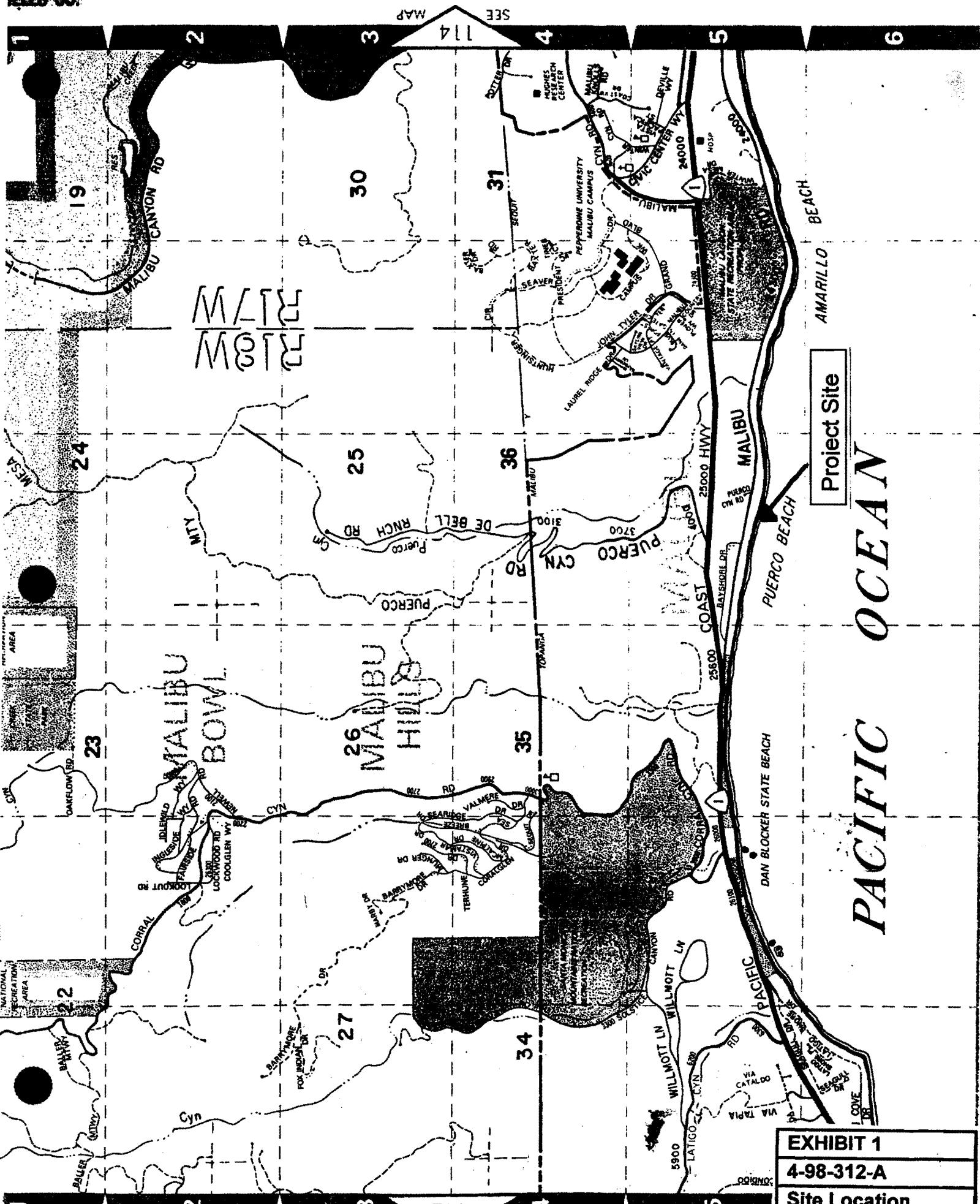
jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed amendment will be in conformity with the provisions of Chapter 3. The proposed amendment will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3.

Therefore, the Commission finds that approval of the proposed amendment, 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).

#### **D. California Environmental Quality Act**

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

The proposed amendment would not cause significant, adverse environmental effects. Therefore, the proposed amendment is found consistent with CEQA and with the policies of the Coastal Act.

