


CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Hearing Date: 9/14 - 9/17/99
Commission Action:

STAFF REPORT: CONSENT CALENDAR

APPLICATION No. 4-99-147

APPLICANT: Sharon & Michael Kaiser

PROJECT LOCATION: 27856 Winding Way, Malibu (Los Angeles County)

PROJECT DESCRIPTION: Construction of a new, two story, 28 ft. above grade, 7,490 sq. ft. single family residence, septic system, and 20-ft wide paved access from Winding Way, and attached 3 car garage and studio with 591 cubic yards of grading (257 cu. yds. cut, 334 cu. yds. fill, and 77 cu. yds. import) and 1,034 cubic yards of overexcavation.

Lot area: 63,069 sq. ft.
Building coverage: 3,311.50 sq. ft.
Pavement coverage: 7,730 sq. ft.
Parking spaces: 3
Height above finished grade: 28 ft

LOCAL APPROVALS RECEIVED: City of Malibu Approval-in-Concept, Plot Plan Review approval Number 98-025, Site Plan Review approval Number 98-099

SUBSTANTIVE FILE DOCUMENTS: "Geologic and Geotechnical Engineering Study and Fault Study 27856 Winding Way Malibu", prepared by RJR Engineering Group, Inc. on January 7, 1998, "Addendum Letter No. 1 Response to Review Comments" prepared by RJR Engineering Group, Inc. on October 30, 1998, "Addendum Letter No. 2 Response to Review Comments" prepared by RJR Engineering Group, Inc. on December 29, 1998

SUMMARY OF STAFF RECOMMENDATION: Staff recommends approval of the proposed project with special conditions regarding **geologic recommendations, landscape and erosion control, removal of natural vegetation, wildfire waiver of liability, color restriction, and future improvements.**

I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

Approval with Conditions:

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

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.

6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Plans Conforming to Geologist's and Engineer's Recommendations

All recommendations contained in the submitted geologic engineering reports prepared by RJR Engineering Group, Inc. dated January 7, October 30, and December 29, 1998 relating to grading, foundations, and drainage shall be incorporated into the final project plans and designs. All plans must be reviewed and approved by the consultants. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval of the Executive Director, evidence of the consultants' review and approval of all project plans. Such evidence shall include affixation of the consulting geologists' stamp and signature to the final project plans and designs.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit. The Executive Director shall determine whether required changes are "substantial."

2. Landscaping and Erosion Control Plans

Prior to issuance of a coastal development permit, the applicant shall submit 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 residence. To minimize the need for irrigation and to screen

or soften the visual impact of development, 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. The plan shall include vertical elements, such as trees and shrubs, which partially screen the appearance of the proposed structure as viewed from Pacific Coast Highway and the Coastal Slope Trail. The plan shall specify the erosion control measures to be implemented and the materials necessary to accomplish short-term stabilization as needed on the site.

- 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.
- 5) Vegetation within 50 feet of the proposed house may be removed to mineral earth, vegetation within a 200 foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the fifty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

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 roads, 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 geofabric 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 through out 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.
- 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 geotextiles 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 residence 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.

3. Removal of Natural Vegetation

Removal of natural vegetation for the purpose of fuel modification within the 50 foot zone surrounding the proposed structure shall not commence until the local government has issued a building or grading permit for the development approved pursuant to this permit. Vegetation thinning within the 50-200 foot fuel modification zone shall not occur until commencement of construction of the structure(s) approved pursuant to this permit.

4. Wildfire Waiver of Liability

Prior to the issuance of a coastal development permit, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

5. Color Restriction

The color of the structures, roofs, and driveway permitted hereby shall be restricted to a color compatible with the surrounding environment (white tones shall not be acceptable). All windows shall be comprised of non-glare glass.

A. 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, which reflects the restrictions stated above on the proposed development. The document shall run with the land for the life of the structures approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances 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.

