

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Hearing Date: Aug. 8-11, 2000
Commission Action:

**RECORD PACKET COPY****STAFF REPORT: REGULAR CALENDAR****APPLICATION NO.:** 4-00-034**APPLICANT:** Gray Whale Restaurant **AGENT:** Tamara Avena**PROJECT LOCATION:** 6800 Westward Beach Road, City of Malibu
(Los Angeles County)

PROJECT DESCRIPTION: After-the-fact permit for addition of a 1,756 sq. ft. attached one-story outdoor patio with canvas awning to an existing two-story 2,526 sq. ft. commercial restaurant. Also included is the relocation of the southern exterior patio wall to eliminate encroachment into an existing public access easement. No grading is proposed.

Total Lot Area:	37,500 sq. ft.	(0.86 ac.)
Building coverage:	3,019 sq. ft.	
Pavement coverage:	30,000 sq. ft.	
Landscape coverage:	2,000 sq. ft.	
Parking spaces:	52 (on-site)	
Ht abv fin grade:	11'6" (new patio + awning)	

LOCAL APPROVALS RECEIVED: Approval in Concept -- City of Malibu Planning Department; Approval in Concept -- City of Malibu Environmental Health Department (Septic System).

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permit (CDP) No. P-184 (Safire); CDP Appeal No. A-488-77 (Safire); CDP No. 4-96-048 (Malibu Country Inn); CDP No. 4-96-077 (Malibu Jewish Center and Synagogue); CDP No. 4-98-330 (Malibu United Methodist Church); CDP Exemption Request No. 4-99-155-X (Gray Whale); CDP No. 4-99-276 (Malibu High School); CDP No. 4-00-053 (Big Ship Productions).

SUMMARY OF STAFF RECOMMENDATION

Staff recommends **approval** of the project with seven (7) special conditions regarding revised plans, landscaping, assumption of risk, lighting restriction, parking management, restriction of future development, and condition compliance.

I. STAFF RECOMMENDATION

1. **Motion:** *I move that the Commission approve Coastal Development Permit No. 4-00-034 pursuant to the staff recommendation.*

2. **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.

3. **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 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. Revised Plans

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit revised project plans, for the review and approval of the Executive Director, which show that the southern exterior patio wall is relocated so that it no longer encroaches into the public vertical access easement from Westward Beach Road to the foot of the stairs to the blufftop viewing area and that all development located within that access easement is deleted. The approximate location of the public vertical access easement is shown in Exhibit 10 of this staff report. The wall shall be located a minimum of six feet (6') from the Birdview Avenue edge of pavement.

2. Landscaping Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a landscaping plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plans shall identify the species, location, and extent of all plant materials and shall incorporate the following criteria.

Disturbed areas and appropriate visual screening areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes within sixty (60) days of issuance of the permit. 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 February 5, 1996. Invasive, non-indigenous plant species which tend to supplant native species shall not be used. Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials.

Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Vegetation within fifty feet (50') of structures may be removed, and vegetation within a two-hundred foot (200') radius may be selectively thinned in order to reduce fire hazard. However, such removal and 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 Fire Department of Los Angeles County.

3. Assumption of Risk

By acceptance of this permit, the applicant acknowledges and agrees: (i) that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, flooding, fire, landsliding, and earth movement; (ii) 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; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) 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.

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 entire parcel, 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. Lighting Restriction

In order to prevent avoidable visual impact to nearby scenic beaches, scenic roads, parks, and trails and to prevent disruption of feeding, nesting, and roosting activities of native wildlife species, the use of night lighting on-site, whether temporary or permanent, shall be restricted to downward-directed, shielded lighting that limits off-site visibility of such lighting to the maximum extent feasible.

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the restrictions stated above on the development. The document shall run with the land for the life of the structures approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

5. Parking Management Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval by the Executive Director, a parking management plan to include at least the following elements: (1) a detailed site plan, drawn to scale, showing all available parking spaces, both on-site and off-site, in the immediate vicinity of the structure(s), including handicapped, staff, and visitor / patron parking; (2) hours of operation for the facility including seasonal and/or daily variations; (3) guidelines for usage of temporary signing, traffic controls, and/or traffic direction to guide motorists and/or to close the parking lot as it becomes filled; and (4) staffing requirements and responsibilities to implement the parking management plan.

6. Future Development Deed Restriction

This permit is only for the development described in Coastal Development Permit No. 4-00-034. Pursuant to Title 14 California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the new development. Accordingly, any future structures, additions, changes of use, or improvements related to the structures approved under Coastal Development Permit No. 4-00-034 will require a permit from the California Coastal Commission or its successor agency.

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 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.

7. Condition Compliance

a) Within ninety (90) days of Commission action on this Coastal Development Permit (CDP) application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

b) Within thirty (30) days of issuance of this permit, the applicant shall remove and/or relocate the southern patio wall which is located within the public vertical access easement as shown on Exhibit 10 of this report. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. Project Description and Background

The applicant is applying for an after-the-fact permit for the addition of a 1,756 sq. ft. attached one-story outdoor patio with canvas awning to an existing two-story 2,526 sq. ft. commercial restaurant. Also included is the relocation of the southern exterior patio wall to eliminate encroachment into the existing public access easement. No grading is proposed. The subject site is an approximately 37,500 sq. ft. (0.86 ac.) parcel located at the intersection of Westward Beach Road and Birdview Avenue in the Point Dume (Westward Beach) area of the City of Malibu. There is limited natural vegetation on-site

consisting of grasses, scattered trees, shrubs, and brush on and adjacent to the coastal bluff.

The Gray Whale Restaurant is located on the western side of Point Dume across Westward Beach Road from the public beach and immediately adjacent to the coastal bluff. Significant residential development is located above the property on top of the bluff to the immediate east. This residential development consists of a mobile home park and the Zuma Bay Villas condominium complex and, further east, larger single family residences situated on the rolling hills of the Point Dume peninsula. Access to the project site is from Pacific Coast Highway via Westward Beach Road, a public road which passes immediately southwest of the property. A previous coastal development permit (CDP No. A-488-77) was obtained for construction of the existing two-story restaurant, parking lot, and septic system. This permit included a deed restriction for public access to a whale watching area located at the top of the bluff behind the restaurant. The patio and awning have since been constructed without receiving a Coastal Development Permit.

Topographically, the restaurant is situated on the beach which extends along the western side of Point Dume, a peninsula south of the Santa Monica Mountains which defines the western boundary of Santa Monica Bay. The subject property consists of a near-level pad area at the base of a coastal bluff with steeply ascending slopes to the immediate east. The natural terrain of the area consists of sandy beach, coastal bluffs, and rolling hills. Drainage from the property flows overland across Westward Beach Road in a westerly direction to the sandy beach and the ocean. The coastal canyons and riparian areas in the Point Dume area, including the canyon along Birdview Drive adjacent to the subject property, have been designated Disturbed Sensitive Resource (DSR) areas in the Malibu / Santa Monica Mountains Land Use Plan (LUP). Pirate's Cove at the tip of Point Dume to the south is a designated sea lion haul-out; the kelp beds off-shore of Point Dume are designated Environmentally Sensitive Habitat Area (ESHA); and Zuma Beach to the north is a designated Shore Fishing Area.

B. Visual / Environmentally Sensitive 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 subordinate to the character of its setting.

Section 30230 of the Coastal Act states:

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.

