

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Commission Action:



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STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-00-135

APPLICANT: Charles Perez

AGENT: Barsocchini & Associates

PROJECT LOCATION: 22432 Pacific Coast Highway, Malibu, Los Angeles County

PROJECT DESCRIPTION: Construction of a concrete pile supported swimming pool, spa, and deck; interior remodel of existing single family residence with no additional square footage; upgraded alternative private sewage disposal system; removal of existing fill and landscaping; an offer to record an assumption of risk deed restriction; and an offer to dedicate a new lateral public access easement over the southern beachfront portion of the lot, as measured from the pool and deck driplines to the ambulatory mean high tide line.

Lot Area:	11,016 square feet
Existing Building Coverage:	4,827 square feet
Existing Hardscape Coverage:	1,875 square feet
Additional Hardscape Coverage Proposed:	690 square feet

LOCAL APPROVALS RECEIVED: City of Malibu, Planning Department, Approval in Concept, April 19, 2000; City of Malibu, Geology and Geotechnical Engineering Review, Approval in Concept, December 28, 1998; and City of Malibu, Environmental Health Department, Approval in Concept, July 14, 2000.

SUBSTANTIVE FILE DOCUMENTS: Facsimile from California State Lands Commission to Commission Staff, August 29, 2001; Facsimile from Barsocchini & Associates to Commission Staff, August 28, 2001; Facsimile from Barsocchini & Associates to Commission Staff, August 28, 2001; "Perez Residence, Rock Revetment and Pool," Pacific Engineering Group, June 1, 2001; letter from Barsocchini & Associates to Commission staff, June 1, 2001; "Wave Uprush Study Addendum #2," Pacific Engineering Group, March 27, 2001; letter from Barsocchini & Associates to Commission staff, March 22, 2001; "Perez Residence, Interior Remodel," Pacific Engineering Group, March 15, 2001; "As-built Condition of Existing Rock Revetment," Pacific Engineering Group, November 13, 2000; "Addenda Wave Uprush Study for

Proposed Pool and Existing Revetment," Pacific Engineering Group, August 5, 2000; "Charles Perez Residence," Barton Slutske, July 23, 2000; "Geotechnical and Geologic Update Report," RJR Engineering Group, July 19, 2000; letter from Barsocchini & Associates to Commission staff, June 7, 2000; letter from California State Lands Commission to Barsocchini & Associates, May 10, 2000; facsimile from Frank P. Angel, Esq., to Commission staff, October 26, 1999; letter from Frank P. Angel, Esq., to Commission staff, received October 28, 1999; letter from California State Lands Commission to Barsocchini & Associates, April 28, 1999; "Supplemental Geotechnical Engineering Report," RJR Engineering Group, August 6, 1998; "Charles Perez Residence," Barton Slutske, June 17, 1998; "Wave Uprush Study," Pacific Engineering Group, June 12, 1998; "Geotechnical Engineering Report," RJR Engineering Group, May 28, 1998; "Charles Perez Residence," Barton Slutske, April 22, 1998; Coastal Development Permits 5-82-521 (Landsburg) and 5-85-695 (Landsburg); and the certified Malibu Santa Monica Mountains Land Use Plan.

SUMMARY OF STAFF RECOMMENDATION: Staff recommends approval of the proposed project with 10 special conditions regarding construction responsibilities and debris/excavated material removal, geologic and engineering recommendations, sign restriction, offer to dedicate lateral access, assumption of risk, drainage and polluted runoff, future shoreline protective device, removal of rock revetment, removal of fill and lawn, and condition compliance. The proposed project includes construction of a new concrete pile supported swimming pool, spa, and deck; interior remodel of existing single family residence with no additional square footage; and upgraded alternative private sewage disposal system. In addition, the proposed development will be located on top of a previously approved rock revetment. All proposed development is landward of the established stringlines, however. Furthermore, the proposal also includes the removal of existing fill and landscaping, an offer to record an assumption of risk deed restriction, and an offer to dedicate a new lateral public access easement over the southern beachfront portion of the lot, as measured from the pool and deck driplines to the ambulatory mean high tide line.

The project site is a beachfront lot located at 22432 Pacific Coast Highway, in the Carbon Beach area of the City of Malibu in Los Angeles County. The site maintains an existing two story, 6,973 square foot single family residence with an attached garage, supported by a wood timber foundation system. There is also an existing rock revetment on the subject site, which was approved in 1985 pursuant to an administrative permit. Although the revetment was approved and an administrative permit was issued for the construction of the revetment, the previous owner of the subject site at that time failed to meet two special conditions of that permit. The two special conditions of that previous permit that were not met include the recordation of an assumption of risk and offer to dedicate lateral public access easement deed restrictions.

Special Conditions Four (4), Five (5), and Ten (10) will result in recordation of an assumption of risk and an offer to dedicate a lateral public access easement. As the

proposed development is located seaward of the existing single family residence and physically above the existing rock revetment, **Special Condition Seven (7)** prohibits any the construction of a new shoreline protective device to protect the development approved under this permit and requires the landowner to remove the development authorized by this permit if any government agency orders that the structures are not to be occupied due to hazards.

Special Condition Eight (8) requires the applicant to submit a report prepared by the coastal engineer stating that the proposed development, including the swimming pool, spa, and decking, will not interfere with or hinder the future removal of the existing rock revetment if the existing timber pile foundation system supporting the existing residence is replaced or upgraded, thereby rendering the rock revetment unnecessary.

Furthermore, to ensure structural and site stability, **Special Condition Two (2)** requires the applicant to submit project plans certified by all consulting geotechnical and coastal engineering consultants as conforming to all recommendations. Although the proposed development will be designed to ensure stability, the project site is located on a beachfront lot and will be subject to inherent potential hazards such as storm damage, flooding, and liquefaction. Therefore, **Special Condition Five (5)** requires the applicant to acknowledge the potential hazards on the project site and waive any claim of liability against the Commission.

In addition, to ensure that adverse effects to the marine environment are minimized, **Special Condition One (1)** requires that no stockpiling of construction materials or excavated material may occur on the beach and that no machinery may be allowed in the intertidal zone during construction activities. **Special Condition Six (6)** requires the applicant to incorporate filter elements that intercept and treat runoff from the subject site.

Additionally, the occupation of a sandy beach area by a structure, such as the proposed development, results in potential adverse effects to shoreline sand supply and public access. The applicant is proposing to dedicate a new lateral public access easement over the southern beachfront portion of the lot, as measured from the pool and deck driplines to the ambulatory mean high tide line. To mitigate adverse effects to public access, **Special Condition Four (4)** is required to ensure implementation of the applicant's lateral public access easement proposal.

The two special conditions that were not met for the existing rock revetment which was approved pursuant to an administrative permit in 1985 include the recordation of a public lateral access easement and an assumption of risk deed restriction. **Special Conditions Four (4) and Five (5)** will result in these conditions being met prior to issuance of the current coastal development permit. Likewise, **Special Condition Nine (9)** requires the applicant to remove the fill and lawn that has been placed seaward of the residence, on top of the rock revetment, without the benefit of a coastal development permit. **Special Condition Ten (10)** ensures that these condition compliance and unpermitted development violations are pursued in a timely manner.

Lastly, 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. Therefore, **Special Condition Three (3)** has been required to ensure that no signs will be posted on the subject property unless they are authorized by a coastal development permit or an amendment to this coastal development permit.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-00-135 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. Construction Responsibilities and Debris/Excavated Material Removal

The applicant shall, by accepting this permit, agree that no stockpiling of dirt or building materials shall occur on the beach and that no machinery will be allowed in the intertidal zone at any time. The permittee shall remove from the beach and rock revetment area any and all debris that result from the construction period. All excess excavated rock and all fill and lawn material shall be exported to an appropriate location outside of the coastal zone or, should the dumpsite be located in the coastal zone, an amendment to this coastal development permit or a new coastal development permit shall be required.

2. Plans Conforming to Geotechnical and Coastal Engineers' Recommendations

All recommendations contained in the reports prepared by RJR Engineering Group dated July 19, 2000; August 6, 1998; and May 28, 1998 and Pacific Engineering Group, dated June 1, 2001; March 15, 2001; March 27, 2001; November 13, 2000; August 5, 2000; and June 12, 1998 shall be incorporated into all final design and construction including recommendations concerning foundation, drainage, and septic system plans and must be reviewed and approved by the consultants prior to commencement of development. Prior to issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director of the consultants' review and approval of all final design and construction plans.

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

3. 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.

4. Offer to Dedicate Lateral Public Access

In order to implement the applicant's proposal of an offer to dedicate a new easement for lateral public access and passive recreational use along the shoreline as part of this project and to meet the previous special condition of Coastal Development Permit 5-85-695 of an offer to dedicate a lateral public access easement, 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 the California State Lands Commission, or if it declines, 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 previous easements or through use which may exist on the property. Such easement shall be located along the entire width of the property, as measured from the pool and deck driplines to the ambulatory mean high tide line, as illustrated on the plan prepared by Barsocchini & Associates, received in the Commission office on June 14, 2001 (Exhibit 17).

The document shall be recorded free of prior liens that the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances that 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 Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.

5. 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.
- 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. This deed restriction shall also meet the previous special condition of Coastal Development Permit 5-85-695 to record an assumption of risk deed restriction. The deed restriction shall include a legal description of the applicant's entire parcel and an exhibit showing all development on the entire parcel, including all development approved by this permit and Coastal Development Permit 5-85-695. 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.
- C. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction that complies with Special Condition Two (2) of Coastal Development Permit 5-85-695. That deed restriction may be combined in one document with the deed restriction required by A. and B., above.

6. Drainage and Polluted Runoff Control Plan

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval, final drainage and runoff control plans, including supporting calculations. The plan 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. The plan shall be reviewed and approved by the consulting engineers to ensure the plan is in conformance with engineers' recommendations. In addition to the specifications above, the plan 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 applicant/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 applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

7. No Future Shoreline Protective Device

- A. By acceptance of the permit, the applicant agrees, on behalf of itself and all successors and assignees, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit 4-00-135 including, but not limited to, the swimming pool, spa, decking, and septic system and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such device(s) that may exist under Public Resources Code Section 30235.
- B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including but not limited to, the swimming pool, spa, decking, and septic system and any other future improvements if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.
- C. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which reflects the above restrictions on development. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or

changed without a Commission approved amendment to this coastal development permit.

