

CALIFORNIA COASTAL COMMISSION

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

Filed: 6/5/00
49th Day: 7/24/00
180th Day: 12/2/00
Staff: MB/MHC
Staff Report: 6/22/00
Hearing Date: 7/11-14/00
Commission Action:

**RECORD PACKET COPY**STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-00-106

APPLICANT: Tom Hennesy

AGENTS: Clive Dawson

PROJECT LOCATION: 32832 Pacific Coast Highway, Malibu (Los Angeles County)

PROJECT DESCRIPTION: Construction of a 2 story 28 ft. height (above natural grade) 4361 sq. ft. single family residence and septic system, with no grading.

Lot area:	43,524 sq. ft.
Building coverage:	2,882 sq. ft.
Pavement coverage:	6,000 sq. ft.
Parking Spaces:	3 covered
Plan Designation:	RR 1, 1 du/ac
Project Density:	1 du/ac
Ht. abv. ext. grade:	28 ft.

LOCAL APPROVALS RECEIVED: Approval in Concept City of Malibu Planning Department, dated 5/2/00; Approval in Concept City of Malibu Environmental Health Department (Septic Approval in Concept for City of Malibu Engineering and Geotechnical Review, dated 3/1/2000.

STAFF NOTE: This project was previously approved by the Commission (4-96-165) at the Commission's January 9, 1997 hearing with special conditions regarding landscaping, drainage plans, geologic hazards, and wildfire waiver of liability, but with no change to the design of the development. The applicant failed to exercise the original permit, or request a time extension in a timely manner, and has therefore re-applied to the Commission for a new coastal development permit. The currently proposal is the same as that originally proposed and approved by the Commission, with no changes in the design of the development.

SUNSTATIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountain Land Use Plan; Coastal Permit A 4-94-145 (Encinal Bluff Partners); Mountain Geology: Updated Engineering Geologic Report, Proposed Custom Single Family Residence, Parcel No. 2 AP. 4473-1-17, 32832 Pacific Coast Highway, Malibu, California, April 26, 1999 and May 1, 2000.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the proposed project with six special conditions addressing landscape and erosion control plans, drainage plans conforming to the consulting geologist recommendations, wildlife waiver of liability, future improvements, protection of view corridors, and water quality.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve with conditions Coastal Development Permit No. 4-00-106 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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 term or 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**

1. **Landscape and Erosion Control Plans**

Prior to issuance of a coastal development permit, the applicant shall submit a landscaping and erosion control plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping and erosion control plan 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 identify the species, extent, and location of all plant materials and 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 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.
- 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 on the subject site shall be limited to low-lying species that will not block or adversely impact public views of the ocean from the highway. Vegetation within Zone A, as shown on Exhibit 4, shall be limited to no more than 2 ft. in height. Vegetation within Zone B, as shown on Exhibit 4b, shall be limited to no more than 14 ft. in height. In no

case shall vegetation on the subject site exceed the 175 ft. elevation line in height (approximate elevation of Pacific Coast Highway). The use of any vegetation of greater height than otherwise provided for above may be allowed only if the Executive Director determines that such landscaping is consistent with the intent of this condition and will serve to minimize adverse effects to public views.

- 6) 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.

2. Plans Conforming to Geologic Recommendation

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, evidence of the geology consultant's review and approval of all project plans. All recommendations contained in the (1) the Coastline Geotechnical Consultant, Inc.: Response to Geology and Geotechnical Engineering Review Sheet, July 10, 1996; Review and Update Geotechnical Engineering Report, April 22, 1996; and Review and Update Geotechnical Engineering Investigation Report, January 16, 1996; and (2) the Mountain Geology, Inc.: Updated Geologic Report, April 26, 1999 and May 1, 2000; Addendum Engineering Geologic Report, July 19, 1996; Addendum Engineering Geologic Report, June 28, 1996; Update Engineering Geologic Report and Plan Review, April 25, 1996; Addendum Engineering Geologic Report, April 24, 1996; Addendum Engineering Geologic Report, February 29, 1996; Updated Engineering Geologic Report, revised November 9, 1994; Addendum Engineering Geologic Report, September 8, 1995; including issues related to site preparation, foundations and drainage, shall be incorporated in the final project plans. All plans must be reviewed and approved by the geologic consultants.

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

3. Future Development Deed Restriction

- A. This permit is only for the development described in coastal development permit No. 4-00-106. Pursuant to Title 14 California Code of Regulations Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the proposed residence or the entire subject parcel. Accordingly, any new development

on the subject parcel or future improvements to the permitted single family residence, or garages, including but not limited to landscaping or repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b), shall require an amendment to Permit 4-99-169 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

- 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, which reflects the above restrictions on development in the deed restriction and shall include legal descriptions of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

4. Wildfire Waiver of Liability and Indemnity

Prior to the issuance of the 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 all claims, demands, damages, costs, expenses, or liability arising out of the acquisition, design, construction, operations, and maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

5. Drainage and Polluted Runoff Control Plans

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a drainage and polluted runoff control plan designed by a licensed engineer to minimize the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with the geologists' recommendations. The plan shall be subject to the following requirements, and shall at a minimum, include the following components:

- (a) Structural and/or non-structural Best Management Practices (BMPs) designed to capture, infiltrate or treat runoff from all roofs, parking areas, driveways and other impervious surfaces shall be identified and incorporated into final plans.
- (b) Selected BMPs shall, when implemented ensure that post-development peak runoff rate and average volume from the site, will be maintained at levels similar to pre-development conditions. The drainage system shall also be designed to collect, convey and discharge

runoff from the building site in non-erosive manner that does not result in increased infiltration from runoff into the slope.