And Section 30240 of the Coastal Act states:

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

The Gray Whale Restaurant is located along the western public beachfront of Point Dume below a coastal bluff adjacent to the Birdview Canyon and its intermittent stream. The Birdview Canyon riparian corridor is designated as a Disturbed Sensitive Resource (DSR) area in the Malibu / Santa Monica Mountains Land Use Plan (LUP). DSRs consist of riparian woodlands, streams, and oak woodlands located in areas of existing development where the habitat has been impacted such that it can no longer support a significant number of species normally associated with healthy, undisturbed habitat. Nonetheless, the riparian corridor continues to provide valuable habitat for a variety of plant and animal species. In addition, Pirate's Cove at the tip of Point Dume to the south is a designated sea lion haul-out; the kelp beds off-shore of the Point are designated Environmentally Sensitive Habitat Area (ESHA); and Zuma Beach to the north is designated a Shore Fishing Area.

The restaurant is highly visible from nearby public beaches (Zuma Beach and Westward Beach). To assess potential visual impacts of projects to the public, the Commission typically investigates publicly accessible locations from which proposed development is visible, such as beaches, parks, trails, and scenic highways. The Commission also examines the building site and the size of the proposed structure(s). Staff visited the subject site and found the scale of the building improvement(s) to be appropriate, given the previously existing development on-site. The new patio and awning have been designed to be attached to and lower in height than the existing building, thereby reducing potential visual impacts. The finished project is visible to the noted surrounding area; however, due to the existing restaurant on-site, the visual impacts of the proposed improvements are minimal, when considered in the context of the overall development. The improvements are substantially in character with the type and scale of development which already exists at the restaurant.

The restaurant is bordered by the public beach to the west, existing residential development to the north and east, and a State Park with a sea lion haul out area to the south. The Commission has found that night lighting of areas in the Malibu / Santa Monica Mountains area creates a visual impact to nearby scenic beaches, scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. Although the applicant has not proposed any lights at the restaurant at this time, in order to mitigate any potential future visual and environmental impacts of the improvements to the facility, the Commission finds it necessary to require the applicant to submit a deed restriction restricting all outdoor lighting for the restaurant or the parking lot to downward-directed, shielded lighting that limits off-site visibility of such lighting to the maximum extent feasible, as specified in **Special Condition Four**, in order to protect the nearby scenic areas and native wildlife from avoidable disturbance that would otherwise be associated with nighttime lighting of the facility.

The Commission notes that the subject site has been previously disturbed by the construction and operation of the restaurant, and since the improvements are located in the same footprint as the existing development, the new development will not displace any existing riparian habitat or interfere with creek flow in the Birdview canyon stream. Visual impacts associated with the development can be minimized by requiring the applicant to prepare a landscaping plan, as specified in **Special Condition Two**, which will preserve and enhance the natural features which exist on-site and by planting disturbed areas on-site, including the narrow strip between the parking lot and Birdview Drive, with vertical screening elements such as trees and shrubs. A previous Coastal Permit for the subject property (CDP No. 77-184) contained a landscaping condition in order to partially screen the parking area from the adjacent beach and to minimize rockfall and erosion from adjacent cliffs. Landscaping in front of the restaurant will soften the appearance of the development and minimize the visual impact as seen from the beach. The landscaping should consist of native, drought resistant plants and be designed to minimize and control erosion as well as to soften the visual impact of the structure(s). Therefore, the Commission finds that it is necessary to require the applicant to submit a landscape plan.

The project, as conditioned, will not result in a significant adverse impact to the scenic public views or character of the surrounding area in this portion of the Malibu / Santa Monica Mountains area. However, additions or improvements to the site in the future which might otherwise be exempt from coastal permit requirements could produce a cumulative impact as seen from the beach. To insure that no additions or improvements are made to the development that may affect visual resources on-site without due consideration of the potential cumulative impacts, the Commission finds it necessary to require the applicant to record a future development deed restriction, which will require the applicant to obtain an amended or new coastal permit for future additions or improvements, as required by **Special Condition Six**. Thus, the Commission finds that the project is consistent, as conditioned, with Sections 30230, 30240, and 30251 of the Coastal Act.

C. Hazards

Section 30253 of the Coastal Act states (in part):

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...*

Section 30250(a) of the Coastal Act states (in part):

New ... development, ... shall be located within, ... existing developed areas able to accommodate it ... and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

The Gray Whale Restaurant is located along the Malibu / Santa Monica Mountains coastline, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu / Santa Monica Mountains area include landslides, erosion, flooding, and earth movement. In addition, fire is a persistent threat due to the indigenous chaparral community of the coastal mountains. Wildfires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides. Even beachfront properties in Malibu have been subject to wildfire; and, of course, beachfront sites are specifically subject to flooding and erosion from storm waves.

The Malibu coast has historically been subject to substantial damage as the result of storm and flood occurrences, most recently and perhaps most dramatically, during the 1998 El Niño winter storm season. Past storms in Malibu have caused property damage resulting in public costs through emergency response and low-interest, publicly-subsidized reconstruction loans amounting in the millions of dollars. In the winter of 1977-78, for instance, storm-triggered mudslides and landslides caused extensive damage to Malibu beaches, seawalls, and other structures which, according to the National Research Council, caused damage of up to \$5 million to private property alone. The El Niño storms from 1982-83 caused high tides of over seven feet, which combined with storm waves of up to 15 feet, caused over \$12.8 million in damage to structures in Los Angeles County, many located in Malibu. The 1998 El Niño storms also resulted in widespread damage to residences, public facilities, and infrastructure along the Malibu coast. Thus, due to its location adjacent to the beach in front of the coastal bluffs, the subject site is potentially subject to a high degree of risk from storm waves and surges, high surf conditions, erosion, and flooding.

The prominent geomorphic features in the area are the Santa Monica Mountains to the north, Point Dume and the Santa Monica Bay to the east, and the Pacific Ocean to the west/southwest. The subject property is sited within that narrow, coastal beach below the hills of Point Dume. The natural terrain of the subject property is flat with coastal bluffs to the immediate east. Surface drainage from the property flows overland and along parking lots / streets in a westerly direction to Westward Beach. The Birdview Drive canyon contains an unnamed United States Geological Survey (USGS) designated blue-line (intermittent) stream which outlets at the beach just south of the subject property. The creek's riparian corridor has been designated as Disturbed Sensitive Resource (DSR) area in the Malibu / Santa Monica Mountains Land Use Plan (LUP).

The Commission requires that new development minimize the risk to life and property in areas of high fire hazard while recognizing that new development may involve the taking of some risk. Vegetation in the coastal areas of the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral, communities which have evolved in concert with, and continue to produce the potential for frequent wildfires. The warm, dry summer conditions of the local Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wildfire damage to development that cannot be completely avoided or mitigated. The proposed improvements do not increase the amount of impervious coverage on-site because the new enclosed patio is constructed in an area which was previously used as an outdoor seating area and/or for parking. However, the restaurant, patio expansion, and parking lot are located directly beneath an eroding coastal bluff. Also, as discussed previously, development on or near the sandy beach in the Malibu / Santa Monica Mountains area is subject to an

unusually high degree of risk from storm waves and surges, high surf conditions, erosion, soil liquefaction, landslide, flooding, and wildfire. The proposed development will continue to be subject to the hazards of near-shore development now and into the foreseeable future. When development is proposed in areas of identified hazards, the Commission considers the hazard associated with the project site and the potential cost to the public, existing use, as well as the continued right to use the property.

An earlier Coastal Permit (CDP No. A-488-77) for the subject property required all construction and site maintenance to conform to the recommendations of an engineering geologist. Another coastal permit for the site (CDP No. 77-184) required a landscaping plan in order to minimize rockfall and erosion from adjacent cliffs. The Commission notes that coastal bluffs, such as this one, are unique geomorphic features that are characteristically unstable. By nature, coastal bluffs are subject to erosion from sheet flow across the top of the bluff and from wave action at the base of the bluff. The Commission notes that the Malibu / Santa Monica Mountains Land Use Plan (LUP) hazards map did identify this area as a potential wave hazard area. The cliffs along this section of the coast may not be subject to frequent erosion from wave action but may be subject to erosion from runoff at the top of the slope. Due to geologic structure and soil composition, bluffs are susceptible to surficial failure, especially with excessive water infiltration.

