

## CALIFORNIA COASTAL COMMISSION

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

Filed: 7/12/00  
49th Day: 8/23/00  
180th Day: 2/19/01  
Staff: J Johnson  
Staff Report: 9/15/00  
Hearing Date: 10/13/00  
Commission Action:



### RECORD PACKET COPY

## STAFF REPORT: CONSENT CALENDAR

**APPLICATION NO.:** 4-00-166

**APPLICANT:** Ronald & Jane Jenny

**PROJECT LOCATION:** 33010 Pacific Coast Highway, City of Malibu

**PROJECT DESCRIPTION:** Construct 18 sq. ft. addition, a dormer over existing entrance and install 32 skylights in existing roof, all 'as built'.

<b>Lot area:</b>	0.5 acres
<b>Building coverage:</b>	3,600 sq. ft.
<b>Pavement coverage:</b>	3,000 sq. ft.
<b>Landscape coverage:</b>	3,000 sq. ft.
<b>Parking spaces:</b>	seven

**LOCAL APPROVALS RECEIVED:** Approval in Concept, City of Malibu, dated 8/22/00

**SUBSTANTIVE FILE DOCUMENTS:** Coastal Permit Number 4-99-222, EM Properties, LLC.

### SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed "as built" project. The project site is a bluff top lot between Meyer State Beach and Nicholas Canyon Beach with an existing single family residence. The applicant proposes minor additions to the residence that will not affect public access along the beach or the scenic view to and along the coast. The existing residence is set back about 20 feet from the bluff top; the proposed addition is on the landward side of the residence. Therefore, the proposed project is consistent with the coastal resource protection policies of the Coastal Act.

**STAFF RECOMMENDATION:**

**MOTION:** I move that the Commission approve Coastal Development Permit No. 4-00-166 pursuant to the staff recommendation.

Staff recommends a YES vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution:

**I. Resolution for 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. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **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.

5. **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**

NONE

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

The Commission hereby finds and declares:

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

The applicant seeks 'after-the-fact' approval to construct an 'as built' 18 sq. ft. dormer addition to the front entrance of an existing one story single family residence and construct 32 skylights within the roof of the residence. The maximum elevation of the entry dormer is 12 feet six inches. The existing 3600 sq. ft. one story residence was constructed prior to the effective date of the Coastal Act in 1973 and is located as close as about 20 feet landward of the edge of the coastal bluff top. (Exhibits 1 – 3) The proposed development does not include any structural improvements on the bluff face or the beach area at the base of the bluff. A previous owner had constructed a wood deck and hot tub on the bluff top along the seaward side of the residence without a coastal permit; the current owner has removed both from the site.

The project is located along the bluff top lot between Meyer State Beach and Nicholas Canyon Beach near Encinal Canyon Road intersection with Pacific Coast Highway. The project site is located in a residential neighborhood with about a dozen residentially developed lots located between Pacific Coast Highway and the ocean. Vertical public access to these public beaches is available from parking lots located with the respective parks.

The applicant applied for a coastal permit exemption on May 24, 2000. Staff determined that a coastal permit was required because the proposed improvement would encroach within 50 feet of a coastal bluff and therefore involve risk of adverse environmental effects. A letter was sent to the applicant on June 23, 2000 confirming that the project was not exempt and required a coastal permit. The applicant subsequently applied for a coastal permit waiver for this proposed project on July 12, 2000. As a result of the staff's site visit, it was discovered that the proposed project was completed without benefit of a coastal permit and that an application for a coastal permit would be processed rather than the applicant's request for the permit waiver.

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

The Commission hereby finds and declares:

##### **A. Blufftop Development**

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

***(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***

***(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or***

***surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

Section 30253 of the Coastal Act requires that new development minimize risk 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, wind driven rainfall, chemical erosion, including salt spray, causing oxidation and hydration, groundwater seepage, and direct wave attack at the base of the bluff. Stable bluffs usually attain an angle of repose at about a 45 degree slope. The subject bluff appears to be eroding at a steeper angle than the angle of repose.

The applicant proposes to construct a relatively minor addition, 18 sq. ft., to an existing 3,600 sq. ft. residence and add 32 skylights to the roof. The proposed addition is located on the landward side of the existing blufftop residence. The City of Malibu's Geologist determined that proposed project was geologically feasible and that no further requirements were needed. Because the proposed project is relatively minor in scope relative to the existing development and is located on the landward side of the existing residence and has been reviewed by the City of Malibu's Geologist, the project will minimize risk to life and property and assure stability. Therefore, the proposed project is consistent with Coastal Act Section 30253.

## **B. Public Access and Scenic and Visual Quality**

The Coastal Act mandates the provision of maximum public access and recreational opportunities along the coast. The Coastal Act contains several policies that address the issues of public access and recreation along the coast.

