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STATE OF CALIFORNIA -- THE RESOURCES AGENCY

GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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RECORD PACKET COPY

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Staff: S. N. Tilles *[Signature]*
Staff Report: 11/01/00
Hearing Date: 11/16/00
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-95-105

APPLICANT: Beverly Higgins

PROJECT LOCATION: 33406 Pacific Coast Highway, City of Malibu (Los Angeles County)

PROJECT DESCRIPTION: Construction of a 1,874 square foot addition to the existing single family residence, including an attached garage and enlarged second story, conversion of an existing carport area into living space, conversion of existing lower deck into enclosed entry area, and minor modification to the configuration of the existing exterior entry deck; construction of a six foot high garden/entry wall; and construction of a whale watching deck adjacent to the garden area.

Lot Area: 15,330 square feet
Building Coverage: 2,697 square feet
Impermeable Coverage: 4,698 square feet
Height Above Finished Grade: 21 feet

LOCAL APPROVALS RECEIVED: City of Malibu, Planning Department, Legal but Non-Conforming Determination ("Grandfathering"), March 17, 2000.

SUBSTANTIVE FILE DOCUMENTS: "Geologic letter in response to Coastal Commission staff issues," Donald B. Kowalewsky, Environmental & Engineering Geology, October 13, 2000; "Geologic memorandum in response to Coastal Commission staff issues raised in a letter dated 9-8-00," Donald B. Kowalewsky, Environmental & Engineering Geology, September 17, 2000; "Slope Stability of the Descending Slope Between the Southerly Portion of the House and the Roadway," C.Y. Geotech, Inc., Engineering Geology and Geotechnical Engineering, July 3, 2000; "Comments on Coastal Commission Staff Report Dated November 18, 1999, C.Y. Geotech, Inc., Engineering Geology and Geotechnical Engineering, February 4, 2000; "Comments concerning California Coastal Commission staff report, dated 11-18-99," Donald B. Kowalewsky, Environmental & Engineering Geology, January 11, 2000;

Part Two: To **deny** the request for a permit to convert the existing lower deck (approximately 218 square feet) into an enclosed entry area and construct a whale watching deck adjacent to the garden area.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission deny the conversion of the existing lower deck (approximately 218 square feet) into an enclosed entry area and the construction of the whale watching deck adjacent to the garden area and approve the construction of a 1,656 square foot addition to the existing single family residence, including an attached garage and enlarged second story, conversion of an existing carport area into living space, and minor modification to the configuration of the existing exterior entry deck; and construction of a garden/entry wall proposed in Coastal Development Permit No. 4-95-105, pursuant to the staff recommendation.*

A. STAFF RECOMMENDATION OF APPROVAL IN PART AND DENIAL IN PART:

Staff recommends a **YES** vote. Passage of this motion will result in approval of all of the development proposed, as conditioned, except for construction of the watching deck adjacent to the garden area and conversion of the existing lower deck (approximately 218 square feet) into an enclosed entry area, which is denied, and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

B. TWO PART RESOLUTION FOR APPROVAL IN PART AND DENIAL IN PART:

Part 1: Approval with Conditions of a Portion of the Development:

The Commission hereby **approves** a Coastal Development Permit for the portion of the proposed project consisting of the after the fact construction of: (1) a 1,656 square foot addition to the existing single family residence, including an attached garage and enlarged second story, conversion of an existing carport area into living space, and minor modification to the configuration of the existing exterior entry deck; and (2) construction of a six foot high, 90 foot long garden/entry wall on the grounds that as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreational policies of Chapter 3 of the Coastal Act, 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.

Engineering Geology and Geotechnical Engineering, including that report dated July 3, 2000 shall be incorporated into all final design and construction, including recommendations concerning construction, foundation, grading and drainage, and must be reviewed and approved by the consultants. Prior to issuance of the Coastal Development Permit, the applicant shall submit evidence to the Executive Director of the consultants' review and approval of all final design and construction plans.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, foundation, grading, and drainage. Any substantial changes in the proposed development approved by the Commission, which may be required by the consultants, shall require an amendment to the permit or a new Coastal Development Permit.

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

- A) By acceptance of this permit, the applicant acknowledges and agrees to the following:
1. The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
 2. The applicant acknowledges and agrees 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.
 3. The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
 4. The applicant agrees 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 subject parcels (APNs 4473-019-03 and 4473-019-04). 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.

is some 27 miles long, backed by the Santa Monica Mountains. The proposed project site is located on the less densely developed western end of Malibu. The applicant's proposed project is located on Encinal Beach, a narrow sandy beach backed by high, steep bluffs. The bluffs backing this beach contain areas of highly erodeable deposits, as well as bedrock outcrops of harder materials. This beach is located in an area between Nicholas Canyon County Beach and the three pocket beaches that make up the Robert H. Meyer Memorial State Beach (El Pescador, La Piedra, and El Matador Beaches).

The subject site is comprised of two parcels, which are shown on Exhibit 2. Access to the subject property is via a driveway, which descends from Pacific Coast Highway. Portions of both parcels contain coastal bluff top area and the southern portions of the site are also comprised of coastal bluff face. The western lot contains the applicant's residence, while the eastern lot is developed with a driveway, garden wall, septic system, and whale watching deck associated with the residence. In addition, the applicant owns three other parcels to the south of the two parcels making up the subject site that are vacant. Those three additional parcels to the south are comprised of bluff face and sandy beach areas. There is also a private beach access driveway traversing the applicant's parcels, which descends the bluff face to the sandy beach below.

There will be no impact on public access as a result of the proposed development. No vertical accessway exists across the subject site and a lateral public access easement must be recorded by the applicant as a condition of approval under CDP 4-97-243. There will also be no visual impact from the proposed development, as the single family residence is only minimally visible from the beach below and is not visible from Pacific Coast Highway, as there is another residence to the north of the subject site fronting Pacific Coast Highway. Furthermore, the bluff portion of the subject site is designated as environmentally sensitive habitat area. However, the portion of the bluff where the project is proposed is highly disturbed and revegetation with native species was a condition of approval for CDP 4-97-243.

The applicant requests after the fact approval of the construction of a 1,874 square foot addition to the existing single family residence, including an attached garage and enlarged second story, conversion of an existing carport area into living space, conversion of existing lower deck into enclosed entry area, and minor modification to the configuration of the existing exterior entry deck. In addition, the applicant is requesting after the fact approval of the construction of a six foot high, approximately 90 foot long, garden wall and a whale watching deck, which are located adjacent to the garden area. The single family residence and proposed additions are located on the western parcel of the subject site, while the garden wall and whale watching deck are located on the eastern parcel. The septic system for the single family residence is also located on the eastern parcel.