8. Removal of Rock Revetment

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a report by the coastal engineer stating that the proposed development, including the swimming pool, spa, and decking, will not interfere with or hinder the future removal of the existing rock revetment if in the future the existing timber pile foundation system supporting the existing residence is replaced or upgraded or the residence is substantially demolished and remodeled, so that the rock revetment is no longer required.

In addition, the report must also state that the proposed development will not require a substantial removal and rebuilding of the existing rock revetment and that only those rocks in the direct position of the proposed foundation piles will be removed. Further, those rocks to be temporarily removed for construction shall be removed individually and replaced individually under the supervision of the coastal engineer. If a substantial portion of the existing rock revetment is removed in order to construct the proposed development (i.e., more than 45 to 50 percent), then the applicant shall be required to apply for a new coastal development permit for that rock revetment, as the demolition and reconstruction of it would be considered new development.

9. Removal of Fill and Lawn

In order to implement the applicant's proposal to remove the fill and lawn placed on top of the rock revetment located seaward of the existing single family residence, all fill and lawn shall be removed within 90 days of the issuance of this permit.

10. Condition Compliance

Within 120 days of Commission action on this coastal development permit 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 with respect to the development on the property that is in violation of Coastal Development Permit 5-85-695 or the Coastal Act 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 subject site is located between Pacific Coast Highway and the Pacific Ocean (Exhibit 1). The area surrounding the project site is characterized as a built-out portion of Malibu consisting of residential and commercial development. The subject site is a rectangular beachfront parcel located at 22432 Pacific Coast Highway, in the Carbon Beach area of the City of Malibu in Los Angeles County (Exhibit 2). The site has a gentle, 12:1 (horizontal to vertical) slope that descends from Pacific Coast Highway to the Pacific Ocean. Elevations of the parcel range from mean sea level near the southern boundary of the site to 16 feet above mean sea level near the northern boundary of the site.

The site currently maintains an existing two story, 6,973 square foot single family residence with an attached garage, supported by a wood timber pile foundation system (Exhibit 3). The single family residence appears to have been originally built prior to 1973. In addition, there is an existing rock revetment on the subject site, which was approved by the Commission in 1985 pursuant to an administrative permit. The rock revetment was constructed to protect the timber foundation system from storm wave uprush and beach scour. The rock revetment is approximately 30 feet wide and is currently completely buried under sand. Further, at the time it was constructed, fill dirt was apparently placed on top of the revetment upon which a sod lawn was placed. The fill and lawn were not part of the permit for the rock revetment, were placed on the site without the benefit of a coastal development permit, and presently remain on the subject site.

The proposed project includes construction of a new swimming pool, spa, and deck seaward of the existing residence and landward of the deck stringline (Exhibit 3). This portion of the proposed development will be located where there is an existing rock revetment covered by beach sand, fill, and lawn (Exhibit 14). In addition, the proposed development also includes an interior remodel of the existing residence with no additional square footage and an upgraded alternative private sewage disposal system (Exhibits 4 and 5). The remodel will convert a den at the ground floor level into a bedroom and bathroom and add a bathroom to an existing upstairs bedroom. Originally, the applicant also proposed to construct a 3,285 square foot addition to the existing single family residence. However, this portion of the project description was withdrawn after Commission staff inquired about the adequacy of the existing timber pile foundation system to support the additional load of the addition. In sum, the construction of the proposed development will be consistent with the visual character of the surrounding area and will not result in any adverse effects to the visual quality of this segment of Pacific Coast Highway or Carbon Beach (Exhibit 15).

The project site has also been subject to Commission action in the past. In 1982, the Commission approved Coastal Development Permit (CDP) 5-82-521 (Landsburg) for remodel and additions to the existing single family residence. Further, in 1985, the Commission also issued an administrative permit, CDP 5-85-695 (Landsburg), for the placement of a rock revetment seaward of the existing residence. At that time, there

were rock revetments existing on either side of the subject site (Exhibit 16). CDP 5-85-695 (Landsburg), however, required assumption of risk and lateral public access easement deed restrictions. The previous owner of the property constructed the revetment, but failed to record the deed restrictions that were required under special conditions of the administrative permit. The property owner's failure to comply with the special conditions of CDP 5-85-695 constitutes a violation of the permit and the Coastal Act.

The proposed development will be located physically above the previously approved rock revetment (Exhibits 8 and 9). In order to resolve these condition compliance violations of CDP 5-85-695, the applicant is proposing to record an offer to dedicate a new lateral public access easement over the southern beachfront portion of the lot as measured from the pool and deck driplines to the ambulatory mean high tide line. In addition, the applicant is also proposing to record a new assumption of risk deed restriction for the proposed development and the existing development on the site, prior to issuance of this permit.

Finally, in their letter dated May 10, 2000, the California State Lands Commission (CSLC) indicates that it presently asserts no claims that the project intrudes onto sovereign tide or submerged lands or that the project is located on public tidelands, although the CSLC reserves the right to any future assertion of state ownership or public rights should circumstances change. The CSLC has, however, expressed some concern regarding the proposed development with respect to a lateral public access easement that has been recorded and accepted by the CSLC and a lateral public access easement that the previous landowner failed to record pursuant to CDP 5-85-695. As reviewed below, however, the applicant proposes to resolve these outstanding issues under the current permit. Furthermore, Commission staff has received a letter from CSLC dated August 29, 2001, stating that it is not opposed to the applicant's new offer to dedicate a lateral public access easement, as proposed (Exhibit 18).

B. Hazards and Geologic Stability

The proposed development would be located in the Santa Monica Mountains, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains 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 also subject to flooding and erosion from storm waves.

Section 30253 of the Coastal Act states, in part, that new development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any

way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30235 of the Coastal Act states:

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

The applicant has submitted a report entitled, "Geotechnical and Geologic Update Report," prepared by RJR Engineering Group, dated July 19, 2000, evaluating the geologic stability of the subject site in relation to the proposed development. This report concludes:

Based upon the available data, from our review, subsurface investigation, the proposed residential improvements remain feasible from a geologic and geotechnical standpoint. The site should be free of any geologic or geotechnical hazards, as long as the recommendations of this report are incorporated into the design and construction of the project.

In addition, in its report dated March 15, 2001, entitled "Perez Residence," Pacific Engineering Group states:

This office has reviewed the referenced architectural plans for the referenced interior remodel. . . . Upon review of the plans it is the opinion of this office that the above remodel work will not require structural modifications to the existing timber pile foundation.

In its report dated June 1, 2001, Pacific Engineering Group also states:

The pool will not diminish the effectiveness of the rock revetment. Past reports addressing the pool and revetment state that the pool will be designed independent of the revetment and will have an insignificant effect on littoral sand processes. The pool is to be constructed on a deepened pile foundation above the existing rock revetment.

Furthermore, the applicant has provided other geology and engineering reports, including: "Wave Uprush Study Addendum #2," Pacific Engineering Group, March 27, 2001; "As-built Condition of Existing Rock Revetment," Pacific Engineering Group, November 13, 2000; "Addenda Wave Uprush Study for Proposed Pool and Existing Revetment," Pacific Engineering Group, August 5, 2000; "Wave Uprush Study," Pacific Engineering Group, June 12, 1998; and "Geotechnical Engineering Report, Proposed Second Story Addition," RJR Engineering Group, May 28, 1998. These reports also include a number of geotechnical and engineering recommendations to ensure the stability and geotechnical safety of the site.

In its report dated March 27, 2001, Pacific Engineering Group makes specific recommendations regarding the construction of the swimming pool and foundation for the swimming pool, which will be located physically above the existing rock revetment. That report states, in part:

The maximum wave uprush at the subject site will occur at approximately 52 feet seaward of the Pacific Coast Highway right-of-way line at elevation +13 Ft. MSL – NGVD datum. ...

The profiles and mean high tide lines conclude that the subject beach is presently a stable beach that oscillates seasonally between sandy summer profiles and winter profiles, with additional but temporary periodic storm scouring of the beach profile during extratropical storm events that are coincidental with high winter tides. Based on the site-specific beach profiles the landward extent of the intertidal zone is 150 feet seaward of the Pacific Coast Highway right-of-way line. ...

The minimum elevation for the bottom of the pool shell should not be lower than elevation +12 MSL – NGVD29 datum. The bottom of the concrete beams supporting the pool should not be lower than elevation +10 MSL – NGVD29 datum. ...

The proposed pool must be supported on a concrete friction pile foundation. ...

All new concrete friction piles should have a minimum diameter of 30-inches and extend to a minimum depth no higher than elevation –12.0 Ft. MSL – NGVD. Actual pile depths will be determined by the project structural engineer based on anticipated vertical and lateral loads in coordination with the project Geotechnical Engineer and will likely be deeper than the minimum depth listed above. These piles will not have an effect on coastline processes. ...

The report dated June 12, 1998, by Pacific Engineering Group also states that the concrete piles used for the swimming pool foundation may be used to support the deck extension.

In addition, in its report dated November 13, 2000, Pacific Engineering Group confirmed that the existing rock revetment remains in the original permitted location. Furthermore, in its report dated June 1, 2001, Pacific Engineering Group states:

The wave uprush report addendum #2 dated March 27, 2001 stated that the rock revetment was constructed in 1985 for the purpose of protecting the timber pile foundation system from storm scour. The original wave uprush report simply stated that the septic system did not require protection if located landward of the wave uprush limit. The current condition of the timber foundation supporting the Perez Residence has not changed and still requires the Rock Revetment for protection of the foundation of the residence.