The plan shall include provisions for BMP maintenance. All structural and non-structural BMPs shall be maintained in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) all traps/separators and/or filters shall be inspected, cleaned and repaired prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

6. Public View Corridor

Prior to the issuance of the Coastal Development Permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, which provides that:

- (a) No less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.
- (b) No structures, vegetation, or obstacles which result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted within the public view corridor.
- (c) Fencing within the public view corridor shall be limited to visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials). Fencing shall be limited to no more than 6 ft. in height. All bars, beams, or other non-visually permeable materials used in the construction of the proposed fence shall be no more than 1 inch in thickness/width and shall be placed no less than 12 inches in distance apart. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.
- (d) Vegetation within the public view corridor, as consistent with Special Condition Two (2), shall be limited to low-lying vegetation of no more than 2 ft. in height.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant proposes the construction of a 2 story, 28 ft. high (above average natural grade), 4,361 sq. ft. single family residence with septic system and no grading on a one acre lot at 32832 Pacific Coast highway in the City of Malibu. Surrounding development includes single family residential development and State Park land. The property is between the first public road and the ocean, but is not located on the beachfront.

The site has experienced past grading associated with creating a building pad and access off Pacific Coast Highway. A private road to the beach is located adjacent and wet of the site. There are a number of apparently inoperative motor vehicles on or near the subject property. According to the applicant's agent, these vehicles are being gradually moved off-site to Oxnard College to be used for instruction and training.

The site is presently improved with an occupied residential motor home, a travel trailer, fences, and landscaping. There is also construction equipment, and various pieces of wood and metal stored on the site that will be removed to facilitate the proposed development.

The site consists of compacted and uncompacted fill over natural terrace deposits. According to the geotechnical investigations, the site drains partially to a blue line stream and partially to the ocean. To the east of the site, a canyon contains the referenced blue-line stream (as designated by the United State Geological Survey), which has been previously recognized by the Commission as an environmentally sensitive habitat area, most recently in the Coastal Permit 4-94-145 (Encinal Bluff Partners).

B. Environmentally Sensitive Habitat Areas

Section 30230 of the Coastal Act provides that:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act provides 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, and minimizing alteration of natural streams.

Section 30240 of the Coastal Act provides that:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The applicant proposes the construction of a 2 story, 28 ft. high (average natural grade), 4,361 sq. ft. single family residence with septic system on a one acre lot with no grading.

The Commission has consistently emphasized the importance placed by the Coastal Act on protecting sensitive environmental resources. As noted above, the area drains partially into a canyon and stream which is identified on U.S. Geological Survey maps as a blue-line stream. The watercourse and associated riparian corridor has, in past decisions, been designated by the Commission as an environmentally sensitive habitat area (ESHA). Additionally, the Commission has found, in past decisions (see permit 4-94-145, Encinal Bluff Partners), the nearby bluff and beach areas and any kelp beds occurring offshore to be ESHA areas as well.

Although the proposed building site is not within the ESHA, development on this site could adversely impact the sensitive habitat resources if not properly designed. Although the applicant proposes no grading, a minor incidental amount of soil disturbance will result from the construction of the residence. In addition, the impervious surfaces created will increase both the volume and velocity of storm water runoff from the site. If not controlled and conveyed off-site in a non-erosive manner this runoff would result in increased erosion on and off site. Increased erosion not destabilizes the site it results in sedimentation of the nearby stream. The increased sediments in the water course can adversely impact riparian streams and water quality.

To ensure that the proposed project minimizes erosion impacts the Commission finds it necessary to require the applicant to submit detailed plans which illustrate how runoff will be conveyed off-site in a non-erosive manner. Special Conditions #1 and 5 require the preparation of erosion and runoff control plans for the site. Additionally, landscaping of the areas disturbed by construction activities will also serve to minimize erosion and ensure site stability. Therefore, the Commission finds it necessary to require the applicant to submit a landscape and erosion control plan as a special condition of approval. Special Condition # 1 requires the applicant to prepare and implement a landscaping plan for the site. Together, these conditions will ensure that all impacts of site disturbance and increased impervious surfaces and increase in peak runoff

rates resulting from the proposed project are mitigated to the maximum extent feasible, thereby minimizing any adverse affects on the habitat of the designated blue-line stream and offshore kelp beds. Therefore, the Commission finds that only as conditioned will the proposed project be consistent with the policies found in Sections 30230, 30231, and 30240 of the Coastal Act.

C. Geologic 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.

As previously noted, the applicant proposed the construction of a 2 story, 28 ft. high (average natural grade), 4,351 sq. ft. single family residence with septic system and no grading on a one acre lot at 32832 Pacific Coast Highway in the City of Malibu.

The applicant has submitted updated geotechnical reports for the proposed project, as note above under Substantive File documents. The reports document the history of the proposed development since 1980. The original geotechnical report, Mountain Geology, Inc. Updated Engineering Geologic Report, revised November 9, 1994, states that:

. . . construction of a single family residence is considered feasible from an engineering geologic standpoint provided the following recommendation are made a part of the plans and are implemented during construction.