On May 9, 2000, the Commission approved Coastal Development Permit (CDP) 4-97-243 (Higgins), for a revetment that the applicant contended was necessary to protect the toe of the bluff from wave erosion. It is this same bluff on which the existing and proposed development is located. Pursuant to CDP 4-97-243, the applicant asserted

permit application states, "This is a suitable use for the general area but the specific site i[s] unsuitable for this type of intensive use. The instability of the bluff would suggest removal to another site." The following reasons are listed as the basis for that recommendation of denial:

1. This structure represents a threat to bluff stability
2. The structure should be removed
3. Inconsistent with existing land use in the area
4. Not feasible (sic) to meet County requirement of 2 car garage or carport on this site.

The applicants appealed that decision to the State Coastal Commission (Appeal 113-74). The appeal was also denied. Incidentally, staff also notes that the other single family residential structures, mentioned above, that were placed on the adjacent parcels were similarly denied.

In a subsequent court action, the trial court found that the Higgins had not obtained a permit from the Commission for the development of any of the lots (including the lots on which the single family residence, proposed additions, and associated improvements are located) and that none of the development on these sites was exempt from permit requirements by reason of substantial lawful construction on the property prior to February 1, 1973. The trial court issued a judgment that enjoined development of the properties and imposed civil penalties. Although the Higgins appealed this judgment, the Court of Appeal affirmed the judgment on March 30, 1977.

Staff could not locate any information in the Commission's or Attorney General's files pertaining to the enforcement of this judgment. Pursuant to the prior permit, CDP 4-97-243, however, the applicant's agent asserted that an informal agreement was entered into between the Commission and the Higgins, whereby the Higgins agreed to remove the two units placed on the beach lots in return for the Commission permitting the subject residence as well as two other modular units on adjacent parcels. Staff notes, however, that no evidence of any agreement, informal or otherwise has been provided. The applicant's agent did, however, provide evidence that the monetary portion of the judgment was satisfied in 1979.

The two modular units on the beach were eventually removed. However, the Commission did not take action to require removal of the residence on parcel 4473-019-003, which is the residence for which the additions are under consideration in this current application. In fact, the Commission has previously approved additions to the subject single family residence, located on parcel 4473-019-003. In December of 1980, the Commission considered three permits (A-80-7340, A-80-7341, and A-80-7342) for additions to the modular units that remained on parcels 4473-019-001, 4473-019-002, and 4473-019-003. Permit A-80-7342 was the application for additions to the single family residence on parcel 4473-019-003. This administrative permit was approved for the "addition of a carport, master bedroom, recreation room and decks to an existing single family residence." Pursuant to the previous permit, CDP 4-97-243, the applicant's agent provided a copy of a transcript of a portion of the December 1980

whereby the project site would be combined with a portion of the lot above it, ostensibly to provide for a potential building pad area on the bluff face that would not extend down to beach level. However, this proposed building pad area was extremely steep and highly eroded. The Commission found that the proposal could not be considered infill development and would destroy a relatively undeveloped bluff face. The Commission further found that a single family residence built in this location could be subject to hazards from wave damage and erosion and that it was very likely that the applicant would request a protective device to protect the structure in the future, as a result. The Commission also found that the proposed single family residence would have adverse impacts on coastal access and on the ESHA on the bluff face.

CDP 4-93-092 (Higgins)

CDP 4-93-092 (Higgins) was also denied by the Commission. This application proposed the construction of a 14 foot high, 120 foot long rock revetment across the three beachfront parcels, including 4473-019-005, 4473-019-006, and 4473-019-007. The applicants originally proposed the revetment to protect a cabana on a beachfront site. However, Commission staff considered this structure to be temporary in nature, and, in any event, unpermitted. The applicants later revised their application to request the revetment to protect an existing roadway and turnaround area on the site. However, the Commission found that while the road pre-dated Proposition 20, the bottom portion of the road and turnaround area had been modified after enactment of Proposition 20 without the required Coastal Development Permit. Additionally, the Commission found that there was no evidence that the road or turnaround were in danger from erosion at that time. Finally, the Commission found that there were alternatives to the proposed project, such as regrading and revegetating the toe of the bluff, which could be effective in maintaining the road and preventing erosion. The Commission findings state:

Given the minimal amount of erosion that has taken place on the site to date, it would be premature at this point to commit this beach to a revetment when there are clearly less environmentally damaging alternatives available. It is possible that the erosion situation on the site may change in the future. Nothing precludes the applicants from applying at a later date to remedy any future problems.

4-98-223-G (Higgins)

The applicant applied for and was granted two emergency permits, 4-97-234-G for a sand berm and 4-98-039-G for the construction of a rock revetment. However, construction was carried out after the 30 days that the emergency permit was effective and development was undertaken that had not been approved under the emergency permit. As such, when the applicant began construction in May of 1998, there was no active Coastal Development Permit. Furthermore, the applicant did not have permits from the City of Malibu. As a result, in May of 1998, the City of Malibu issued a stop-work notice to the applicant, halting the construction before the revetment or buttress was complete. In August of 1998, the applicant submitted a request for an emergency permit, 4-98-223-G, to complete the construction of the buttress fill to support the coastal bluff, retaining wall adjacent to the roadway and repair underground drainage

adjustment will be to reduce the total number of legal lots from three to two. This application was recently received, however, and has not been completed for filing purposes or scheduled for a Commission hearing. At this time therefore, the application remains incomplete, but still pending.

B. Bluff Top Development/Geologic Hazard and Stability

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 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.

In his report entitled, "Geologic letter in response to Coastal Commission staff issues," dated October 13, 2000, Donald B. Kowalewsky, Environmental & Engineering Geology states:

It is the opinion of the undersigned engineering geologist that if all of the recommendations provided in the reports previously prepared by this office are incorporated in the building plans and implemented the proposed construction will not be adversely affected by landslides settlement or slippage and will not adversely affect stability of slopes on offsite properties.

In addition, in their report entitled, "Slope Stability of the Descending Slope Between the Southerly Portion of the House and the Roadway," dated July 3, 2000, C.Y. Geotech, Inc., Engineering Geology and Geotechnical Engineering, analyze the stability before and after the installation of the pile supported retaining walls, approved under CDP 4-97-243, directly beneath the southern portion of the residence. In this report, they state that the factor of safety upon completion of the retaining walls will, in fact, be 1.50.