6. Future Improvements

This permit is only for the development described in coastal development permit No. 4-99-147. Pursuant to Title 14 California Code of Regulations Sections 13250 (b)(6), the exemptions otherwise provided in Public Resources Code Section 30610 (a) shall not apply to the entire parcel. Accordingly, any future improvements to the

permitted structures (single family residence, garage, studio), including but not limited to clearing of vegetation or grading, other than as provided for in the approved fuel modification, landscape and erosion control plan prepared pursuant to Special Condition 2, shall require an amendment to Permit No. 4-99-147 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

A. PRIOR TO THE 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, reflecting the above restrictions on development in the restricted area. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the restricted area. 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:

A. Project Description

The applicant proposes to construct a new, two story, 28 ft. above grade, 7,490 sq. ft. single family residence, septic system, 20-ft wide paved access from Winding Way, and attached 3 car garage and studio with 591 cubic yards of grading (257 cu. yds. cut, 334 cu. yds. fill, and 77 cu. yds. import) and 1,037 cubic yards of overexcavation. (Exhibits 1-4b)

The subject property is a triangular shaped site that is considered a flag lot from West Winding Way with open fields to the north, and northeast and residential development to the south. The site occupies an eastern descending ridge flank. An unnamed canyon is present along the eastern property boundary. Generally, slope gradients within the property range from 2:1 to 10:1 (horizontal : vertical). However, local steeper segments are present in the lower portion adjacent to the canyon. In the area of the proposed residence, the slope gradient is approximately 10:1. Local segments of the descending slope are as steep as 1:1. Overall site relief is approximately 100 feet and the elevation in the area of the proposed residence is approximately 190 feet. Access to the site is presently limited, and ingress and egress is planned to be by a 20 ft. wide driveway extending from Winding Way. A designated flood hazard area is present on the eastern edge of the project site.

However, no part of the proposed project will encroach upon the designated hazard area. This site is visible from Pacific Coast Highway and highly visible from the Coastal Slope Trail easement which passes to the east of the subject site.

B. Hazards

The proposed development is located in the Malibu/Santa Monica Mountains area, 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 area 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 states in pertinent part that new development shall:

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

The applicant has submitted a geologic report titled "Geologic and Geotechnical Engineering Study and Fault Study 27856 Winding Way, Malibu" dated January 7, 1998 and two subsequent addendums dated October 30 and December 29, 1998 prepared by RJR Engineering Group, Inc. which incorporate numerous recommendations regarding construction, foundations, and drainage, and state that:

"Based upon the available data, from our review, investigation and analysis, the subject residential improvements are feasible from a geologic and geotechnical standpoint and the site should be free of any geologic or geotechnical hazards, as long as the recommendations of this report are incorporated into the design and construction of the project. The site will be free of landslides, slippage and excess settlement within the guidelines described in this report, provided our recommendations are incorporated into the design and construction of the project".

Therefore, the Commission finds that based on the recommendations of the applicants' geotechnical consultants, the proposed development is consistent with the requirements of Section 30253 of the Coastal Act so long as the geologic consultant's recommendations are incorporated into the final project plans and

designs. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by the geotechnical consultants in accordance with **Special Condition number one (1)**.

Landscaping of the graded and disturbed areas on the project site will enhance the geological stability of the site. In addition, interim erosion control measures implemented during construction will minimize erosion and enhance site stability. Therefore, the Commission finds it is necessary to require the applicant to submit a landscape and erosion control plan as specified in **Special Condition number two (2)**.

In addition, in order to ensure vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition number three (3)**. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced.

Wild Fire Waiver

The proposed project is located near the Santa Monica Mountains, an area subject to an extraordinary potential for damage or destruction from wild fire. The typical vegetation in the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, Terrestrial Vegetation of California, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from these associated risks. Through **Special Condition number four (4)**, the wild fire waiver of liability, the applicant acknowledges the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Moreover, through acceptance of **Special Condition number four (4)**, the applicant also agrees to indemnify the Commission, its officers, agents and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

The Commission finds that only as conditioned to incorporate the landscape and erosion control plans, all recommendations by the applicant's consulting geologist

and engineer, and the wild fire waiver of liability, will the proposed project be consistent with section 30253 of the Coastal Act.

C. Visual Impacts

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and protected:

Section 30251

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.

As stated above, the applicant proposes to construct a new, two story, 28 ft. above grade, 7,490 sq. ft. single family residence, septic system, 20-ft wide paved access from Winding Way, and attached 3 car garage and studio with 591 cubic yards of grading (257 cu. yds. cut, 334 cu. yds. fill, and 77 cu. yds. import) and 1,037 cubic yards of overexcavation.