A subsequent report prepared by Coastline geotechnical Consultant, Updated Geotechnical Engineering Investigation Report, dated January 16, 1966 that:

. . . construction within the building site would not e subject to hazards from slippage or excessive settlement . . .the proposed buildings and anticipated site grading and would not adversely effect the stability of the site on or adjacent properties . . .

The most recent geotechnical report prepared by Mountain Geology, Inc. Update engineering Geologic Reports, revised April 26, 1999 states that:

Based upon our investigation, the propose development will be free from geologic hazards such as landslides, slippage, active faults, and settlement. The proposed development and installation of the private sewage disposal system will have no adverse effect upon the stability of the site or adjacent properties

provided the recommendations of the Engineering Geologist and geotechnical Engineer are complied with during construction.

Based upon the recommendations of the consulting engineer and geologists, the Commission find that the development is consistent with Section 30253 of the Coastal Act and applicable LUP policies so long as the geologic consultant's geologic recommendations are incorporated into the project plans. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by the consultant Engineering Geologist as conforming to their recommendations. Special Condition #2 requires that the final plans for the project be in substantial conformance with the geologic recommendations contained in the updated geologic reports prepared for the project.

The Commission also finds that that the site stability maybe further assured with the minimization of site erosion by requiring the applicant to landscape the site with native plants, compatible with the surrounding environment. Therefore, the Commission finds its necessary to require the applicant to submit and implement-landscaping plan designed to revegetate disturbed and degraded areas of the site. (See Special Condition #1.)

Additionally, during to the fact that the proposed project is located in an area subject to extraordinary potential for damage or destruction from wildfire, the Commission can only approve the project if the applicant accepts the liability from the associated risks. Through the waiver of liability the applicant acknowledges and understands the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Special Condition #4 requires the applicant to acknowledge the risks from wildfire associated with the site. The Commission finds that the proposed development as conditioned is consistent with Section 30253 of the Coastal Act and applicable portions of the Malibu LUP.

D. Septic System

Section 30231 of the Coastal Act provides 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, and minimizing alteration of natural streams.

The proposed development includes the installation of an on-site septic system to provide sewage disposal. The Commission has recognized, in part permit actions, that the potential build-out of

lots in the Malibu area and the resultant installation of septic system may contribute to adverse health effects.

The applicant proposes the construction of an on-site septic system which consists of a septic tank and seepage pits located near Pacific Coast Highway. After extensive review by the City, the system was moved to a location to the west of the proposed residence and further uphill, toward Pacific Coast Highway. Final review by the City Environmental Health Department, as noted above, in Substantive File Documents, reflects this relocation of the proposed septic system and an upgrade in capacity. Past Commission decisions have found that compliance with City codes have resolved any potential problem of pollution of coastal waters by proposed development. The Commission therefore finds that the project as proposed is consistent with Section 30231 of the Coastal Act.

E. Public Access

The proposed development is between the first public road and the ocean, but is not located on the ocean or beachfront. The Coastal Act requires that the Commission ensure maximum access to and along the coast. Applicable Section of the Coastal Act provide:

Section 30210. 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.

Section 30211. 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.

Section 30212. (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except 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 accessway 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.

Projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. The Commission has required public access to and along the shoreline in connection with new development project and has required design changes in other projects to reduce interference with access to and along the shoreline.

The major access issue in such permits in the occupation of sand areas by a structures, or blockage of access to the sand area, in contradiction of Coastal Act policies 3210, 30211, and 30212. However, a conclusion that access may be warranted is not necessarily determinative of the question as applied to any particular situation. Section 30210 also imposes a duty on the Commission to administer the public access policies of the Coast Act in a manner that is "consistent with the need to protect . . . rights of private property owners . . ." The need to carefully review the potential impacts of a project when considering imposition of public access condition was emphasized by the U.S. Supreme Court's decision in the case *Nollan vs. California Coastal Commission*. In that case, the court ruled that the Commission may legitimately require a lateral access easement where the proposed development has either individually or cumulative impacts which impede the achievements of the State's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate these impacts.

The subject site is located inland of the beachfront residential development in Malibu near the intersection of Encinal Canyon Road and Pacific Coast Highway and between segments of Robert H. Meyer Memorial State Beach. As such, development in the project area has been reviewed on many occasions with respect to Coastal Act sections relative to access and recreation. The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access of such projects can include, among others: encroachment on lands subject to the public trusts thus physical excluding the public; interference with natural shoreline processes which are necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability use the beach area.

In the case of the proposed project, however, the project is on a lot inland of beachfront lots and therefore will not affect lateral access along the coast. In addition, the site is located within approximately 500 feet of two State beaches which provide unrestricted vertical access to the beach. Thus, the project will not have individual or cumulative impacts on public access. The Commission therefore finds that the proposed project is consistent with Sections 30212, 30211, and 30212 of the Coastal Act.

F. Visual Resources

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 subordinated to the character of its setting.

The proposed project site is located seaward of the Pacific Coast Highway, a Commission designated scenic highway. The building site is located below Pacific Coast Highway and is currently heavily screened by existing landscaping. There are two residences on the adjoining parcels that also have dense landscaping along the highway frontage.

