

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Hearing Date: 2/13/01
Commission Action:

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

APPLICATION NO.: 4-00-169

APPLICANT: Roger and Mary Amerian

AGENTS: Don Schmitz

PROJECT LOCATION: 24456 Malibu Road, Malibu; Los Angeles County.

PROJECT DESCRIPTION: Repair and renovation of an existing 3,235 sq. ft. single family residence damaged by fungus and dry rot and a request for after-the-fact approval of an existing 60 ft. long timber bulkhead. Repair and renovation activities will involve replacement of five timber piles with concrete piles, repair of the existing timber bulkhead, removal of a portion of an existing wind/privacy wall on the existing 2nd story deck, replacement of a 120 sq. ft. at-grade concrete slab walkway, reconstruction of an existing breakfast nook room located in the interior portion of the structure, repair two existing timber decks (replace deck floor boards, deck railing, and approximately 30% of deck framing), minor interior remodeling, and the replacement of damaged portions of the roof, windows, and exterior siding of the existing residence. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck dripline to the mean high tide line.

LOCAL APPROVALS RECEIVED: Approval in Concept City of Malibu Planning Department.

SUBSTANTIVE FILE DOCUMENTS: Assessment of Existing Timber Bulkhead by Dave Weiss Structural Engineer & Associates dated 10/25/00; Repair of Existing Timber Bulkhead and Miscellaneous Timber Piles Report by Dave Weiss Structural Engineer & Associates dated 7/13/00; and Geologic and Soils Engineering Investigation by Subsurface Designs dated 6/9/00.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed project with ten (10) special conditions as outlined on pages 3-7 of the staff report. The proposed project is for the repair and renovation of an existing 3,235 sq. ft. single family residence damaged by fungus and dry rot and a request for after-the-fact approval of an existing 60 ft. long timber bulkhead. No change to the footprint, size, or seaward extent of the residence is proposed.

To mitigate adverse effects to shoreline processes and public access from the proposed bulkhead, the applicant is proposing to dedicate a public lateral access easement from the deck dripline to the mean high tide line. In addition, although a relatively short wall, or solid rail, on the 2nd story deck was approved pursuant to CDP No. 793, a significantly larger wind/privacy wall was actually constructed also without the required coastal permit or amendment. The proposed project includes the removal of the unpermitted portion of the wind/privacy wall and reconstruction of the wall as consistent with the previously approved plans.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-00-169 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. Revised Plans

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised project plans which show that all portions of the existing 2nd story deck privacy/wind wall which are not consistent with the previously approved plans pursuant to Coastal Development Permit No. 739 (as shown on Exhibit 7) are deleted. Deleted portions of the wall may be replaced with glass, PlexiglasTM, or another transparent substance.

2. Removal of Portion of Existing 2nd Story Deck

The applicant shall remove all portions of the existing 2nd story deck privacy/wind wall which are not consistent with the previously approved plans pursuant to Coastal Development Permit No. 739 (as shown on Exhibit 7) within 90 days of the issuance of this permit unless an amendment to this permit or a separate coastal permit which allows for the retention of such development is issued. The Executive Director may grant additional time for good cause.

3. Construction Responsibilities and Debris Removal

The applicant shall, by accepting this permit, agree: a) that no stockpiling of dirt or construction materials shall occur on the beach; b) that all grading shall be properly covered and sand bags and/or ditches shall be used to prevent runoff and siltation; and, c) that measures to control erosion must be implemented at the end of each day's work. In addition, no machinery will be allowed in the intertidal zone at any time. The permittee shall remove from the beach area any and all debris that result from the construction period.

4. Geologic and Engineering Recommendations

All recommendations contained in the Assessment of Existing Timber Bulkhead by Dave Weiss Structural Engineer & Associates dated 10/25/00; Repair of Existing Timber Bulkhead and Miscellaneous Timber Piles Report by Dave Weiss Structural Engineer & Associates dated 7/13/00; and Geologic and Soils Engineering Investigation by Subsurface Designs dated 6/9/00 shall be incorporated into all final design and construction plans.

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 consultant shall be in substantial conformance with the plans approved by the Commission. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

5. Required Approvals

Prior to issuance of a coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, evidence of all necessary approvals for the proposed development from the California State Lands Commission.

6. Sign Restriction

No signs shall be posted on the property subject to this permit unless they are authorized by a coastal development permit or an amendment to this coastal development permit.

7. Offer to Dedicate Lateral Public Access

In order to implement the applicant's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicant agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the ambulatory mean high tide line landward to the approved deck dripline.

The document shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The recording document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area. 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.

8. Provisional Term for Shoreline Protective Structure

- A. Coastal Development Permit No. 4-00-169, in full or in part, authorizes the construction of the shoreline protective device generally depicted in Exhibits 3 and 4. By acceptance of this permit, the applicant acknowledges that the purpose of the subject shoreline protective device is solely to protect the existing structures located on site, in their present condition and locations, including the septic disposal system. If any of the activities listed below are undertaken, a new coastal permit for the shoreline protective device authorized by Coastal Development Permit 4-00-169 shall be required unless the Executive Director determines that a new permit is unnecessary because such activities are minor in nature or otherwise do not affect the need for the shoreline protective device.
1. Changes to the foundation of any structure on the subject site located landward of the subject shoreline protective structure authorized herein, such as repairs or replacement of support piles or caissons;
 2. Upgrade, relocation or abandonment of the septic disposal system;
 3. Remodel of the primary structure or residence on the subject site involving the demolition of more than 50 percent of exterior walls or an addition to the primary structure or residence resulting in an increase of more than 10 percent of structural size;
 4. Construction of a new structure on the subject parcel;
 5. Relocation and/or complete removal of any or all of the structures existing on site shown on the exhibit required pursuant to paragraph (B) below.

The applicant or successor-in-interest shall contact the Executive Director if any of the above activities are contemplated so that a determination as to the necessity of applying for a new permit can be made. If an application for a new coastal development permit is required pursuant to this condition, and the Commission determines that the proposed project is not consistent with the Coastal Act, the Commission may deny the permit application and may take any other action authorized by law.

- 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, reflecting the above restrictions on development of the subject parcel. The deed restriction shall include both a legal description of the applicant's entire parcel, and an Exhibit drawn to scale depicting all existing development on site to be protected by the subject shoreline protective device, and the shoreline protective device itself. 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 an amendment to this coastal development permit approved by the Coastal Commission.

9. Assumption of Risk/Shoreline Protection

- 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.
 5. No future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to Coastal Development Permit 4-00-169, as shown on Exhibits 3 and 4, shall be undertaken if such activity extends the seaward footprint of the subject shoreline protective device. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code section 30235.
- 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 and an exhibit showing the location of the shoreline protective device approved by this permit. 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.

