

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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(805) 641-0142

**RECORD PACKET COPY**

Filed: 7/18/00  
49<sup>th</sup> Day: 9/5/00  
180<sup>th</sup> Day: 1/14/01  
Staff: A. Verbanac  
Staff Report: 7/19/00  
Hearing Date: 8/8-11/00  
Commission Action:

**STAFF REPORT: CONSENT CALENDAR**

**APPLICATION No.** 4-00-072

**APPLICANT:** Dr. and Mrs. Martin Cohen    **AGENT:** Russel Tyner

**PROJECT LOCATION:** 24858 Malibu Road, Malibu (Los Angeles County)

**PROJECT DESCRIPTION:** Demolition of a street side deck and construction of a two-story, 28 ft. high, 432 sq. ft. addition with new caisson foundation on the landward side of an existing beachfront single family residence and minor interior remodel.

<b>Area of Lot:</b>	6,000 sq. ft.
<b>Building Coverage:</b>	2,060 sq. ft.
<b>Hardscape Coverage:</b>	75 sq. ft.
<b>Unimproved:</b>	3,865 sq. ft.
<b>Height Above Finished Grade:</b>	28 ft.

**LOCAL APPROVALS RECEIVED:** City of Malibu Planning Department Approval-In-Concept dated 1/24/00, City of Malibu Environmental Health Department In-Concept Approval dated 12/15/99, City of Malibu Geology and Geotechnical Engineering Review Sheet dated 4/21/00, and City of Malibu Geology Referral Sheet dated 10/5/99.

**SUBSTANTIVE FILE DOCUMENTS:** Updated Engineering Geologic and Geotechnical Engineering Evaluation dated 12/17/99 by Robertson Geotechnical Inc., Engineering Geologic Report dated 7/2/93 by Robertson Geotechnical, Inc., Adequacy of Existing Timber Bulkhead Evaluation dated 6/14/00 by David C. Weiss, City of Malibu Plot Plan Review Determination dated 1/24/00, State Lands Commission Letter dated June 7, 2000, CDP # 4-98-165-W (Cohen), CDP # 4-93-187A-A2 (Cohen), CDP # 5-88-989 (Cohen), CDP # P-1591 (Solov).

**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **approval** of the proposed project with two Special Conditions regarding geologic recommendations and assumption of risk. The project site is located on a beachfront lot off of Malibu Road in an area that has been the subject of concern with respect to an active landslide located directly north of Malibu Road. The applicant's geotechnical consultants have

addressed the related concerns in the referenced geologic reports and conclude that the active landslide has been stabilized by a buttress fill, and that the project will be geologically feasible and safe provided the consultant's recommendations are incorporated into the proposed development. Though the project site is located on a beachfront lot the proposed development will be located landward of the existing residence and bulkhead and will not result in seaward encroachment of development onto the beach. No changes to the existing wood bulkhead or septic system are proposed and the project poses no additional impacts to public coastal views, access, or recreation.

## **I. STAFF RECOMMENDATION**

**MOTION:**     *I move that the Commission approve Coastal Development Permit No. 4-00-072 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 (2) years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed within a reasonable period of time. Application for an 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 that the assignee files with the Commission an affidavit accepting all of the 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. Plans Conforming to Geologists' and Engineers' Recommendations

All recommendations contained in the submitted Updated Engineering Geologic and Geotechnical Engineering Evaluation report dated 12/17/99 and Engineering Geologic Report dated 7/2/93 prepared Robertson Geotechnical Inc. relating to construction, foundations, and drainage shall be incorporated into all final project plans. Final project plans must be reviewed and approved by the geotechnical consultants as in conformance with their recommendations prior to commencement of construction. Prior to issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director of the consultants' review and approval of all final design and construction plans.

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

#### 2. Assumption of Risk

A. By acceptance of this permit, the applicant acknowledges and agrees to the following:

- (1) The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
- (2) The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
- (3) The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
- (4) The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's 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.

#### **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

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

The applicant is proposing to demolish a street side deck and construct a two-story, 28 ft. high, 432 sq. ft. addition to be supported on two new caissons on the landward side of an existing beachfront single family residence, and minor interior remodel work of a master bath (Exhibits 3-6). The subject site is a beachfront lot located off of Malibu Road in the City of Malibu and is currently developed with a three-story, 3,443 sq. ft. single family residence and wood bulkhead. The proposed project will result in a three-story single family residence totaling 3,875 sq. ft. No grading or changes to the existing wood bulkhead or septic system are proposed. The City of Malibu Environmental Health Department has evaluated the existing septic system and has determined that the system is adequate to service the existing residence and proposed addition without further renovation or replacement.