Coastal Act Section 30251 requires that development be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas.

The proposed residence would be sited on an existing level area approximately 20 feet below and 70 feet south of Pacific Coast Highway. The design of the residence includes an approximately 16 foot high one story middle section, with two 28 foot high two story mid-sections on both sides of the one store mid-section. The proposed residence is sited on a very gently sloping to level portion of the site. The southern half of the site is moderately sloping towards the ocean. The proposed location of the residence is clearly the preferred building site on the property because it requires the least amount of site alteration. If the existing landscaping along Pacific Coast Highway were removed there would be a very brief bluewater view over the site from a passing vehicle on Pacific Coast Highway. The design of the residence as proposed would permit a brief bluewater view over the one story mid-section of the residence if the vegetation along Pacific Coast Highway were removed. There are several significant view corridors within 200 to 500 feet of this property. Immediately to the east, within the 200 feet of the subject parcel there is a small canyon which afford a view of the ocean. In addition, within the 500 feet east and west of the property there are two state beaches (La Piedra and El Pescador) which also afford scenic view corridors. As previously mentioned, the adjacent properties are developed with residences and have landscaping which block views from Pacific Coat Highway.

Public views of the beach and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential related development between Pacific Coast Highway and the ocean. This type of development limits the public's ability to view the coast or ocean to only those few parcels which have not yet been developed. The Commission notes that the construction of individual beachfront or bluff top residences, when viewed on a regional basis, results in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

In addition the certified Malibu/Santa Monica Mountains LUP contains a number of applicable policies relied upon by the Commission as guidance in past permit decisions. Specifically, Policy 125 further provides that, where feasible, new development on sloped terrain should be set below road grade. Policy 130 of the LUP provides that in highly scenic areas and along scenic highways, new development and landscaping shall be sited so as to not significantly intrude into the skyline. Policy 138 of the LUP provides that new development on the ocean side of and fronting Pacific Coast Highway shall occupy no more than 80% of the lineal frontage of the site. In addition, Policy 141 of the LUP provides that "fencing or walls to be erected on the property shall be designed and constructed to allow for view retention from scenic roadways."

In the case of the proposed project, the Commission notes that the proposed 28 ft. high main residence, although located downslope from Pacific Coast Highway, will extend approximately 8 or more ft. higher in elevation than the highway and will significantly reduce or completely block public views of the ocean over a portion of the subject site. As noted above, however, if the existing landscaping along Pacific Coast Highway were removed the design of the residence as proposed would permit a brief bluewater view over the one story mid-section of the residence if the vegetation along Pacific Coast Highway were removed. Special Condition #1 requires such modification of existing vegetation and if implemented will reduce the adverse effects of the proposed project on public coastal views.

In addition, the Commission notes that any future development on the subject site (such as a new structure, a second-story addition, changes to the roofline, or landscaping) would result in potential adverse effects to visual resources on the subject site. Therefore, Special Condition #3 requires the applicant to record a future improvements deed restriction to ensure that any future structures, additions, or landscaping that would otherwise be exempt from coastal permit requirements are reviewed by the Commission.

In addition, the Commission also notes that public views of the ocean from Pacific Coast Highway have been significantly reduced or completely blocked by landscaping associated with residential development. Currently, the ocean is visible from Pacific Coast Highway over the entire parcel since all vegetation has been previously removed from the bluff top area of the site. However, the Commission notes that new landscaping on the subject site will result in a potential reduction in the public's ability to view the ocean from the highway. Therefore, Special Condition #1 and #6 have been required to ensure that vegetation on the subject site shall be limited to low-lying species that will not block or adversely impact public views of the ocean from the highway. The use of any vegetation of greater height than otherwise provided for above may be allowed only if the Executive Director determines that such landscaping is consistent with the intent of this condition and will serve to minimize adverse effects to public views.

Therefore, for the reasons discussed above, the Commission finds that the proposed development, as proposed, will not result in any adverse effects to public views and is consistent with Section 30251 of the Coastal Act.

G. Local Coastal Program

Section 30604 of the Coastal Act states that:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