10. Condition Compliance

Within 90 days of Commission action on this coastal development permit amendment 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.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing the repair and renovation of an existing 3,235 sq. ft. single family residence damaged by fungus and dry rot and a request for after-the-fact approval of an existing 60 ft. long timber bulkhead. Repair and renovation activities will involve replacement of five timber piles with concrete piles, repair of the existing timber bulkhead, removal of a portion of an existing wind/privacy wall on the existing 2nd story deck, replacement of a 120 sq. ft. at-grade concrete slab walkway, reconstruction of an existing breakfast nook room located in the interior portion of the structure, repair two existing timber decks (replace deck floor boards, deck railing, and approximately 30% of deck framing), minor interior remodeling, and the replacement of damaged portions of the roof, windows, and exterior siding of the existing residence. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck dripline to the mean high tide line.

The project site is located on a beachfront parcel of land approximately 6,200 sq. ft. in size on Amarillo Beach between Malibu Road and the ocean (Exhibits 1 & 2). The area surrounding the project site is characterized as a built-out portion of Malibu consisting of residential development. The existing residence on site is in a severely deteriorated condition due to infestation by *Poria Incrassata* fungus and dry rot. The primary purpose of the proposed project is to repair damage to the existing structure. No change to the footprint, size, or seaward extent of the residence is proposed. Repairs to the proposed decks will involve replacement of floor boards, deck railing, and approximately 30 percent of the existing deck framing. No development will occur seaward of the dripline of the existing deck.

The Commission notes that the subject site has been subject to past Commission action. Coastal Development Permit (CDP) No. 793 was approved by the Commission in 1973 for a new single family residence with a bulkhead located seaward of the residence and the approved deck dripline. However, the bulkhead was constructed in a different location and using a different design than was previously approved without either the required coastal development permit or amendment to the underlying permit. The existing timber bulkhead (which the applicant is now requesting after-the-fact approval for as part of this application) is of a smaller scale, a different configuration, and located approximately 40 ft. further landward (under the residence) than the previously approved seawall. In addition, although a relatively short wall, or solid rail, on the 2nd story deck was approved pursuant to CDP No. 793, a significantly larger wind/privacy wall was actually constructed also without the required coastal permit or amendment (Exhibit 7). The proposed project includes the removal of the unpermitted portion of the wind/privacy wall and reconstruction of the wall as consistent with the previously approved plans.

B. Hazards and Shoreline Processes

Section 30235 of the Coastal Act states:

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

Finally, 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.*

The project site is located on a beachfront parcel in 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. Even beachfront properties have been subject to wildfires. Finally, shoreline areas, such as the project site, are subject to flooding and erosion from storm waves.

The proposed project is for the repair and renovation of an existing beachfront single family residence damaged by *Poria Incrassata* fungus and dry rot. The applicant's engineering consultants have indicated that removal and replacement of the damaged portions of the residence is necessary in order to eliminate the fungus and ensure structural stability. The Repair of Existing Timber Bulkhead and Miscellaneous Timber Piles Report by Dave Weiss Structural Engineer & Associates dated 7/13/00 states:

A very virulent Poria Incrassata has infested portions of the house, timber piles, and bulkhead. Unfortunately, little is known about how this organism gets started. What is known is that it is very infectious and if not stopped, will virtually eat a timber structure from foundation to roof...The only sure way to eliminate it is to cut out the infested portion of the timber member

The proposed repair and renovation activities will involve replacement of five timber piles with concrete piles, repair of the existing timber bulkhead, removal of a portion of an existing wind/privacy wall on the existing 2nd story deck, replacement of a 120 sq. ft. at-grade concrete slab walkway, reconstruction of an existing breakfast nook room located in the interior portion of the structure, repair two existing timber decks (replace deck floor boards, deck railing, and approximately 30% of deck framing), minor interior remodeling, and the replacement of damaged portions of the roof, windows, and

exterior siding of the existing residence. No change to the footprint, size, or seaward extent of the residence is proposed and no development will occur seaward of the dripline of the existing deck.

In addition, the proposed project also includes a request for after-the-fact approval of an existing 60 ft. long timber seawall. Section 30235 of the Coastal Act allows for the construction of a shoreline protective device when necessary to protect existing development or to protect a coastal dependent use. In this case, Coastal Development Permit (CDP) No. 793 was previously approved by the Commission in 1973 for a new single family residence with a bulkhead located seaward of the residence and the approved deck dripline. During the processing of this application, staff discovered that although the bulkhead approved by the Commission pursuant to CDP No. 793 was never constructed, a different bulkhead was actually constructed (either during construction of the residence or some time after) in a different location and using a different design than was previously approved pursuant to CDP No. 793. The existing unpermitted bulkhead is actually of a smaller scale, a different configuration, and located approximately 38 ft. further landward (under the residence) than the much larger bulkhead that was previously approved seaward of the deck dripline pursuant to CDP No. 793. Regardless, the Commission notes that the existing bulkhead was constructed without either the required coastal development permit or an amendment to the previously approved underlying permit. As such, the applicant is now requesting after-the-fact approval for the as-built bulkhead.

Interference by shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile which results from a reduced beach berm width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on their own property. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. This affects public access again through a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. As set forth in earlier discussion. In addition, if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. Fourth, if not sited landward in a location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy.

Section 30235 of the Coastal Act allows for the construction of a shoreline protective device only when necessary to protect existing development or to protect a coastal dependent use and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. In this case, the proposed bulkhead is necessary in order to protect both the existing residence (which has been constructed partially on a timber pile foundation and partially on at-grade slab foundation) as well as the septic system and leach field which are located immediately landward of the existing bulkhead. As such, the Commission notes that in this case, a shoreline protective device is necessary in order to protect existing development consistent with Section 30235.

However, Section 30235 of the Coastal Act also requires that, when new shoreline protective devices are allowed, such devices shall be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The Commission notes that adverse effects to shoreline processes from shoreline protective devices are greater the more frequently that they are subject to wave action. As such, in past permit actions, the Commission has required that all new development on a beach, including shoreline protection devices, be located as landward as possible in order to reduce adverse impacts to the sand supply and public access resulting from the development. The proposed bulkhead is located immediately seaward of the existing septic system. In addition, the Commission notes that the proposed bulkhead is located as landward as feasible in order to protect both the existing septic system and the existing at-grade development that would otherwise be subject to wave action and undermining. In addition, the Commission notes that the proposed bulkhead is located more than approximately 34 ft. further landward (at the wall's most seaward point) than the existing deck dripline and more than 38 ft. further landward than the previously approved bulkhead. In addition, in order to ensure that future modifications to the approved bulkhead do not result in seaward extension of the shoreline protective device, Special Condition Nine (9) prohibits any future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to this permit, if such activity extends the seaward footprint of the subject shoreline protective device. This will prevent adverse impacts to shoreline processes from seaward extensions of the bulkhead.

The Commission further notes that the residential structure and septic disposal system that the proposed bulkhead is designed to protect are both substantially aged. The septic disposal system itself is outdated in design and may be banned in the future or become obsolete altogether should a sewer system become available for the Malibu area in the future. As such, the Commission notes that the proposed bulkhead, in its proposed location, may not be necessary to protect the existing structure if it is significantly remodeled, or its septic system abandoned in the future. Therefore, the Commission finds it necessary to impose Special Condition Eight (8) in order to ensure that future development or changes to the existing structures on the subject site would require the applicant to seek a new permit from the Commission for the seawall that is the subject of the present coastal development permit application.