Construction of the existing single family residence and bulkhead was approved by the California Coastal Zone Conservation Commission in 1973 under permit P-7-31-73-1591. The 1973 coastal development permit included a condition that the applicant not deny public lateral access to the beach up to 25 ft. inland of the mean high tideline. The proposed development will be located entirely on the landward side of existing development at the site, therefore the proposed project will not affect public coastal views, access, or recreation along the beach.

Geologic reports prepared for the subject site describe active landslide debris existing immediately north of the subject site on the ascending slope between Malibu Road and Pacific Coast Highway. The referenced geology reports indicate that this slide area has had slope stability problems since the 1970's and that intermittent debris sliding has occurred up through 1992 when the slide was stabilized by a buttress fill. Based on the site evaluation and conclusions made by the project's consulting geotechnical engineer in the referenced geologic reports, the consultants conclude that there is no significant evidence of distress of existing development at the site which would suggest site instability, and that the proposed project is geologically feasible.

##### **B. Seaward Encroachment, Public Access, and Visual Resources**

The proposed project is located on a beachfront lot in the City of Malibu. The Coastal Act contains several policies that address the issues of public access and recreation and visual resources in relation to development on a beach.

Coastal Act Section 30210 states that:

***In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with***

***public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.***

Coastal Act Section 30211 states:

***Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.***

Coastal Act Section 30212(a) provides that for new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, where:

***(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.***

***(2) adequate access exists nearby, or,***

***(3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.***

Additionally, 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.***

### **Seaward Encroachment of Development**

As a means of controlling seaward encroachment of residential structures on a beach to ensure maximum public access and to protect public views as required by Coastal Act Sections 30210, 30211, 30251, the Commission has, in past permit actions, developed the "stringline" analysis to control seaward development. As applied to beachfront development, the stringline analysis limits the seaward extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks to a similar line drawn between the nearest corners of the adjacent decks.

The Commission has applied this policy to numerous past permits involving infill development on sandy beaches and has found it to be an effective policy tool in preventing further encroachments onto sandy beaches. In addition, the Commission has found that restricting new development to building and deck stringlines is an effective means of controlling seaward

encroachment to ensure maximum public access as required by Sections 30210 and 30211, to protect public views and the scenic quality of the shoreline as required by Section 30251, as well as to minimize hazards associated with beachfront development as required by Section 30253 of the Coastal Act.

The proposed project does not invoke the restrictions of the stringline policy because the proposed addition will be constructed landward of the existing residence, and therefore the project will not exceed either the first or second floor stringlines as measured from adjacent development. Therefore, the Commission finds that the proposed project will not result in seaward encroachment of residential development and the project will not adversely impact public access, visual, or coastal resources as addressed below.

### **Public Access and Shoreline Development**

The Commission has established a policy that all beachfront projects requiring a coastal development permit be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. In past permit actions, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline. The major access issue in such permits is the occupation of sand area by a structure in contradiction of Coastal Act policies 30210, 30211, and 30212.

Past Commission review of shoreline residential projects in Malibu has shown that individual and cumulative adverse impacts on public access include: encroachment on lands subject to the public trust, thus physically excluding the public; interference with the natural shoreline processes 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 to use public tideland areas.

As described, the project involves a two-story, 432 sq. ft. addition to the landward side of the existing residence and a minor interior remodel of a master bath. The addition will not result in development that encroaches upon the sandy beach. As such, the proposed project will not result in seaward development and will not affect public access to and along the beach. The Commission therefore finds that the project, as proposed, will not have any individual or cumulative adverse impacts on public access and recreation and is consistent with sections 30210, 30211, and 30212 of the Coastal Act.

### **Visual Resources**

Section 30251 of the Coastal Act requires public views to and along the ocean and scenic coastal areas to be considered and protected when siting new development. As mentioned above, the proposed addition will be constructed on the landward side of an existing residence, therefore the project will not result in seaward development which would potentially impact public views along the beach. Additionally, the project will not result in a height increase of the existing residence, is not visible from Pacific Coast Highway or any other designated scenic highway, and will be consistent with the character of neighboring development. Therefore, the Commission finds that the project, as proposed, has no significant impact on public views to or along the beach and is consistent with Section 30251 of the Coastal Act.

The Commission finds that the project, as proposed, will not result in seaward encroachment of development on the sandy beach and therefore will not have an individual or cumulative impact on public access or visual resources. Therefore, the Commission finds that the proposed project is consistent with Sections 30210, 30211, 30212 and 30251 of the Coastal Act.