Because there remains some inherent risk in building on sites located near coastal bluffs and along the shoreline, such as the subject site, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by **Special Condition Three**. This responsibility is carried out through the recordation of a deed restriction. The assumption of risk deed restriction, when recorded against the property, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development, and agrees to assume any liability for the same. It should be noted that an assumption of risk deed restriction for hazardous geologic conditions is commonly required for new development throughout the greater Malibu / Santa Monica Mountains region in areas where there exist potentially hazardous geologic conditions, or where previous geologic activity has occurred either directly upon or near sites under consideration.

Landscaping of disturbed areas of the subject property will enhance the long-term stability of the site. Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface / foliage weight. The Commission has found that non-native and invasive plant species do not serve to stabilize slopes and that such vegetation results in potentially adverse effects to the stability of a project site. Native species, alternatively, tend to have a deeper root structure and aid in preventing erosion. Also, the use of invasive, non-indigenous plant species tends to supplant species that are native to the Malibu / Santa Monica Mountains area. Increasing urbanization in this area has caused the loss or degradation of major portions of native habitat and native plant seed banks through grading and removal of topsoil. Moreover, invasive groundcovers and fast-growing trees originating from other continents which have been used for landscaping in this area have already seriously degraded native plant communities adjacent to development. Therefore, the Commission finds that in order to ensure site stability, disturbed areas on-site should be landscaped with appropriate native plant species, as specified in **Special Condition Two**. The Commission finds that the project, as conditioned, is consistent with Sections 30250 and 30253 of the Coastal Act.

D. Public Access

A basic mandate of the Coastal Act is to maximize public access and recreational opportunities along the coast. The Coastal Act has several policies, cited below, which address the issues of public access and recreation. In addition, Section 30250(a) of the Coastal Act requires that new development be permitted only where public services are adequate and where such development will not have any adverse impacts on coastal resources.

Section 30210 of the Coastal Act states:

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 of the Coastal Act states:

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 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act states (in part):

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development....

Section 30223 of the Coastal Act states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30252 of the Coastal Act states that:

The location and amount of new development should maintain and enhance public access to the coast by ... (3) providing adequate parking facilities or providing substitute means of serving the development with public transportation ...

The development is located in an area where heavy peak season recreational demand exists for visitors to Zuma and Westward Beaches -- popular destinations for beach users in the Los Angeles region. The proposed project is for an after-the-fact permit for addition of a 1,756 sq. ft. attached one-story outdoor patio with canvas awning to an existing two-story 2,526 sq. ft. commercial restaurant, a visitor-serving use. Also included is the relocation of the southern exterior patio wall to eliminate encroachment into an existing public access easement. A previous coastal permit on the subject

property (CDP No. A-488-77) included the dedication of an easement for public access to a whale watching area located at the top of the bluff behind the restaurant. This access easement included vertical access from Westward Beach Road along and adjoining Birdview Avenue to the base of a stairway up the coastal bluff. Since that time, however, the restaurant has constructed an unpermitted wall adjacent to Birdview Avenue to enclose the southern patio area which blocks the public accessway.

In order to implement the applicant's offer to relocate the obstructing wall, and to ensure that adverse effects to public access from the beach to the blufftop viewing area are minimized, **Special Condition One** requires the applicant to submit revised project plans which show that the southern exterior patio wall is relocated so that it no longer encroaches into the public vertical access easement from Westward Beach Road to the foot of the stairs to the blufftop viewing area and that all development located within that access easement is deleted. In addition, in order to expedite the provision of public access, **Special Condition Seven** requires the applicant to remove and/or relocate the southern patio wall within thirty (30) days of issuance of this permit. As stated in the original Offer to Dedicate (OTD) and shown in Exhibit 10, the access easement shall be a minimum of six feet (6') in width; therefore, the southern patio wall shall be located a minimum of six feet (6') from the Birdview Avenue edge of pavement. The applicant has also proposed posting a sign on the relocated wall notifying the public of the open accessway.

Regarding parking, substantial demand exists due to the nearby beaches, State Park, and various recreational amenities. This demand results in the posting of nearby streets, businesses, and private residences as not being available for beach users. On-street parking is available along Westward Beach Road from Pacific Coast Highway to the State Park entrance. In addition, substantial parking facilities exist at the State Park located south of the subject property at Point Dume, and north of the subject property at Zuma Beach. However, despite a large number of available spaces in the vicinity, beach-users may find it difficult or impossible to park near Westward Beach and the subject property on weekends and holidays.

Based on the need for beach-related circulation and parking generated on a regional basis, the Commission examines proposed developments to determine whether generation of additional parking demand may be accommodated on-site. In this project, it must be determined if demand extends from the restaurant into the area available for limited public parking along Westward Beach Road or to other public parking facilities in the area such as the nearby State Park. Past Commission findings such as in permits for the construction of additions to the Malibu Jewish Center and Synagogue (CDP No. 4-96-077), the Malibu United Methodist Church (CDP No. 4-98-330), and Malibu High School (CDP No. 4-99-276) nearby indicate the Commission's concern that institutional uses not create parking demand that adversely impacts on-street parking potentially serving local beach areas.

Staff conducted a parking analysis for the Gray Whale Restaurant, comparing the potential parking demand associated with capacity events at the restaurant with the available parking supply. To evaluate the adequacy of available facilities, the Malibu / Santa Monica Mountains Land Use Plan (LUP) requires one (1) parking space for each fifty square feet (50 sq. ft.) of service area. Prior to the patio addition, there were 47 parking spaces which were significantly more than required for a restaurant with a 1,140 sq. ft. service area.

With the new 1,468 sq. ft. enclosed patio addition, the restaurant's total service area has been increased to 2,608 sq. ft. Applying the parking guidelines from the LUP, a total of fifty-two (52) parking spaces are required to meet the demand generated by the restaurant and the proposed addition. The Gray Whale has recently re-striped the existing parking lot resulting in a total of 52 permanent parking spaces available on a day-to-day basis. Therefore, an adequate number of parking spaces have been provided for the improvements.

In addition, the Gray Whale Restaurant allows pay parking in their lot during the day in order to alleviate some of the chronic parking difficulties for nearby beach-users. However, finding a parking space could be confusing and cumbersome during the evening (e.g., restaurant dining hours) resulting in traffic problems at the parking lot entrances, as well as encouraging on-street parking. In order to mitigate potential parking difficulties, the Commission, through **Special Condition Five**, requires the applicant to create a parking management plan to facilitate efficient access to and utilization of the on-site parking supply and to discourage off-site parking for restaurant customers and unnecessary circulation of vehicles looking for parking places.

In summary, the fifty-two (52) space restaurant parking lot is sufficient to meet the anticipated parking demand for the Gray Whale improvements. The provision of these daily spaces is sufficient to accommodate the existing and proposed development; and the improvements will not significantly impact circulation on local roads and beach access in the surrounding area. In fact, the provision of daily paid beach parking may, to some extent, alleviate some of the parking problems in the Westward Beach area. The project, therefore, as conditioned, avoids adverse impact on coastal access and recreational opportunities and is consistent with Sections 30210, 30211, 30223, 30250(a), and 30252 of the Coastal Act.