H. CEQA

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

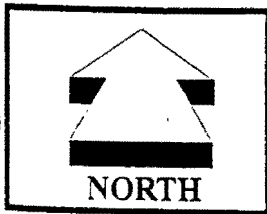
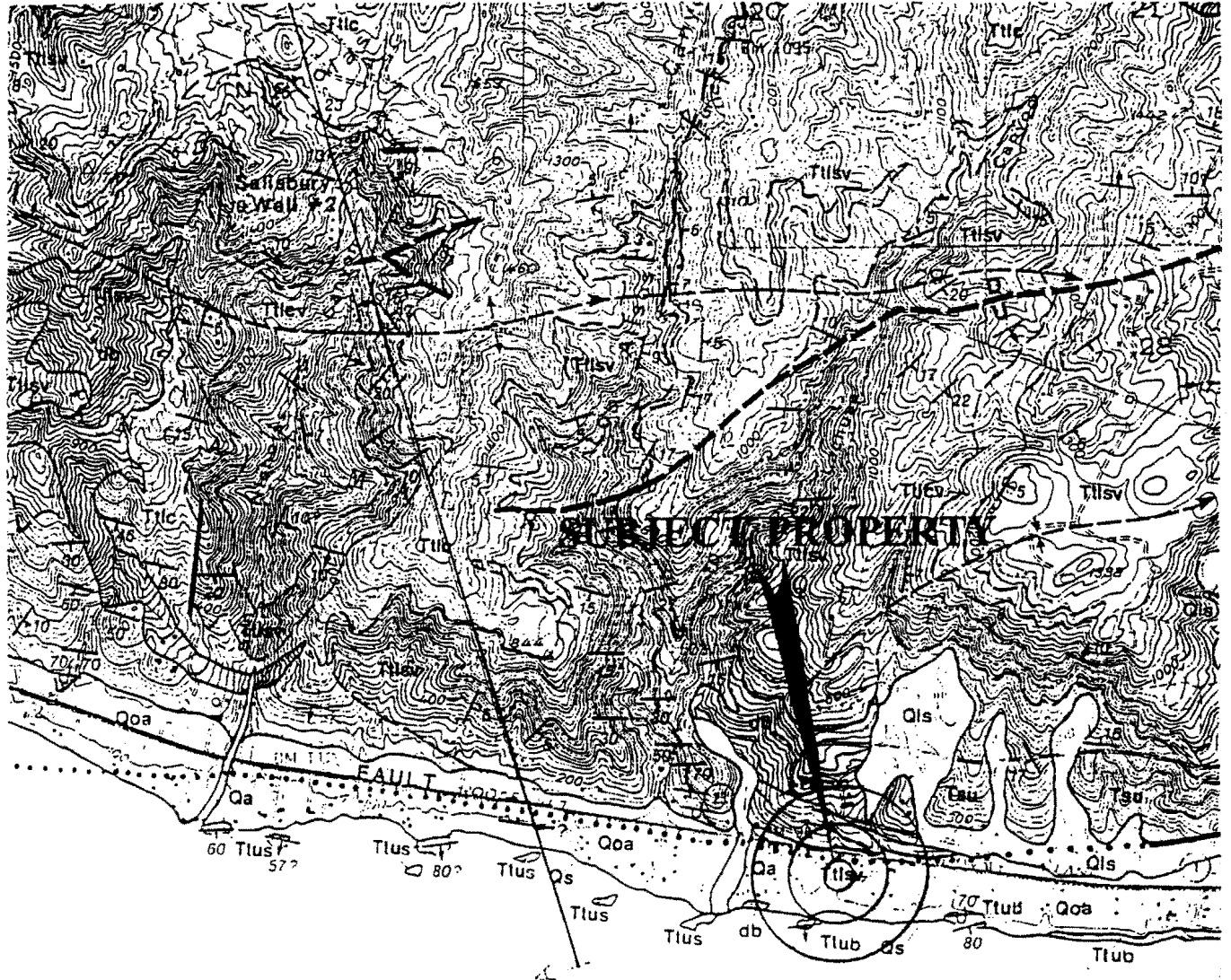
The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be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

REGIONAL GEOLOGIC MAP

Mountain Geology, Inc.

CONSULTING ENGINEERING GEOLOGISTS

REFERENCE: GEOLOGIC MAP OF THE POINT MUGU AND TRIUNFO PASS QUADRANGLES, VENTURA AND L.A. COUNTIES, CALIF., BY T.W. DIBBLEE, JR., AND H.E. EHRENSPECK, 1990



SCALE

0 FT 2000 4000 6000 8000



EXHIBIT NO. 1

APPLICATION NO.