The site is minimally visible from Pacific Coast Highway and is highly visible from the Coastal Slope Trail easement that passes to the east of the property. The project site is in an area of existing large, single family residences and therefore, the proposed project is consistent with the character of the surrounding area. In addition, minimal grading is proposed and the residence is designed to conform to the topography of the site. However, due to the highly visible nature of the project as seen from the Coastal Slope Trail easement, the Commission finds it necessary to require mitigation measures to minimize visual impacts as seen from the public trail.

The impact on public views can be mitigated by requiring the residence to be finished in a color consistent with the surrounding natural landscape and, further, that the windows of the proposed structure be of a non-reflective nature. To ensure any visual impacts associated with the colors of the structure and the potential glare of the window glass are minimized, the Commission finds it necessary to require the applicant to use colors compatible with the surrounding environment and non-glare glass, as required by **Special Condition number five (5)**.

In addition, future developments or improvements to the property have the potential to create significant adverse visual impacts as seen from the public trail and from

Pacific Coast Highway. It is necessary to ensure that future developments or improvements normally associated with a single family residence, which might otherwise be exempt, be reviewed by the Commission for compliance with the visual resource protection policies of the Coastal Act. **Special Condition number six (6)**, the future improvements deed restriction, will ensure the Commission will have the opportunity to review future projects for compliance with the Coastal Act.

Furthermore, visual impacts can be mitigated by requiring the slope on the eastern side of the residence to be adequately landscaped. The landscaping should consist of native, drought resistant plants and be designed to minimize and control erosion, as well as, partially screen and soften the visual impact of the structure from the Coastal Slope Trail and Pacific Coast Highway with vertical elements such as trees and shrubs. Therefore, the Commission finds that it is necessary to require the applicant to submit a landscape plan as specified in **Special Condition number two (2)**.

In summary, the proposed project, as conditioned, will not result in a significant adverse impact to the scenic public views or character of the surrounding area in this portion of the Santa Monica Mountains. Thus, the Commission finds that the proposed project is consistent, as conditioned, with Section 30251 of the Coastal Act and the policy guidance contained in the certified Malibu/Santa Monica Mountains LUP.

D. 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. 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 applicant proposes to construct a new 1,500 gallon septic tank and disposal system as shown on the plans approved by the City of Malibu, Environmental Health Department. The conceptual approval by the City indicates that the sewage disposal system for the project in this application complies with all minimum requirements of the Uniform Plumbing Code.

The Commission has found in past permit actions that compliance with the health and safety codes will minimize any potential for wastewater discharge that could adversely impact coastal waters. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 and 30250 of the Coastal Act.