Furthermore, in the report dated September 17, 2000, entitled "Geologic memorandum in response to Coastal Commission staff issues raised in a letter dated 9-8-00," Donald B. Kowalewsky, states:

It is my understanding that the application is for additions to the structure that were constructed some time ago. . . . Although the undersigned geologist was not involved with those additions, review of stability analyses along cross-section A-A', prepared by

Section 30253 of the Coastal Act as long as the geotechnical consultant's and the structural engineering consultant's recommendations are incorporated into project plans. Therefore, **Special Condition 1** requires the applicant to submit final project plans and designs that have been certified in writing by the geologic and geotechnical engineering consultants as conforming to their recommendations.

The subject site is located along the Malibu coastline, an area that is generally considered to be subject to an unusually high degree of natural hazards. Geologic hazards common to the Malibu/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. Finally, the area is potentially subject to severe ground shaking during any earthquake on the nearby Malibu Coast fault.

Coastal bluffs, such as the one located on the subject site, are unique geomorphic features that are characteristically unstable. By nature, coastal bluffs are subject to erosion from both runoff from the top of the bluff and from wave action at the base of the bluff. In addition, due to their geologic structure and soil composition, these bluffs are susceptible to surficial failure, especially with excessive water infiltration.

In addition, the Malibu coast has been subject to substantial damage as a result of storm and flood occurrences, landslides, and firestorms. The proposed project site is subject to flooding and/or wave damage from storm waves and storm surge conditions. Past occurrences have resulted in public costs (through low interest loans for home repairs and/or rebuilding after disasters) in the millions of dollars in the Malibu area alone. Along the Malibu coast, significant damage also has occurred to coastal areas from high waves, storm surge and high tides. In the winter of 1977-78, storms triggered numerous mudslides and landslides and caused significant damage along the coast. The "El Nino" storms in 1982-83 caused additional damage to the Malibu coast, when high tides over seven feet combined with surf between six and 15 feet. These storms caused over \$12 million in damage. The El Nino storms of 1987-88, 1991-92, and 1997-1998 did not cause the far-reaching devastation of the 1982-83 storms; however, they too were very damaging in localized areas and could have been significantly worse except that the peak storm surges did not coincide with peak high tide.

The Coastal Act recognizes that new development, such as the construction of the proposed additions on a coastal bluff, will involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the 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 his property.

Therefore, the Commission finds that due to the possibility of wave attack, erosion, landsliding, and flooding, the applicant shall assume these risks as a condition of approval and agree to indemnify the Commission for any damages imposed on it due to

development. The applicant submitted evidence, in the form of investigations conducted by coastal engineers and an engineering geologist, that a shoreline protective device and other improvements are needed to prevent further erosion of the bluff, and to protect existing development from damage. The applicant's engineering geologist determined that wave erosion at the base of the bluff decreased overall slope stability on the site and endangered the residence at the top of the bluff which is supported on standard foundations, and which is the subject of the present CDP under consideration. The applicant submitted evidence, in the form of investigations conducted by coastal engineers and an engineering geologist, that a shoreline protective device and other improvements are needed to prevent further erosion of the bluff, and to protect existing development from damage. The applicant's consultants contended that if a shoreline protective device is not constructed on the subject site, the bluff would continue to erode, further damaging the existing roadway, further destabilizing the bluff slopes, and causing support for the existing residence to be lost.

Additionally, observation by Commission staff since at least 1990 indicates that severe erosion has taken place at the toe of the bluff on the project site after the El Nino storms of 1998. Pursuant to the review of CDP 4-97-243, the Commission Engineer, Lesley Ewing, visited the project site with the applicant and the applicant's geologic consultant to assess the threat to development on the site and the proposed stabilization. Based on this site visit, review of the project materials, and consultation with the applicant's geologist, she concurred with the applicant's assertion that continued erosion of the toe of the bluff will threaten the residence and found that the residence could probably be threatened in the next five to 10 years. However, one large storm could change the situation significantly. Eventually, without the revetment, the bluff could retreat landward such that a much larger revetment and or bluff retaining wall may be required to protect the existing development. In addition, the applicant's consultants contended that the revetment is necessary at this time because a catastrophic bluff failure could occur and result in severe damage to the residence.

The applicant's geologist determined that the buttress fill and retaining walls, approved under CDP 4-97-243, will increase the slope stability of the bluff. Under CDP 4-97-243, the retaining walls proposed for the area below the existing residence will be supported on caissons in order to provide adequate support for the residence, which is constructed on conventional foundations. Pursuant to CDP 4-97-243, the applicant's geologist made specific recommendations relating to the construction of the proposed improvements and concluded that the site will be stable if his recommendations are incorporated into the project. The consultants' recommendations and conclusions regarding geologic safety of the additions are based on the assumption that the retaining walls authorized in CDP 4-97-243 will be constructed. If those retaining walls are constructed, the applicants' consultants found that an acceptable factor of safety (1.5) will be provided. Based on the consultant's analysis and staff's observations of the wave erosion that has taken place at the base of the bluff and the associated threat of damage to or destruction of the single family residence, the Commission finds that it is necessary to require **Special Condition 5**. As the site, including the subject single family residence, may not be stable until the construction permitted under CDP 4-97-243 is completed, the Commission finds that this permit may not be issued until the

elevation line on the topography map. As a result, a portion of the existing residence does not meet the 25 foot setback from the bluff edge.

Therefore, the Commission finds that the enclosure of the lower deck into an entry area measuring approximately 218 square feet, would be inconsistent with past Commission permit actions requiring a minimum 25 foot setback from the bluff edge; therefore, the Commission denies this portion of the proposed development since it is not consistent with Section 30253 of the Coastal Act. Consequently, **Special Condition 3** requires the applicant to submit revised plans deleting this conversion of the lower existing deck into an entry area.

With the increase in the size of the existing single family residence, there is a possibility that septic capacity may likewise need to be increased. The applicant has submitted a report, entitled "Addendum, to geologic letter in response to Coastal Commission staff issues," prepared by Donald B. Kowalewsky and dated October 16, 2000 that addresses the septic system for the residence and the additions proposed under this permit application. That report states:

Although additions to the structure are currently under review by Coastal Commission staff members, those additions have been in use for approximately ten years. As a consequence, the existing septic system has been receiving the effluent discharge from the structure, as that structure is proposed in the existing application. . .

Because that system has functioned adequately since installation, there should be no need to expand the system to accommodate the existing structure. However, should the seepage pit fail in the future, room for future pits exists to the east of the existing pit. Those future pits would be no closer to the bluff than the existing pit and would discharge effluent into the same type of earth material (granular terrace deposits), therefore, the effect on bluff stability should be the same as the existing pit.