4-00-106

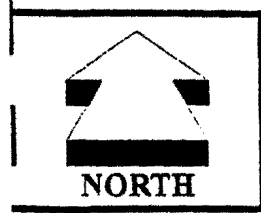
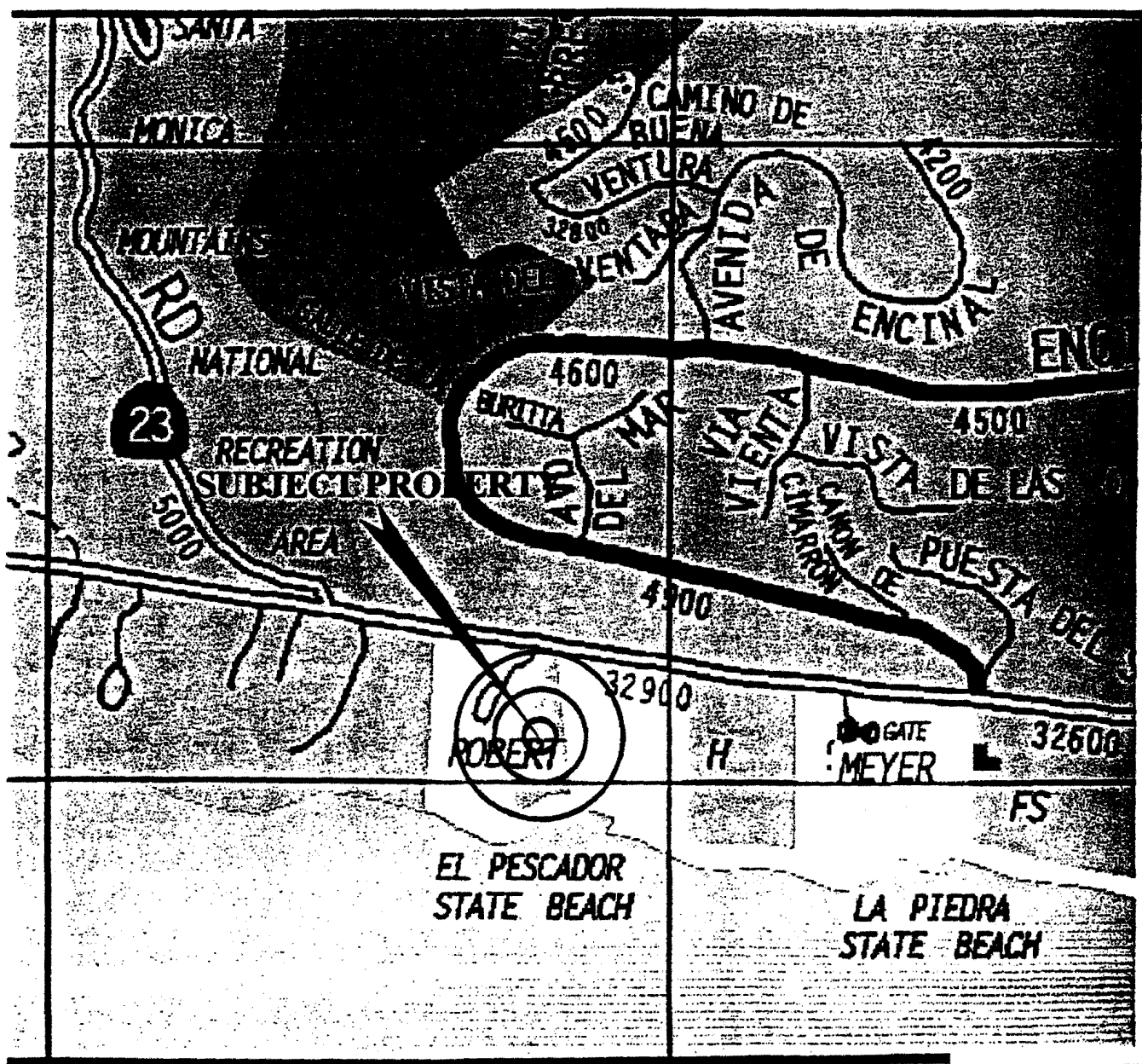
Hennesy



VICINITY MAP

CONSULTING ENGINEERING GEOLOGISTS

REFERENCE: THOMAS BROTHERS MAP GUIDE, PAGE 667



SCALE

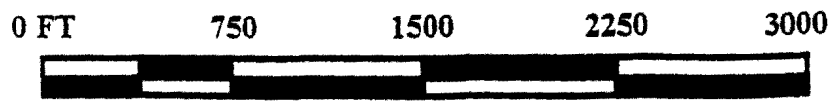


EXHIBIT NO. 2
APPLICATION NO.
4-00-106
Hennesy

PROJECT ADDRESS

TOM HENNESSY
32832 PACIFIC COAST HWY.
MALIBU, CA 90264

BOOK 4473
MAP 5

(4)

PACIFIC COAST HWY.

4-96-165

SUBJECT
PROPERTY

Hennessy

100'

(14)

(23)

(24)

BOOK 4473
MAP 17

BOOK 4473
MAP 16

EXHIBIT NO. 3
APPLICATION NO.
4-00-106
Hennessy

Hennessy
K-94-111-115 Partners

(8)

(10)

(11)

(12)

(18)

(20)

(22)

(25)

PACIFIC OCEAN

EXHIBIT NO. II
APPLICATION NO.
4-96-165 Hennessy
Parcel Map (APN)

LEGAL DESCRIPTION
PAGE 1

THAT PORTION OF PARCEL JUPITERA MALLEN, HEREIN, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CERTIFIED TO HATHEN KELLER BY PATENT RECORDED IN BOOK 1 PAGE 407 OF S.E., OF FUTURE, IN THE OFFICE OF THE COUNTY CLERK OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THE 60 FOOT STRIP OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 12120 PAGE 242, OFFICIAL RECORDS OF SAID COUNTY, SAID POINT OF BEGINNING BEING SOUTH 7° 16' 30" WEST 40 FEET AND THENCE S6° 45' 30" WEST 127.04 FEET FROM THE BEGINNER'S CENTER LINE STATION 200 PLUS 28.44 AT THE BARRELS EXTENT OF THAT CORRAL CENTER LINE CORNER DESCRIBED IN SAID DEED AS SOUTH 85° 45' 30" EAST 7,102.63 FEET;

THENCE SOUTH 62° 41' 30" WEST ALONG SAID SOUTHERLY LINE OF THE 60 FOOT STRIP 134.58 FEET;

THENCE SOUTH 17° 30' WEST 120.01 FEET;

THENCE SOUTH 68° 09' 52" WEST 214.52 FEET TO THE NORTHEASTLY EXTREMITY OF THE SOUTHWESTERLY LINE DESCRIBED AS SOUTH 62° 41' 30" WEST 204.68 FEET, OF THE LAND DESCRIBED IN THE DEED TO LINDA T. HENNESSY AND WIFE, RECORDED ON APRIL 1, 1944 AS INSTRUMENT NO. 100, IN BOOK 2042 PAGE 179, OFFICIAL RECORDS OF SAID COUNTY;

THENCE SOUTH 64° 09' 20" WEST 102.75 FEET;

THENCE SOUTH 45° 19' 37" EAST 107.13 FEET;

THENCE SOUTH 25° 30' 45" EAST 20.68 FEET;

THENCE SOUTH 14° 30' 45" EAST 176.19 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THAT PORTION OF SAID LAND INCLUDED WITHIN THE LINES OF THE 100 FOOT STRIP OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED IN BOOK 10726 PAGE 200, OFFICIAL RECORDS OF SAID COUNTY.