E. Local Coastal Program

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

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

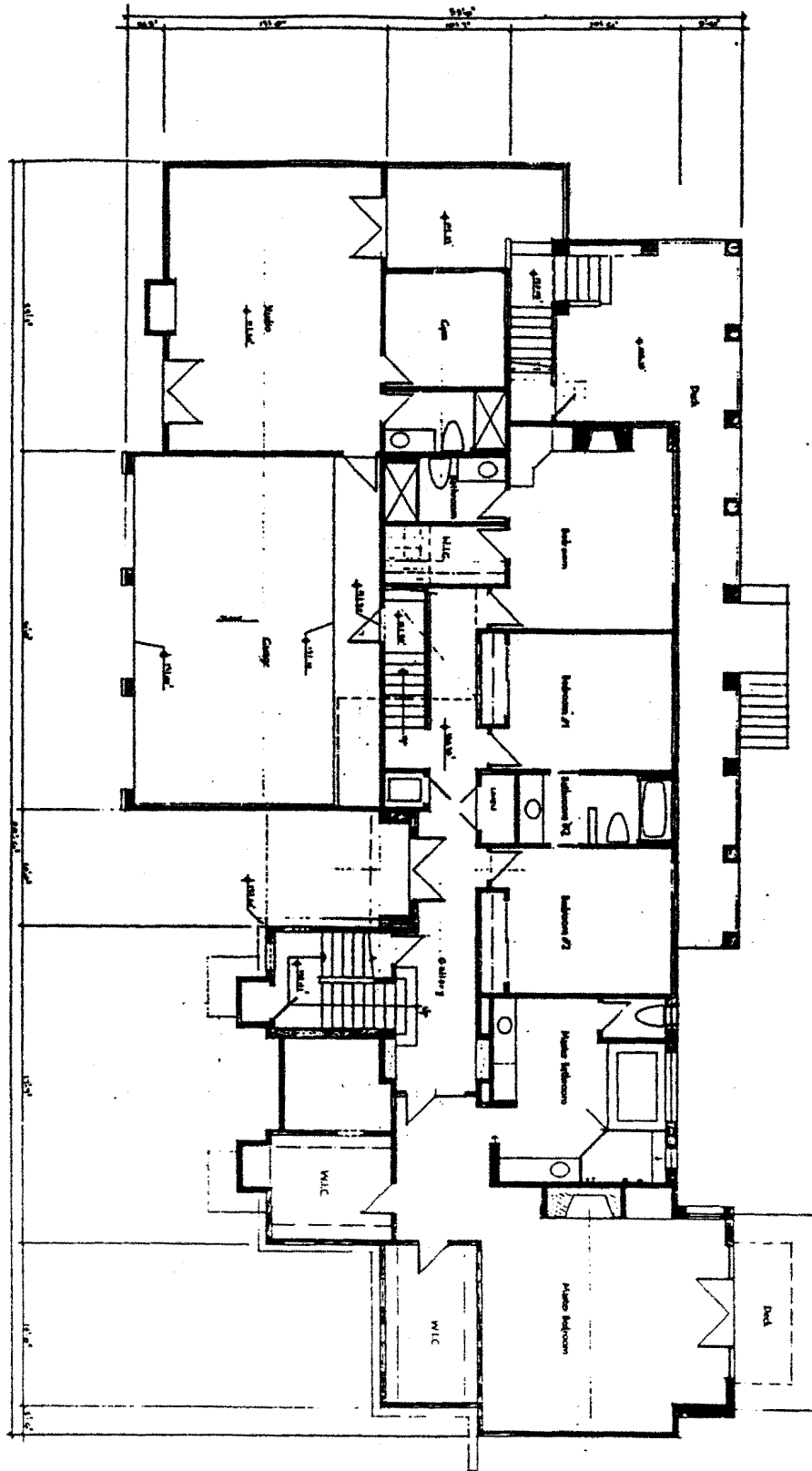
Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding 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).

F. California Environmental Quality Act

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being

approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity would have on the environment.

The proposed project, as conditioned, will not have any 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 consistent with CEQA and the policies of the Coastal Act.