To ensure that the recommendations of the geotechnical and engineering consultants have been incorporated into all proposed development, **Special Condition Two (2)** requires the applicant to submit project plans certified by both the consulting geotechnical and coastal engineers as conforming to all 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 that may be recommended by the consultants shall require an amendment to this coastal development permit or a new coastal development permit.

As discussed above, the applicant's geotechnical engineering consultant has indicated that the proposed development will serve to ensure relative geologic and structural stability on the subject site. The proposed development, however, is located on a beachfront lot in the City of Malibu, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu and 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. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

Furthermore, Section 30253 of the Coastal Act requires that new development minimize risk to life and property in areas of high geologic, flood, and fire hazard, and to assure stability and structural integrity. The proposed development is located on a beachfront lot in the City of Malibu and will be subject to some inherent potential hazards. 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 wave damage from storm waves, storm surges, and high tides. In the Malibu area alone, past occurrences have caused property damage resulting in public costs through emergency responses and low-interest, publicly subsidized reconstruction loans amounting in millions of dollars. In the winter of 1977-1978, storm-triggered mudslides and landslides caused extensive damage along the Malibu coast. According to the National Research Council, damage to Malibu beaches, seawalls, and other structures during that season caused damage of up to five million dollars to private property alone. The El Nino storms recorded from 1982 to 1983 caused high tides of over seven feet, which were combined with storm waves of up to 15 feet. These storms caused over \$12.8 million in damage to structures in Los Angeles County, many of which were located in Malibu. The severity of the 1982 to 1983 El Nino storm events are often used to illustrate the extreme storm event potential of the California coast and of the Malibu coast, in particular. The 1998 El Nino storms also resulted in widespread damage to residences, public facilities, and infrastructure along the Malibu coast. Thus, ample evidence exists that all beachfront development in the Malibu area is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding.

To minimize wave hazards, while controlling seaward encroachment of residential structures on a beach to ensure maximum public access, minimize adverse effects to coastal processes, shoreline sand supply, and public views, 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 the case of this project, the proposed development will be located landward of the appropriate deck and building stringlines and will not result in the seaward encroachment of residential development on Carbon Beach. The proposed swimming pool, spa, and decking will be located landward of the deck stringline for the site. As such, the Commission finds that the proposed project will be consistent with the established stringlines and will serve to minimize adverse effects to coastal processes.

However, due to the concerns discussed previously, the proposed development will continue to be subject to a high degree of risk posed by the hazards of oceanfront development in the future. In fact, in the report dated March 27, 2001, Pacific Engineering Group states:

The owner should realize that there will always be certain risks associated with building or living on the beach and assume such risks. Further, the Engineer makes no warranty or guarantee that the structures outlined in this report will survive natural forces from any and all storm conditions. . . . Because of the unpredictability of the ocean environment, the above design standards are meant to minimize storm wave damage and not eliminate it. Tsunami or hurricane generated waves were not analyzed in this report because of the . . . extreme low probability of these events producing damage to the subject site and project. However the possibility of these events producing damage to the subject property does exist, and hence no warranties are provided should these events occur.

These concerns are also set forth in Pacific Engineering Group's report dated June 12, 1998.

In addition, Commission staff also received correspondence from Frank Angel, Esq., on October 28, 1999, that raises the issue of the risk of damage from wave action in this area of Carbon Beach (Exhibit 13). That correspondence includes photographic documentation of damage to this area from storm waves.

The Coastal Act recognizes that development, even as designed and constructed to incorporate all recommendations of the consulting geotechnical and coastal 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, landslide, 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 Five (5)**, 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, as reviewed previously, the previous landowner failed to record the assumption of risk deed restriction pursuant to CDP 5-85-695, which authorized the rock revetment. The proposed pool will be located on top of the rock revetment. The applicant is proposing to record this assumption of risk deed restriction pursuant to the current project. As a result, **Special Condition Five (5)** also requires the applicant to record an assumption of risk deed restriction for the development approved under CDP 5-85-695, prior to issuance of this coastal development permit.

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

C. Public Access.

One of the basic mandates of the Coastal Act is to maximize public access and recreational opportunities along the coast. The Coastal Act has several policies that address the issues of public access and recreation along the coast.

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states, in part:

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects . . .

Section 30220 of the Coastal Act states:

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

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 for the use of dry sand and rocky coastal beaches.

All beachfront projects requiring a coastal development permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. In past permit actions, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline. The major access issue in such permits is the occupation of sandy beach areas 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 the ability to use public tideland areas.

Pursuant to CDP 5-82-521 (Landsburg) for remodel and additions to the existing residence, a previous offer to dedicate a public lateral access easement deed restriction was required as a special condition of approval. Further, this easement was recorded in 1983 and was accepted by the CSLC in 1996. This accepted public lateral access easement consists of a "25 foot wide strip of beach as measured inland from the water line (document shall state that the daily high water line is understood by both parties to be ambulatory from day to day, as will the 25 foot wide strip of dry, sandy beach)." It also states that in "no case shall said access be closer than 10 feet from the approved development."

In 1985, however, the Commission approved CDP 5-85-695 (Landsburg), which allowed the placement of a rock revetment seaward of the existing single family residence. Special Condition One (1) of that permit required the applicant to record a new public lateral access easement and stated, in part:

Such easement shall be located along the entire width of the property from the mean high tide line to the interface of the sand and the revetment. The part of the access area that is less than ten feet from the seaward edge of the existing residence and decks shall be limited to pass and repass only and only when storm conditions make areas farther from the residence impassable.

This new lateral public access easement required pursuant to the approval of the rock revetment under CDP 5-85-695 was never recorded. Further, as stated previously, in 1996, the CSLC accepted the prior public lateral access easement recorded in 1983 pursuant to CDP 5-82-521. The previous applicant's failure to record the lateral access easement required by CDP 5-85-695 is a condition compliance violation of that permit

and the Coastal Act. However, as stated previously, the current applicant has offered to dedicate a new public lateral access easement prior to the issuance of this permit, to remedy this violation. The new offered lateral access easement will no longer contain a privacy buffer and will include the southern beachfront portion of the lot as measured from the pool and deck driplines to the ambulatory mean high tide line (Exhibit 17).

Concern has been raised, however, as to whether the proposed development could potentially be located in the public lateral access easement that was recorded in 1983 and accepted by the CSLC in 1996. The rock revetment approved by the Commission in 1985 is already in the location where the proposed development would be located and is already occupying that area of sandy beach. As stated above, the prior owner failed to meet the special condition requiring the recordation of a new lateral public access easement from the interface of the sand and the rock revetment to the ambulatory mean high tide line, which also allowed for public pass and repass within the 10 foot privacy buffer, as measured 10 feet seaward from the existing residence and decking, during storm events. However, the applicant has proposed, as part of the current project, an offer to dedicate a new lateral public access easement over the southern beachfront portion of the lot, as measured from the pool and deck driplines to the ambulatory mean high tide line, the applicant is now proposing to record the required easement prior to issuance of this coastal development permit, which will resolve this condition compliance violation. The new proposed development will be located within the area of the site that was covered by the lateral access easement that the previous landowner failed to record pursuant to CDP 5-85-695. In addition, portions of the proposed development will be located within the 10 foot privacy buffer allowed under that previous lateral access easement that was not recorded, which did allow for public pass and repass during storm events.

In addition, Commission staff has received a letter from Frank Angel, Esq., indicating opposition to the location of the new development with respect to the public's right of lateral access on the site, which includes a number of attachments (Exhibit 12). One attachment in this letter includes correspondence to the CSLC, dated October 26, 1999, on behalf of Frank Angel, Esq., which states, in part:

[D]evelopment of a totally dispensable private deck, pool and spa within the reserved lateral access area, if approved, supported or endorsed in any way by the State Lands Commission or the Coastal Commission staff, would be an egregious, precedent-setting action – one least expected from these two agencies, and one making a hoax out of approved mitigation of the adverse impacts of shoreline structures on beaches and public lateral access to beaches. It would take away the very mitigation the Coastal Commission deemed necessary to allow approval of the coastal permits for the shoreline structures to begin with, and touted by it to the public as being necessary to mitigate these structures adverse effects.

Please keep me fully apprized of all your determinations in this matter or regarding any other attempt to take away public access mitigations to accommodate seaward extensions of new development. I thought the trend with the Coastal Commission was toward shoreline retreat. I can't imagine any benefit to the public or the environment from allowing the placement of new structures closer to the mean high tide line than existing structures already subject to wave action.

In addition, this letter to Commission staff also included an attachment of a letter that was submitted to the City of Malibu's Planning Director opposing the proposed development. That letter, dated September 23, 1999, states, in part:

As I informed the Planning Commission . . . we urge you to refrain from drawing, or causing or allowing the drawing of, a new stringline for this ocean-fronting property, that would permit development of any pool or spa seaward of the seaward edge of the existing deck, because any such new development would obviously be located smack-dab within the area reserved for public access, and would directly interfere with the public's right to pass and repass. As such, the drawing of a new stringline seaward of the seaward edge of the existing deck would purport to allow an egregious violation of the cited coastal permit condition. . . .

Further, Frank Angel, Esq., has also voiced his objections to the proposed development in several telephone conversations with Commission staff and requested that hearing on this permit be postponed from the scheduled hearing on September 11, 2001 in Eureka to allow for a more local hearing.

The applicant has submitted correspondence from the CSLC regarding the proposed project, dated May 10, 2000 and April 28, 1999 (Exhibits 10 and 11). In its letter dated May 10, 2000, the CSLC indicates that it presently asserts no claims that the project intrudes onto sovereign tide and submerged lands or that the project is located on public tidelands, although the CSLC reserves the right to any future assertion of state ownership or public rights should circumstances change. In its letter dated April 28, 1999, the CSLC did not approve of the stringlines drawn for the site, as they were drawn from the nearest corner of the adjacent deck on the west and a deck three lots to the east, rather than from the immediately adjacent deck to the east of the site. However, the plans were subsequently revised for the proposed development and in their letter dated May 10, 2000, the CSLC states that the proposed development appears to be in conformance with the stringline policies established by the residences and decks on either side of the subject site.