In addition, Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard as well as ensure stability and structural integrity. In this case, the applicant's geologic and coastal engineering consultants have determined that the proposed bulkhead is adequate to protect the existing development on the subject site. The Assessment of Existing Timber Bulkhead by Dave Weiss Structural Engineer & Associates dated 10/25/00 concludes that:

[E]xcept for the damage sustained by the infestation, the existing bulkhead is adequate to protect the existing sewage disposal system. The infestation damage appears to be easily repaired. The bulkhead is in reasonable conformance to present standards of bulkhead construction. It is functioning and has functioned in the past. The bulkhead has resisted the ocean wave forces generated during the El Nino storm of 1983, the severe ocean storms of 1988, 1993, and the El Nino storms of 1998.

The Commission notes that the applicant's geotechnical and coastal engineering consultants have made several recommendations in order to further ensure that the proposed repair work provide for adequate structural stability and minimize potential hazards on site. The Assessment of Existing Timber Bulkhead by Dave Weiss Structural Engineer & Associates dated 10/25/00; Repair of Existing Timber Bulkhead and Miscellaneous Timber Piles Report by Dave Weiss Structural Engineer & Associates dated 7/13/00; and the Geologic and Soils Engineering Investigation by Subsurface Designs dated 6/9/00 include a number of geotechnical and engineering recommendations to ensure the stability and geotechnical safety of the site. To ensure that the recommendations of the geotechnical and coastal engineering consultants have been incorporated into all proposed development, Special Condition Four (4) requires the applicant to submit project plans certified by both the consulting geotechnical and geologic engineer and the coastal engineering consultant as conforming to all recommendations. 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.

As discussed above, the Commission notes that the applicant's engineering consultants have indicated that the proposed development will serve to ensure relative structural stability on the subject site. However, the Commission also notes that the proposed development is located on a beachfront lot in the City of Malibu and will be subject to some inherent potential hazards. The Malibu/Los Angeles County Coastline Reconnaissance Study by the United States Army Corp of Engineers dated April 1994 indicates that residential development on the subject beach is exposed to recurring storm damage because of the absence of a sufficiently wide protective beach.

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 severe 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. Past

occurrences have caused property damage resulting in public costs through emergency responses and low-interest, publicly-subsidized reconstruction loans in the millions of dollars in Malibu area alone from last year's storms. 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 damages of as much as almost \$5 million to private property alone. The El Nino storms recorded in 1982-1983 caused high tides of over 7 feet, which were combined with storm waves of up to 15 feet. These storms caused over \$12.8 million to structures in Los Angeles County, many 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, and in particular, Malibu coast. 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 proposed development will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future. The Coastal Act recognizes that development, even as designed and constructed to incorporate all recommendations of the consulting coastal engineer, 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 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 Nine (9), 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.

In addition, the Commission notes that the proposed construction activity on a sandy beach, such as the proposed project site, will result in the potential generation of debris and or presence of equipment and materials that could be subject to tidal action. The presence of construction equipment, building materials, and excavated materials on the subject site could pose hazards to beachgoers or swimmers if construction site materials were discharged into the marine environment or left inappropriately/unsafely exposed on the project site. In addition, such discharge to the marine environment would result in adverse effects to offshore habitat from increased turbidity caused by erosion and siltation of coastal waters. To ensure that adverse effects to the marine environment are minimized, Special Condition Three (3), requires the applicant to ensure that stockpiling of dirt or materials shall not occur on the beach, that no

machinery will be allowed in the intertidal zone at any time, all debris resulting from the construction period is promptly removed from the sandy beach area, and that sand bags and/or ditches shall be used to prevent runoff and siltation.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Sections 30235, 30251, and 30253.

C. Public Access and Visual Resources

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

Coastal Act Section 30210 states that:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

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

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

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.*
- (2) adequate access exists nearby, or,*
- (3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 30220 of the Coastal Act states that:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such use.

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 beaches of Malibu are extensively used by visitors of both local and regional origin and most planning studies indicate that attendance of recreational sites will continue to increase significantly over the coming years. Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches. Coastal Act. Further, Section 30251 requires that visual qualities of coastal areas shall be considered and protected and where feasible, degraded areas shall be enhanced and restored. All projects requiring a coastal development permit must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act. Based on the access, recreation and development sections of the Coastal Act, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

The major access issue in this permit application is the potential for adverse effects from a shoreline protective device on shoreline sand supply and public access in contradiction of Coastal Act policies 30211 and 30221. The proposed project includes the construction of a timber bulkhead on Amarillo Beach, approximately 200 ft. to the west (upcoast) of the nearest open public vertical coastal accessway. Further, there are several existing and potential lateral public access easements across several lots near the project site.

The State owns tidelands, which are those lands located seaward the mean high tide line as it exists from time to time. By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The public trust doctrine restricts uses of sovereign lands to public trust purposes, such as navigation, fisheries, commerce, public access, water oriented recreation, open space, and environmental protection. The public trust doctrine also severely limits the ability of the State to alienate these sovereign lands into private

ownership and use free of the public trust. Consequently, the Commission must avoid decisions that improperly compromise public ownership and use of sovereign tidelands. In this case, the proposed development is located on the sandy beach and requires review by the California State Lands Commission (CSLC). However, the applicant has not submitted any evidence to CSLC review. Therefore, Special Condition Five (5) requires that, prior to the issuance of the coastal development permit, the applicant submit evidence of all necessary approvals for the proposed development from the California State Lands Commission.

In addition, the Commission must also consider whether a project affects any public right to use shorelands that exist independently of the public's ownership of tidelands. In addition to a new development's effects on tidelands and on public rights protected by the common law public trust doctrine, the Commission must consider whether the project will affect a public right to use beachfront property, independent of who owns the underlying land on which the public use takes place. Generally, there are three additional types of public uses identified as: (1) the public's recreational rights in navigable waters guaranteed to the public under the California Constitution and state common law, (2) any rights that the public might have acquired under the doctrine of implied dedication based on continuous public use over a five-year period; and (3) any additional rights that the public might have acquired through public purchase or offers to dedicate. These use rights are implicated as the public walks the wet or dry sandy beach below the mean high tide plane. This area of use, in turn moves across the face of the beach as the beach changes in depth on a daily basis. The free movement of sand on the beach is an integral part of this process, and it is here that the effects of structures are of concern.

The Commission notes that even structures located above the mean high tide line, however, may have an adverse effect on shoreline processes and the public ability to access the beach as wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately to the extent and availability of public lands. That is why the Commission also must consider whether a project will have indirect effects on public ownership and public use of shorelands. Shoreline protective devices, such as the proposed bulkhead, have a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests.