ALSO DESCRIBED WHEREIN ALL MINERALS, OIL, PETROLEUM, NATURAL GAS, COAL, AND OTHER HYDROCARBON RESOURCES IN, ON, UNDER AND UPON SAID LANDS AND EVERY PART THEREOF, BUT WITHOUT RIGHT OF MINE AS RESERVED BY HATHENKELLER LAND COMPANY, IN DEED RECORDED ABOVE NO. 1044 IN BOOK 2117 PAGE 202, OFFICIAL RECORDS.

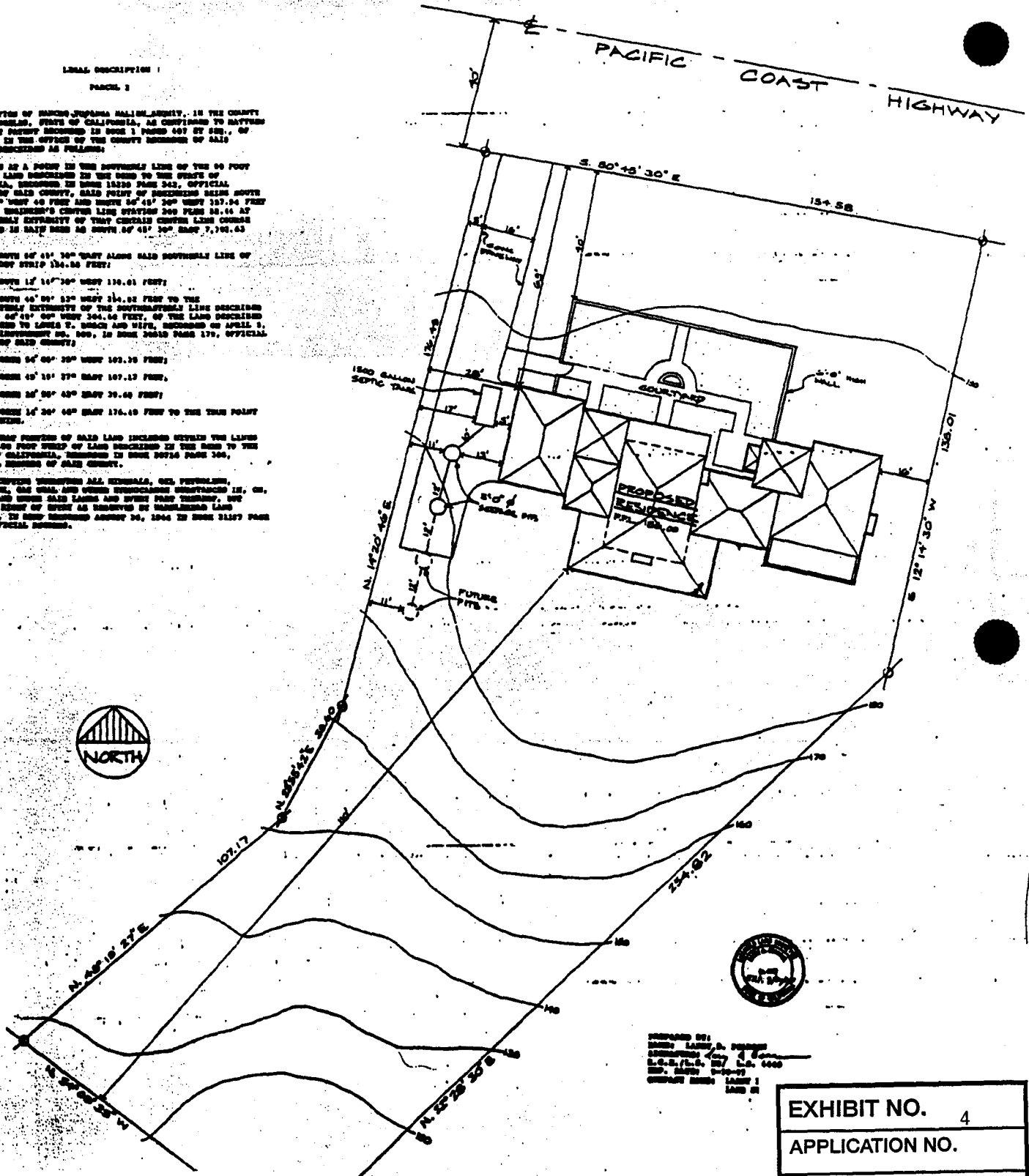


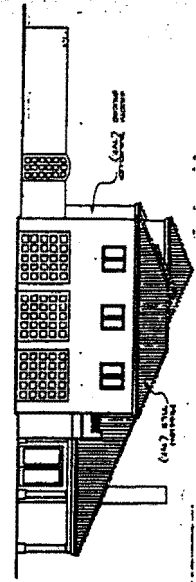
PREPARED BY:
LARRY L. HENNESSY
SURVEYOR, CIVIL ENGINEER
S.E. 12120, P. 242, B. 1, 1944
S.E. 10726, P. 200, B. 1, 1944
S.E. 2117, P. 202, B. 1, 1944