Further, the CSLC addresses the issue of the previously recorded and required lateral public access easements on the subject site, discussed above. Their letter dated April 28, 1999 states:

[W]e have concluded that at certain times of the year, the existing rocks and the proposed swimming pool may intrude into, and interfere with, the public access easement accepted by the CSLC. Therefore we object to the project as proposed. We understand that your clients are willing to consider recording a new public access easement that would more clearly define the public's rights on the beach at this location. CSLC staff would be willing to work with CCC staff in determining whether the recordation of a new public access easement would be appropriate as part of the CCC's consideration of the proposed project.

Additionally, in its letter dated August 29, 2001, CSLC also states:

You have requested comments from the staff of the California State Lands Commission (CSLC) as to language Coastal Commission staff is proposing to include in the staff

report for the subject application. The language relates to the recordation of a new Offer to Dedicate Lateral Public Access. The proposed language will require the easement be located along the 'southern beachfront portion of the lot as measured from the pool and deck driplines to the ambulatory mean high tide line.'

CSLC staff believe the proposed language will be more definitive and practical in defining the easement on both the inland and waterward side of the Perez property. Therefore, we do not object to the language as proposed.

As stated previously, the applicant is proposing an offer to dedicate a new lateral public access easement over the southern beachfront portion of the lot, as measured from the pool and deck driplines to the ambulatory mean high tide line. The recordation of this new easement will aid in defining the public's right to access on the sandy beach at this location and will resolve the issue regarding condition compliance with the previous permit for the rock revetment. In addition, the new lateral access easement will no longer allow for a 10 foot privacy buffer. As explained above, the proposed pool is located entirely above the rock revetment that was approved in 1985. The only potential impact on lateral access pursuant to the CSLC's current easement from the proposed pool is in the event that, at some time in the future, the foundation of the residence will be upgraded or replaced and the revetment will no longer be necessary and will be removed. If this should occur, the pool would remain in its proposed location, which is approximately 16 feet landward of the previously approved deck. Therefore, the potential impact from the proposed pool will be a reduction of beach available for lateral access under the CSLC's existing easement by 16 feet, or by six feet if the privacy buffer is not considered in this calculation. However, the proposed pool is consistent with the stringline used by the Commission to determine the appropriate seaward extent of structures in developed beachfront areas. In addition, the 16 feet of beach occupied by the swimming pool, spa, and decking will only have an infrequent impact on lateral access during big storms. Further, the proposed pool is located substantially landward of the most landward mean high tide line that was surveyed for this site in 1928. The available information regarding the site also indicates that while the mean high tide line oscillates on a seasonal basis, the width of the beach has been fairly consistent and stable. Based on these factors, the Commission finds that approval of the proposed pool will not have a significant adverse impact on lateral public access at the site.

The applicant is not proposing any changes or reinforcements to the existing rock revetment, aside from the temporary removal of several individual rocks to install the concrete piles for the foundation system for the swimming pool, spa, and decking. In addition, in its report dated August 5, 2000, Pacific Engineering Group states that the proposed swimming pool would have an "insignificant effect on wave uprush and coastal processes." Furthermore, in its report dated June 12, 1998, Pacific Engineering Group states that the subject pool and deck extension will not be "exposed to wave uprush from non-storm wave run-up during high tides." That report also finds that the effect of the pool and deck "on the littoral coastal process and the adjacent properties is considered insignificant." In addition, that report also states that the proposed pool and deck will have a "negligible effect on littoral transport and beach sedimentation" and

that the "degree of coastal access, both lateral and vertical, will not appreciably change from present conditions."

However, several individual rocks from the existing rock revetment will need to be temporarily removed in order to construct the concrete pile foundation system for the proposed swimming pool, spa, and deck extension. Although the Commission in 1985 previously approved this rock revetment, if it were to be completely removed in order to construct the proposed development, such a complete removal and reconstruction would require a new coastal development permit. If the rock revetment were to be substantially removed and reconstructed, this would be interpreted to be demolition of the structure and construction of a new development under the Coastal Act, thereby triggering the requirement for a permit for both the demolition and new structure.

Further, in its report dated June 12, 1998, Pacific Engineering Group states:

The existing rock revetment can be left in place. Lateral coastal access would not change from present conditions. However, the rock would need to be temporarily removed and stockpiled to allow for the construction of the pool and deck. The revetment would then be reconstructed at the present location. New filter rock and 'B' rock would need to be added to the revetment due to anticipated loss of material during the temporary stockpiling of the rock.

Although this report states that the rock revetment will need to be removed and reconstructed in order to build the pool, spa, and decking, Commission staff discussed alternatives with the applicant's coastal engineer, Pacific Engineering Group, that would eliminate this substantial removal and reconstruction. In an oral discussion with Commission staff on August 23, 2001, however, a representative of Pacific Engineering Group stated that it would be possible to remove just those individual rocks on the top layer of the rock revetment in the direct location of the proposed concrete piles in order to install the concrete piles for the foundation system. The coastal engineer stated that once these individual top, large rocks are removed one at a time, it would be possible to bore through the remainder of the rock revetment in order to construct the concrete pile foundation system. As a result, he stated that only a few of the rocks would be temporarily removed and it would not be necessary to remove and reconstruct a substantial portion of the rock revetment, as was previously stated in the June 12, 1998, report.

In order to ensure that this alternative construction procedure is implemented, **Special Condition Eight (8)** requires the applicant to submit a coastal engineering report stating that the proposed development will not require substantial removal and rebuilding of the existing rock revetment and that only those individual rocks in the direct position of the proposed swimming pool piles will be removed. Further, **Special Condition Eight (8)** also requires those rocks temporarily removed for construction to be removed individually and replaced individually under the supervision of the coastal engineer. Additionally, under **Special Condition Eight (8)**, if a substantial portion of the existing rock revetment is removed in order to construct the proposed development (i.e., more than 45 to 50 percent), then the applicant will be required to apply for a new coastal

development permit for that rock revetment, as the demolition and reconstruction of it would be considered new development.

In addition, although 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, the approval of a shoreline protective device to protect new development, such as the proposed project, would not be required by Section 30235 of the Coastal Act. The construction of a shoreline protective device to protect a new development would conflict with Section 30253 of the Coastal Act, which states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. In addition, the construction of a shoreline protective device to protect new development would also conflict with Section 30251 of the Coastal Act, which states that permitted development shall minimize the alteration of natural land forms, including sandy beach areas which would be subject to increased erosion from such a device.

To ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act and to ensure that the proposed project does not result in future adverse effects to coastal processes, **Special Condition Seven (7)** requires the applicant to record a deed restriction that would prohibit the applicant, or future landowners, from constructing new or additional shoreline protective works for the purpose of protecting any of the development proposed as part of this application including the swimming pool, spa, decking, or new septic system. In addition, pursuant to **Special Condition Seven (7)**, by acceptance of this permit, the applicant agrees to remove the development authorized by this permit, including but not limited to, the swimming pool, spa, decking, or septic system, and any other future improvements, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. **Special Condition Seven (7)** also requires that in the event that portions of the development fall to the beach before they are removed, the landowner must remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site, which would require a coastal development permit.

In addition, the applicant's coastal engineer has stated that the existing rock revetment is only needed to protect the old, timber pile foundation system for the existing residence. Further, the applicant originally applied to construct new additions to the residence, which the geotechnical engineer stated could require a new, upgraded foundation system. However, when Commission staff raised these concerns with respect to the current application, the proposed additions to the residence were withdrawn from the application. If at some point, the foundation system for the residence is upgraded or reconstructed or if the house is demolished and rebuilt, this rock revetment may no longer be required. As a result, since the swimming pool, spa, and deck are proposed physically above the rock revetment, this development must be constructed in a manner in which the future removal of the rock revetment will not be precluded.

Commission staff confirmed in oral conversations with the applicant's coastal engineer on August 22, 2001 that following construction of the proposed development, it will still be possible to remove the rock revetment in the future. As a result, **Special Condition Eight (8)** requires the applicant to submit a report by the coastal engineer stating that the proposed development, including the swimming pool, spa, and decking, will not interfere with or hinder the future removal of the existing rock revetment if the existing timber pile foundation system supporting the existing residence is replaced or upgraded or the residence is substantially demolished and remodeled, so that the rock revetment is no longer required.

Furthermore, apparently when the rock revetment was constructed in 1985, fill dirt was placed on top of the rock revetment and a lawn was planted on top of that fill and the rock revetment. This development was not approved under any previous permits and is in the location of the proposed development. The applicant has proposed to remove this unpermitted fill and lawn pursuant to the proposed development. As a result, to ensure that this unpermitted development is resolved, **Special Condition Nine (9)** requires the applicant to remove the fill and lawn placed on top of the rock revetment located seaward of the existing single family residence within 90 days of the issuance of this permit. Lastly, to ensure that this material is disposed of properly, **Special Condition One (1)** requires the applicant to remove from the beach and rock revetment area any and all debris resulting from the construction period, ensuring that the fill and lawn material will be properly disposed of off site.

In addition, the 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 the applicant clearly understands that such postings are not permitted without a new coastal development permit, it is necessary to impose **Special Condition Three (3)** to ensure that similar signs are not posted on or near the proposed project site. The Commission finds that if implemented, **Special Condition Three (3)** will protect the public's right of access to the sandy beach below the mean high tide line and along the public lateral access easement.

As stated previously, the Commission has in past permit actions developed the stringline policy as a means of controlling seaward encroachment of residential structures on a beach and to ensure maximum public access and public views. 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 the case of this project, the proposed development will be located landward of the appropriate stringlines. Additionally, although the proposed development will be visible from Carbon Beach, it will not be visible from Pacific Coast Highway. As a result, the Commission finds that the

proposed project will not result in the seaward encroachment of existing single family residence and the proposed development will meet the requirements of the building and deck stringlines, thereby minimizing adverse effects to public access and views.

