

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
 SOUTH CALIFORNIA ST., SUITE 200  
 MALIBU, CA 93001  
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 Hearing Date: 8/07-10, 2001  
 Commission Action:



## RECORD PACKET COPY

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NO.:** 4-01-058

**APPLICANTS:** Eric & Deborah Roth

**AGENT:** Mike Barsocchini

**LOCATION:** 23674 Malibu Colony Dr., City of Malibu (Los Angeles County)

**DESCRIPTION:** Removal of an approximately 224 sq. ft. tea house and remodel of a 3,200 sq. ft. single family residence located on Malibu Beach. The remodel involves removal of approximately 15% of interior walls, addition of approximately 10% of interior walls, and minor changes to exterior walls. The project also includes the installation of an alternative septic system, enclosure of an approximately 98 sq. ft. space beneath the existing second story, extension of a patio, and an offer to dedicate a lateral public access easement along the beach. No grading is proposed.

Lot area	6,970 sq. ft. (0.16 ac.)
Building coverage:	1,885 sq. ft.
Pavement coverage:	674 sq. ft.
Landscape coverage:	400 sq. ft.
Parking spaces:	2 (covered)
Ht abv fin grade:	28'

**LOCAL APPROVALS RECEIVED:** City of Malibu Planning Department approval-in-concept dated 1/22/2001; City of Malibu Environmental Health in-concept approval for for septic disposal system dated 1/29/2001; City of Malibu Geology and Geotechnical Engineering Review approval in-concept dated 12/04/2000.

**SUBSTANTIVE FILE DOCUMENTS:** Coastal Development Permit (CDP) Nos. 4-01-025-W (Roth), 5-85-411 (Maslansky), 5-85-411-A (Maslansky), 5-84-607 (Kasden/Mayer); Engineering Geologic Report by Mountain Geology, Inc. dated October 3, 2000; Geotechnical Engineering Report by West Coast Geotechnical dated October 13, 2000; *Letter Re: Coastal Development Project Review for Removal of Existing Teahouse and Remodel at 23674 Malibu Colony Drive, Malibu*, by Robert L. Lynch, California State Lands Commission, dated May 8, 2001; Wave Uprush Study by Pacific Engineering Group dated August 30, 2000; *Letter Re: Eric Roth Remodel, Client Revisions, Elimination of Pool, #38 Malibu Colony Drive, Malibu CA 90265*, by Reg K. Browne, Pacific Engineering Group, dated July 9, 2001; *Letter Re: Eric Roth Remodel, Bulkhead Depth, #38 Malibu Colony Drive, Malibu CA 90265*, by Reg K. Browne, Pacific Engineering Group, dated July 11, 2001; *Letter Re: Eric Roth Remodel, Condition of Existing Timber Bulkhead, #38 Malibu Colony Drive, Malibu CA 90265*, by Reg K. Browne, Pacific Engineering Group, dated July 12, 2001.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends approval of the proposed project with six (6) special conditions regarding construction responsibilities/debris removal, drainage/polluted runoff control, assumption of risk/shoreline protection, geologic recommendations, offer to dedicate lateral public access, and sign restriction.

### **I. STAFF RECOMMENDATION**

1. **Motion:** *I move that the Commission approve Coastal Development Permit No. 4-01-058 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 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. Construction Responsibilities and Debris Removal

The applicants shall, by accepting this permit, agree: a) that no stockpiling of dirt shall occur on the beach; b) that all disturbed areas 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 and bulkhead area any and all debris that result from the construction period.

#### 2. Drainage / Polluted Runoff Control Plans

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, final drainage and runoff control plans, including supporting calculations. The plans shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. In addition to the specifications above, the plans shall be in substantial conformance with the following requirements:

- (a) Selected BMPs (or suites of BMPs) shall be designed to treat or filter stormwater from each runoff event, up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor, for flow-based BMPs.
- (b) Runoff shall be conveyed off site in a non-erosive manner.
- (c) Energy dissipating measures shall be installed at the terminus of outflow drains.
- (d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned, and repaired when necessary prior to the onset of the storm season, no later than September 30th each year, and (2) should any of the project's surface or subsurface drainage / filtration structures or other BMPs fail or result in increased erosion, the applicants / landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage / filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicants shall submit a repair and restoration plan to the Executive

Director to determine if an amendment or new coastal development permit is required to authorize such work.

### **3. Assumption of Risk / Shoreline Protection**

By acceptance of this permit, the applicants acknowledge and agree: (i) that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, flooding, or wildfire; (ii) to assume the risks to the applicants 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.

No future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device shall be undertaken if such activity extends its seaward footprint. By acceptance of this permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to such activity that may exist under Public Resources Code section 30235.

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants 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 applicants' entire parcel and an exhibit showing the location of the shoreline protective device. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

### **4. Geologic Recommendations**

All recommendations contained in the Wave Uprush Study by Pacific Engineering Group dated August 30, 2000; in the *Letter Re: Eric Roth Remodel, Client Revisions, Elimination of Pool, #38 Malibu Colony Drive, Malibu CA 90265*, by Pacific Engineering Group, dated July 9, 2001; in the Engineering Geologic Report prepared by Mountain Geology, Inc. dated October 3, 2000; and in the Geotechnical Engineering Report prepared by West Coast Geotechnical, dated October 13, 2000 shall be incorporated into all final design and construction plans including but not limited to requirements for foundations, pilings, structural elements, site preparation, temporary excavations, and drainage, and all plans must be reviewed and approved by the consultants prior to commencement of development. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants 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, grading, and drainage. Any

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

#### **5. Offer to Dedicate Lateral Public Access**

In order to implement the applicants' 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 applicants agree to complete the following prior to issuance of the permit: the applicants / 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 (MHTL) landward to the south face of the existing seawall, as illustrated on the site plan prepared by Land & Air Surveying dated 7/20/2000 (Exhibit 7).

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 applicants' entire parcel 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.

#### **6. Sign Restriction**

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

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

The Commission hereby finds and declares as follows:

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

The applicants are proposing the removal of an approximately 224 sq. ft. tea house and remodel of a 3,200 sq. ft. single family residence. The remodel involves removal of approximately 15% of interior walls, addition of approximately 10% of interior walls, and minor changes to exterior walls. The project also includes the installation of an alternative septic system, enclosure of an approximately 98 sq. ft. space beneath the existing second story, extension of a patio into the tea house footprint and alongside the

residence, and an offer to dedicate a public lateral access easement along the beach. No grading is proposed (**Exhibits 5 and 6**).

The subject site is a 6,970 sq. ft. (0.16 acre) parcel located on the beach in the private Malibu Colony area between Amarillo Beach and Malibu Point. The Malibu Colony community is a highly developed residential area of Malibu. Access to the project site is from Pacific Coast Highway to Malibu Colony Drive, a private road which passes immediately north of the property (**Exhibit 2**). The Malibu Colony community is gated with controlled, guarded access. The site is bordered by existing single-family residences to the east, west, and north (across Malibu Colony Drive).