E. Violation

This application includes the after-the-fact request for addition of a 1,756 sq. ft. attached one-story outdoor patio with a canvas awning to an existing two-story 2,526 sq. ft. commercial restaurant. Also included is the relocation of the southern exterior patio wall to eliminate encroachment into an existing public vertical access easement. To ensure that the unpermitted, violation aspect of this application is resolved in a timely manner, **Special Condition Seven** requires that the applicant satisfy all "prior to issuance" requirements specified in the conditions within ninety (90) days of Commission action on this Coastal Development Permit (CDP) application, or within such additional time as the Executive Director may grant for good cause. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

Although construction has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

G. Local Coastal Program

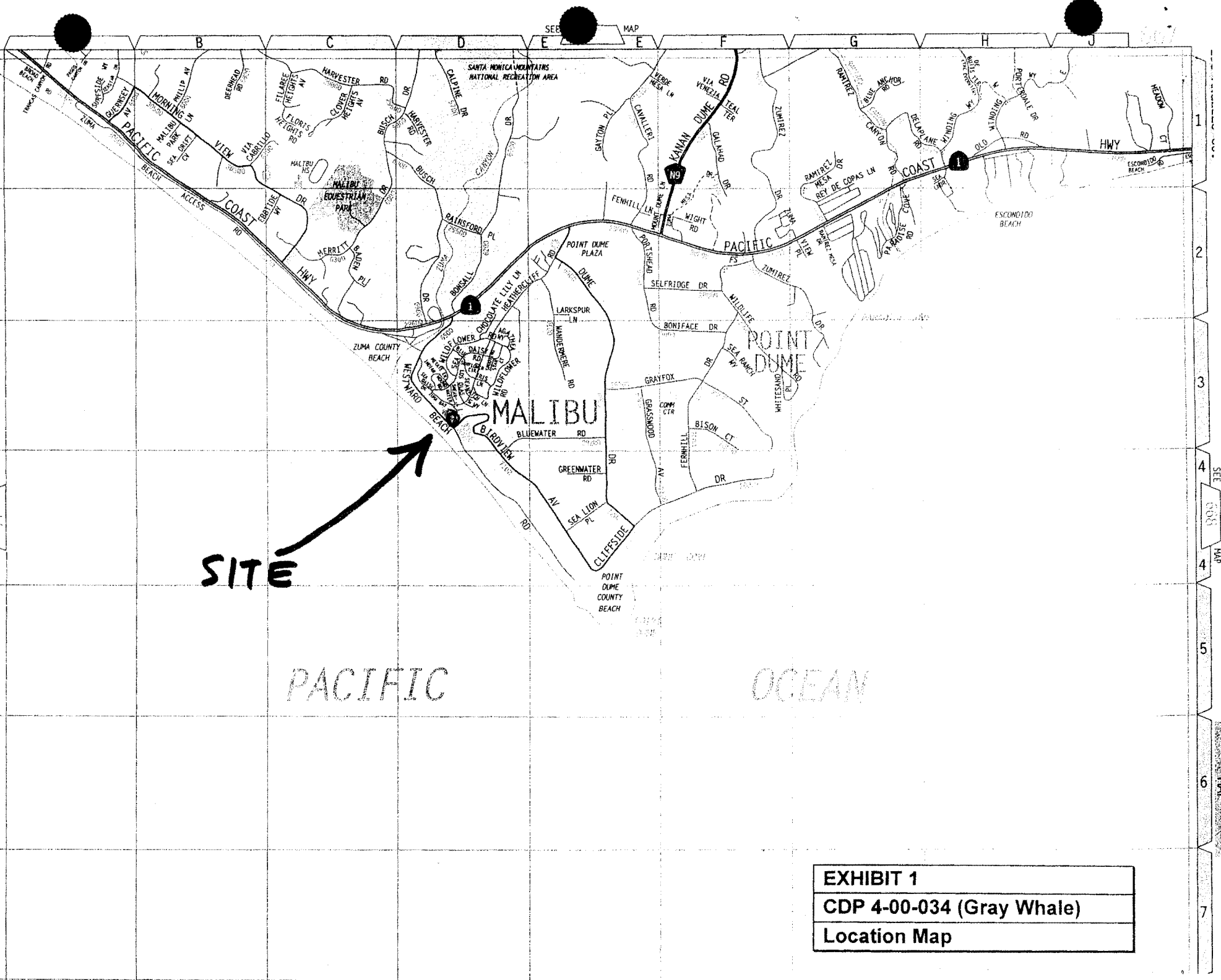
Section 30604(a) of the Coastal Act states (in part):

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 Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with Chapter 3 (commencing with Section 30200). ...

Section 30604(a) of the Coastal Act stipulates 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 significant adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3 of the Coastal Act. 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 the City of Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

H. California Environmental Quality Act (CEQA)

Section 13096(a) of the Coastal Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The Commission therefore finds that the proposed project, as conditioned, has been adequately mitigated, is determined to be consistent with CEQA and the policies of the Coastal Act, and will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970.



SITE

PACIFIC

OCEAN

EXHIBIT 1
CDP 4-00-034 (Gray Whale)
Location Map

ESRI ArcExplorer 1.1

4-00-034 Gray Whale (6800 Westward Beach Rd.)