Based on this information that has been submitted by the applicant's consultant, the Commission notes that it appears that the existing septic system has performed adequately and should not require any modification as a result of the additions approved in this Permit. However, the City of Malibu Department of Environmental Health has not yet approved the septic system for the additions. If the City determines that the septic system is not adequate or is no longer functioning properly it will require the applicant to replace, relocate or modify the septic system. It will be necessary to ensure that this occurs in a way that will not cause or contribute to bluff instability. Therefore, **Special Condition 4** requires that prior to issuance of this Permit, the City must approve the septic system. The condition also indicates that if the City requires the applicant to replace, relocate or modify the septic system, an amendment to this Permit is required, unless the Executive Director determines that an amendment is not required.

Wildfire

The proposed project is located in the Santa Monica Mountains, an area subject to an extraordinary potential for damage or destruction from wildfire. The typical vegetation in

maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.

As stated in the previous section, with the increase in the size of the existing single family residence, there is a possibility that the septic capacity may likewise need to be increased. The applicant has submitted a report, entitled "Addendum, to geologic letter in response to Coastal Commission staff issues," prepared by Donald B. Kowalewsky and dated October 16, 2000 that addresses the issue of site stability in relation to the septic system for the residence and the additions proposed under this permit application. That report states:

Plans reviewed by this office indicate the existing septic system consists of a 2000 gallon septic tank and a single 5' diameter by 59' deep seepage pit. The seepage pit is located approximately 8 feet east of the carport in the northerly portion of the lot. That pit has been utilized for many years and at no time has this office seen any evidence for seepage onto the sea cliff.

Although additions to the structure are currently under review by Coastal Commission staff members, those additions have been in use for approximately ten years. As a consequence, the existing septic system has been receiving the effluent discharge from the structure, as that structure is proposed in the existing application. . .

Because that system has functioned adequately since installation, there should be no need to expand the system to accommodate the existing structure. However, should the seepage pit fail in the future, room for future pits exists to the east of the existing pit. Those future pits would be no closer to the bluff than the existing pit and would discharge effluent into the same type of earth material (granular terrace deposits), therefore, the effect on bluff stability should be the same as the existing pit.

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. As of the date of this report, the applicant has not obtained "In-Concept Approval" for the existing sewage disposal system from the City of Malibu Environmental Health Department. Further, in Commission staff's discussions with a representative of the City of Malibu Environmental Health Department, staff was informed that the applicant would be required to receive a final approval from that department prior to issuance of a final building permit from the City of Malibu Building and Safety Department. The City of Malibu Planning Department has stated that the additions that are the subject of this Permit will not require Planning Department review or approval because they were constructed prior to incorporation of the City of Malibu. However, staff was informed by the City of Malibu Environmental Health Department that the septic system was not "grandfathered" and final approval must be received by the applicant. This final approval from the City of Malibu Environmental Health Department will indicate that the sewage disposal system for the project in this application complies with all current 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

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).

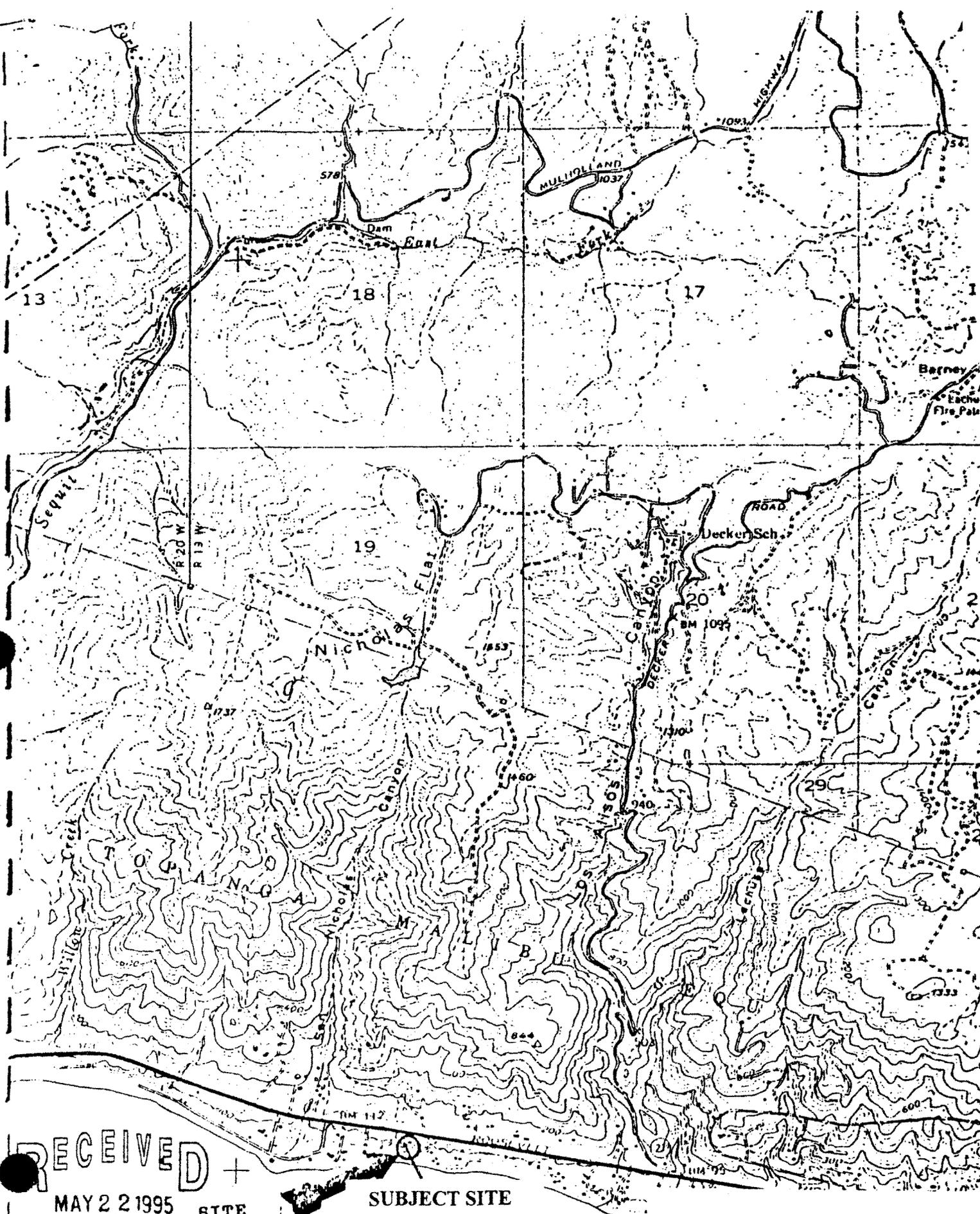
Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project would not be in conformity with the provisions of Chapter 3 of the Coastal Act. The proposed development would result in adverse impacts and is found to be not consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the portion of the proposed project consisting of the after the fact conversion of the existing lower deck (approximately 218 square feet) into an enclosed entry area and construction of a whale watching deck adjacent to the garden area would prejudice the City of Malibu'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).