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 that:

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 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 projects requiring a coastal development permit must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act. Coastal Act Section 30251 requires that all development be sited and designed to protect views to and along the coast. Based on the access, recreation and development sections 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 applicant seeks 'after-the-fact' approval to construct an 'as built' 18 sq. ft. dormer addition to the front entrance of an existing one story single family residence and construct 32 skylights within the roof of the residence. The maximum elevation of the entry dormer is 12 feet six inches. The existing 3600 sq. ft. one story residence is located as close as about 20 feet landward of the edge of the coastal bluff top. The proposed development does not include any structural improvements on the bluff face or the beach area at the base of the bluff. A previous owner had constructed a wood deck and hot tub on the bluff top along the seaward side of the residence without a

coastal permit; the current owner has removed both from the site. As proposed, there will be no landform alteration or visual impact associated with the proposed project.

The beaches of Malibu are extensively used by visitors of both local and regional origin and most planning studies indicate that attendance of recreational sites will continue to increase significantly over the coming years. The public has a right to use the shoreline under the public trust doctrine, the California Constitution and California common law. The Commission must protect those public rights by assuring that any proposed shoreline development does not interfere with or will only minimally interfere with those rights. As stated previously, the proposed project is located along the bluff top lot between Meyer State Beach and Nicholas Canyon Beach near Encinal Canyon Road intersection with Pacific Coast Highway. The project site is located in a residential neighborhood with about a dozen residentially developed lots. The existing residence is about 20 feet landward of the edge of the approximate 50 foot high bluff, and the proposed addition is located on the landward side of the residence about 35 feet landward of the edge of the bluff. The project and the site are not visible from either Pacific Coast Highway or from the beach below the bluff. There will be no significant visual impacts, as seen from the public beach below, as a result of the proposed development. Therefore, public visibility of the proposed development is not an issue. Vertical public access to these public beaches is available from parking lots located with the respective parks. Therefore, vertical access to the beach exists nearby.

All of the proposed "as built" development is located on the bluff top and will not affect public access along the beach. Regarding lateral access, there are no existing offers to dedicate public easements recorded on the property according to the Commission's records. Therefore, the proposed project will not have any new impacts on shoreline processes nor will it affect public views to and along the beach. Therefore, the Commission finds that there will be no new effects on the beach that would affect lateral public access along the beach. Therefore, there is no basis to require a condition to establish a lateral access easement across the applicant's property.

The project will not preclude public access to any presently existing lateral public access easements or rights or adversely affect public coastal views. For all of these reasons, the Commission finds that the proposed project will have no individual or cumulative adverse effects on public access. Therefore, the Commission finds that a condition to require a new or revised lateral access is not appropriate and that the project, as proposed, is consistent with Coastal Act Sections 30210, 30211, 30212, and 30251.

### **C. Violation**

Although development has taken place prior to the filing of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred.

The proposed addition and remodel of the existing single family residence located on a bluff top along the coast and seaward of the first public road paralleling the coast requires a coastal permit in order to be in conformance with the Coastal Act. As proposed, the development is consistent with the Coastal Act.

#### **D. Local Coastal Program**

Section 30604 of the Coastal Act states, in part, 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 will not prejudice the City's ability to prepare a Local Coastal Program 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**

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 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.