Lower Level Plan, Bedrooms, Studio and Garage

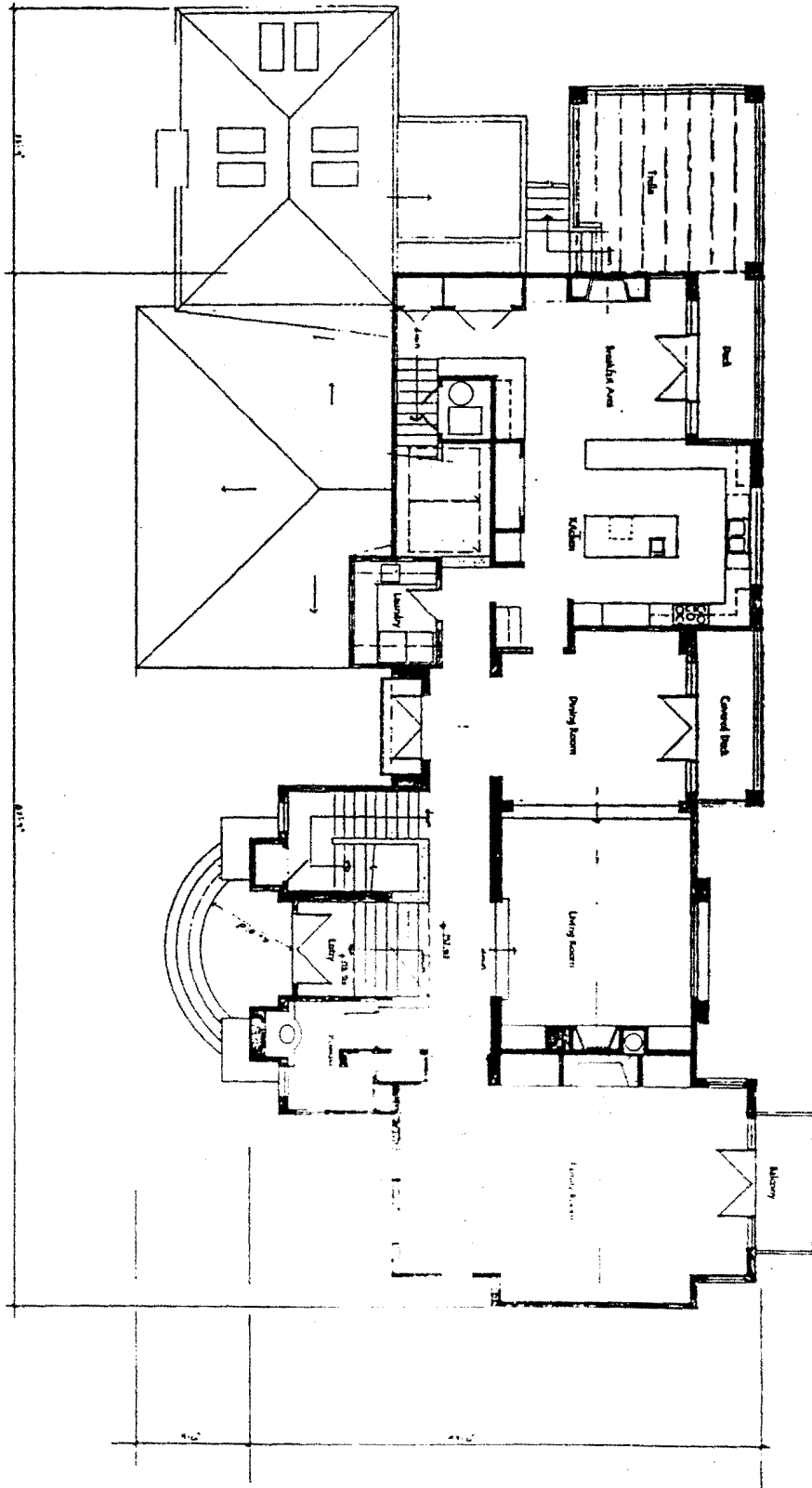
Exhibit 3a:
Application 4-99-

Kaiser
Lower Floor P

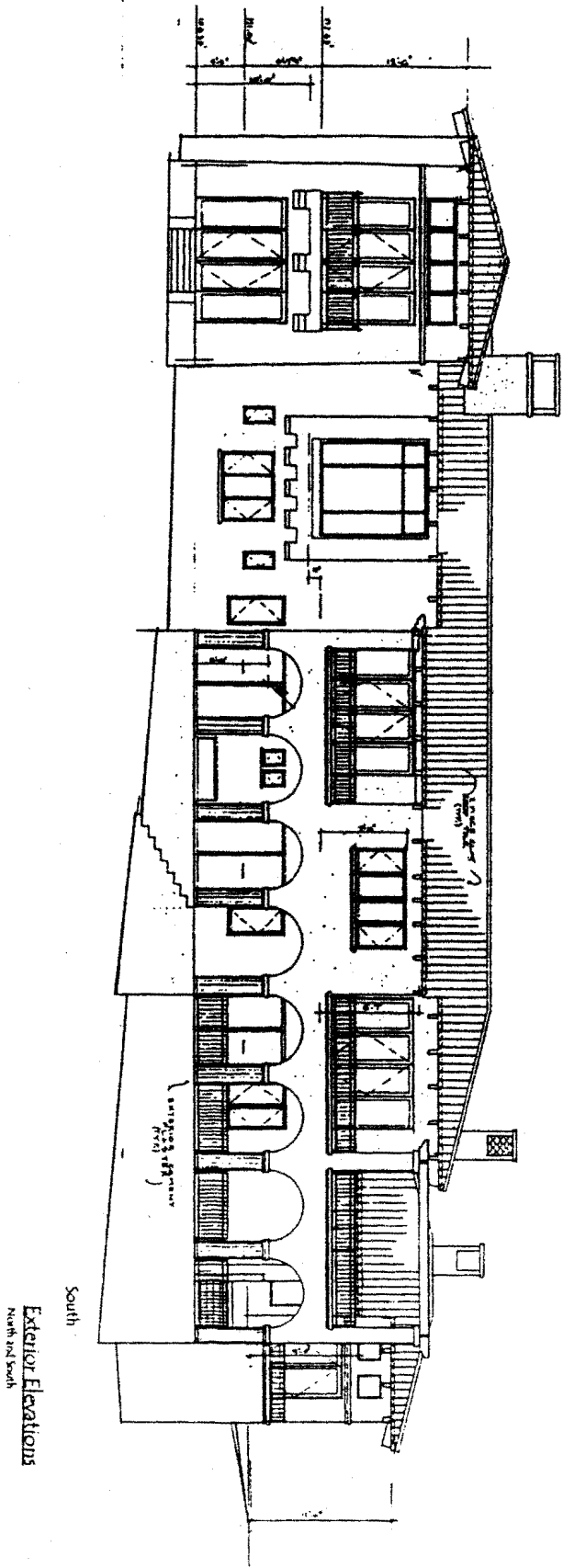
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A-2 Lower Floor Plan (1/4"=1'-0")