The Commission also finds that the portion of the proposed project consisting of the after the fact construction of a 1,656 square foot addition to the existing single family residence, including an attached garage and enlarged second story, conversion of an existing carport area into living space, and minor modification to the configuration of the existing exterior entry deck; and construction of a six foot high, 90 foot long garden/entry wall, as conditioned, would not prejudice the City of Malibu's ability to prepare a Local Coastal Program and is consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

F. 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) of 1970. 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 that the activity may have on the environment.

The Commission finds that the portion of the proposed project consisting of the after the fact conversion of the existing lower deck (approximately 218 square feet) into an enclosed entry area and construction of a whale watching deck adjacent to the garden area would result in significant adverse effects on the environment, within the meaning of CEQA. The Commission finds that revising the project to delete conversion of the lower deck into an enclosed entry area and the whale watching deck is a feasible alternative that would substantially lessen significant adverse environmental impacts of the project. Therefore, these portions of the proposed project are determined to be inconsistent with CEQA and the policies of the Coastal Act.



RECEIVED

MAY 22 1995
 CALIFORNIA
 COASTAL COMMISSION
 SOUTH CENTRAL COAST DISTRICT



SUBJECT SITE

Figure 1 Location Map

EXHIBIT 1
 CDP 4-95-105 (Higgins)

BASIS OF BEARINGS:

THE BEARING OF S 80°45'30" E ON THE CENTER LINE OF PACIFIC COAST HIGHWAY AS DESCRIBED IN A DEED RECORDED IN BOOK 15228, PAGE 342 OF OFFICIAL RECORDS OF LOS ANGELES WAS USED AS THE BASIS OF BEARINGS FOR THIS MAP.

BENCHMARK:

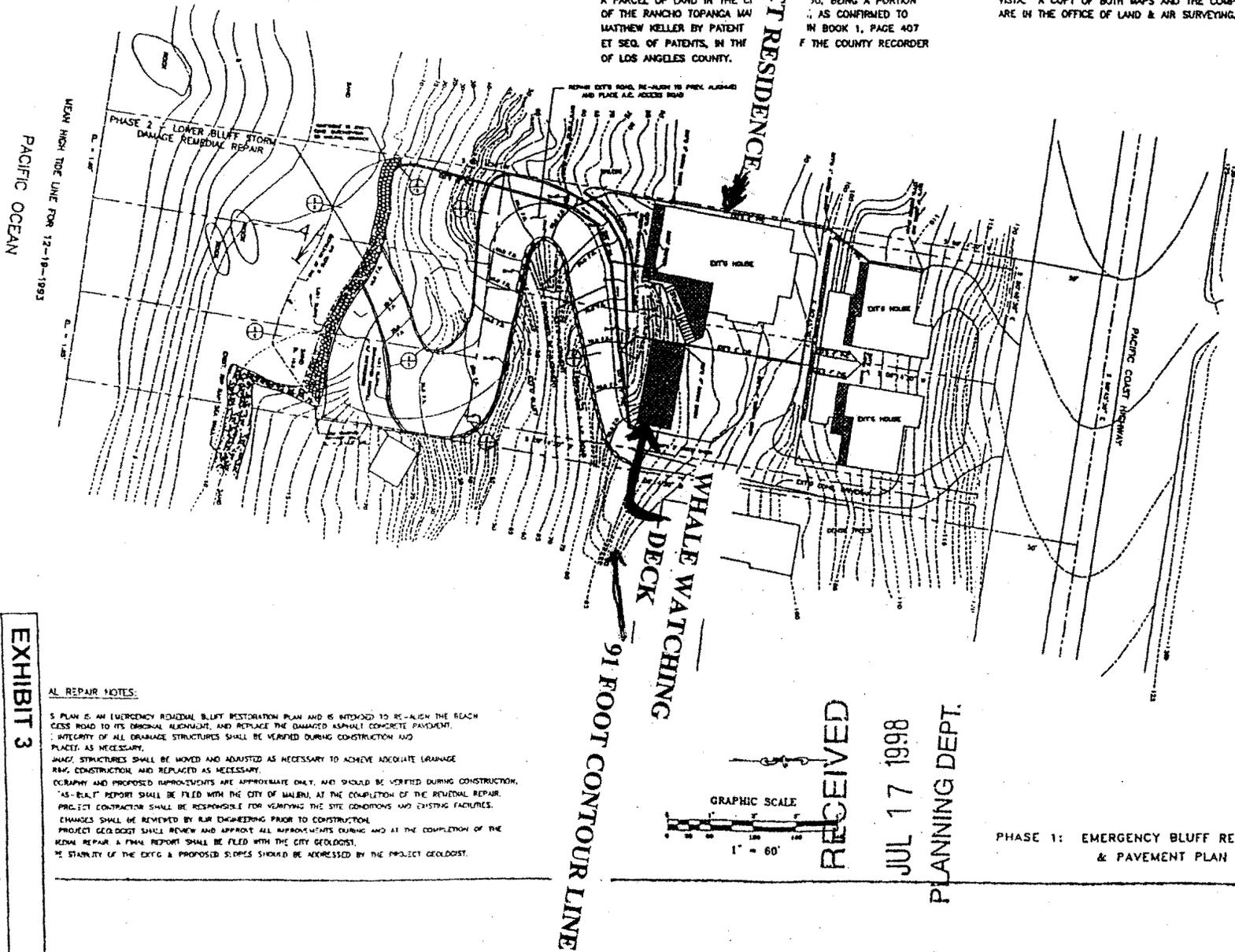
L.A.C.E. B.M. #DY-9087
EL.=113.402 (1990 ADJ.)

LEGAL DESCRIPTION
A PARCEL OF LAND IN THE CT OF THE RANCHO TOPANGA MOUNTAIN MATTHEW KELLER BY PATENT ET SEQ. OF PATENTS, IN THE COUNTY OF LOS ANGELES.