Existing development on-site includes a 3,200 sq. ft. single family residence, 450 sq. ft. attached garage, 224 sq. ft. attached tea house, patio and deck, septic system, and a wooden bulkhead (**Exhibit 4**). The existing bulkhead on-site constitutes a segment of a continuous wooden bulkhead that protects several single family residences along the beach.

The property consists of a near-level pad area with a descending beach sand slope to the Pacific Ocean (Santa Monica Bay) to the immediate south. The existing residence and associated decking sits on the near-level graded pad area. There is very limited natural vegetation on-site consisting of scattered grasses and plants on the sand. Drainage from the property flows overland directly to the ocean or to Malibu Colony Drive where it is collected and discharged at the beach. Malibu Creek and Malibu Lagoon to the east are designated as Environmentally Sensitive Habitat Area (ESHA) in the Malibu / Santa Monica Mountains Land Use Plan (LUP) (**Exhibit 3**). The applicants have submitted evidence of review of the proposed project by the California State Lands Commission (CSLC) dated May 8, 2001, which indicates that the CSLC presently asserts no claims that the project is located on public tidelands, although the CSLC reserves the right to any future assertion of state ownership or public rights.

The site has been the subject of previous Commission action. In July 1985, the Commission approved Coastal Development Permit 5-85-411 (Maslansky) to enclose an existing deck to increase the size of the master bedroom, extend the new deck ten feet, and enclose the entrance way between the guesthouse (teahouse) and the main house, with the condition that the applicants submit revised plans eliminating all development seaward of the the existing footprint of the structure. The Commission subsequently denied Coastal Development Permit application 5-85-411-A (Maslansky) for a similar proposal, to include a seaward extension of the structure and deck equal to that approved for the adjacent structure on the east, and a waiver of the stringline requirement. In March 2001, the Commission approved Coastal Development Permit 4-01-025-W (Roth) for structural repair and reinforcement of foundations for the existing single family residence.

## **B. Visual Resources**

Section 30251 of the Coastal Act states that:

*The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in*

*visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.*

To assess potential visual impacts of projects to the public, the Commission typically investigates publicly accessible locations from which the proposed development is visible, such as beaches, parks, trails, and scenic roads. The Commission also examines the building site and the size of the proposed structure. The subject site and existing single family residence are visible from the shoreline at Malibu Beach. The Malibu Colony area, however, is a private, gated community which limits public access and views from the scenic Pacific Coast Highway.

Coastal Commission staff visited the subject site and found the proposed building location to be appropriate and feasible, given the terrain and the surrounding existing development. The adjacent residences are of a similar massing, character, and location to be similarly visible, and the proposed building plans are substantially in character with the type and scale of development in the surrounding area. Furthermore, removal of the tea house will reduce the visual impact of the residence by withdrawing its façade approximately 30 feet landward. The proposed project, therefore, 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. Thus, the Commission finds that the proposed project is consistent with Section 30251 of the Coastal Act.

### **C. Public Access**

The Coastal Act mandates the provision of maximum public access and recreational opportunities along the coast. The Coastal Act contains several policies that address these priorities.

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 shoreline development projects, access to the shoreline and along the coast shall be provided except where:

- (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
- (2) Adequate access exists nearby, or,*
- (3) Agriculture would be adversely affected. ...*

Finally, 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.***

Coastal Act Sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development shall 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 the use of dry sand and rocky coastal beaches. All projects requiring a coastal development permit must be reviewed for compliance with the public access 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 such permits is the occupation of sand area by a structure in contradiction of Coastal Act Sections 30210, 30211, and 30212.

Past Commission review of shoreline residential projects in Malibu has shown that individual and cumulative adverse effects to public access from such projects can 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/or ability to use public tideland areas. In the case of the proposed project, the applicants have submitted a letter from the California State Lands Commission (CSLC) dated May 8, 2001, stating that the CSLC presently asserts no claims that the project is located on public tidelands although the CSLC reserves the right to any future assertion of state ownership or public rights. State Lands does not currently assert any state ownership or public rights because of a lack of information and the time and expense that is required to conduct the studies necessary to obtain the information.

As a means of controlling seaward encroachment of residential structures on a beach to ensure maximum public access, protect public views, and minimize wave hazards as required by Coastal Act Sections 30210, 30211, 30251, and 30253, the Commission has, in past permit actions, developed the "stringline" policy. As applied to beachfront development, the stringline 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 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 and to protect public views and the scenic quality of the shoreline as required by Section 30251 of the Coastal Act.



The proposed project is consistent with the stringline policy because the project will remain within the existing seaward footprint of the residence and the proposed improvements to the residence will be located behind the structural stringline (**Exhibit 9**). The extended patio will, in a similar manner, be located within the seaward footprint of existing development and landward of the deck stringline. In addition, no reinforcement for the bulkhead is proposed.

In the review of past permit applications, the Commission has found that shoreline protective devices, such as bulkheads, result in adverse effects to shoreline processes and beach profiles due to increased scour and erosional end effects. The existing bulkhead on the subject site constitutes a segment of a continuous wooden bulkhead that protects several single family residences along the beach. The applicants are not proposing any repairs or improvements to the bulkhead at this time. However, remodelling and structural repairs to the residence will extend the life of the residence and therefore extend the time period for protecting the residence from wave action. In order to ensure that any future repairs, maintenance, reinforcement, or other activity affecting the shoreline protective device remains within the current seaward footprint, **Special Condition Three (3)** states that the applicants waive any rights to undertake activity that extends the seaward footprint of the shoreline protective device.

In past permit actions, the Commission has required that all new development on a beach, including the construction of new single family residences or shoreline protection devices, provide for lateral public access along the beach in order to mitigate adverse effects to public access from increased beach erosion. In this case, the applicants are proposing to dedicate a lateral public access easement, which would provide for public access along the entire beach as measured seaward from the south face of the existing seawall. The Commission notes that the lateral public access easement which the applicants have offered to dedicate as part of this project will be consistent with other lateral public access easements which have been recorded on properties along Malibu / Amarillo Beach and in the Malibu area in general.

In order to determine with absolute certainty the adverse effects which would result from the proposed project in relation to shoreline processes and the adequacy of the existing lateral public access easement, a historical shoreline analysis based on site specific studies would be necessary. Although this level of analysis has not been submitted by the applicants, the Commission notes that because the applicants have 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 south face of the existing seawall to the mean high tide line, it has not been necessary for Commission staff to engage in an extensive analysis as to whether the imposition of an offer to dedicate would be required here absent the applicants' proposal. As such, **Special Condition Five (5)** has been required in order to ensure that the applicants' offer to dedicate a 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 throughout 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 the 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 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

mean high tide line. The Commission finds that the proposed project, as conditioned, will have no individual or cumulative adverse effects on public access. Therefore, the Commission finds that the project, as conditioned, is consistent with Coastal Act Sections 30210, 30211, 30212, and 30251.

#### **D. Hazards and Geologic Stability**

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...***

The proposed development is located on the Malibu coastline, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu coastline 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 beachfront sites are specifically subject to flooding and erosion from storm waves.