In sum, the interior remodel will not extend seaward edge of the single family residence, the swimming pool, spa, and decking will not extend beyond the deck stringline, and no new shoreline protective devices are proposed. In addition, as the applicant is proposing a new public lateral access easement, the development will not substantially preclude any existing vertical public access easements or lateral public access rights. Furthermore, the proposed development will not adversely affect public coastal views, as it is consistent with the community character and within the stringlines.

For all of these reasons, 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, and 30212.

D. Water Quality

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase 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 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, minimizing alteration of natural streams.

As described above, the proposed project includes the construction of a concrete pile supported swimming pool, spa, and deck; interior remodel; and an upgraded alternative private sewage disposal system. The proposed development will result in increased impervious surface on the subject site. Further, use of the site for residential purposes introduces potential sources of pollutants such as petroleum, household cleaners and pesticides, as well as other accumulated pollutants from rooftops and other impervious surfaces.

The proposed development will result in an increase in impervious surface, which in turn may decrease the infiltrative function and capacity of existing permeable land on

site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons such as oil and grease from vehicles, heavy metals, synthetic organic chemicals such as paint and household cleaners, soap and dirt from the washing of vehicles, dirt and vegetation from yard maintenance, litter, fertilizers, herbicides, pesticides, and bacteria and pathogens from animal waste. The discharge of these pollutants into 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; 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, as most storms in this region are small in nature. Additionally, storm water 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 (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 to be sized based on design criteria specified in **Special Condition Six (6)**, and finds 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.

Further, construction activity on a sandy beach, such as the proposed project, will result in the potential generation of debris and 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, 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. Further, any excavated materials that are placed in stockpiles are subject to increased erosion. Additional landform alteration would also result if excavated materials were to be retained on site.

In order to minimize landform alteration and adverse effects to the marine environment, **Special Condition One (1)** 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, and that all debris resulting from the construction period is promptly removed from the sandy beach area. Further, any excess rock and all excavated material and lawn must be removed to an appropriate location outside of the coastal zone. Should the dumpsite be located in the coastal zone, an amendment to this coastal development permit or a new coastal development permit shall be required.

Finally, the proposed development includes the installation of an upgraded private sewage disposal system, including secondary treatment. The existing 1,200 gallon septic tank located in the courtyard between the single family residence and Pacific Coast Highway will be replaced with a 1,500 gallon septic tank. The new septic system will likewise be located in the courtyard area between the residence and Pacific Coast Highway. At its most seaward location, the sewage disposal system will be located approximately 50 feet from the Pacific Coast Highway right-of-way line. As a result, according to the calculations prepared by the applicant's coastal engineer, the septic system will be outside of the maximum wave uprush limit line, which is located approximately 52 feet from Pacific Coast Highway. In addition, the applicant's environmental health consultant performed percolation tests and evaluated the proposed septic system. The report concludes that the site is suitable for the septic system and there would be no adverse impact to the site or surrounding areas from the use of a septic system. Finally, the City of Malibu Environmental Health Department has given conceptual approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources.

Therefore, the Commission finds that the proposed project, as conditioned to incorporate and maintain a drainage and polluted runoff control plan and construction responsibilities, is consistent with Section 30231 of the Coastal Act.

E. Violations

As discussed previously, development has occurred on the subject site in violation of Coastal Development Permit 5-85-695 (Landsburg) and the Coastal Act. In order to resolve these violations and proceed with the development proposed in this application, the applicant is proposing an offer to dedicate a new lateral public access easement over the southern beachfront portion of the lot, as measured from the pool and deck

driplines to the ambulatory mean high tide line and an assumption of risk deed restriction for the proposed development and existing development on the site. These two previously unmet special conditions will be met under the requirements of **Special Conditions Four (4) and Five (5)** of this permit. In addition, fill was placed on top of the rock revetment that was approved by the Commission in 1985 and a lawn area was planted on top of that fill, without the benefit of a coastal development permit. In order to implement the applicant's proposal to remove the fill and lawn above the rock revetment, **Special Condition Nine (9)** requires this fill and lawn to be removed by the applicant within 90 days of the issuance of this permit.

In order to further ensure that the violation portions of the subject site related to the proposed development are resolved in a timely manner, **Special Condition Ten (10)** states that the Commission may proceed with an enforcement action under Chapter 9 of the Coastal Act if the applicant does not satisfy all conditions that are prerequisites to the issuance of this permit within 120 days of Commission action.

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

F. Local Coastal Program

Section 30604 of the Coastal Act states:

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 development 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 of Malibu'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).

G. CEQA

Section 13096(a) of the 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 that 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.

Location Map

4452 | 2 | 1992
SCALE 1" = 50'

(23)

RECEIVED
JUN 08 2000

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

(24)

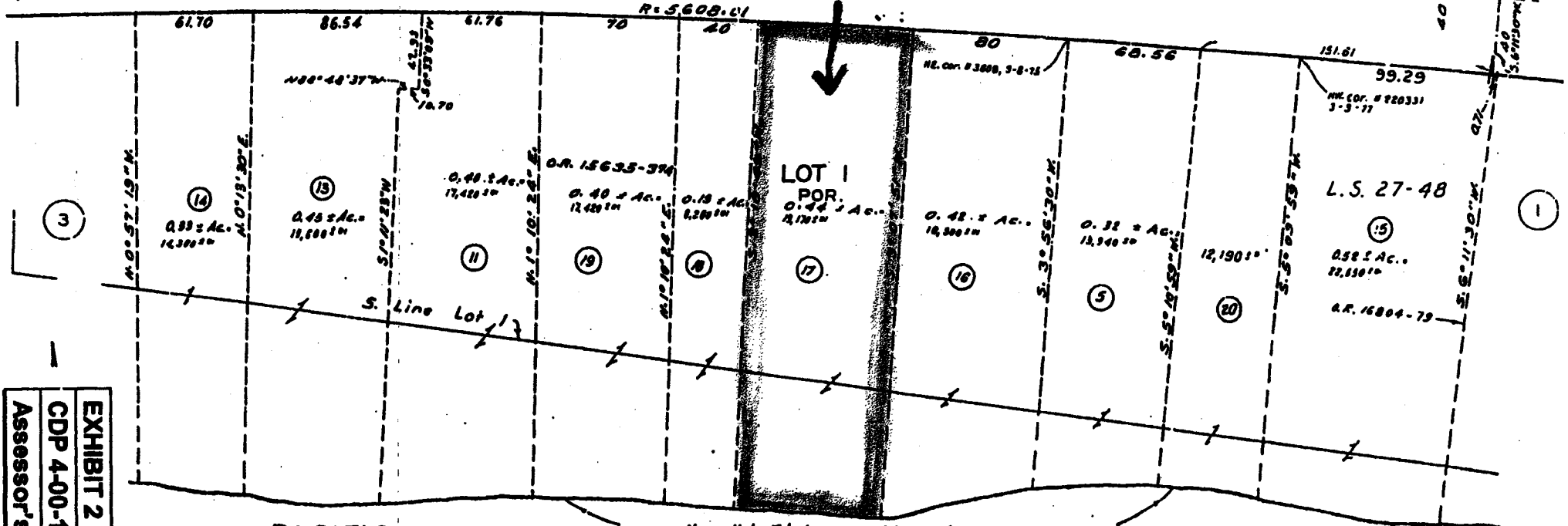
PACIFIC COAST

R.M. 18658

R.M. 11260-3

HWY.

SUBJECT SITE



PACIFIC

LAND OF MATTHEW KELLER
IN THE RANCHO TOPANGA MALIBU SEQUIT

R.F. 534

OCEAN

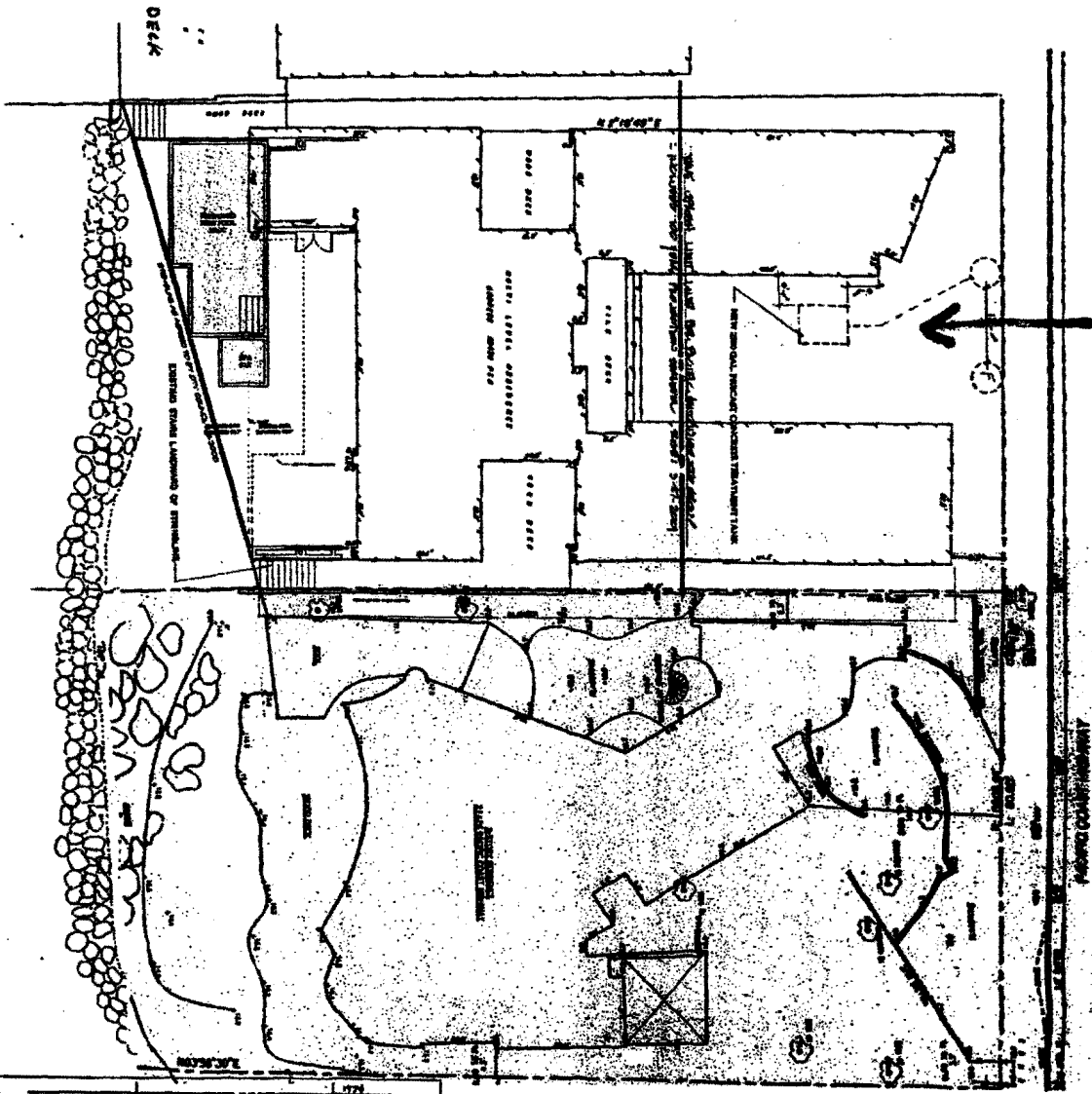
IV. ASSMT. SEE:

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

EXHIBIT 2
CDP 400-135 (Perez)
Assessor's Parcel Map

11

PERFORMING ARTS



PACIFIC

RECORD MARK OF 2007
EL = 13.21'

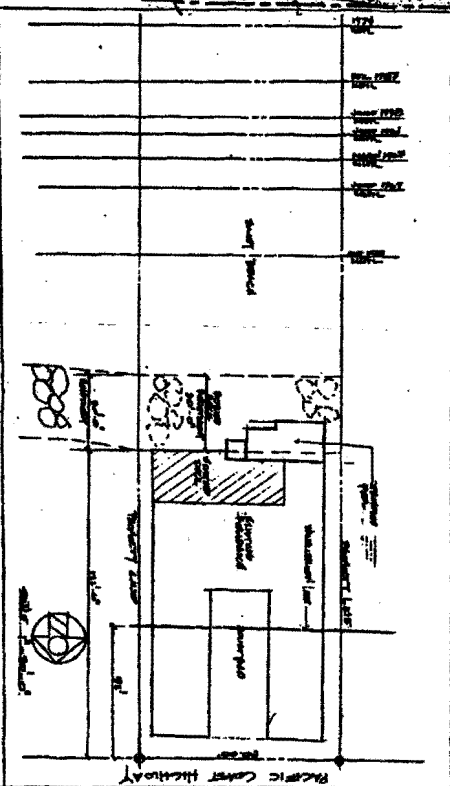
SECTIONS

[illegible]

6973 S.F.

ESTIMATED FLOOR LIVING SPACE	437.0 SQ. FT.
ESTIMATED 2ND FLOOR LIVING SPACE	208.1 SQ. FT.
ESTIMATED GARAGE	207.0 SQ. FT.
TOTAL ESTIMATED FLOOR AREA	852.1 SQ. FT.

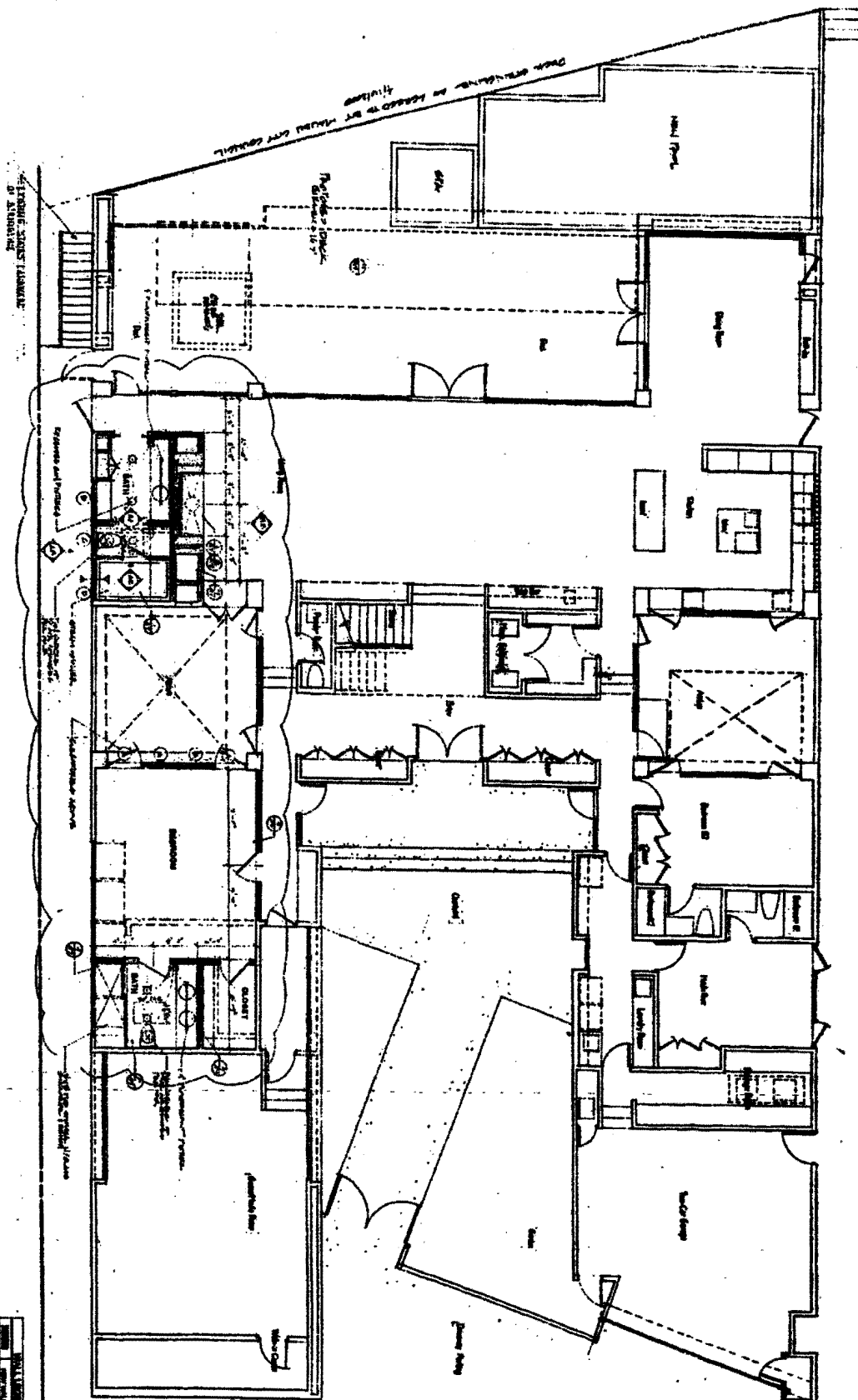
THE ABOVE IS A SUMMARY OF THE FACTS OF THE GROUP DATED JAN 24 1968. IT IS REQUESTED THAT YOU REVIEW THE GROUP DATED JAN 24 1968 AND ADVISE THE BUREAU OF THE RESULTS OF YOUR REVIEW.