AS BEING A PORTION AS CONFIRMED TO IN BOOK 1, PAGE 407 OF THE COUNTY RECORDER

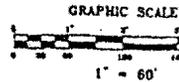
SURVEYORS NOTES:

1. MEAN HIGH TIDE ELEVATION USED FOR THIS MAP IS 1.25'.
2. THIS MAP IS A COMPILED MAP PREPARED BY LAND & AIR SURVEYING AND A MAP SUPPLIED BY MALIBU VISTA. A COPY OF BOTH MAPS AND THE COMPILED MAP ARE IN THE OFFICE OF LAND & AIR SURVEYING.



REPAIR NOTES:

- 1. THIS PLAN IS AN EMERGENCY REMEDIAL BLUFF RESTORATION PLAN AND IS INTENDED TO RE-ALIGN THE BEACH ACCESS ROAD TO ITS ORIGINAL ALIGNMENT AND REPLACE THE DAMAGED ASPHALT CONCRETE PAVEMENT.
- 2. INTEGRITY OF ALL DRAINAGE STRUCTURES SHALL BE VERIFIED DURING CONSTRUCTION AND REPAIRED, AS NECESSARY.
- 3. EXISTING STRUCTURES SHALL BE MOVED AND ADJUSTED AS NECESSARY TO ACHIEVE ADEQUATE DRAINAGE. CONSTRUCTION AND REPAIRED, AS NECESSARY.
- 4. TOPOGRAPHY AND PROPOSED IMPROVEMENTS ARE APPROXIMATE ONLY, AND SHOULD BE VERIFIED DURING CONSTRUCTION.
- 5. "AS-BUILT" REPORT SHALL BE FILED WITH THE CITY OF MALIBU, AT THE COMPLETION OF THE REMEDIAL REPAIR.
- 6. PROJECT CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE SITE CONDITIONS AND EXISTING FACILITIES.
- 7. CHANGES SHALL BE REVIEWED BY LAIR ENGINEERING PRIOR TO CONSTRUCTION.
- 8. PROJECT GEOLOGIST SHALL REVIEW AND APPROVE ALL IMPROVEMENTS DURING AND AT THE COMPLETION OF THE REMEDIAL REPAIR. A FINAL REPORT SHALL BE FILED WITH THE CITY GEOLOGIST.
- 9. THE STABILITY OF THE EXISTING AND PROPOSED SLOPES SHOULD BE ADDRESSED BY THE PROJECT GEOLOGIST.



RECEIVED
JUL 17 1998
PLANNING DEPT.

PHASE 1: EMERGENCY BLUFF RESTORATION & PAVEMENT PLAN

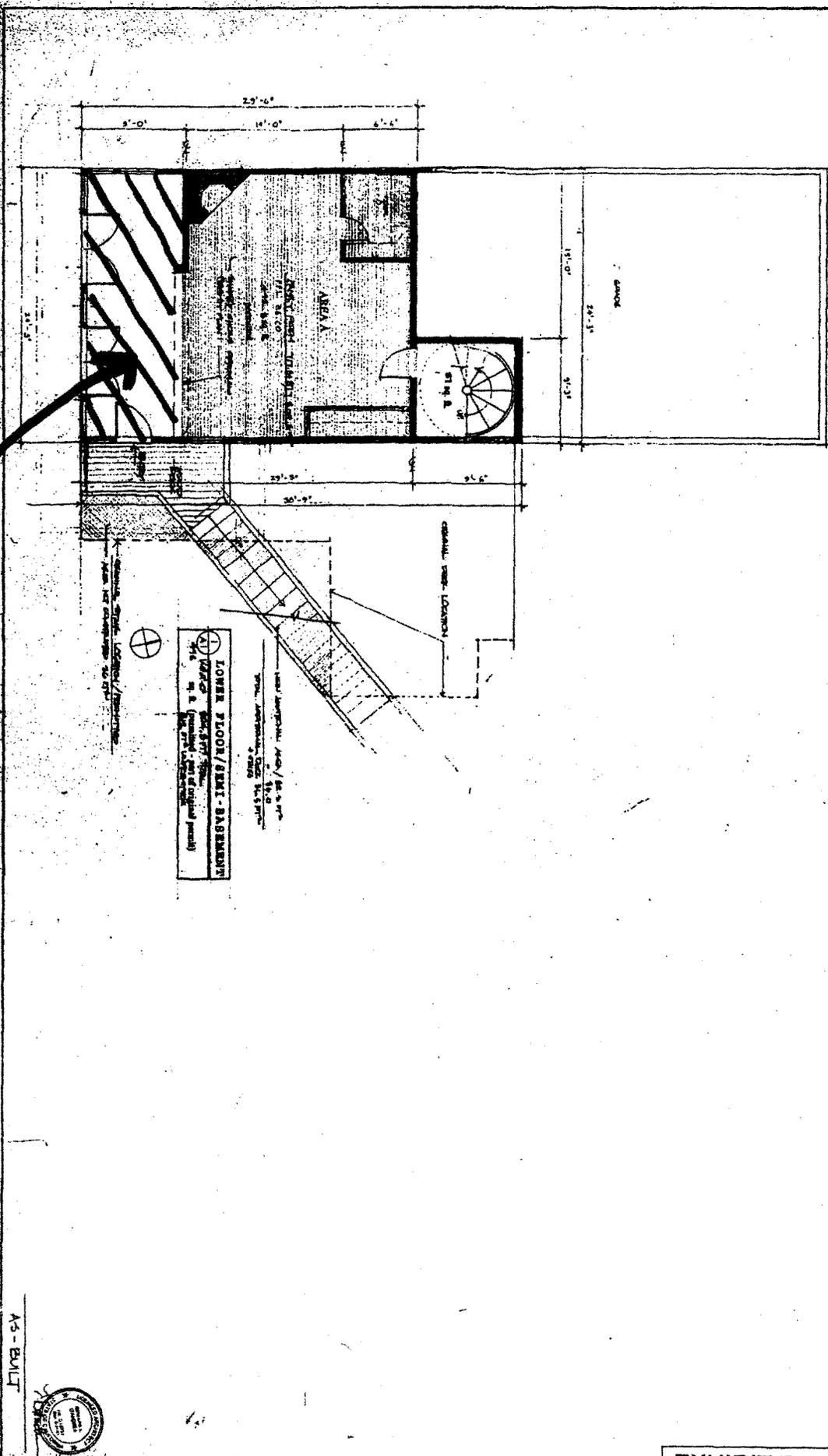
DATE	BY

GRADING AND DRAINAGE PLAN
ADDRESS: 33400 PACIFIC COAST HIGHWAY
MALIBU, CALIFORNIA 90265
OWNER: MR. MATTHEW HIGGINS

VPL ENGINEERING, INC.
7625 HAYVENHURST AVE. #16, VAN NUYS, CA 91406
(818) 784-3877

DATE	BY

EXHIBIT 3
CDP 4-95-105 (Higgins)