The applicants have submitted an Engineering Geologic Report prepared by Mountain Geology, Inc., dated October 3, 2000, a Geotechnical Engineering Report prepared by West Coast Geotechnical, dated October 13, 2000, a Wave Uprush Study prepared by Pacific Engineering Group, dated August 31, 2000, and three update letters, by Pacific Engineering Group, dated July 9, 2001, July 11, 2001, and July 12, 2001 which evaluate the safety and stability of the project site in relation to the proposed development. The consultants have determined that the proposed development will serve to ensure geologic and structural stability on the subject site. The Engineering Geologic Report by Mountain Geology, Inc., dated October 3, 2000 concludes that:

***Based upon our investigation, the proposed site improvements will be free from geologic hazards such as landslides, slippage, active faults, and settlement. The proposed site improvements will have no adverse effect upon the stability of the site or adjacent properties provided the recommendations of the Engineering Geologist and Geotechnical Engineer are complied with during construction.***

The Engineering Geologic Report prepared by Mountain Geology, Inc., dated October 3, 2000, the Geotechnical Engineering Report prepared by West Coast Geotechnical, dated October 13, 2000, the Wave Uprush Study prepared by Pacific Engineering Group, dated August 31, 2000, and the update letter by Pacific Engineering Group, dated July 9, 2001 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 engineering geological consultants have been incorporated into all proposed development, **Special Condition Four (4)** requires the applicants to submit project plans certified by both the consulting geotechnical engineer and the coastal engineering consultant as conforming to all their recommendations 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 project is located on Malibu Beach, between Amarillo Beach and Malibu Point. The U.S. Army Corps of Engineers, Los Angeles District, in their *Reconnaissance Study of the Malibu Coast*, dated 1994, identified this beach as having stable to slow erosional characteristics. The *Shoreline Constraints Study*, by Moffatt and Nichol Engineers, dated June 30, 1992, indicates that the subject beach is retreating at the rate of 0.25 to 1.5 feet per year. Based on the above information, the Commission concludes that the subject site is located on an eroding beach. Many of the residences along this beach, including the subject site, employ bulkheads or other forms of shoreline protection for the residences and the associated septic systems. Much of the existing development, however, is exposed to recurring damage because of the absence of a sufficiently wide, protective beach.

The existing bulkhead at the subject site constitutes a segment of a continuous wooden bulkhead that protects several single family residences along the beach. The applicants propose no repairs or improvements to the bulkhead at this time. The applicants have submitted a wave uprush study, dated August 31, 2000 and three update letters from Pacific Engineering Group, that comment on the condition of the bulkhead. Pacific Engineering Group concludes, in its letter of July 12, 2001 that

***It is the professional opinion that the existing bulkhead will protect the existing or any new future septic system that is located landward of the bulkhead sheathing in the beach side patio area of the subject property. This bulkhead has performed without failure during the 1983, 1988, 1992 and 1998 storms that produced waves that broke directly on the subject bulkhead. To this office's knowledge no failure of the bulkhead occurred during these storms and there is no reason to assume that this bulkhead will not perform its intended purpose of septic system protection as long as no structural changes are made in the future to the bulkhead without being properly engineered.***

As discussed above, the Commission notes that the applicants' geological and engineering consultants have indicated that the proposed development will serve to ensure relative geologic and structural stability on the subject site. In addition, the applicants' coastal engineers have indicated that the existing bulkhead will protect the area behind it from wave action. 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 Commission notes that 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 the Malibu area alone from last the 1998 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 in damage 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 and 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 liquefaction, storm waves, surges, erosion, flooding, and wildfire, the applicants shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicants 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 applicants' assumption of risk, as required by **Special Condition Three (3)**, when executed and recorded on the property deed, will show that the applicants are aware of and appreciates the nature of the hazards associated with development of the site, and that may adversely affect the stability or safety of the proposed development.

The Commission further notes that construction activity on a sandy beach, such as the proposed project, 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 or 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 One (1)** requires the applicants 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, any grading shall be properly covered, and that sand bags and/or ditches shall be used to prevent runoff and siltation.

The Commission therefore finds, for the reasons set forth above, that the proposed development, as conditioned, is consistent with Sections 30250 and 30253 of the Coastal Act.

#### **E. Water Quality**

The Commission recognizes that development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native

vegetation, construction of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as additional effluent from septic systems. Section 30231 of the Coastal Act states:

***The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.***

As described previously, the proposed project includes removal of an approximately 224 sq. ft. tea house and remodel of a 3,200 sq. ft. single family residence located on Malibu Beach. The remodel involves removal of approximately 15% of interior walls, addition of approximately 10% of interior walls, and minor changes to exterior walls. The project also includes the installation of an alternative septic system, enclosure of an approximately 98 sq. ft. space beneath the existing second story, extension of a patio, and an offer to dedicate a lateral public access easement along the beach. No grading is proposed. The proposed project will increase the amount of impermeable surface area by replacing an undeveloped, approximately 30 sq. ft. strip immediately west of the house, and a planter box in the entry area, with slate decking. The removal of the teahouse will also change drainage conditions on site.

The property is located on the sandy beach, so surface drainage on-site is primarily accomplished naturally by overland sheetflow towards the ocean to the south. Runoff from developed portions of the site flows into drainage conveyances to outlet at the beach or Malibu Lagoon. The entire Malibu Creek mouth and Malibu Lagoon area located east of the project site are designated as Environmentally Sensitive Habitat Area (ESHA) in the Malibu / Santa Monica Mountains Land Use Plan (LUP) (Exhibit 3).

If not controlled and conveyed off-site in a non-erosive manner, runoff from the site may result in increased erosion, affect site stability, and impact water quality. The placement of impervious surfaces allows for less infiltration of rainwater into the soil, thereby increasing the rate and volume of runoff, causing increased erosion and sedimentation. Infiltration of precipitation into the soil allows for the natural filtration of pollutants. When infiltration is prevented by impervious surfaces, pollutants in runoff are quickly conveyed to coastal streams and to the ocean. Thus, new development can cause cumulative impacts to the hydrologic cycle of an area by increasing and concentrating runoff, leading to stream channel destabilization, increased flood potential, increased concentration of pollutants, and reduced groundwater levels.

Further, continued use of the site for residential purposes may introduce potential sources of pollutants such as petroleum hydrocarbons including oil and grease from vehicles, heavy metals, synthetic organic chemicals including paint and household cleaners, soap and dirt from washing vehicles, dirt and vegetation from yard maintenance, litter, fertilizers, herbicides, and pesticides, bacteria and pathogens from animal waste, as well as other accumulated pollutants from rooftops and other impervious surfaces. The discharge of these pollutants to coastal waters can cause cumulative impacts such as eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat including adverse changes to species composition and size, excess nutrients causing algae blooms and sedimentation

increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species, disruptions to the reproductive cycle of aquatic species, and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices (BMPs) designed to control the volume, velocity, and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, stormwater runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter, or treat) the runoff from the 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e.: the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs). Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition Two (2)**, and finds that this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

Furthermore, interim erosion control measures implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. To ensure that adverse effects to water quality, coastal resources, and/or the marine environment are minimized, **Special Condition One (1)** requires the applicants 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, all grading shall be properly covered, and that sand bags and/or ditches shall be used to prevent runoff and siltation.