First, changes in the shoreline profile, particularly changes in the slope of the profile, which results from reduced beach width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area of public property available for public use. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. The effect of this on the public is again a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect public access by

causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they eventually affect the profile of a public beach. Fourth, if not sited landward in a location that insures that the revetment is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments and bulkheads interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

In the case of the proposed project, the construction of the proposed bulkhead will result in the potential permanent loss of sandy beach as a result of the change in the beach profile or steepening from potential scour effects. In past permit actions, the Commission has required that all new development on a beach, including new shoreline protective devices, provide for lateral public access along the beach in order to minimize any adverse effects to public access. In the case of the proposed project, the Commission notes that in order to conclude with absolute certainty what adverse effects to shoreline processes would result from construction of the proposed seawall, a historical shoreline analysis based on site-specific studies would be necessary. Although this level of analysis has not been submitted by the applicant, the Commission notes that because the applicant has proposed as part of the project an offer to dedicate a lateral public access easement along the entire southern portion of the lot, as measured from the dripline of the approved deck, it has not been necessary for Commission staff to engage in an extensive analysis of whether the imposition of such an offer to dedicate would be required here absent the applicant's proposal. As such, Special Condition Seven (7) has been required in order to ensure that the applicant's offer to dedicate a new lateral public access easement is transmitted prior to the issuance of the coastal development permit.

In addition, the Commission notes that chronic unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties in the Malibu area. These signs have an adverse effect on the ability of the public to access public trust lands. The Commission has determined, therefore, that to ensure that applicants clearly understand that such postings are not permitted without a separate coastal development permit, it is necessary to impose Special Condition Six (6) to ensure that similar signs are not posted on or near the proposed project site. The Commission finds that if implemented, Special Condition Six (6) will protect the public's right of access to the sandy beach below the MHTL.

As a means of controlling seaward encroachment of residential development on a beach to ensure maximum public access, minimize wave hazards, and protect public views along the shoreline, the Commission has, in past permit actions, developed the "stringline" policy. The stringline limits the seaward extension of a structure to a line drawn between the nearest corners of adjacent structures (a separate stringline is used for decks). Pursuant to the use of a stringline to limit seaward encroachment of new

development, the construction of solid structural walls has been limited to locations landward of the structural stringline (not the deck stringline). Coastal Development Permit (CDP) No. 793 was approved by the Commission in 1973 for a new single family residence. However, in this case, although a relatively short wall, or solid rail, on the 2nd story deck was previously approved pursuant to CDP No. 793, a significantly larger wind/privacy wall actually constructed without the required coastal permit or amendment (Exhibit 7). The applicant has not submitted adequate information to determine the appropriate structural stringline for new development on site. However, based only on the available information, including historic aerial photographs, staff notes that the solid wall located on the 2nd story deck appears to be located seaward of the appropriate structural (building) stringline.

In order to determine the actual location of the unpermitted deck wall in relation to the appropriate structural stringline with certainty, additional information regarding the location of the appropriate stringline would be required. However, in this case, the applicant is proposing to remove all unpermitted portions of the wind/privacy wall and reconstruct the wall consistent with the previously approved plans. However, the submitted project plans do not reflect the removal of the unpermitted portions of the wall. Therefore, in order to implement the applicant's proposal to remove the unpermitted additions and to ensure that any potential adverse effects to public views along the beach are minimized, Special Condition One (1) requires the submittal of revised plans, for the review and approval of the Executive Director, which show that all portions of the existing 2nd story deck privacy/wind wall which are not consistent with the previously approved plans pursuant to Coastal Development Permit No. 739 (as shown on Exhibit 7) are deleted. Deleted portions of the wall may be replaced with glass, PlexiglasTM, or another transparent substance. Special Condition Two (2) has been required to ensure that removal of all portions of the existing 2nd story deck privacy/wind wall which are not consistent with the previously approved plans pursuant to Coastal Development Permit No. 739 (as shown on Exhibit 7) occur in a timely manner and be removed within 90 days of the issuance of this permit unless an amendment to this permit or a separate coastal permit which allows for the retention of such development is issued. The Executive Director may grant additional time for good cause.

For all of these reasons, therefore, the Commission finds that as conditioned, the proposed project is consistent with Sections 30210, 30211, 30212, 30220, and 30251 of the Coastal Act.

D. Violations

Development has occurred on the subject site including construction of a 60 ft. long timber bulkhead and a deck wind/privacy wall without the required coastal development permit. The applicant is proposing to retain the bulkhead and remove the permitted portions of the wind/privacy wall.

To ensure that the unpermitted development component of this application is resolved in a timely manner, Special Condition Ten (10) requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. In addition, in order to ensure implementation of the applicant's proposal to remove the unpermitted portions of the 2nd story deck, Special Condition Two (2) requires the applicant to remove all portions of the existing 2nd story deck privacy/wind wall which are not consistent with the previously approved plans pursuant to Coastal Development Permit No. 739 (as shown on Exhibit 7) within 90 days of the issuance of this permit unless an amendment to this permit or a separate coastal permit which allows for the retention of such development is issued. The Executive Director may grant additional time for good cause.

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 any alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

E. 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).

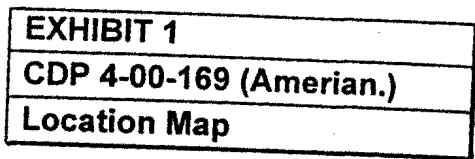
F. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). 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.

SMH-VNT

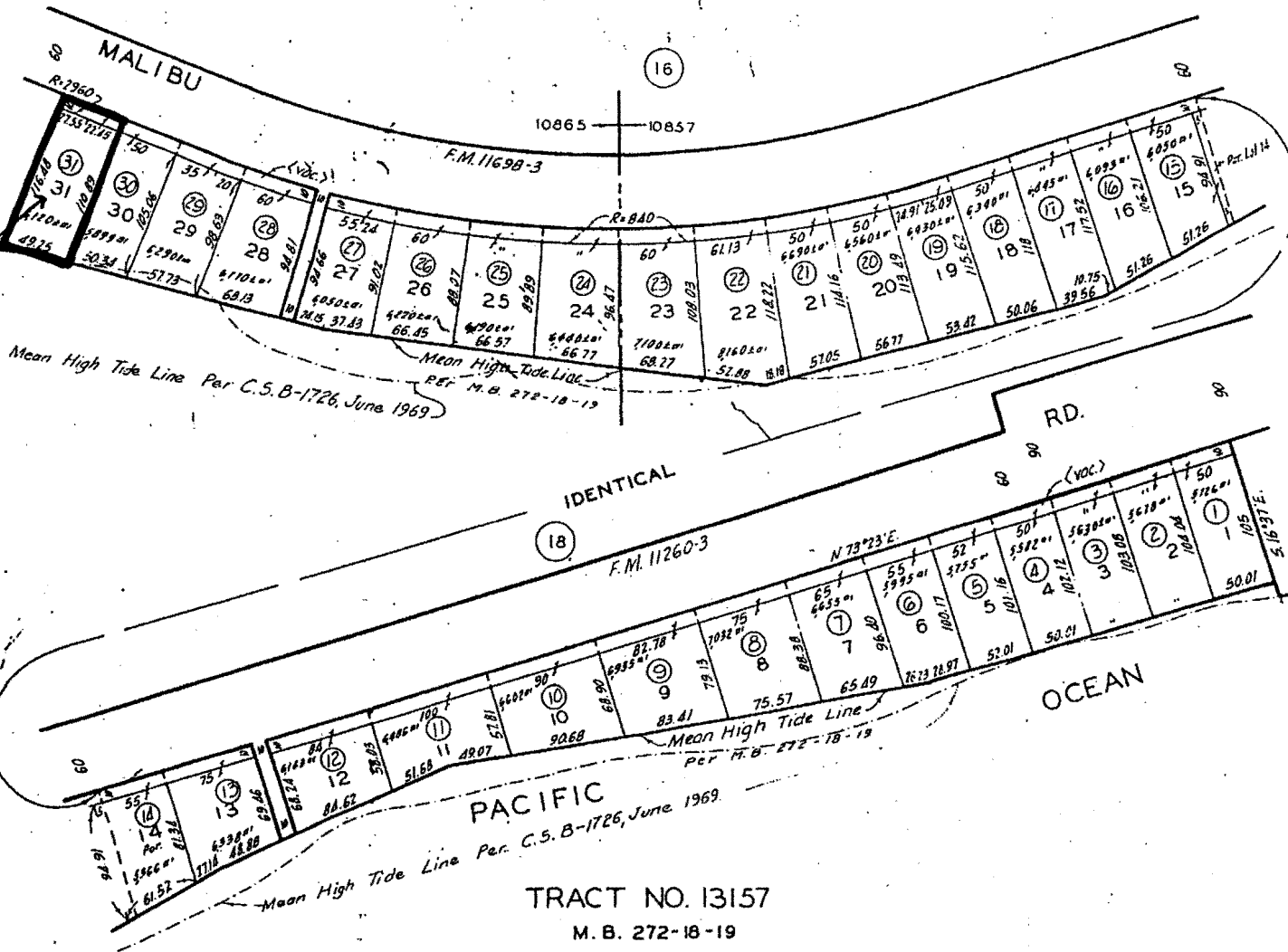
File smh\permits\regular\4-00-169 amerian report