DECK ENCLOSURE

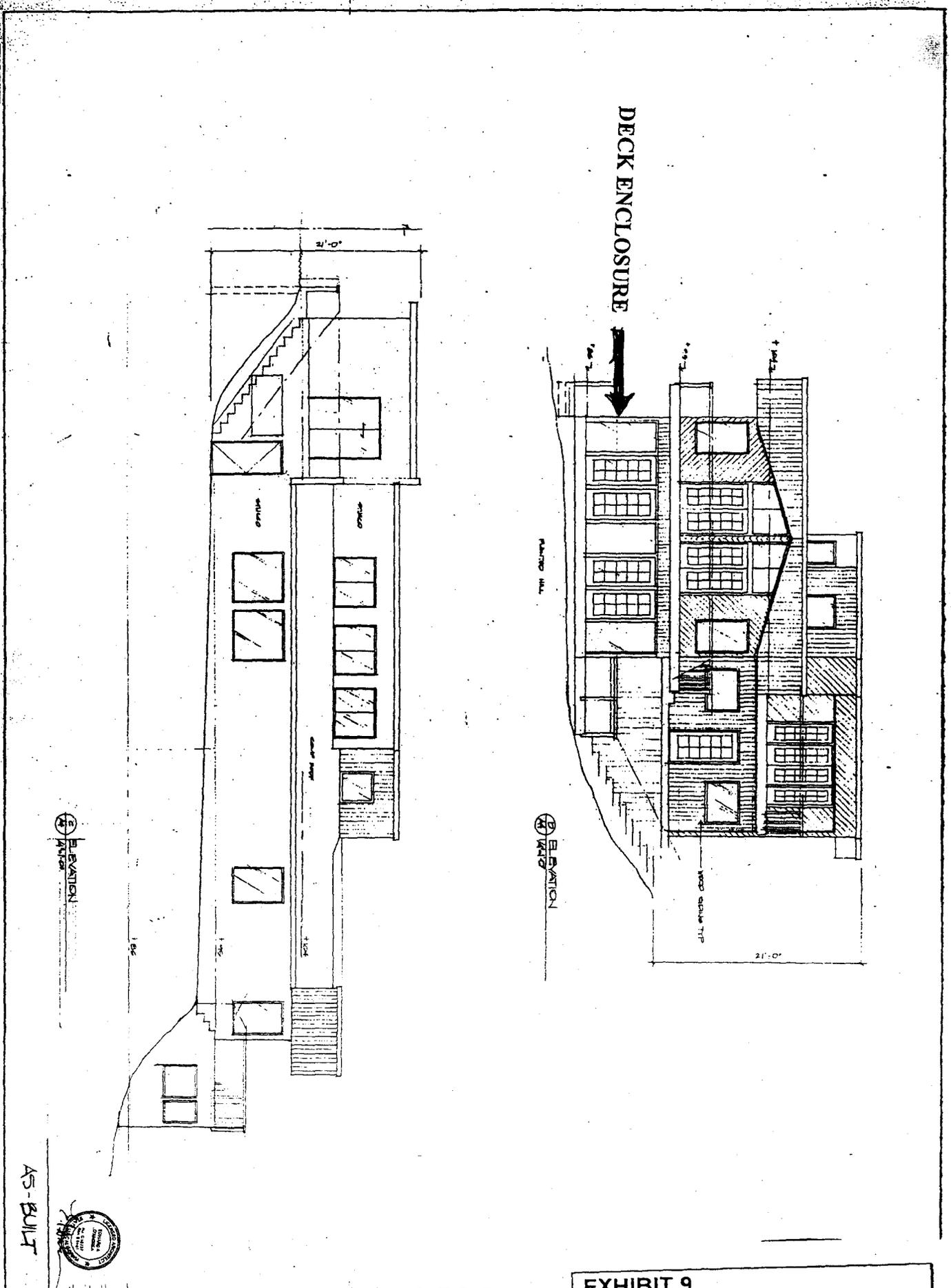
LOWER FLOOR/SEMI-BASEMENT
 1/2" SCALE
 (See note on sheet 4-95-105)

AS-BUILT



EXHIBIT 7
 CDP 4-95-105 (Higgins)