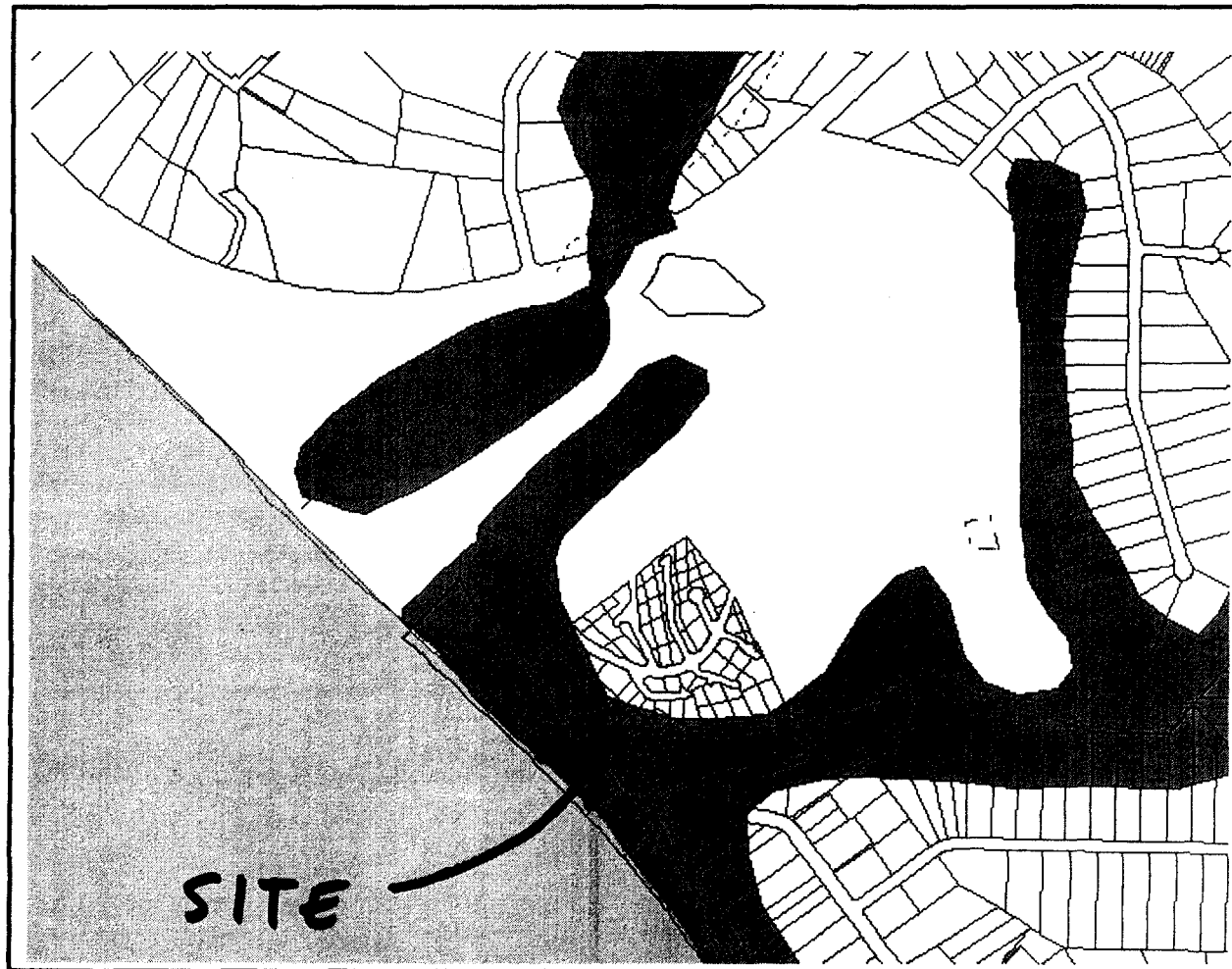


EXHIBIT 2
CDP 4-00-034 (Gray Whale)
Location Map

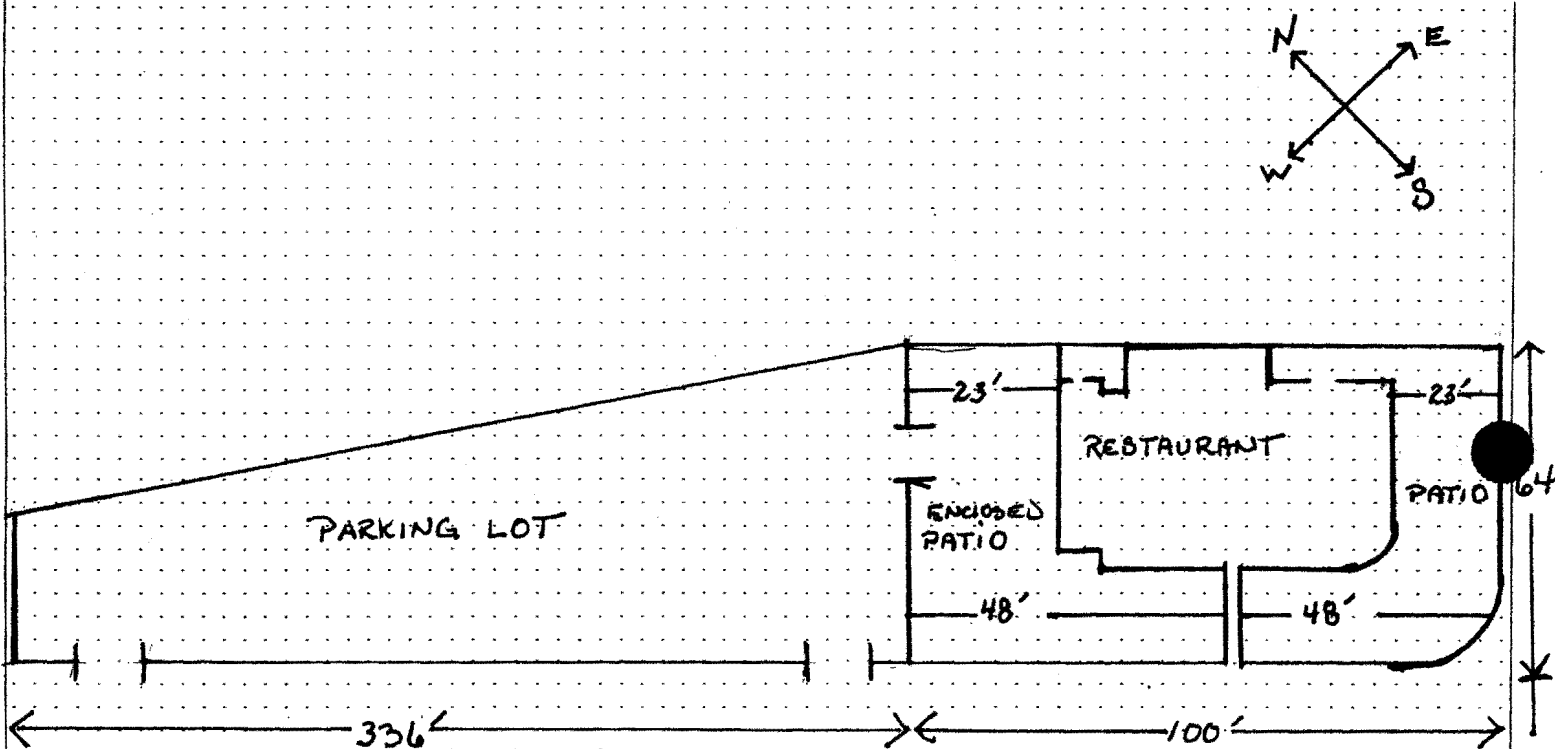
DIAGRAM OF LICENSED PREMISES

STATE C
DEPARTMENT OF ALCOHOLIC BEVER

1. FULL NAME (Last, First, Middle) Westward Beach Restaurant Holdings, LLC (Thomas R. Avera)	3. TYPE OF LICENSE 47
2. PREMISES ADDRESS (Number & Street, City, Zip) 6800 Westward Beach Road, Malibu, CA 90265	4. Nearest Cross Street Birdview

The diagram below is a true and correct description of the entrances, exits, interior walls and exterior boundaries of the premises to be licensed, including dimensions.

DIAGRAM



RECEIVED
APR 10 6 2009
SOUTH

Please read carefully and sign below.

It is hereby declared that the above-described boundaries, entrances and planned operation as indicated on the reverse side, will not be changed without first notifying and securing prior written approval of the Department of Alcoholic Beverage Control. I declare under penalty of perjury that the foregoing is true and correct.

5. APPLICANT SIGNATURE	6. DATE
------------------------	---------

FOR DEPARTMENT USE ONLY

INSPECTION DATE	CERTIFIED CORRECT
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EXHIBIT 4

CDP 4-00-034 (Gray Whale)