4458 11

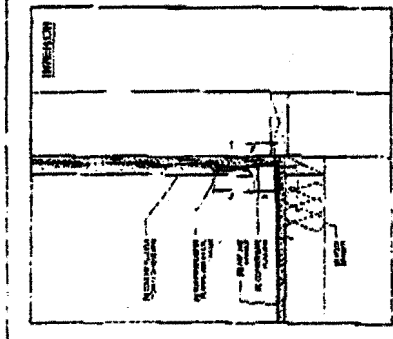
SCALE 1" = 80'

PROJECT SITE

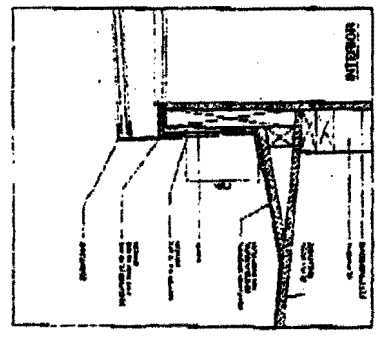


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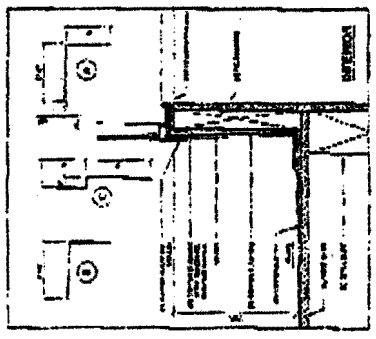
EXHIBIT 2
CDP 4-00-169 (Amerian)
Parcel Map