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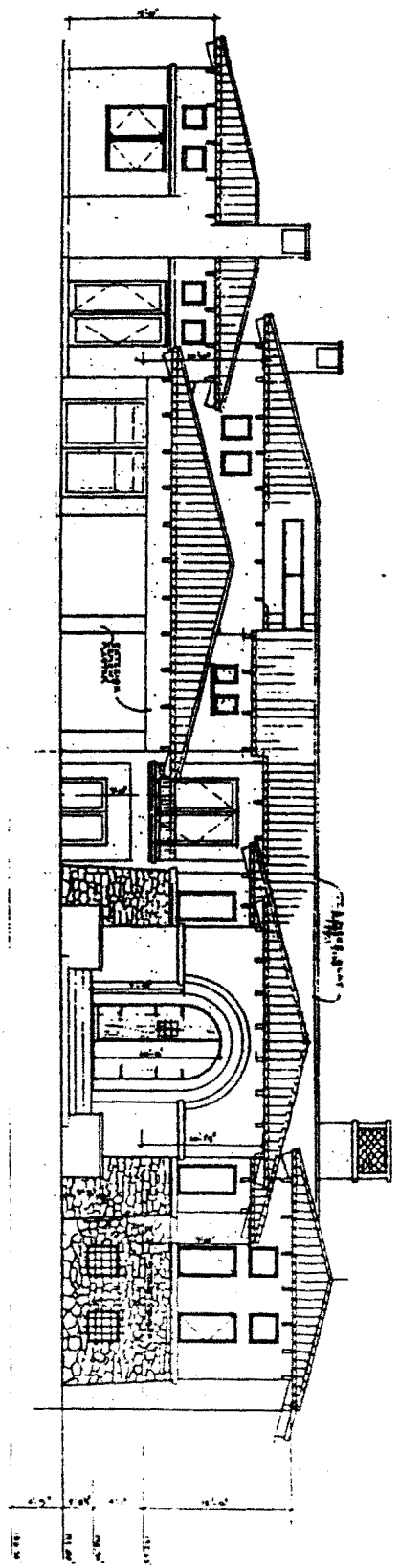
Kaiser Residence
27856 Winding Way
Malibu California, 90265



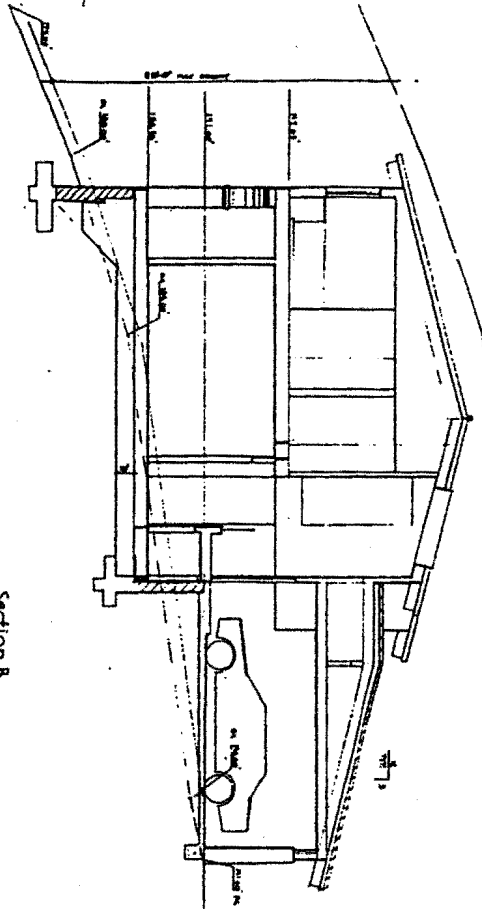
Upper Level Plan, Family and Living spaces