Site Plan

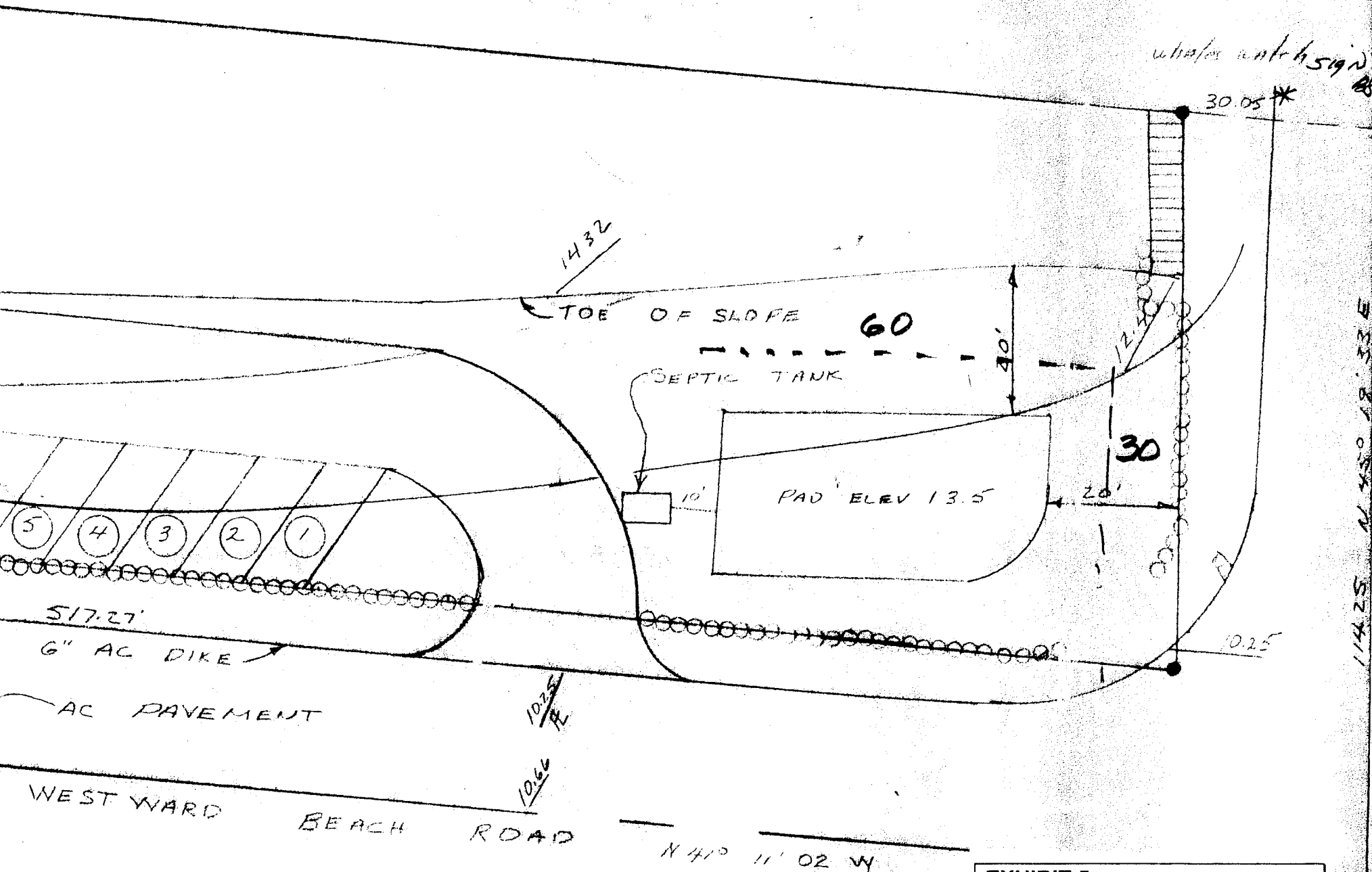


EXHIBIT 5
CDP 4-00-034 (Gray Whale)
Site Plan

DIAGRAM OF LICENSED PREMISES

STATE OF CALIFORNIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

1. FULL NAME (Last, First, Middle)

Westward Beach Restaurant Holdings, LLC (Thomas R. Aversa-Member)

3. TYPE OF LICENSE

#47

2. PREMISES ADDRESS (Number & Street, City, Zip)

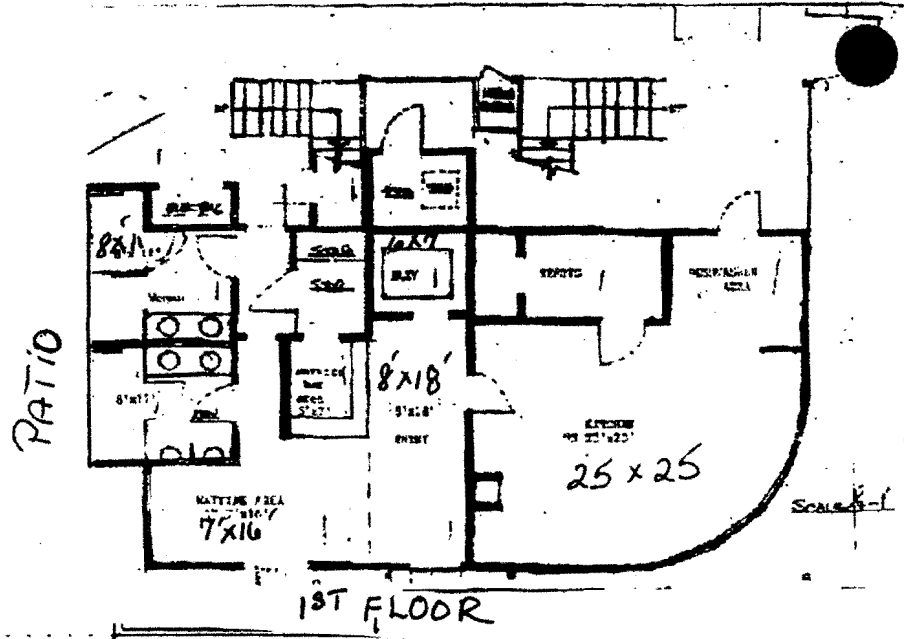
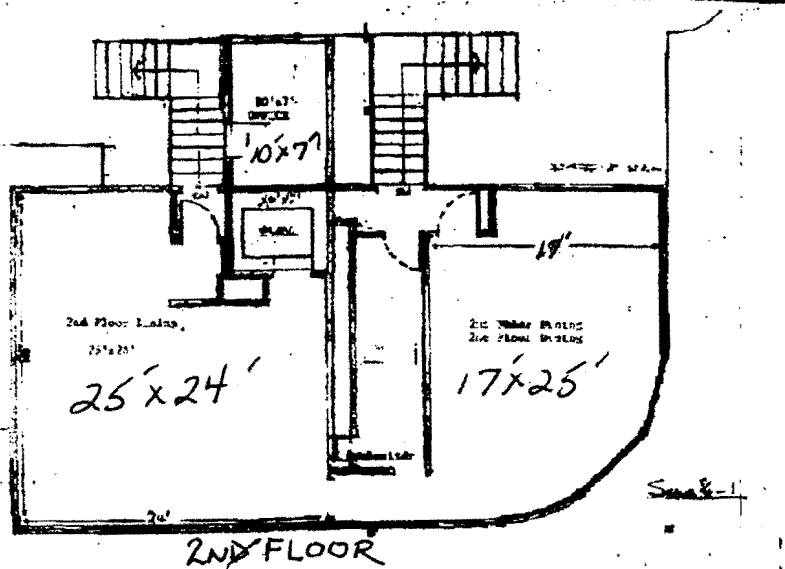
6800 Westward Beach Rd., Malibu CA 90265

4. Nearest Cross Street

Birdview

The diagram below is a true and correct description of the entrances, exits, interior walls and exterior boundaries of the premises to be licensed, including dimensions.

DIAGRAM



Please read carefully and sign below.

It is hereby declared that the above-described boundaries, entrances and planned operation as indicated on the reverse side, will not be changed without first notifying and securing prior written approval of the Department of Alcoholic Beverage Control. I declare under penalty of perjury that the foregoing is true and correct.