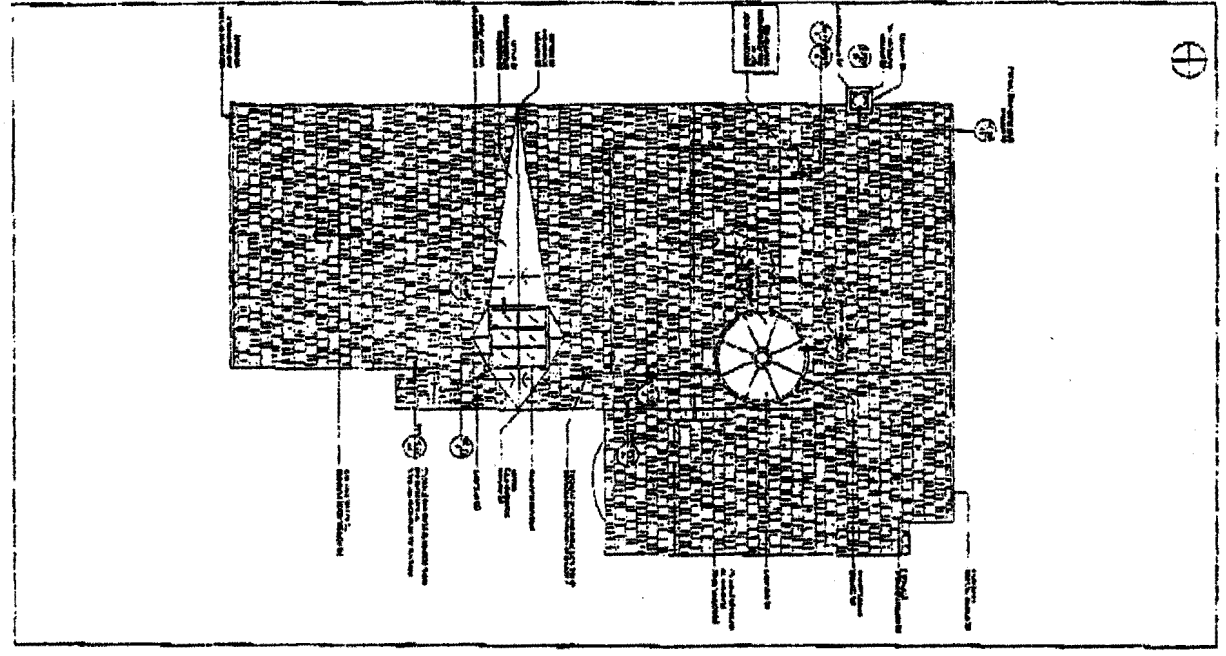
3 ROOF & WALL BASE FLASHING



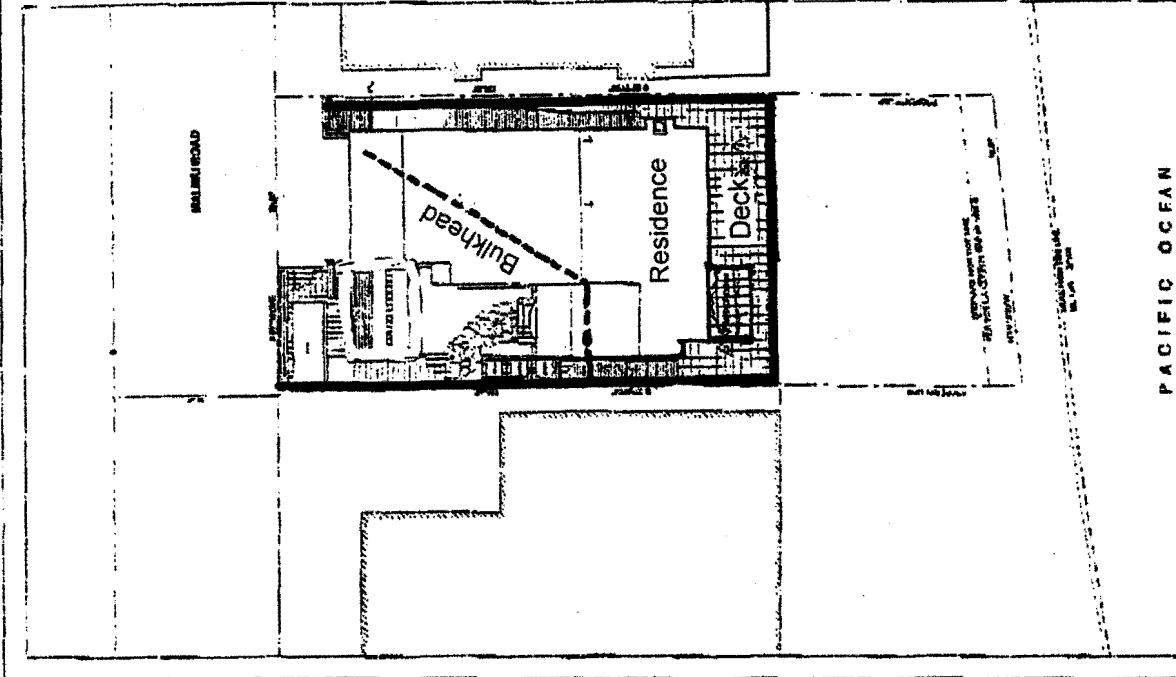
4 SKYLIGHT GIRDERS



5 SKYLIGHT GIRDERS



2 Roof Plan



1 Site Plan

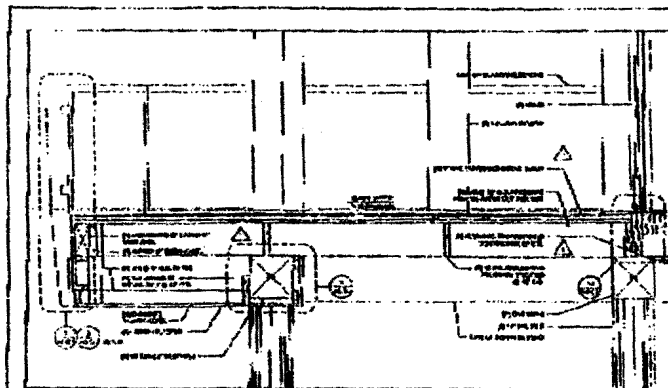
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NAVY
AMERICAN
RESIDENCE

ROOF PLAN
SITE PLAN

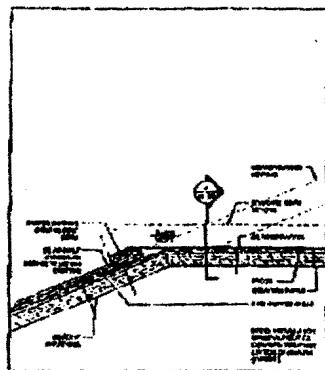
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CDP 4-00-169 (Amerian)

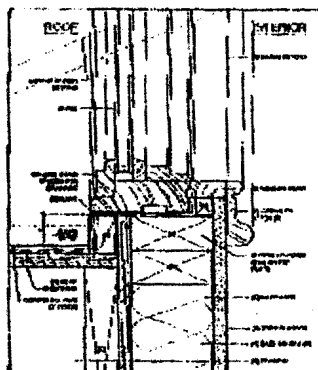
Site Plan



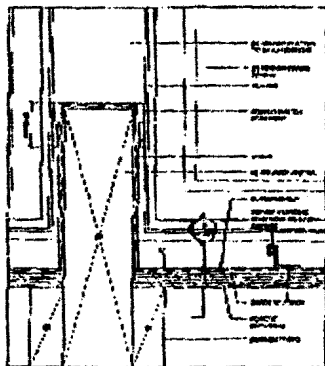
2 BALCONY SECTION



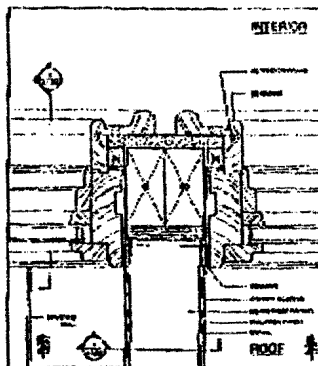
5 METAL ROOF @ DORMER BREAK (ALT. #3)



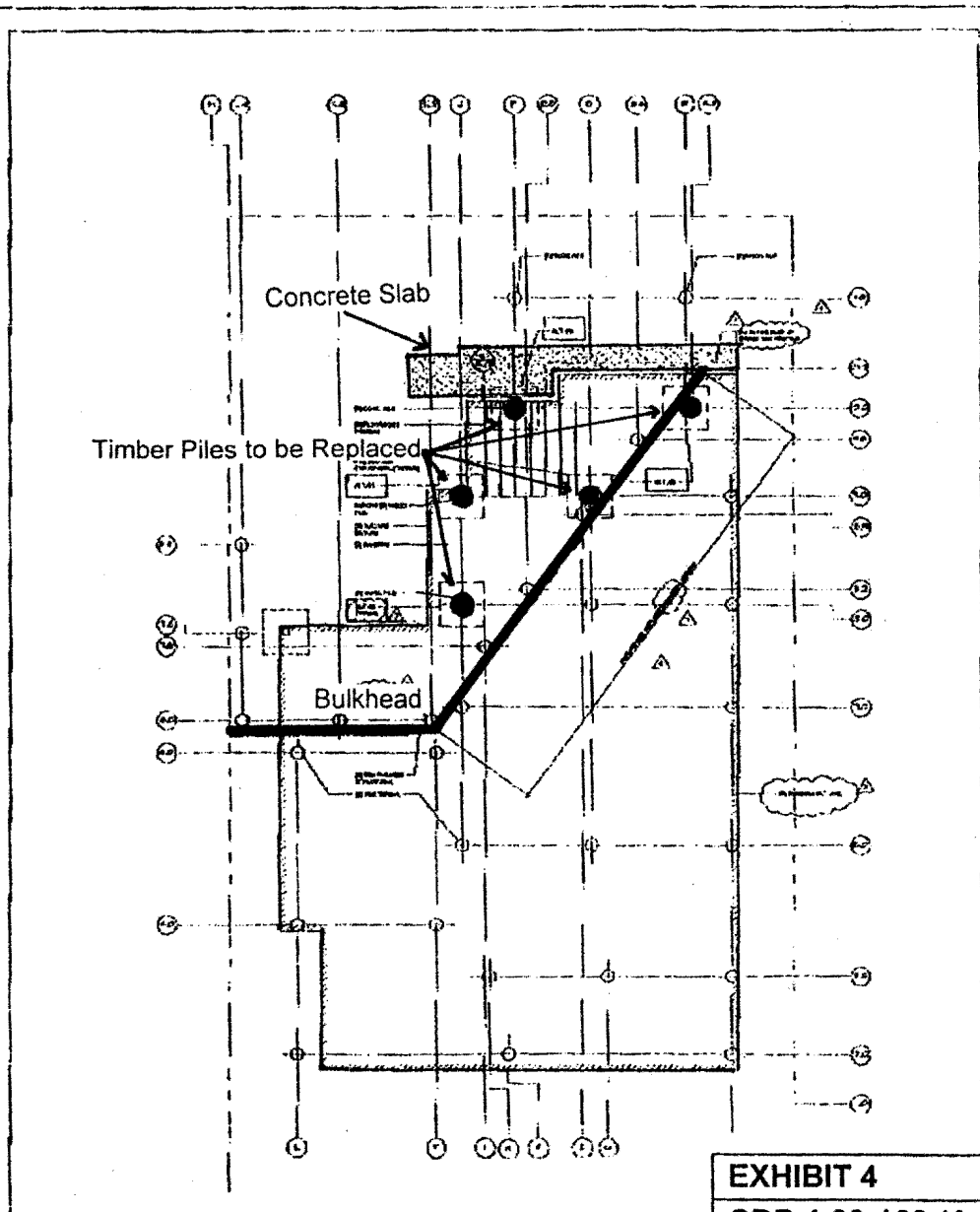
3 METAL ROOF @ WINDOW SILL (ALT. #3)