Finally, the proposed development includes the installation of a new 2,500 gallon secondary treatment septic system (**Exhibit 8**). In order to reduce the size of the required leachfield for the proposed septic system and to allow the system to be located as far landward as possible, the applicants are proposing to install a bottomless intermittent sand filter septic system. This system is also designed to produce treated effluent with reduced levels of organics, biochemical oxygen demand, and total suspended solids, while occupying only fifty percent (50%) of the area which would otherwise be required for a conventional septic system and leachfield. The applicants have submitted approval from the City of Malibu Environmental Health Department stating that the proposed septic system is in conformance with the minimum requirements of the City of Malibu Uniform Plumbing Code. The City of Malibu's minimum health code standards for septic systems have been found protective of

coastal resources and take into consideration the percolation capacity of soils along the coastline, the depth to groundwater, etc. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

## **F. 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 applicants. 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).

## **G. 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.

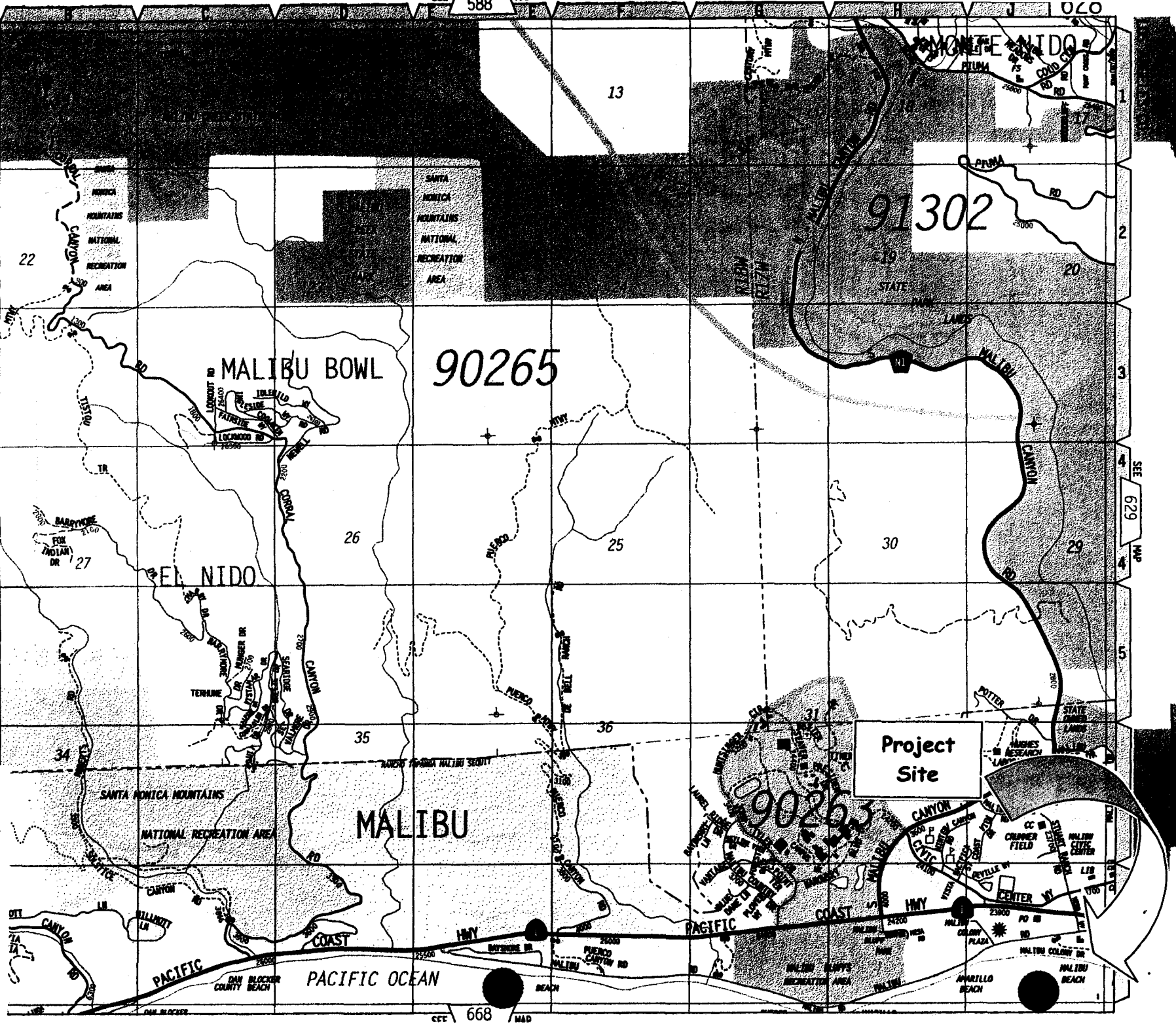
The Commission finds that the proposed project, as conditioned, will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be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



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SEE 627 MAP

EXHIBIT NO. 1
APPLICATION NO. 4-01-058
VICINITY MAP



668 MAD

SEE 629 MAP

020

588

Project Site

90265

91302

900203

MALIBU

SANTA MONICA MOUNTAINS NATIONAL RECREATION AREA

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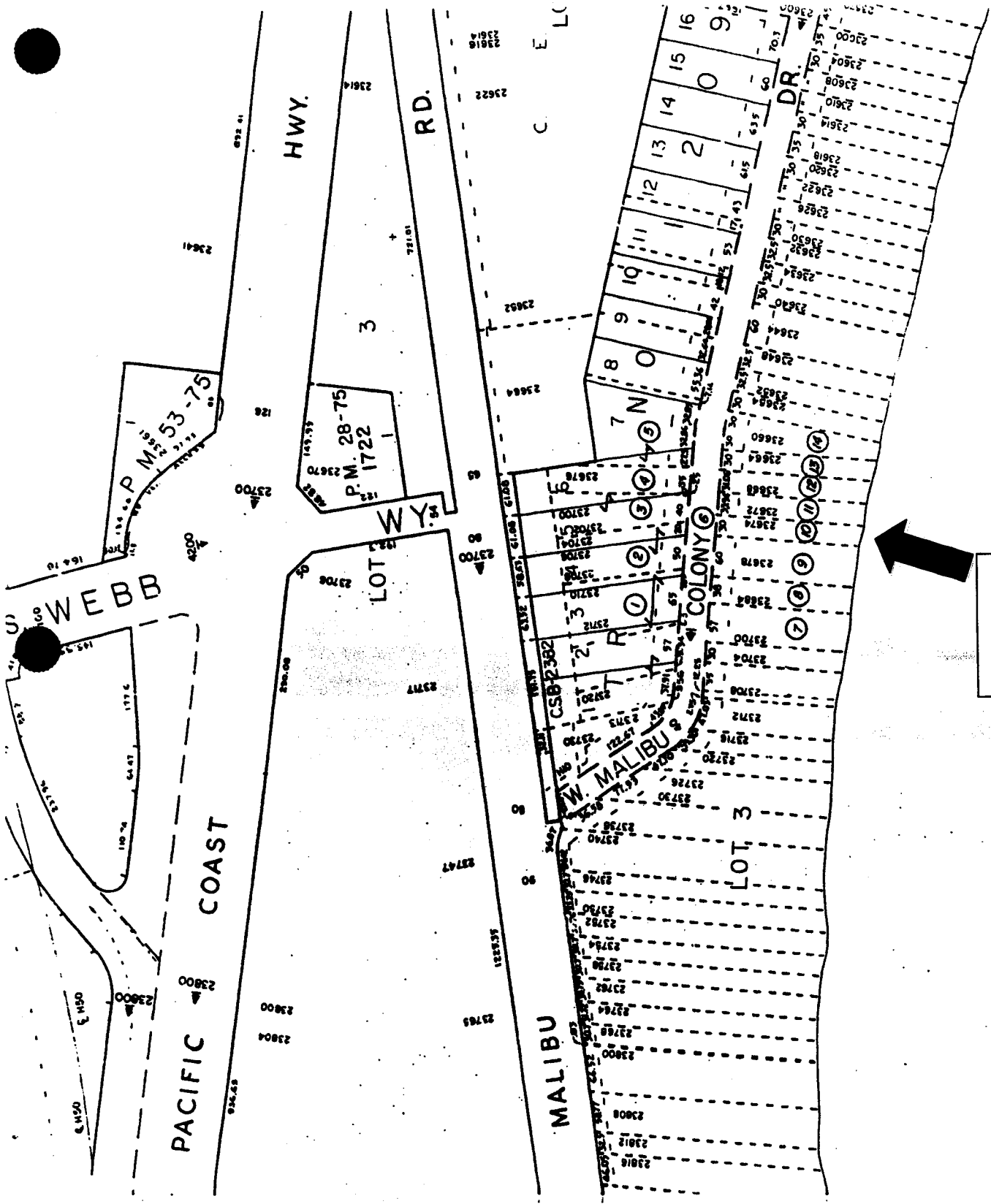
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Project Site