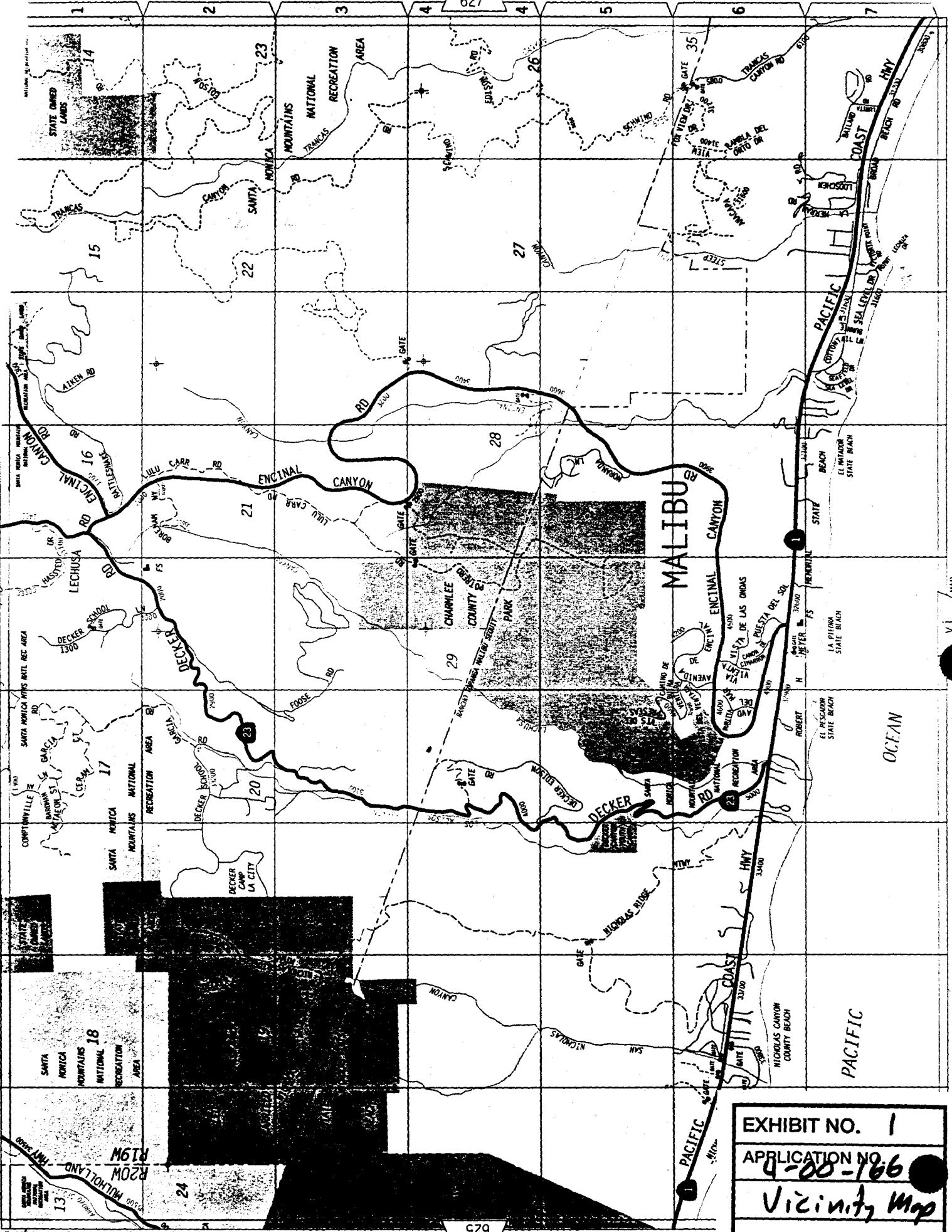
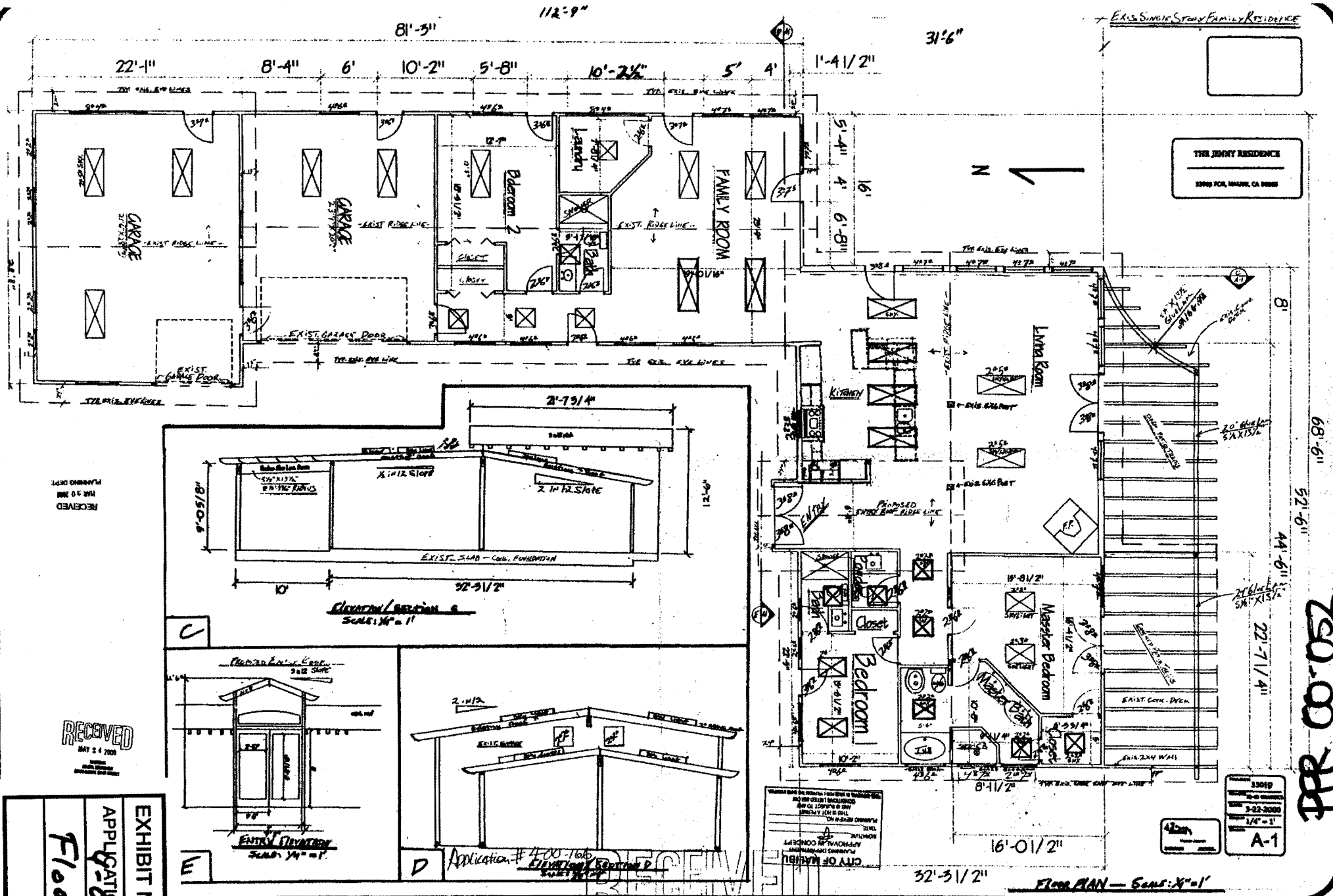