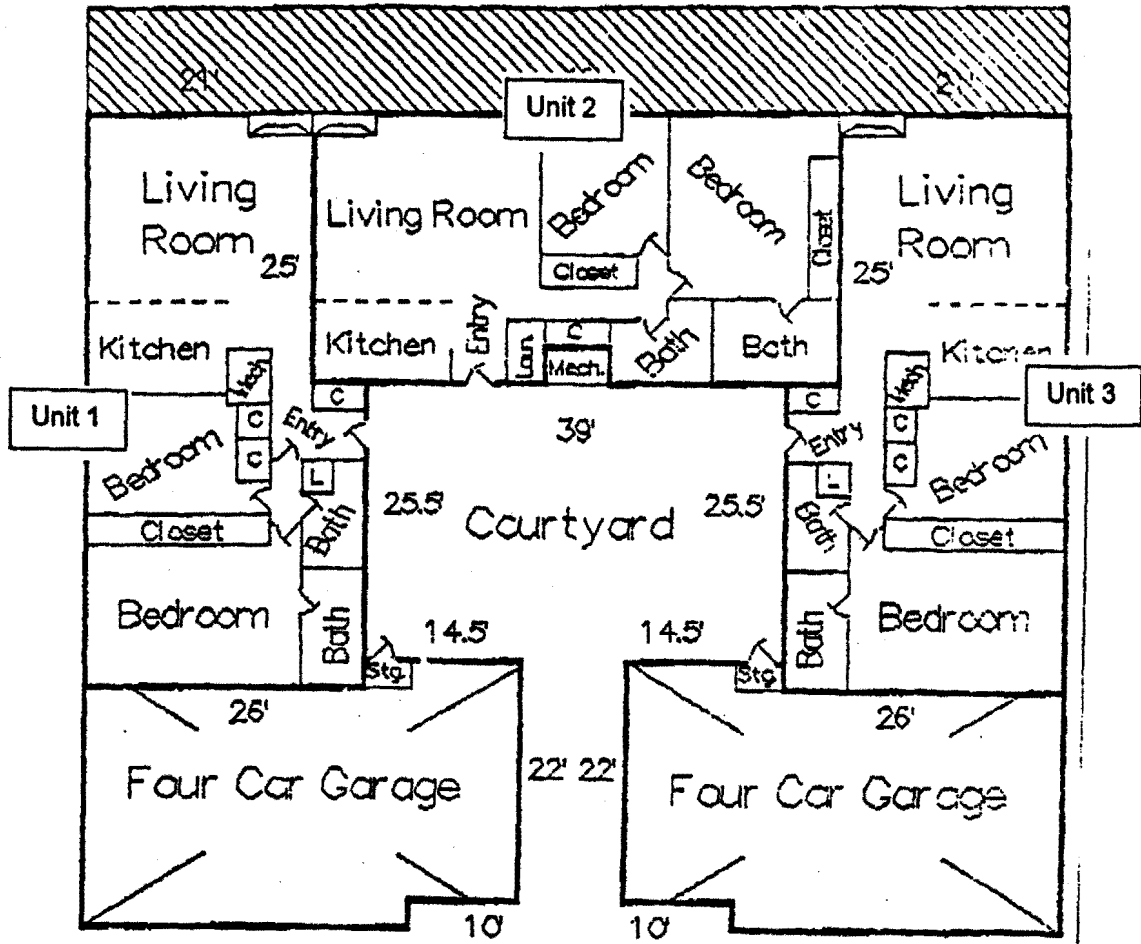


Project Site

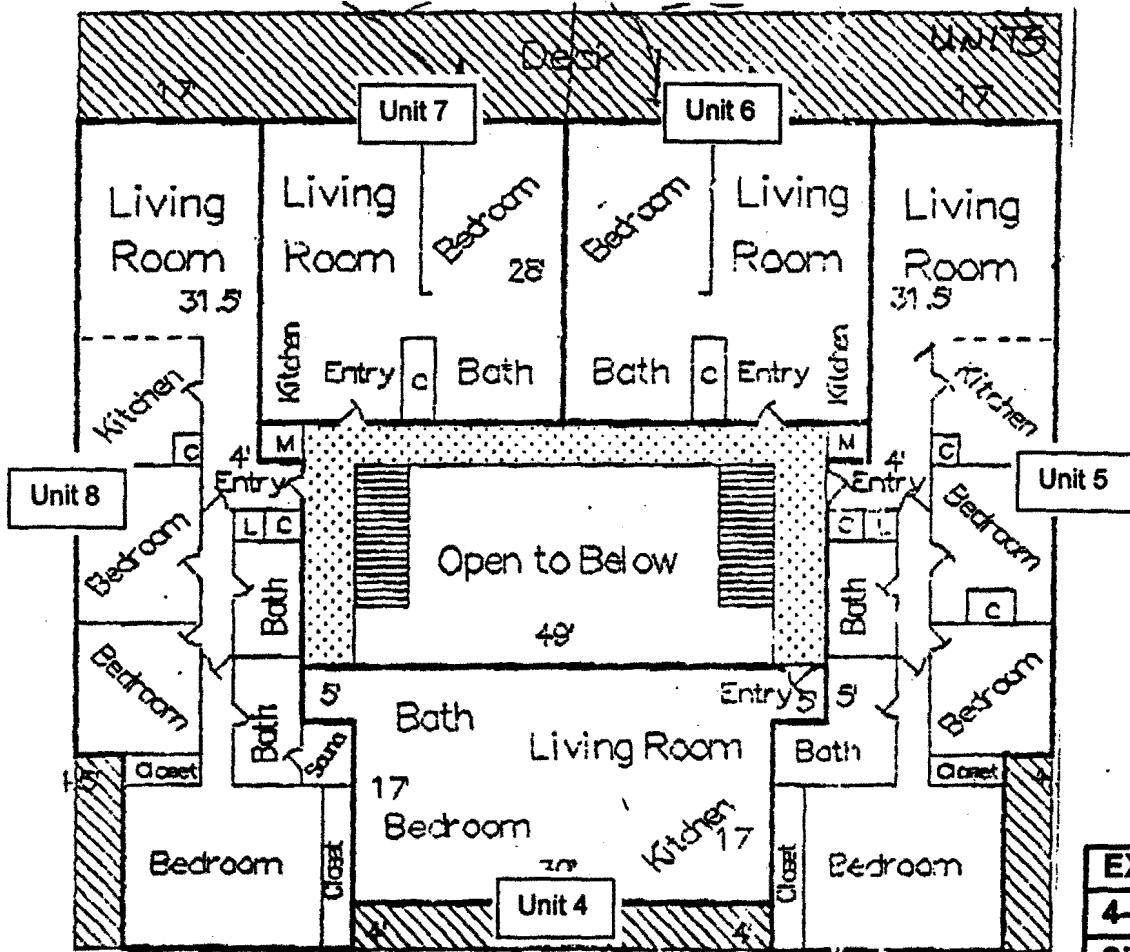
# PACIFIC OCEAN

<b>EXHIBIT 1</b>
<b>4-98-312-A</b>
<b>Site Location</b>

1<sup>st</sup> Floor



2<sup>nd</sup> Floor





CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION

SOUTH COAST REGIONAL COMMISSION

46 E. OCEAN BOULEVARD, SUITE 3107  
P.O. BOX 1450  
LONG BEACH, CALIFORNIA 90801  
(213) 336-2025 (714) 846-0648  
590-5071



RECEIVED

DEC 1976

FILE COPY

ADMINISTRATIVE PERMIT

Application Number: A-10-28-76-9250

Name of Applicant: William F. & Shirley Parker

211 So. Beverly Drive, Beverly Hills, CA 90212

Development Location: 25200 West Malibu Rd.

Malibu, CA

Development Description: Conversion of 8-unit apartment building to a 5-unit apartment building.

Condition:

Prior to issuance of permit, applicant shall submit evidence that a deed restriction has been recorded limiting the use of the structure to a 5-family dwelling.

Condition met:  Date: 12-27-76

1. In accordance with Section 27422, Public Resources Code, the Executive Director on behalf of the South Coast Regional Commission finds that said development will not have a substantial adverse environmental or ecological effect and is consistent with code, Sections 27001 and 27302.