6 METAL ROOF @ RAFTER (ALT. #3)

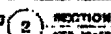
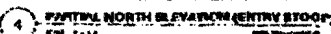
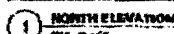
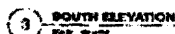


4 METAL ROOF @ WINDOW JAMB (ALT. #3)



1 Foundation Plan

<p>UNITED STATES FOUNDATION REPAIR REINFORCEMENT AMERICAN RESIDENCE</p> <p>FOUNDATION PLAN BALCONY SECTION AND DETAILS</p>	<p>1/4" = 1'-0"</p> <p>1/8" = 1'-0"</p> <p>1/16" = 1'-0"</p> <p>1/32" = 1'-0"</p> <p>1/64" = 1'-0"</p> <p>1/128" = 1'-0"</p> <p>1/256" = 1'-0"</p> <p>1/512" = 1'-0"</p> <p>1/1024" = 1'-0"</p> <p>1/2048" = 1'-0"</p> <p>1/4096" = 1'-0"</p> <p>1/8192" = 1'-0"</p> <p>1/16384" = 1'-0"</p> <p>1/32768" = 1'-0"</p> <p>1/65536" = 1'-0"</p> <p>1/131072" = 1'-0"</p> <p>1/262144" = 1'-0"</p> <p>1/524288" = 1'-0"</p> <p>1/1048576" = 1'-0"</p> <p>1/2097152" = 1'-0"</p> <p>1/4194304" = 1'-0"</p> <p>1/8388608" = 1'-0"</p> <p>1/16777216" = 1'-0"</p> <p>1/33554432" = 1'-0"</p> <p>1/67108864" = 1'-0"</p> <p>1/134217728" = 1'-0"</p> <p>1/268435456" = 1'-0"</p> <p>1/536870912" = 1'-0"</p> <p>1/1073741824" = 1'-0"</p> <p>1/2147483648" = 1'-0"</p> <p>1/4294967296" = 1'-0"</p> <p>1/8589934592" = 1'-0"</p> <p>1/17179869184" = 1'-0"</p> <p>1/34359738368" = 1'-0"</p> <p>1/68719476736" = 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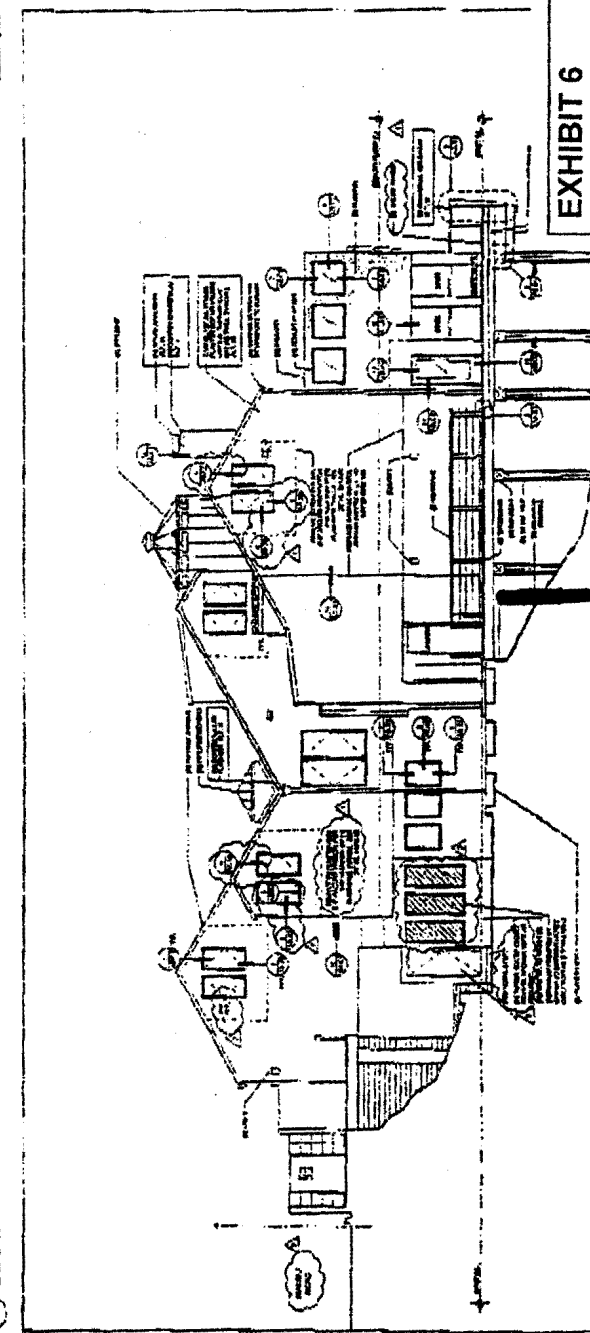
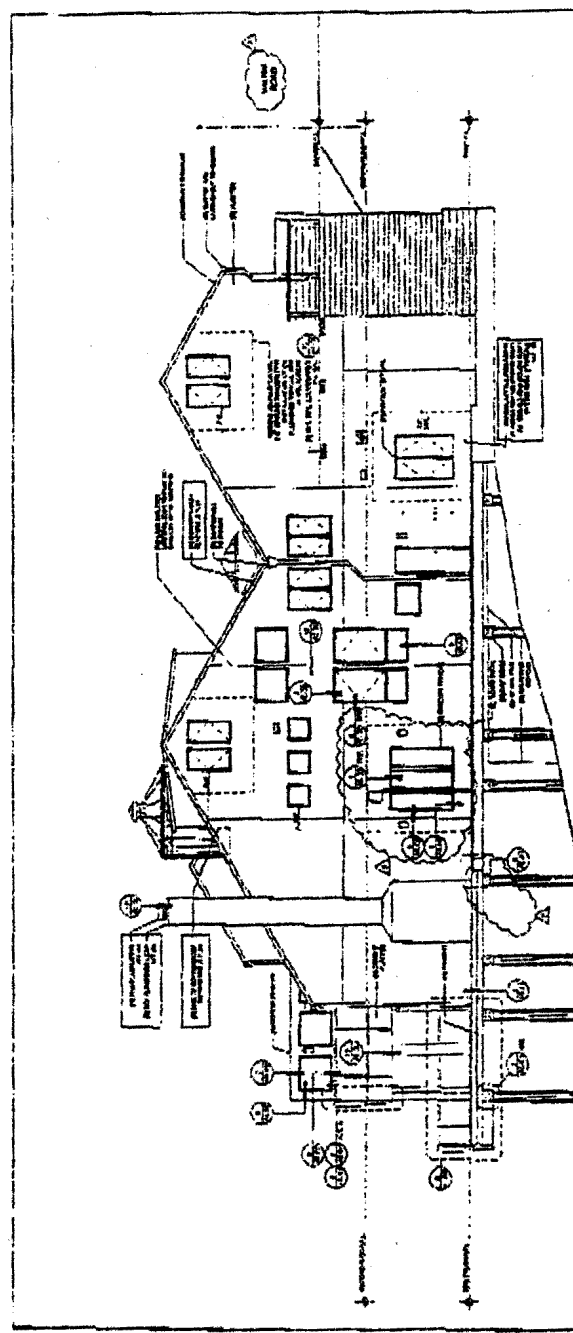
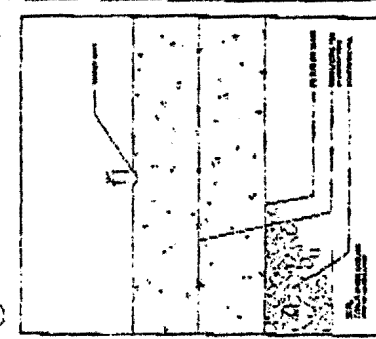
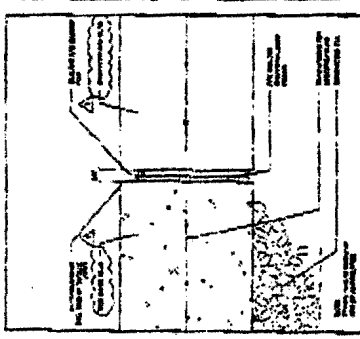
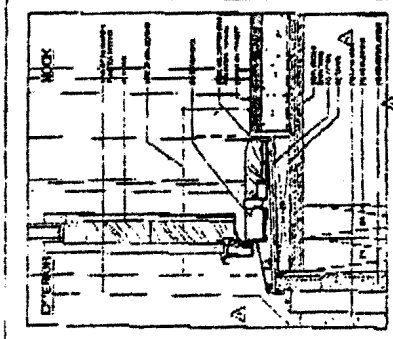
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UNITED STATES
FOUNDAION
FPAID
RENTAL
AMERICAN
RESIDENCE