EXHIBIT NO.	4
APPLICATION NO.	4-00-106
Hennesy	

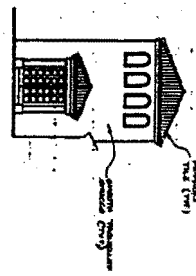
EXHIBIT NO.	III
APPLICATION NO.	4-96-165
Hennesy	
Site Plan	

SITE PLAN

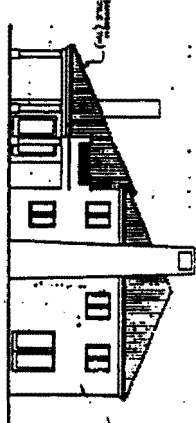




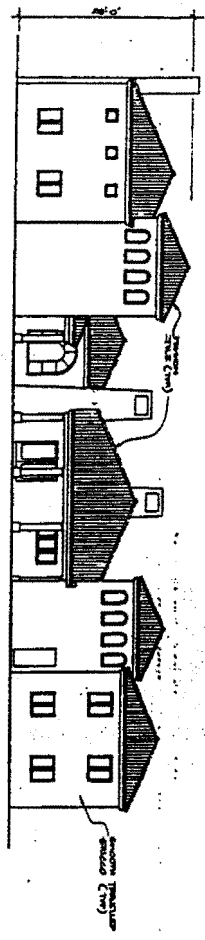
WEST ELEVATION



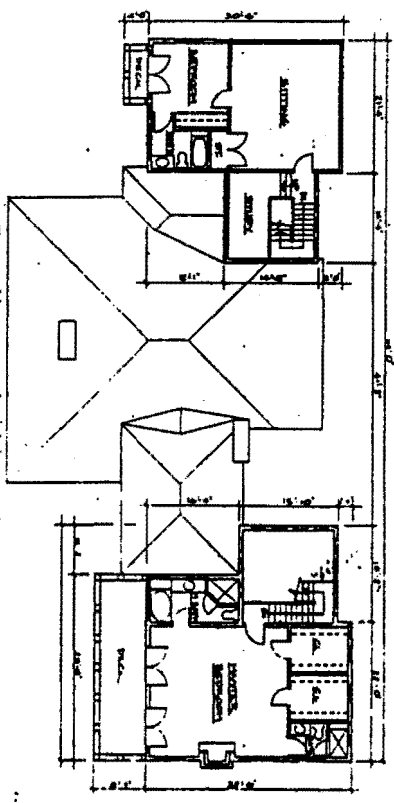
ENTRY



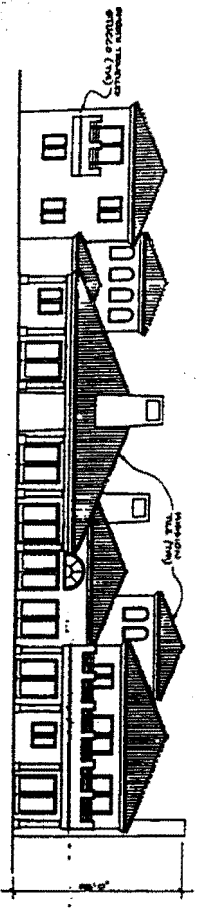
EAST ELEVATION



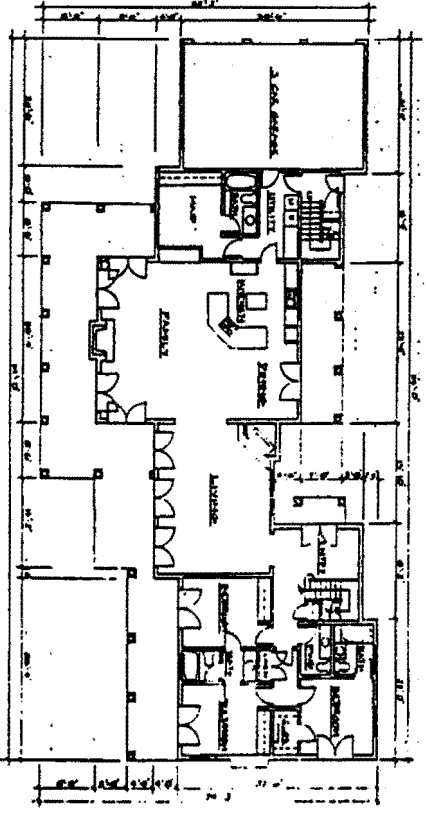
NORTH ELEVATION



SECOND FLOOR



SOUTH ELEVATION



FIRST FLOOR

EXHIBIT NO. 5
APPLICATION NO.
4-00-106
Hennesy

2

OLIVE DAWSON AIA
 Architecture and Planning
 32832 PACIFIC COAST HIGHWAY
 MALIBU, CA 90265

PROPOSED SINGLE FAMILY RESIDENCE FOR:
 TON GENESTY @
 32832 PACIFIC COAST HIGHWAY
 MALIBU, CA 90265