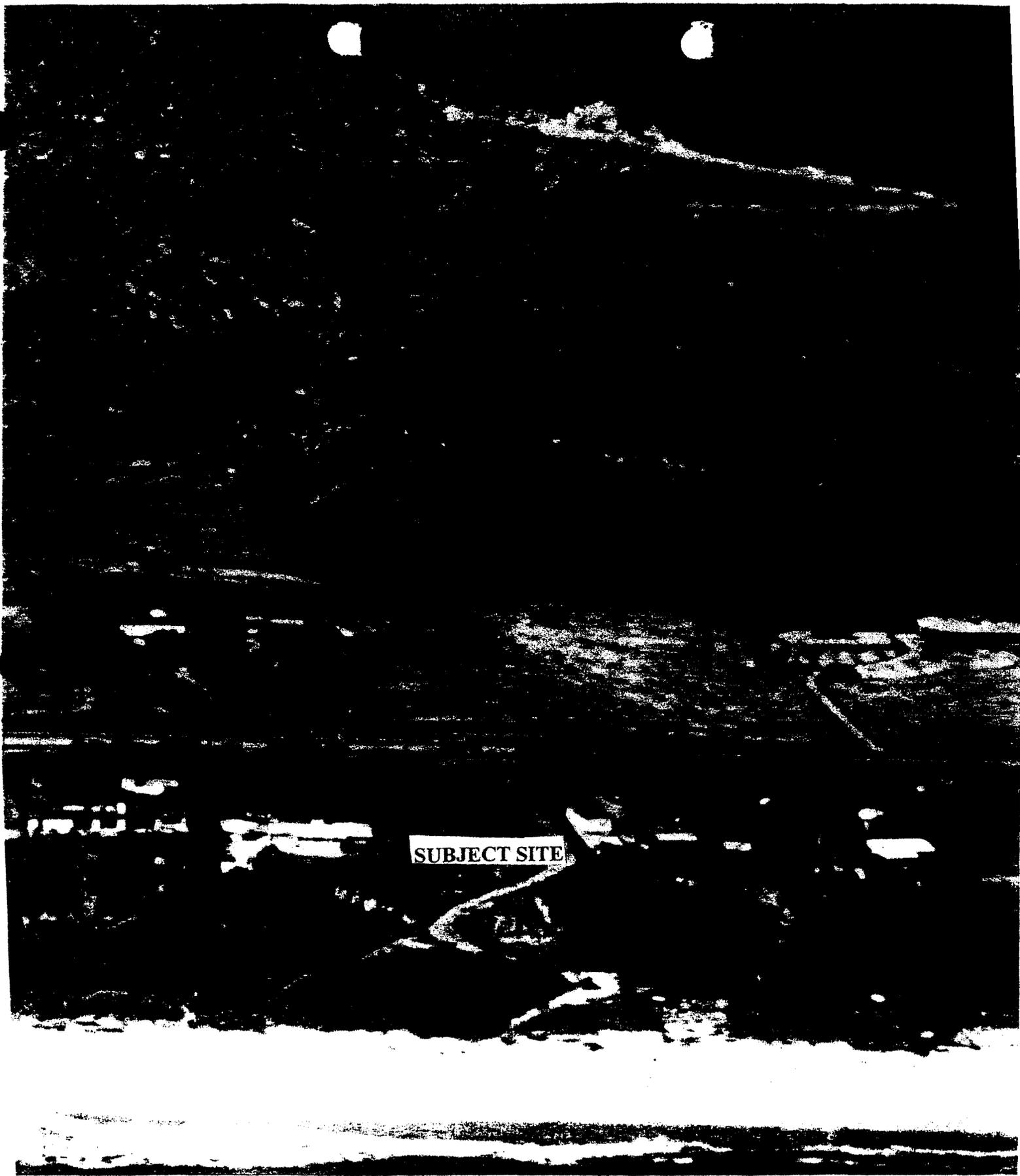
FLOOR PLAN



AS-BUILT



EXHIBIT 9
CDP 4-95-105 (Higgins)



SUBJECT SITE

EXHIBIT 11

CDP 4-95-105 (Higgins)

Aerial Photo of Site



SUBJECT RESIDENCE

EXHIBIT 13
CDP 4-95-105 (Higgins)



DECK ENCLOSURE

SUBJECT RESIDENCE



EXHIBIT 15
CDP 4-95-105 (Higgins)



EXHIBIT 17

CDP 4-95-105 (Higgins)

STATE OF CALIFORNIA

EDWARD S. BROWN, JR. 12/1

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
680 E. OCEAN BOULEVARD, SUITE 2107
P.O. BOX 1489
LONG BEACH, CALIFORNIA 90801
(714) 280-2071 (714) 280-2040

December 1, 1980

Torrance
City Council Chambers
3031 Torrance Boulevard
Torrance, California

ADMINISTRATIVE AGENDA

To be reported at the December 1, 1980 hearing.

(1) A-80-7340
VT

Addition of a carport, bedroom and second story deck to an existing SFD. Property does not have ocean frontage. (\$12,000), at 33408 Pacific Coast Hwy., in Malibu, by Neland Sprik and Matthew Higgins.

(2) A-80-7341
VT

Addition of a carport, bedroom and second story deck to an existing SFD. Property does not have ocean frontage. (\$12,000), at 33410 Pacific Coast Hwy., in Malibu, by Neland Sprik and Kelly Higgins.

(3) A-80-7342
VT

Addition of a carport, master bedroom, recreation room, and decks to an existing SFD. Property does not have ocean frontage. (\$18,000), at 33412 Pacific Coast Hwy., in Malibu, by Neland Sprik and Matthew Higgins.

(4) A-80-7361
VT

Minor additions to an existing beach fronting residence, including the construction of seaward extending trellised patio sun screens, and trellised fences screening existing decks. Project also includes the construction of a guest parking space on the landward side of Malibu Cove Colony Road. Approval of permit will rectify alleged violation. (\$3,200), adjacent to MHT, at 27124 Malibu Cove Colony Road, in Malibu, by Mr. & Mrs. S.P. Garvey.

Condition:

Prior to issuance of permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, and easement for public access and passive recreational use along the shoreline.

Such easement shall be a 25 foot wide strip of beach as measured inland from the water line (document shall state that the daily high water line is understood by both parties to be ambulatory from day to day, as will the 25 ft. wide strip of dry, sandy beach). In no case shall said access be closer than 10 ft. from the approved development.

Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California binding successors and assigns

EXHIBIT 19

DP 4-95-105 (Higgins)

Hearing Transcript from 1980

Appealed
359-800

1 item to public hearing.

2 So, with that, Commissioners, we will start with
3 the Administrative agenda.

4 Are there any questions on page one?

5 [Pause in Proceedings]

6 All right, for those who may need to know this --
7 digressing for a moment -- Commissioner Reeda called. He is
8 ill and will not be here today.

9 Questions on -- yeah, I had a question on page 1,
10 since nobody else seems to. On the first three items, which
11 seem to be adjacent, are those existing structures? things
12 that we had permits for? that we granted permits for? or are
13 they pre-Prop. 20? And, if they were, the question is were
14 there any conditions attached to the original permits.

15 COASTAL STAFF ANALYST: These are ones that were
16 on violation for a long time, but the court did not order
17 them removed. And, so although they were put on after the
18 Coastal Act was in effect, no permit was ever received for
19 them.

20 CHAIR GALLANTER: And, so no conditions were ever
21 --

22 UNIDENTIFIED SPEAKER: They are all paid.

23 CHAIR GALLANTER: All right.

24 COASTAL STAFF ANALYST: It has been a couple of
25 years.

DRAFT COPY

EXHIBIT 19
CDP 4-95-105 (Higgins)
Hearing Transcript for 1995

Conditions met on N/A By R VI

- III. This permit may not be assigned to another person(s) except as provided in Section 13170 of the Coastal Commission Rules and Regulations.
- IV. This permit shall not become effective until:
 - A. Completion of the Regional Commission review of the permit pursuant to the notice of public hearing.
 - B. A copy of this permit has been returned to the Regional Commission, upon which copy all permittees or agent(s) authorized in the permit application have acknowledged that they have received a copy of the permit and have accepted its contents.
- V. Any development performed on this permit prior to the review by the Regional Commission is at the applicant's risk and is subject to stoppage upon completion of the review pending the Regional Commission's approval and/or completion of any appeal of the Regional Commission's decision.
- VI. Work authorized by this permit must commence within two years from the date of approval. Any extension of time of said commencement date must be applied for prior to expiration of the permit.

Approved on December 4, 1980.



M. J. Carpenter
Executive Director

I, _____, permittee/agent, hereby acknowledge receipt of Permit Number A-80-7342 and have accepted its contents.

(Date)

(Signature)

Scheduled Hearing Date December 1, 1980

EXHIBIT 20
CDP 4-95-105 (Higgins)
CDP A-80-7342 (3 pages) 2 of 3