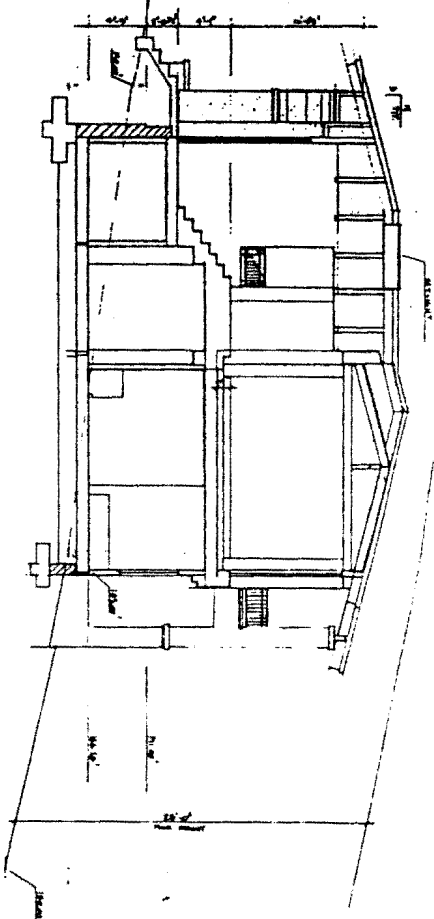
South
Exterior Elevations
North and South



Section B



Section A



Exterior Elevations

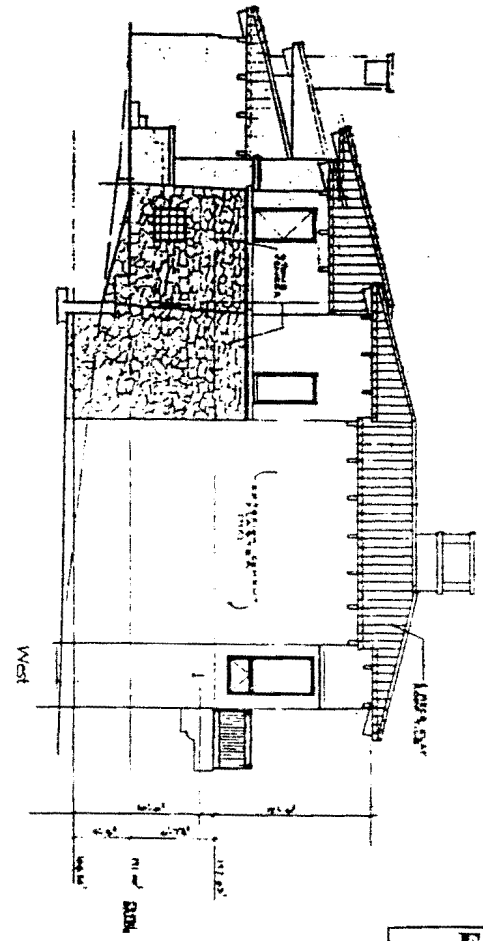
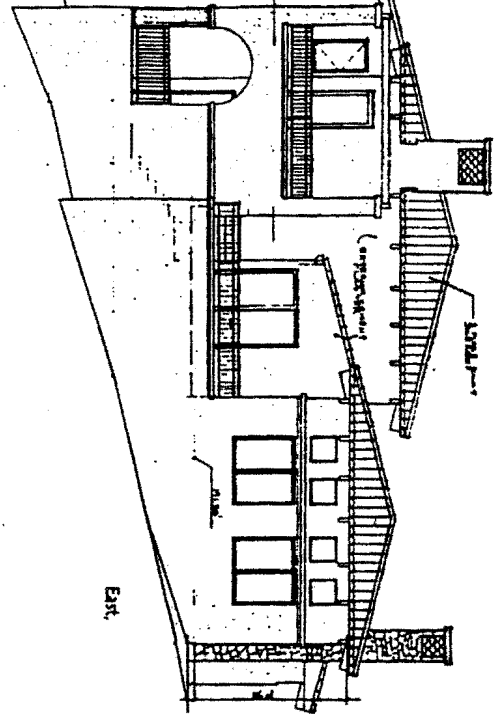


Exhibit 4b:
Application 4-99-

Kaiser
Elevations