### C. Hazards and 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.***

Section 30235 of the Coastal Act states that:

***Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.***

The proposed development will be located landward of the existing single-family residence and bulkhead, and therefore will not result in seaward development onto the sandy beach, which would be subject to significant wave hazards. As such, the Commission finds that the proposed project will not result in seaward encroachment of development on the beach and will minimize wave hazards and adverse effects to shoreline processes.

Though the project will not result in seaward development, the project site is located on a beachfront lot on the Malibu coast and is located in close proximity to an identified landslide. The applicant has submitted an Updated Engineering Geologic and Geotechnical Engineering Evaluation report dated 12/17/99 and an Engineering Geologic Report dated 7/2/93 by Robertson Geotechnical Inc., evaluating the geologic stability of the subject site in relation to the proposed development. The report addresses the existence of a landslide located immediately north of the project site, as well as risks associated with the proposed development on a beachfront lot. The report concludes that the proposed addition is geologically feasible and states:

***It is the opinion of the undersigned, based on the findings of this engineering geologic and geotechnical engineering evaluation, and the referenced reports, that the proposed addition will be safe against hazards from landslide, settlement or slippage and that the proposed addition will have no adverse affect on the geologic stability of the property outside the building site.***

To ensure that the recommendations of the geotechnical engineering consultants have been incorporated into the proposed development, **Special Condition 1** requires the applicant to submit project plans certified by the geotechnical consultants as conforming to all their recommendations for design and construction to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. 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.

The Commission notes that the applicant's geotechnical engineering consultants have indicated that the proposed development will serve to ensure relative geologic and structural stability on the subject site. However, the Commission also notes that though the consultants have indicated in the referenced geology reports that the landslide located north of the subject property has been stabilized, there remains some inherent risk in building on sites in the immediate vicinity of an active landslide. Furthermore, the proposed development is located on a beachfront lot in the City of Malibu, an area that 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, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains and even beachfront lots have been subject to damage from wildfires. Additionally, beachfront sites are subject to flooding and erosion from storm waves.

Section 30253 of the Coastal Act requires that new development minimize risk to life and property in areas of high geologic, flood, and fire hazard, and to assure stability and structural integrity. The Commission notes that the proposed development is located on a beachfront lot in the City of Malibu and will be subject to potential hazards inherent of beachfront development. 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 severe 1998 El Nino winter storm season.

The subject site is clearly susceptible to flooding and/or wave damage from storm waves, storm surges and high tides. In the Malibu area alone, past occurrences have caused property damage resulting in public costs through emergency responses and low-interest, publicly subsidized reconstruction loans amounting in millions of dollars. In the winter of 1977-1978, storm-triggered mudslides and landslides caused extensive damage along the Malibu coast. According to the National Research Council, damage to Malibu beaches, seawalls, and other structures during that season caused damage of up to \$5 million to private property alone. The El Nino storms recorded from 1982-1983 caused high tides of over seven feet, which were combined with storm waves of up to 15 feet. These storms caused over \$12.8 million in damage to structures in Los Angeles County, many of which were located in Malibu. The severity of the 1982-1983 El Nino storm events are often used to illustrate the extreme storm event potential of the California coast and the Malibu coast, in particular. The 1998 El Nino storms also resulted in widespread damage to residences, public facilities, and infrastructure along the Malibu coast. Thus, ample evidence exists that all beachfront development in the Malibu area is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding.

The existing single-family residence is presently protected from wave attack by an existing wood bulkhead located under the house. The applicants have submitted a letter by their coastal engineering consultant evaluating the existing bulkhead which indicates that the bulkhead is adequate to protect development at the site. Nevertheless, despite the existence of a shoreline protection device all development on the beachfront parcel will continue to be subject to wave



attack, flooding, and erosion hazards which have historically cause significant damage to development along the Malibu coastal zone.

Due to the concerns discussed above, the proposed development will continue to be subject to some degree of risk posed by the existence of a landslide immediately north of the site and the hazards associated with oceanfront development. The Coastal Act recognizes that development, even as designed and constructed to incorporate all recommendations of the consulting geotechnical engineers, may still involve the taking of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

The Commission finds that due to the possibility of landslide, liquefaction, storm waves, surges, erosion, flooding, and wildfire, the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property, which may occur as a result of the permitted development. The applicant's assumption of risk, as required by **Special Condition 2**, when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the proposed development.