ELEVATIONS & SECTION

EXHIBIT 5
CDP 4-00-169 (Amerian)
Structural Cross Sections

Breakfast Nook to be Repaired



UNITED STATES
DEPARTMENT OF
ARMY
AMERICAN
RESIDENCE
Project No. 4-00-169

EAST
AND WEST
ELEVATIONS

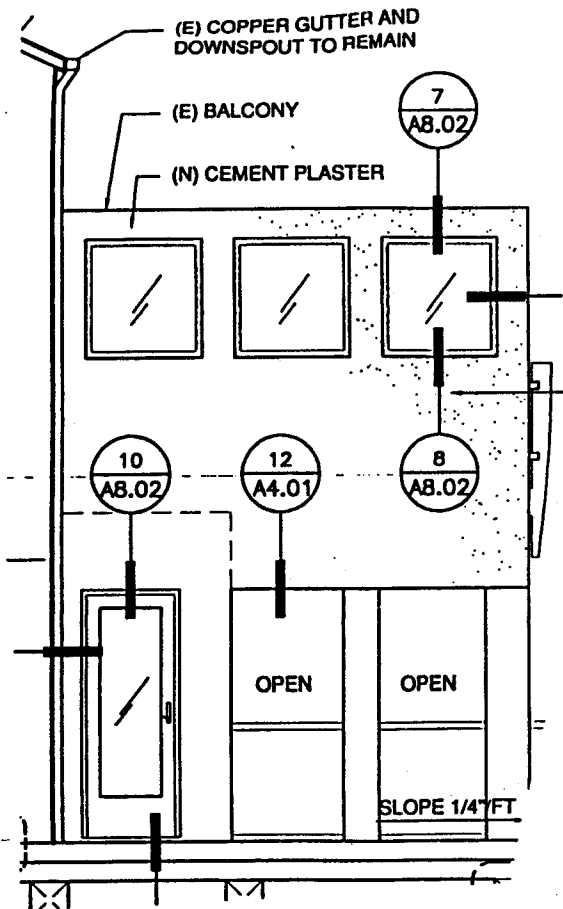
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EXHIBIT 6

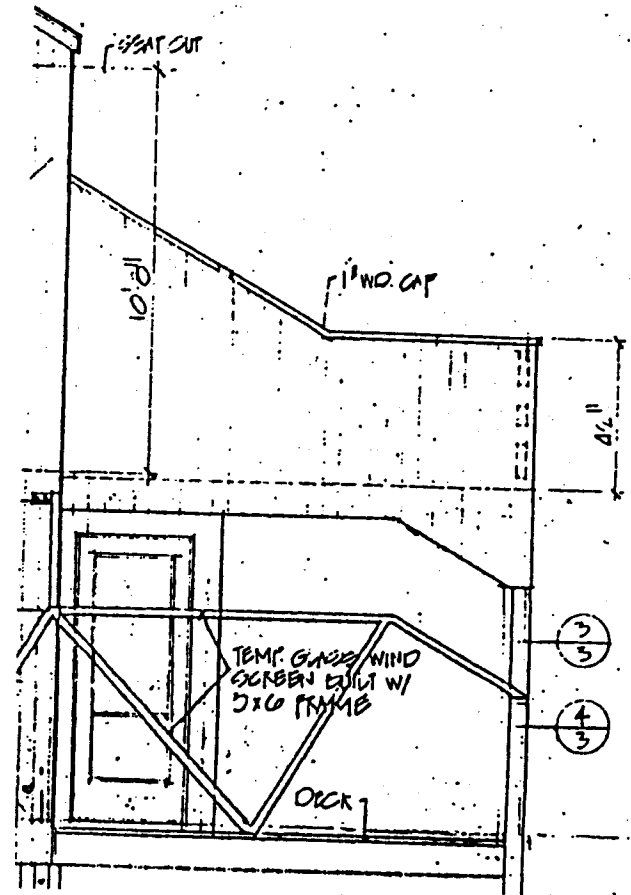
CDP 4-00-169 (American)

Structural Cross Sections

Bulkhead



As-Built 2nd Story Deck



Previously Approved 2nd Story Deck

EXHIBIT 7

CDP 4-00-169 (Amerian)

2nd Story Deck Detail