BARSOCCHINI & ASSOCIATES, INC.
A R C H I T E C T S

Site Plan/Stringline Map

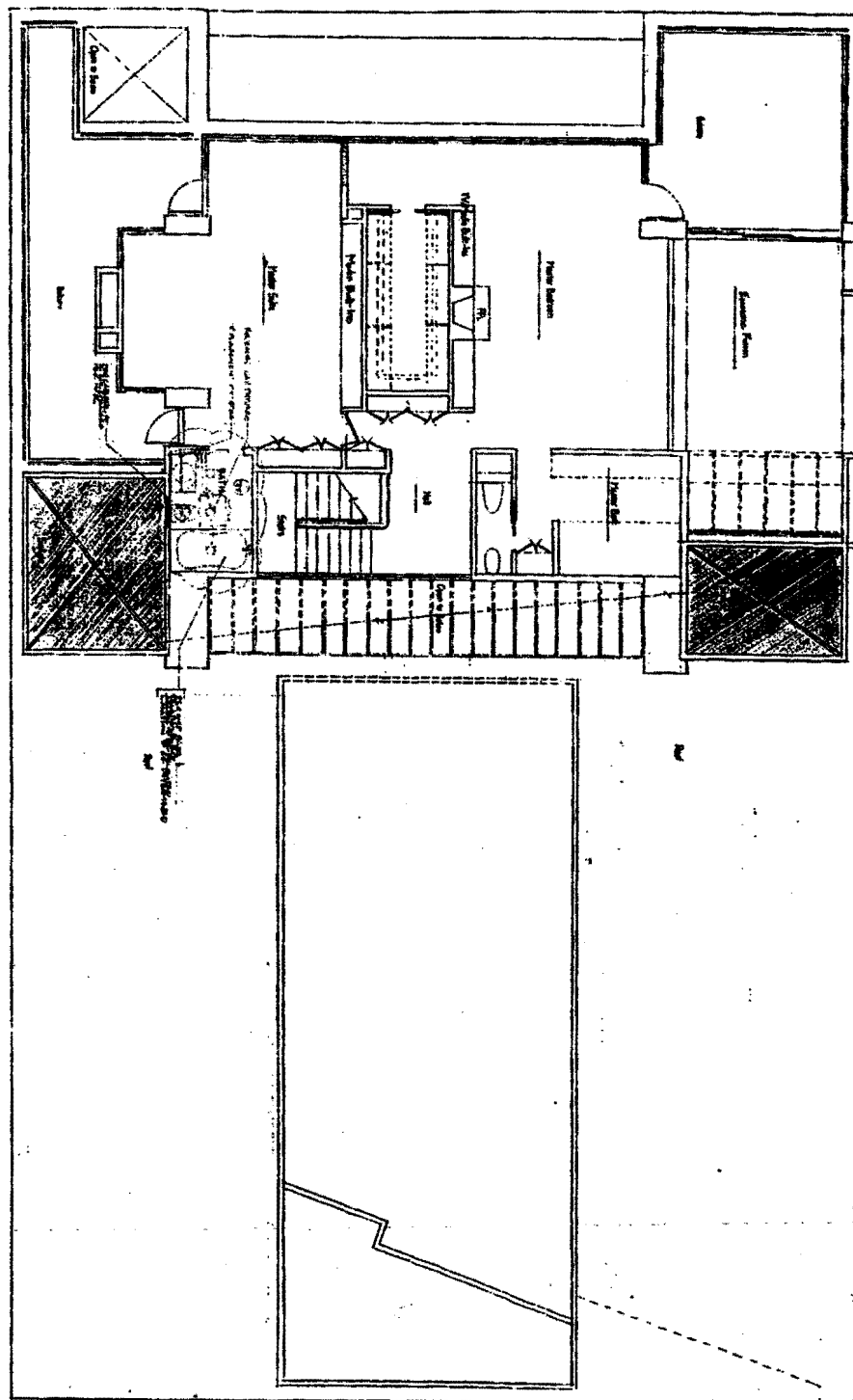
FLOOR PLAN

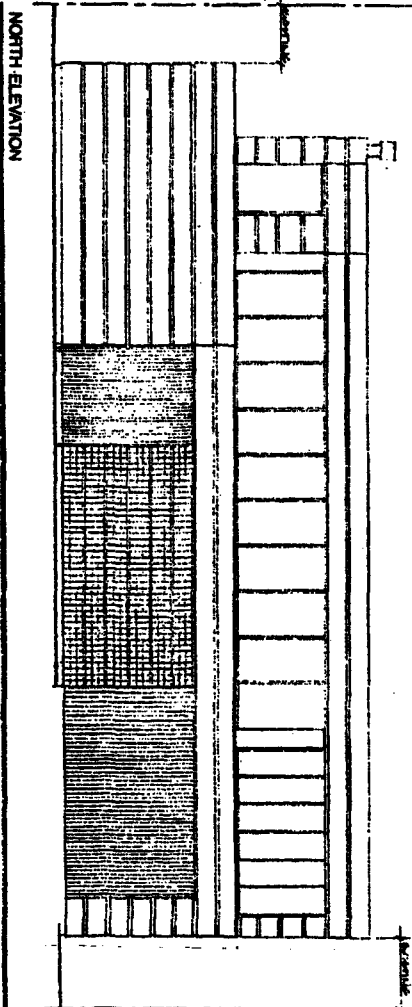


1/4\"/>

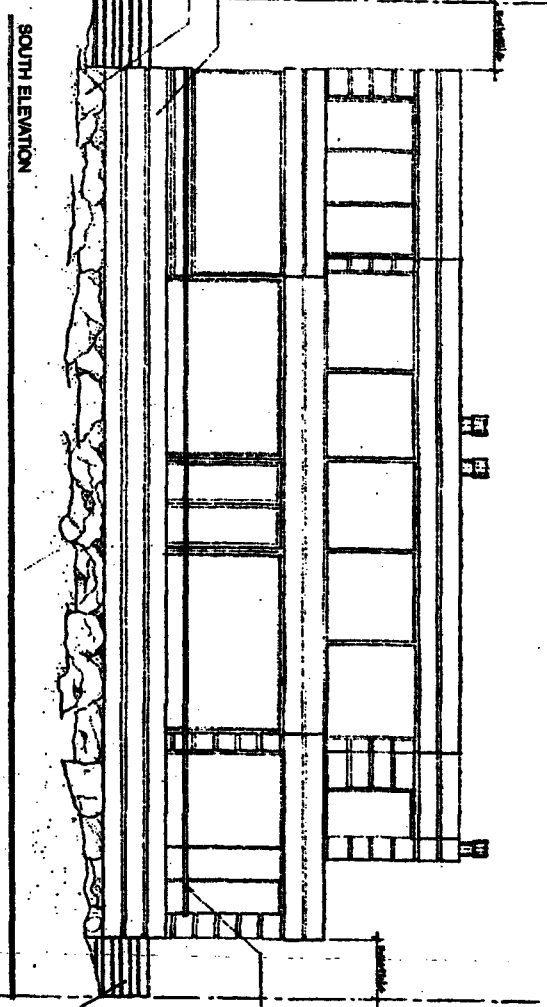
EXHIBIT 4
CDP 4-00-135 (Perez)
First Floor Plan

22-10-2011

[illegible]



NORTH ELEVATION



SOUTH ELEVATION

1'-0" = 1'-0" SCALE
 1'-0" = 1'-0" SCALE
 1'-0" = 1'-0" SCALE

EXHIBIT 6

CDP 4-00-135 (Perez)