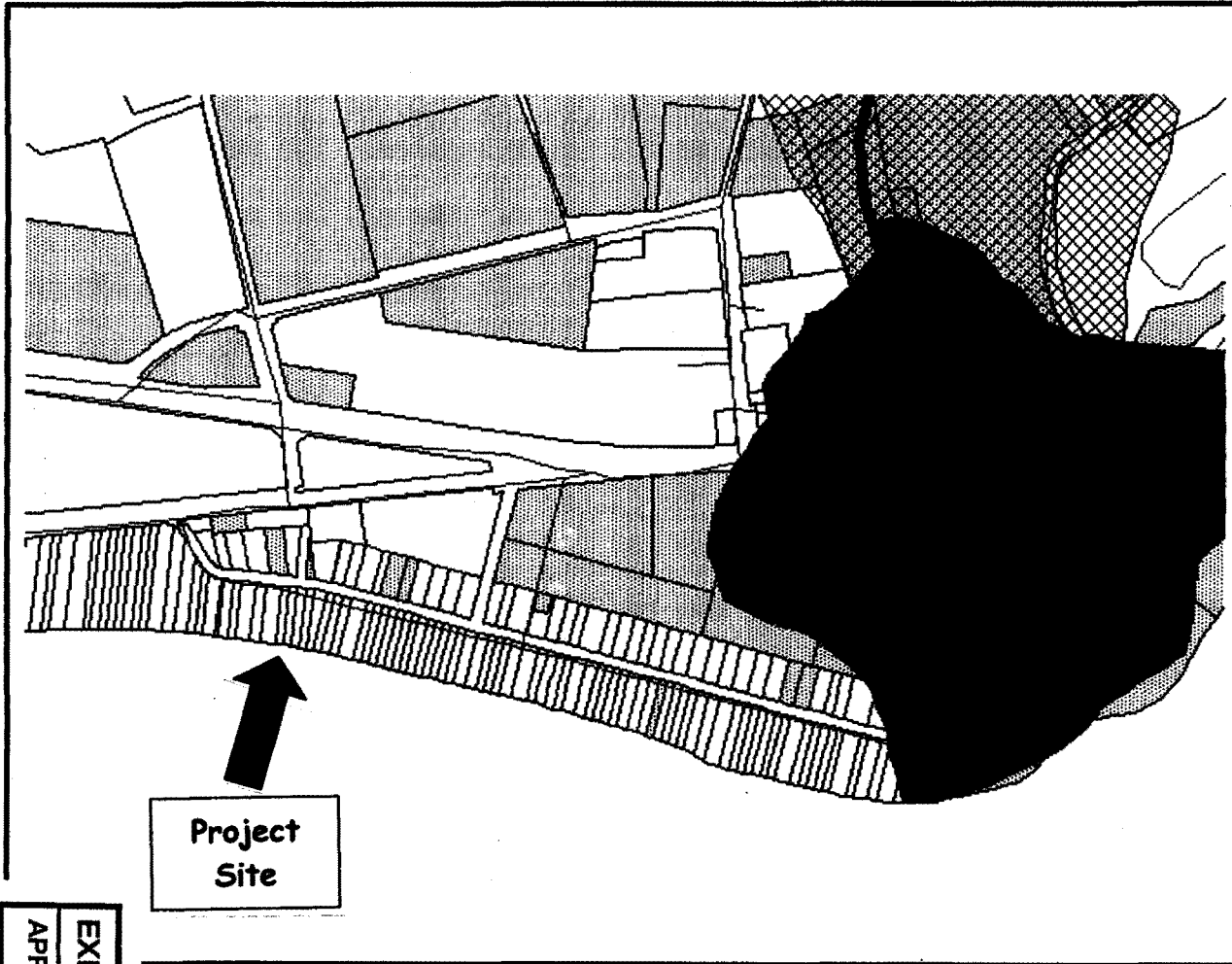
EXHIBIT NO. 2

APPLICATION NO.

4-01-058

LOCATION MAP

4-01-058 (Roth) 23674 Malibu Colony Drive



- vacant parcels
- laprcs
- esha (ESHA)
- Coldcreek management area inland
- locally disturbed resources oak woodlands and savannahs
- significant watersheds residential
- wildlife migration corridor