EXHIBIT NO. 1  
 APPLICATION NO. 99-00-166  
*Vicinity Map*

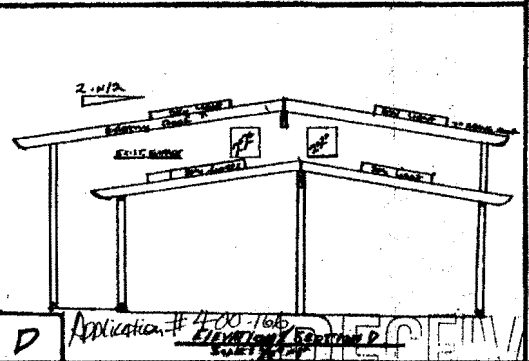
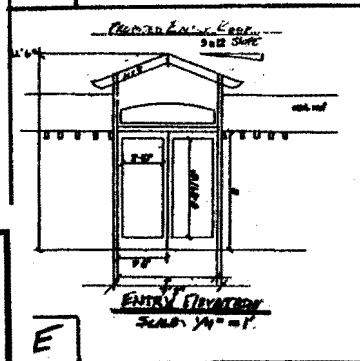
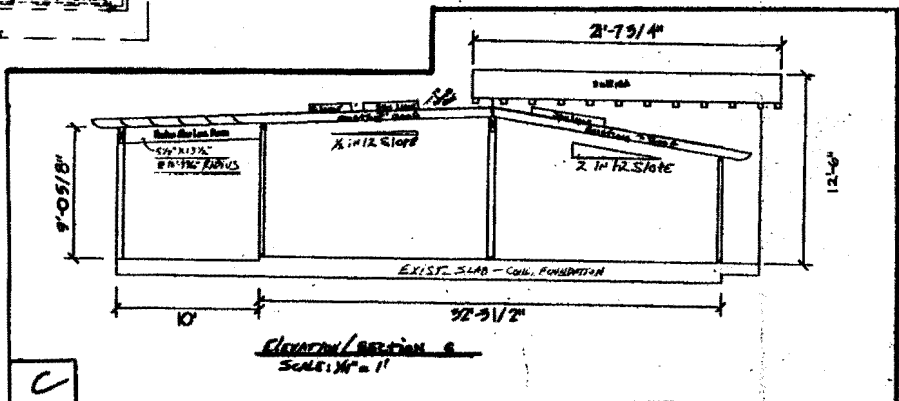




EXIST. SIMS STONY FAMILY RESIDENCE



THE JERRY RESIDENCE  
 15000 FOX HAVEN, CA 95020



CITY OF MARLBOROUGH  
 PLANNING DEPARTMENT  
 APPROVAL OF CONCEPT  
 DATE: \_\_\_\_\_  
 NAME: \_\_\_\_\_  
 PROJECT: \_\_\_\_\_

15000  
 3-22-2000  
 1/4" = 1"  
 A-1

Floor Plan - Scale: 1/4" = 1'

20.00  
 PR 00.052

EXHIBIT NO. 5  
 APPLICATION # 08-1966  
 Floor Plan

AUG 23 2000

CALIFORNIA  
 COMMISSION  
 SOUTH CENTRAL COAST DISTRICT

11-DA-1116

RECEIVED  
 MAY 3 2000  
 PLANNING DEPT.

RECEIVED  
 MAY 24 2000  
 PLANNING DEPT.