5. APPLICANT SIGNATURE

6. DATE

FOR DEPARTMENT USE ONLY

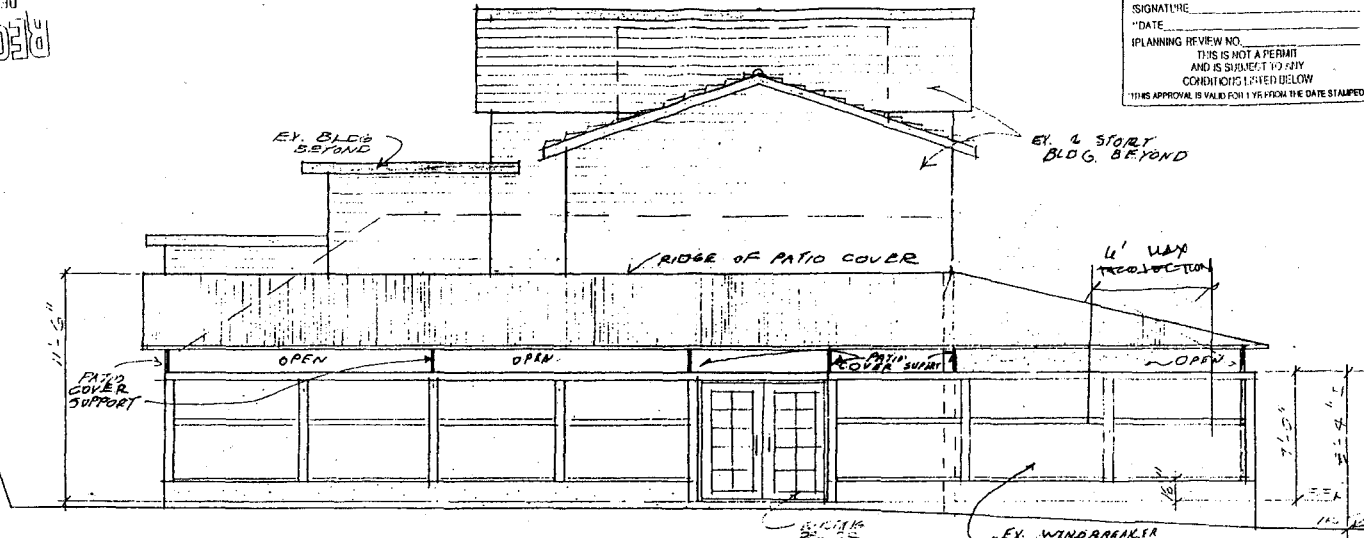
INSPECTION DATE

CERTIFIED CORRECT

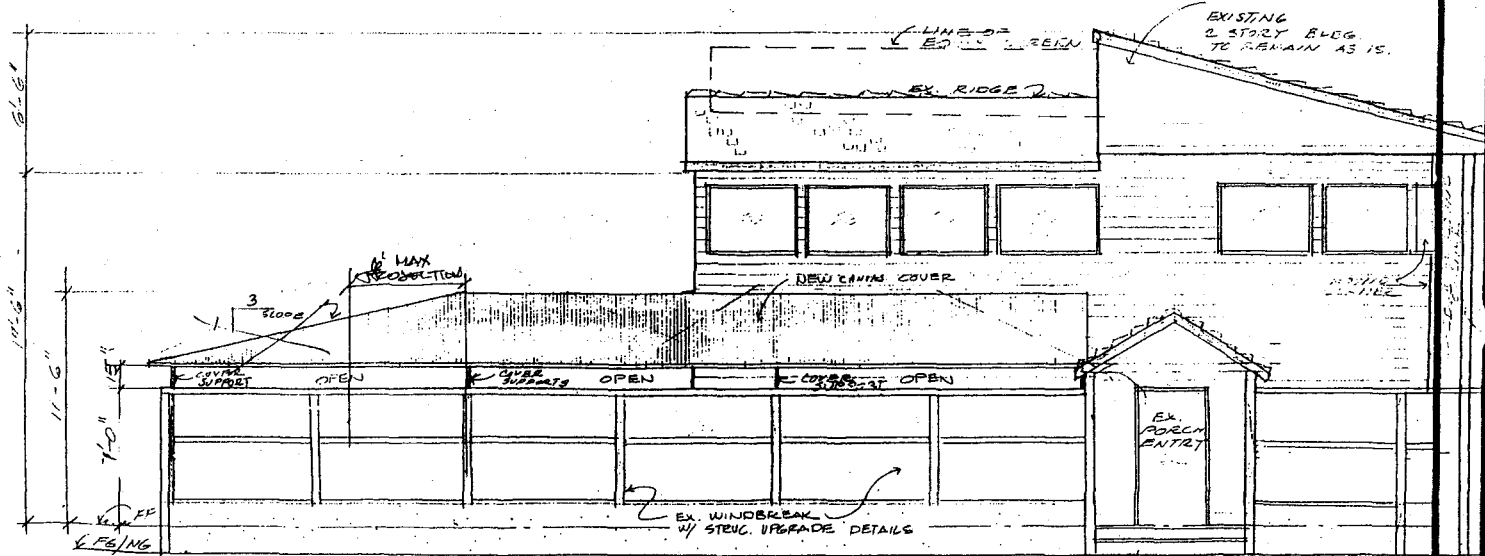
EXHIBIT 6
CDP 4-00-034 (Gray Whale)
Floor Plans

RECEIVED

CITY OF MALIBU
PLANNING DEPARTMENT
APPROVAL IN CONCEPT
SIGNATURE _____
DATE _____
PLANNING REVIEW NO. _____
THIS IS NOT A PERMIT
AND IS SUBJECT TO ANY
CONDITIONS LISTED BELOW
THIS APPROVAL IS VALID FOR 1 YEAR FROM THE DATE STAMPED.



ELEVATION B
1/4" = 1'



ELEVATION A
1/4" = 1'