Project Site



Thursday, Jul 19 2001

EXHIBIT NO. 3  
APPLICATION NO.  
4-01-058  
SURROUNDING USES

RECEIVED

MAR 11 2001

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

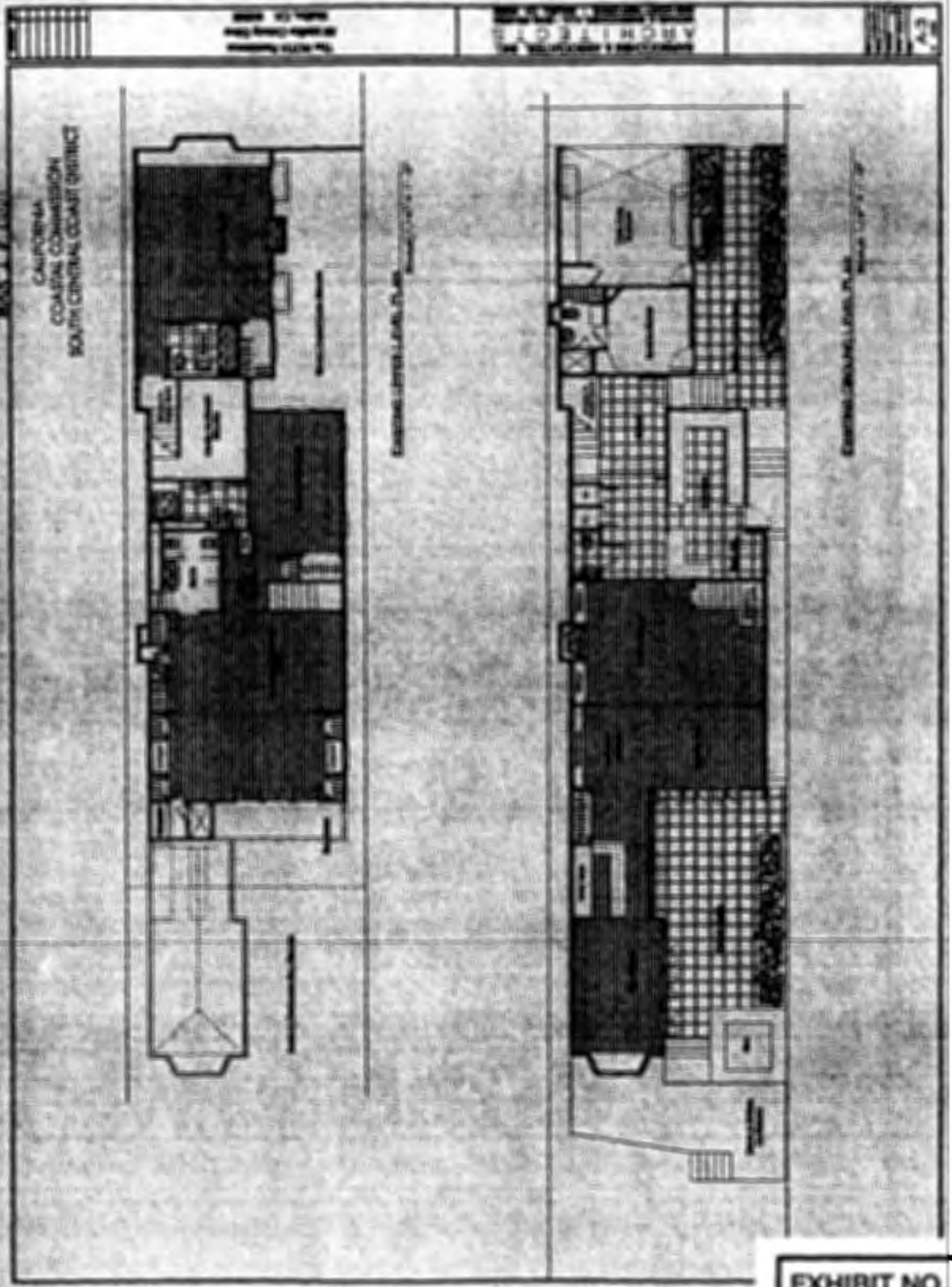


EXHIBIT NO. 4  
APPLICATION NO.  
4-01-058  