2. Wherefore, administrative permit A-10-28-76-9250 is approved.

A. That this permit shall not become effective until the attached verification of permit has been returned to the South Coast Regional Commission upon which copy all permittees have acknowledged that they have received a copy of the permit and understood its contents. Said acknowledgment should be returned within ten working days following issuance of this permit.

Executed at Long Beach, California

December 27, 1976

Date

M.J. Carpenter  
Executive Director

pg/ss

EXHIBIT 3
4-98-312-A
Permit

(C) 1994 TRW REDI Property Data

1) Situs:25200 MALIBU ROAD, MALIBU CA 90265-4635

Use:APARTMENT

APN :4459-015-021  
County: Los Angeles CA  
Census:8004.01  
Map Pg:113-D5  
New Pg:628-F7

Tax Rate Area:10865  
Property Tax :\$37,089  
Exemption :

Assd Land:\$3,000,000  
Assd Imp :\$303,000  
Total Val:\$3,303,000  
Assd Year:98  
%Improved:9%

Owner :ORVIS SHEILA I TRUST  
Mail :25200 MALIBU RD 7;MALIBU CA 90265-4635

Last Sale Prior Sale  
Transfer Date:09/21/98 12/19/97  
Document # :1700477 1995655  
Document Type:QUIT CLAIM DEED GRANT DEED  
Price :\$5,000U \$3,303,000F  
First TD : \$1,800,000