1/4" = 1' ELEVATIONS

PATIO COVER
6800 WESTWARD BCH RD.
GREY WALE RESTAURANT

DRAWN
A.A.
CHECKED
DATE
12-6-99
SCALE
1/4" = 1'-0"
JOB NO.
SHEET

8

OF SHEETS

EXHIBIT 8
CDP 4-00-034 (Gray Whale)
N / W Elevations

CITY OF MALIBU

PLANNING DEPARTMENT
APPROVAL IN CONCEPT

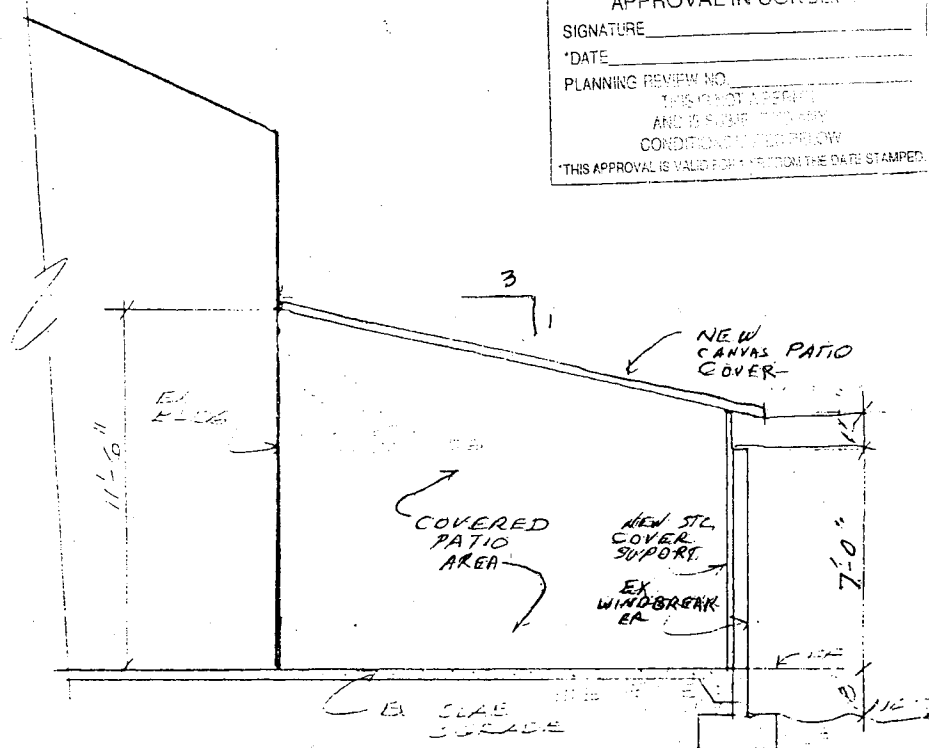
SIGNATURE _____

DATE _____

PLANNING REVIEW NO. _____

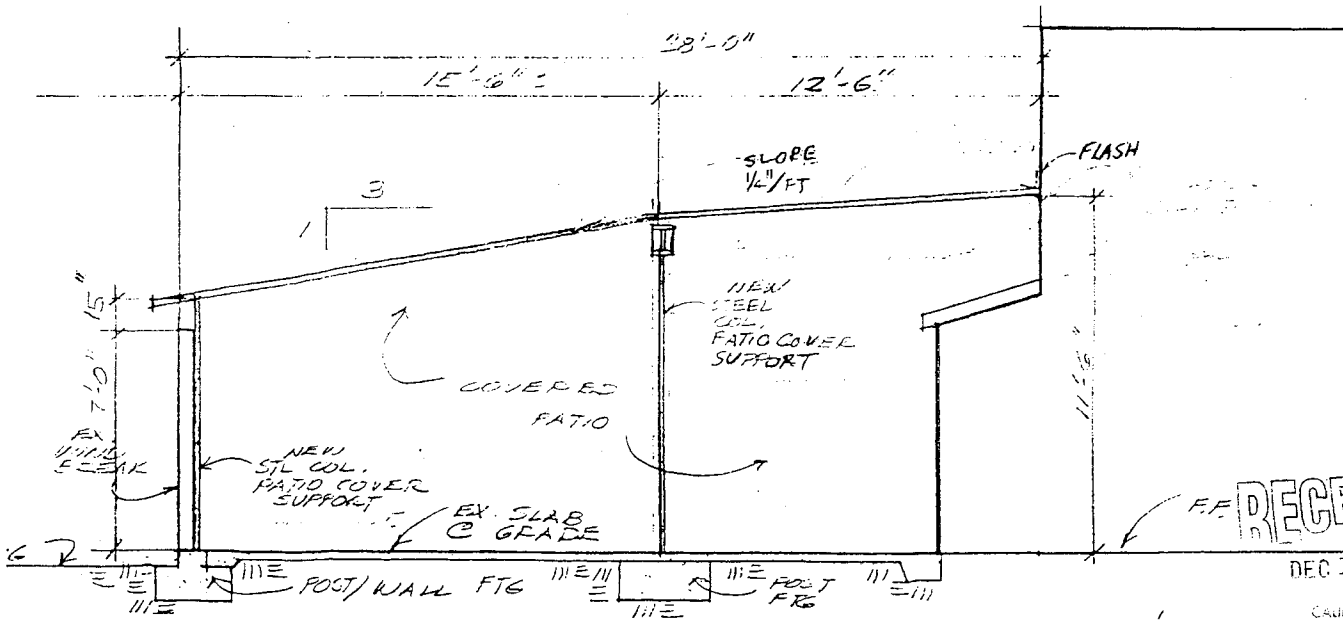
THIS IS NOT A PERMIT
AND IS SUBJECT TO ANY
CONDITIONS SET FORTH

*THIS APPROVAL IS VALID FOR 1 YEAR FROM THE DATE STAMPED.



SECTION B-B

1/4" = 1'



SECTION A-A

1/4" = 1'

SECTIONS & DETAILS

EXHIBIT 9

CDP 4-00-034 (Gray Whale)

Sections

OUR PLAN

Public Access - Dedicated Easement

SAFIRE (CDP# A-488-77) & ZUMA BAY ASSOCIATES (CDP# 115-73)

Malibu, Los Angeles County

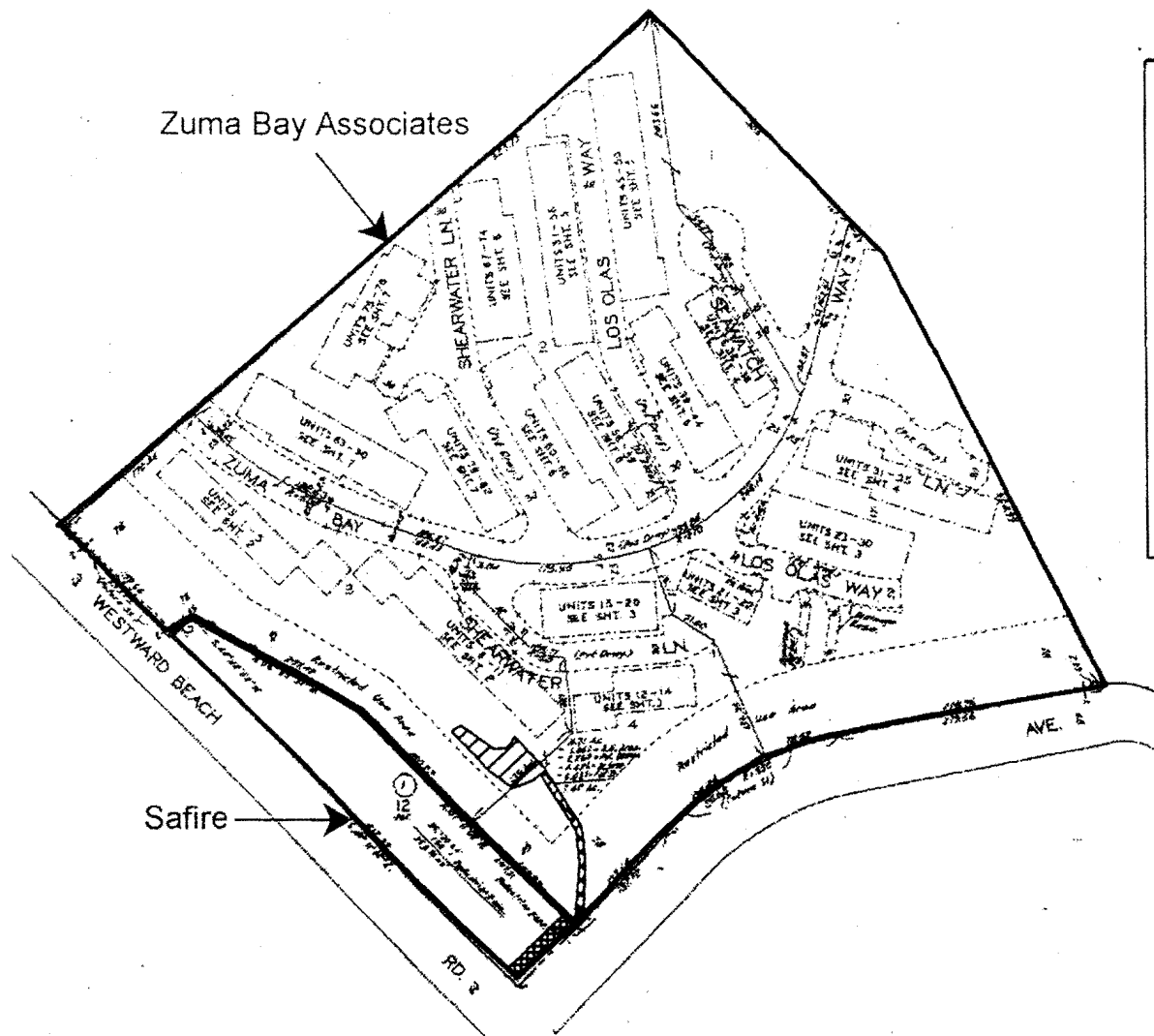


EXHIBIT 10
CDP 4-00-034 (Gray Whale)
Whale Watch Easement Map



Zuma Bay Associates 6 Foot Wide Vertical Access Dedicated Easement
(Extends from Westward Beach Road to Blufftop Viewing Easement)
L. A. County APN 4468-022-001



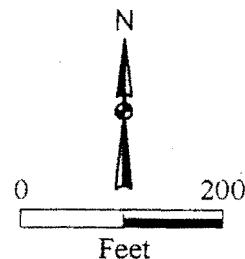
Zuma Bay Associates Blufftop Viewing Area
(Approximately 3,500 Sq. Ft. Total Size)



Safire Staircase (Extending From The Base Of
Bluff To Zuma Bay Associates Pedestrian Easement)
L. A. County APN 4468-022-006

Zuma Bay Associates Property Boundary
L. A. County APN 4468-022-001 and

Safire Property Boundary
L. A. County APN 4468-022-006



Note: All Locations Approximate.
For Illustrative Purposes Only.



California Coastal Commission
Coastal Access Program

Source: California Coastal Commission Access Program
Base Map Source: L. A. County Assessor 1997