EXISTING SITE PLAN

SCALE 1/8" = 1'-0"  
DATE 10/10/88  
PROJECT 100-100-100

ARCHITECTS  
J. J. J. ARCHITECTS  
100-100-100

100-100-100

Roth Residence  
revised Contingency

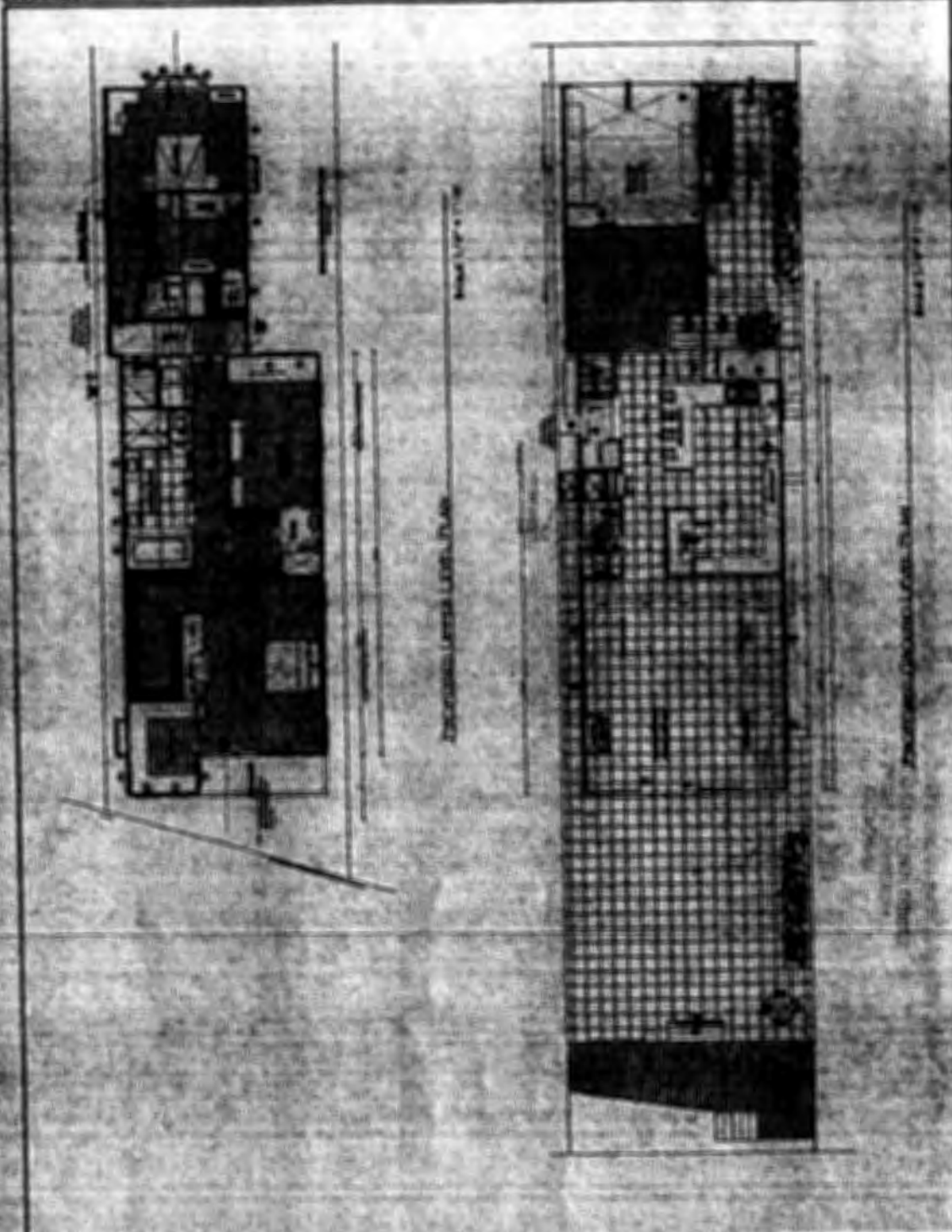
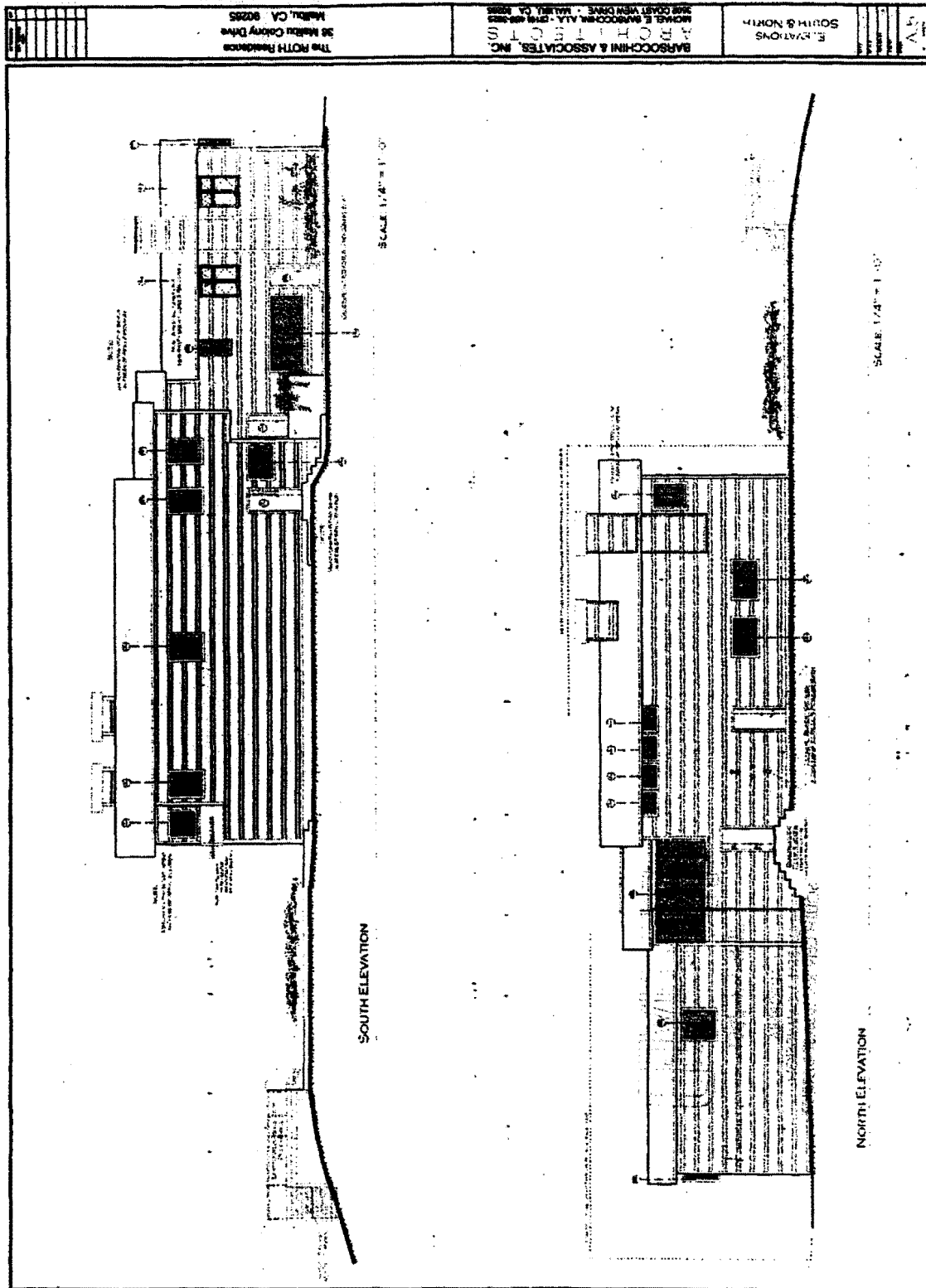