Bldg/Lvarea:9,220  
Yrbt/Eff :63/63  
# Stories :  
# Units :8  
# Buildings:1

Junior TD :  
Lender :  
Seller :ORVIS SHEILA I TRUST  
Title Company:

County Use:0500 Lot Size :A0.27  
Bldg Class:D Lot Area :12,074  
Flood Panl:065043-0769C Zoning :LCR3\*  
Flood Zone:  
Heat : Park Type :  
Air-Cond : Park Spaces:

Pool :  
Condition :  
Paved Pkg :

Comments :USABLE LOT:12,074;15 BDRMS;13 BATHS  
Legal :L15 TR12939/VAC ST ADJ ON N & L

TRW-REDI (C) 1994

The Page & Grid reference is copyrighted by Thomas Bros. Maps <TM>

>> Reported data believed to be reliable but accuracy is not guaranteed <<

EXHIBIT 4  
4-98-312-A  
TRW Information

4459 15  
SCALE 1" = 80'  
SHEET 1

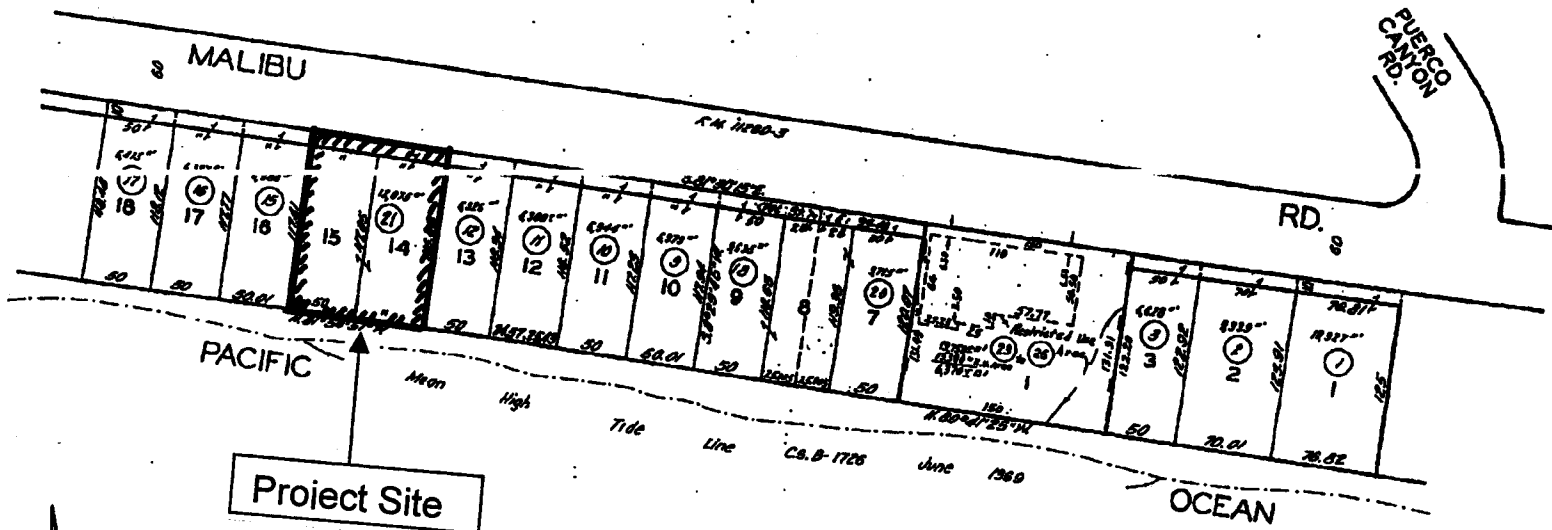
1992

Diagrammatic depicts approximate dimensions.

The assessment of units in the following Condominium Plans, includes all rights and interests in the common areas as set forth in deeds of record.

Condominium Plan Reference	Tract No.	Common Area Lots/Units	Subdivision of Airspace
1971927	P.M. 134-		Sheet 2
	7-8-81	33-34	

12-8-85  
2-8-86  
731205  
REVISED  
3-2-81  
10-20-81  
3-25-84  
810209201  
811822409  
110626



Project Site



CODE 10865

TRACT NO. 12939

M. B. 263-39-40

CONDOMINIUM  
PARCEL MAP

P.M. 135-33-34

f. ASSMT. SER: 482-253

EXHIBIT 5  
4-98-312-A  
Assessor's Parcel Map

ASSESSOR'S MAP  
COUNTY OF LOS ANGELES, CALIF.