For the reasons set forth above the Commission finds that the proposed development, as conditioned, is consistent with Section 30253 of the Coastal Act.

#### **D. 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 Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with 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 effects 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 that is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

#### **E. California Environmental Quality Act**

The Coastal Commission's permit process has been designated as the functional equivalent of CEQA. Section 13096(a) of the California Code of Regulations requires Commission approval

of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of 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 that would substantially lessen any significant adverse effects that the activity may have on the environment.

The proposed development, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified effects, is consistent with the requirements of CEQA and the policies of the Coastal Act.

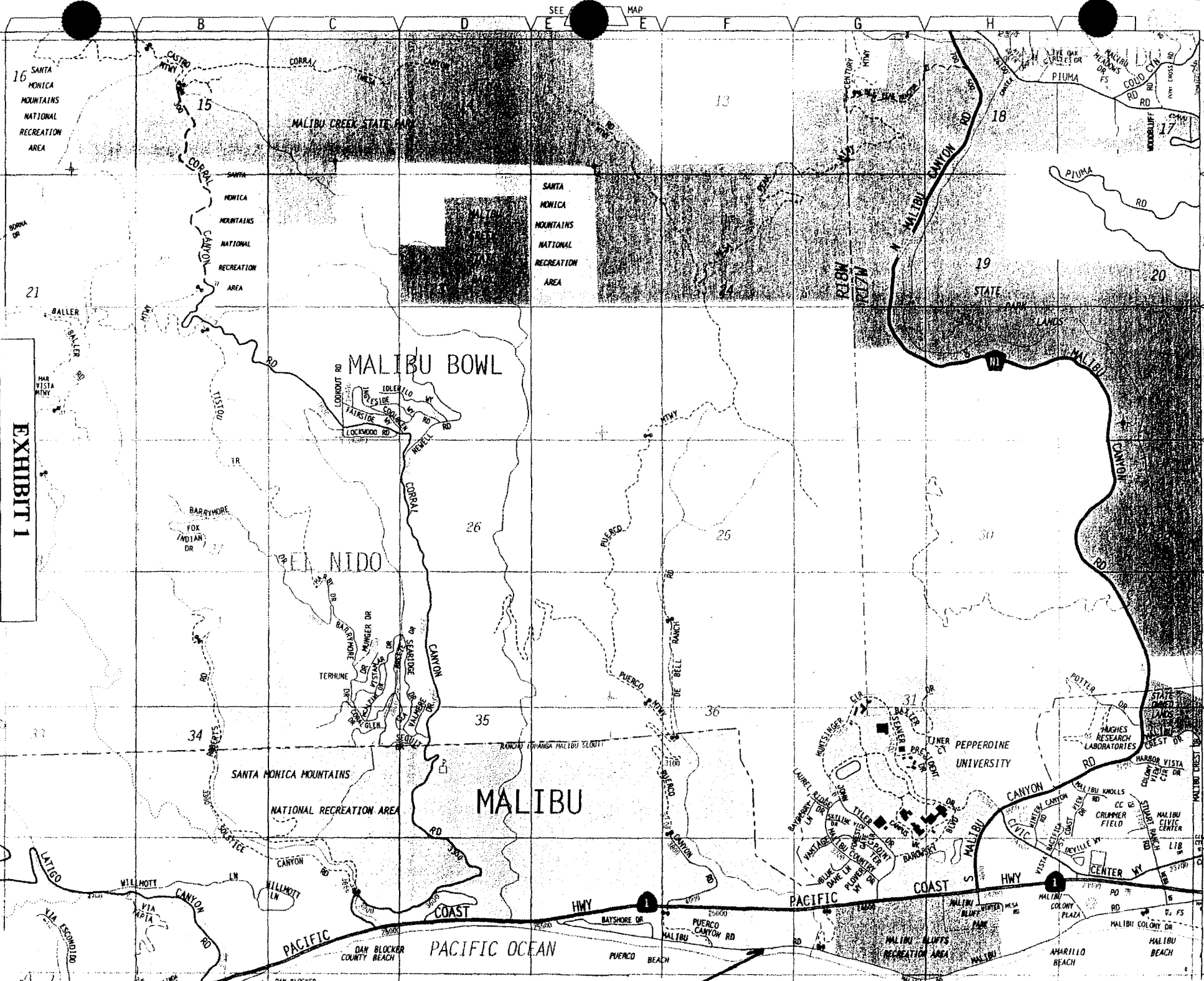
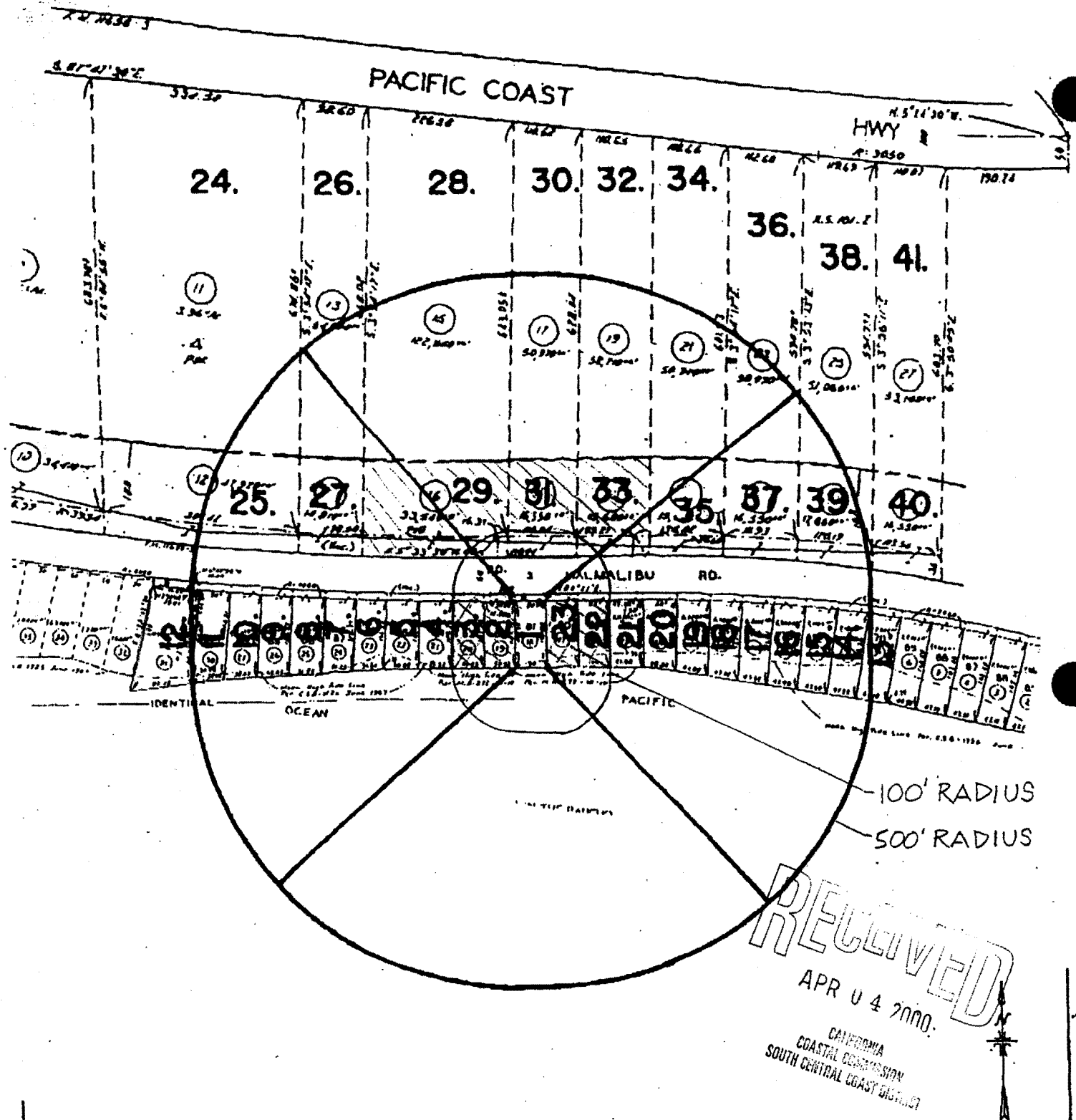


EXHIBIT 1

CDP #4-00-072

Vicinity Map

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<p>SITE: 24858 MALIBU RD. MALIBU</p> <p>APN: 4458-013-018</p>	<p>OWNERSHIP MAP 500'</p> <p>1-SQUARE MAPPING SERVICE</p> <p>P.O. BOX 605 LA CANADA, CA 91012 626-403-1803</p>	<p>CAME NO.</p> <p>DATE 10-14-98</p> <p>SCALE 1"=200'</p> <p>USES FIELD D.M.</p>
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EXHIBIT 2

CDP # 4-00-072

Parcel Map



Architecture  
Interior Design



## Demolition Plan