EXHIBIT NO. <b>5</b>
APPLICATION NO.
<b>4-01-058</b>
PROPOSED SITE PLAN



THE ROTH FOUNDATION  
 38 MARINO COLONY DRIVE  
 MARINO, CA 90255

BARBOCCHINI & ASSOCIATES, INC.  
 ARCHITECTS  
 MICHAEL E. BARBOCCHINI, AIA, LEED AP  
 3888 DOWNEY WAY DRIVE - MARINO, CA 90255

E. DYALONS  
 SOUTH & NORTH

EXHIBIT NO. 6

APPLICATION NO.

4-01-058

PROPOSED ELEVATION

RECEIVED

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

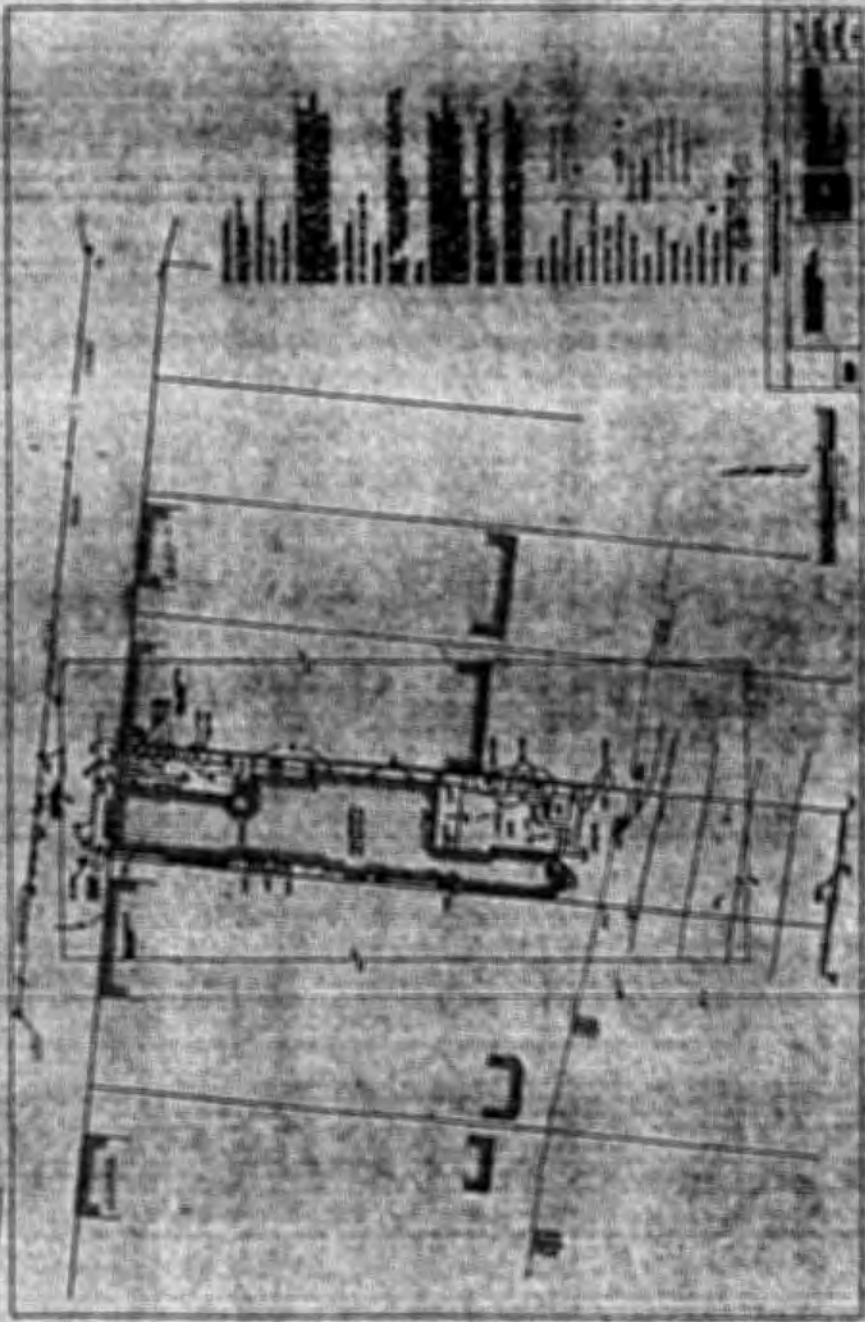
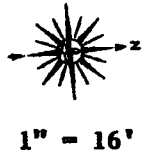
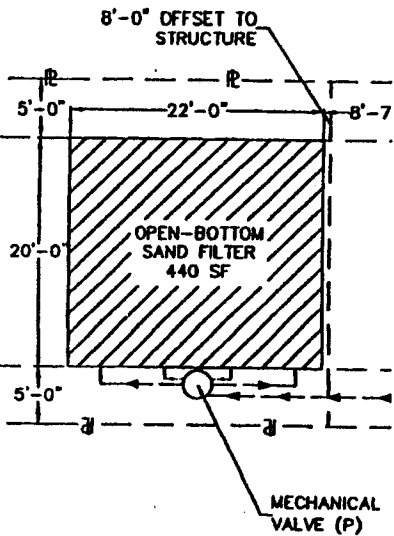
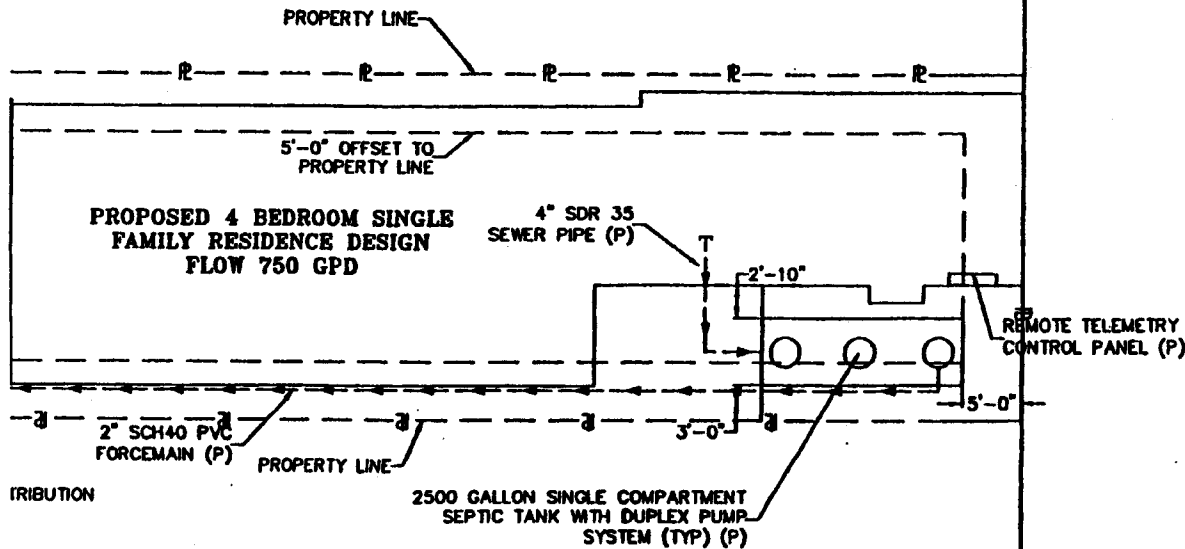


EXHIBIT NO. 7
APPLICATION NO.
4-01-058
SITE SURVEY





PROCE  
NO SCALE



TRIBUTION

2500 GALLON SINGLE COMPARTMENT  
SEPTIC TANK WITH DUPLEX PUMP  
SYSTEM (TYP) (P)

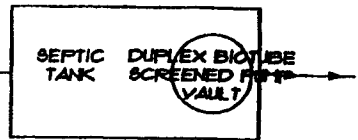
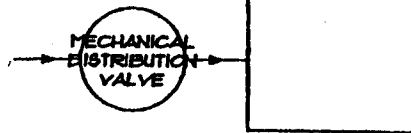
**NOTE:**

1. EXISTING SEPTIC TANKS REQUIRING REMOVAL (IF APPLICABLE) SHALL BE PUMPED, CRUSHED AND FILLED WITH LOCAL FILL MATERIAL COMPACTED TO 85% OF ASTM D1557. SEWER PIPE SHALL BE BEDDED IN ACCORDANCE WITH SPECIFICATIONS AND 1997 UNIFORM PLUMBING CODE (UPC).
2. SYSTEM COMPONENTS AND APPURTENANCES (INCLUDING CLEAN-OUTS) SHALL BE INSTALLED IN ACCORDANCE WITH 1997 UNIFORM PLUMBING CODE.
3. ELECTRICAL COMPONENTS AND APPURTENANCES SHALL BE INSTALLED IN ACCORDANCE WITH 1999 NATIONAL ELECTRIC CODE.
4. A REGISTERED GEOTECHNICAL ENGINEER, UNDER THE DIRECTION OF THE OWNER, SHALL DETERMINE IF THE WASTEWATER LOADING RATE WILL CAUSE THE EXISTING SLOPE TO BECOME UNSTABLE. ENSITU ENGINEERING INC. IS NOT A GEOTECHNICAL ENGINEERING FIRM. THEREFORE, WE CAN NOT PREDICT AND/OR DETERMINE THE STABILITY OF THE EXISTING SLOPE.
5. ALL DIMENSIONS AND GRADES SHALL BE VERIFIED BY CONTRACTOR PRIOR TO SYSTEM INSTALLATION. BUILDING SEWER DEPTH OR CONNECTION POINT WAS NOT PROVIDED AND SHALL BE DETERMINED BY CONTRACTOR PRIOR TO CONSTRUCTION.
6. ONSITE WASTEWATER TREATMENT SYSTEM SHALL BE VENTED IN ACCORDANCE WITH REQUIREMENTS OF THE 1997 UNIFORM PLUMBING CODE (CHAPTER 9) AND AS IS REQUIRED BY LOCAL CODES.

FINAL FOR APPROVAL  
AFTER FINAL APPROVAL  
OBTAIN FINAL DRAWINGS AND SPECIFICATIONS  
FROM ENSITU ENGINEERING  
NOT FOR CONSTRUCTION

Printed  
6/26/08

**SCHEMATIC**



ENSITU ENGINEERING INC.  
 38 MALIBU COLONY DRIVE, NORTH RESIDENCE  
 MALIBU, CALIFORNIA  
 IN-CONCEPT-APPROVAL  
 6/26/08

EXHIBIT NO. 8  
 APPLICATION NO.  
 4-01-058  
 Septic System