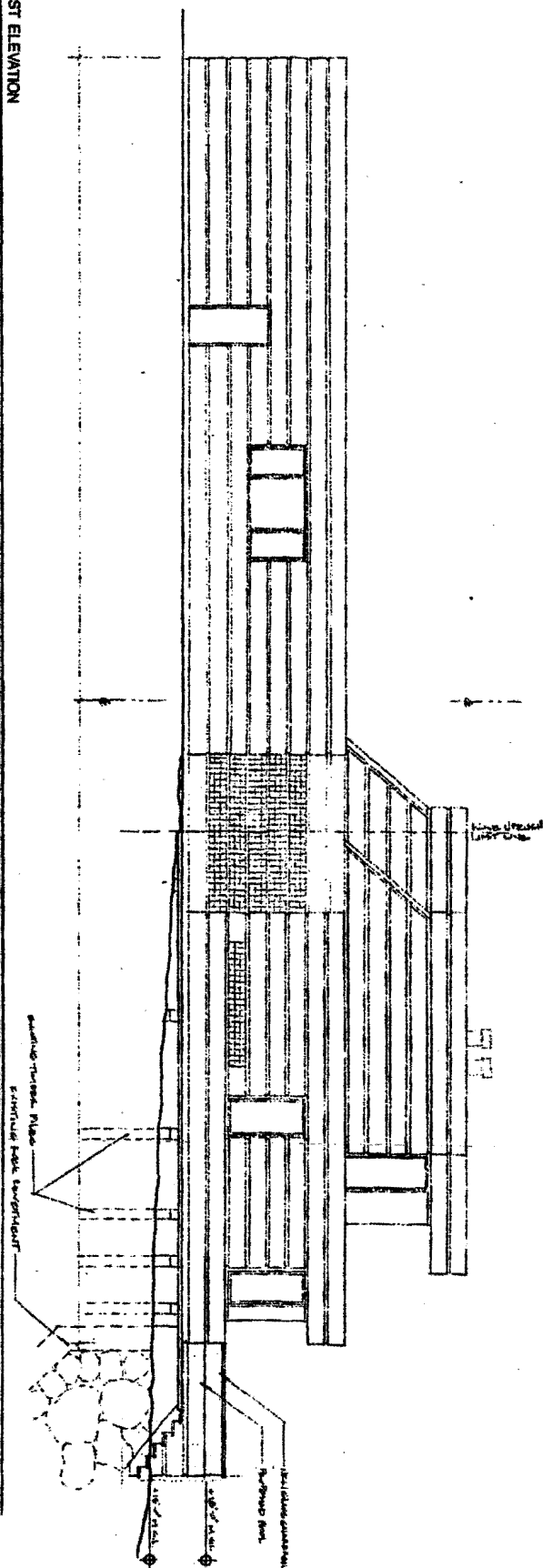
North and South Elevations

ELEVATIONS

BARSOCCCHINI & ASSOCIATES, INC.
ARCHITECTS
 MICHAEL E. BARSOCCCHINI, AIA - (303) 454-3625

PEREZ
 22432 Pacific
 Malibu, CA

WEST ELEVATION



EAST ELEVATION

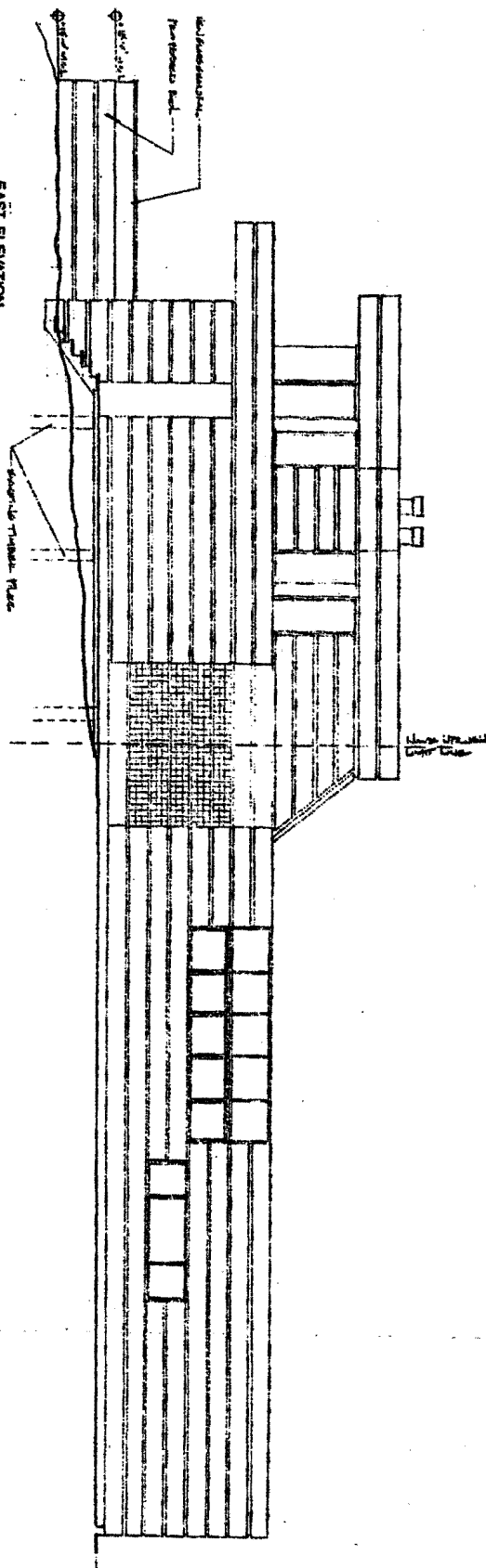
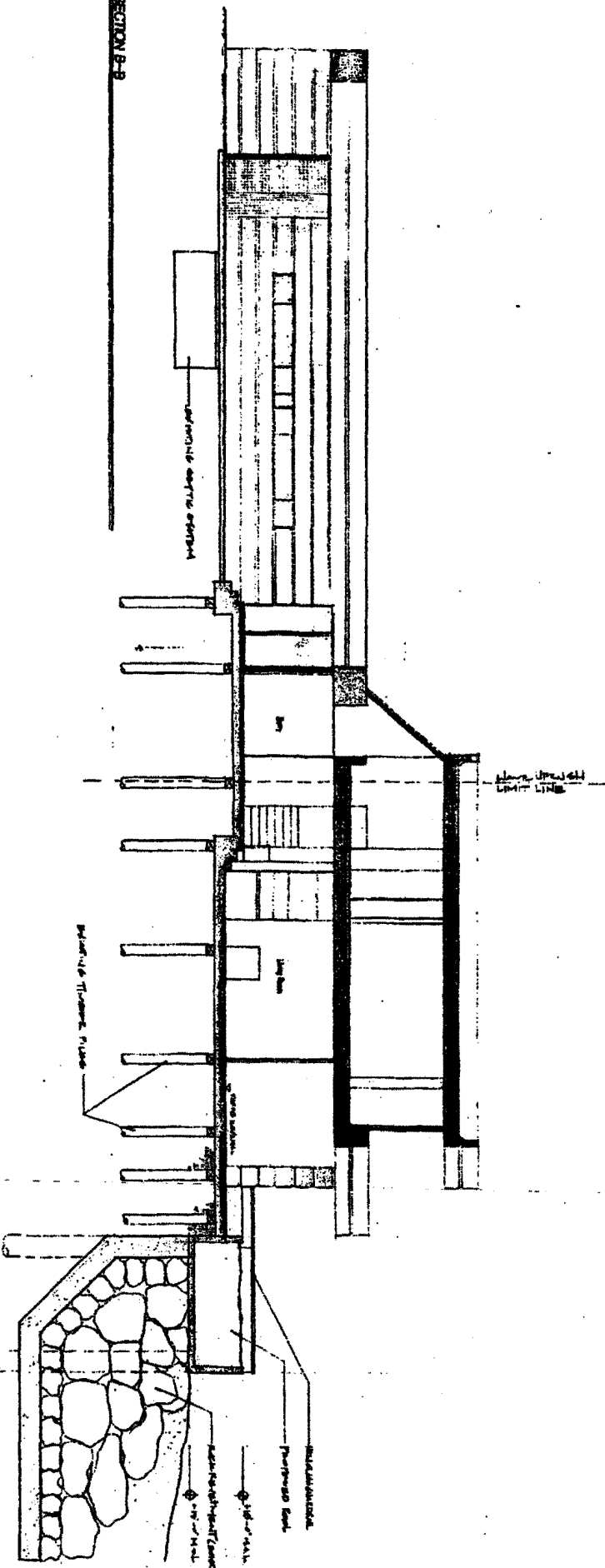


EXHIBIT 7

CDP 4-00-135 (Perez)

East and West Elevations

SECTION B-B



SECTION A-A

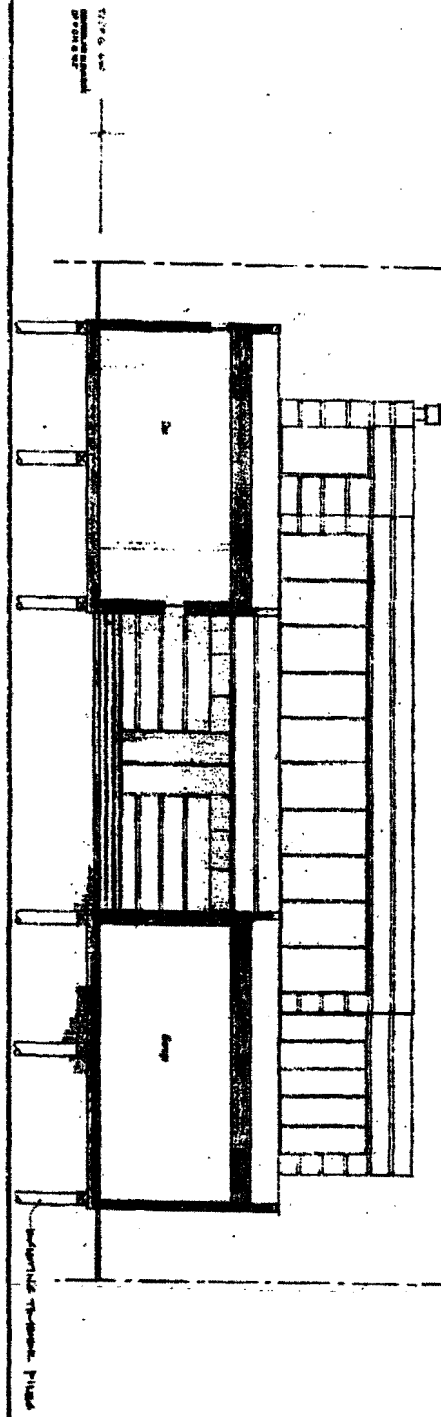


EXHIBIT 8
CDP 4-00-135 (Perez)
Cross Sections by Architect

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



May 10, 2000

PAUL D. THAYER, Executive Office
(916) 574-1800 FAX (916) 574-1811
*California Relay Service From TDD Phone 1-800-735-2922
from Voice Phone 1-800-735-2929*

Contact Phone: (916) 574-1892
Contact FAX: (916) 574-1925

File Ref: SD 98-08-13.5

Michael Barsocchini, AIA
Barsocchini & Associates, Inc.
3502 Coast View Drive
Malibu, CA 90265

Dear Mr. Barsocchini:

**SUBJECT: Coastal Development Project Review for Deck and Swimming Pool
Addition and Second Story Expansion at 22432 Pacific Coast
Highway, Malibu**

This letter is a follow up to our letter of April 28, 1999, concerning the subject project. You have requested our review of a revised site plan dated April 17, 2000, which locates the swimming pool and deck further landward than the previous plan. The plan indicates that the string line was approved by the Malibu City Council on April 6, 2000. Based on our review of those plans, the swimming pool and deck appear to be in conformance with the string lines established by the residences/decks on either side. Our previous statement that the CSLC presently asserts no claims that the project intrudes onto sovereign tide and submerged lands remains unchanged.

However, as you are aware, and as indicated in our April 28th letter, this property is subject to a 1983 Irrevocable Offer to Dedicate Public Access Easement accepted by the California State Lands Commission (CSLC) in 1996. You have also provided us with a copy of an Administrative Permit (5-85-695) issued by the California Coastal Commission (CCC) on November 1, 1985, to the previous property owners (Alan and Linda Landsburg) authorizing the placement of a rock revetment seaward of the then existing residence. That permit also required the recordation of an Irrevocable Offer to Dedicate Public Access Easement for public access and passive recreational use along the shoreline. It is unclear whether the latter easement was ever recorded. Therefore, our position relative to the project's impact on the public access easement(s) as stated in our April 28th letter, attached hereto as reference, remains unchanged.

EXHIBIT 10 (page 1 of 2)
CDP 4-00-135 (Perez)
Letter from CSLC dated 5/10/00

May 10, 2000

If you have any questions, please contact Jane E. Smith, Public Land Management Specialist, at (916) 574-1892.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Lynch", written over a large, loopy initial "R".

Robert L. Lynch, Chief
Division of Land Management

Attachment

cc: Craig Ewing, City of Malibu, w/attachment

EXHIBIT 10 (page 2 of 2)
CDP 4-00-135 (Perez)
Letter from CSLC dated 5/10/00

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



ROBERT C. HIGHT, Executive Officer
California Relay Service From TDD Phone 1-800-735-2925
from Voice Phone 1-800-735-2925

Contact Phone: (916) 574-1892
Contact FAX: (916) 574-1925

April 28, 1999

File Ref: SD 98-08-13.5

Wayne T. Chevalier
Barsocchini & Associates
3502 Coast View Drive
Malibu CA 90265

Dear Mr. Chevalier:

SUBJECT: Coastal Development Project Review for Deck and
Swimming Pool Addition and Expansion to Second Story of
Existing Residence at 22432 Pacific Coast Highway, Malibu

This is in response to your request on behalf of your client, Charles Perez, for a determination by the California State Lands Commission (CSLC) whether it asserts a sovereign title interest in the property that the subject project will occupy and whether it asserts that the project will intrude into an area that is subject to the public easement in navigable waters.

The facts pertaining to your client's project, as we understand them, are these:

Your client proposes to construct a new first floor deck and swimming pool and expand the second floor of an existing single family residence at 22432 Pacific Coast Highway in Malibu. The second floor expansion will be located within the footprint of the existing residence. This is a developed stretch of beach with residences both up and down coast. From the plans and photographs submitted, the new first floor deck and swimming pool will be sited approximately 16 - 20 feet further seaward than the existing deck. The string line on your plans has been drawn from the nearest corner of the adjacent deck on the west and a deck three lots to the east, not the immediately adjacent deck to the east. You indicate that the string line has been approved by the City of Malibu Planning Department. We are, however, unsure whether this project complies with the established string line policy of the California Coastal Commission (CCC) as we understand it to be. Therefore, we anticipate that any adjustment of the location of the pool and deck, if necessary, will be worked out to the mutual satisfaction of your client and the CCC. The plans also reflect

EXHIBIT 11 (page 1 of 2)

CDP 4-00-135 (Perez)

Letter from CSLC dated 4/28/99

April 28, 1999

existing rocks and approximately one to two feet of a wooden deck on the west side, seaward of the string line. It is not clear when the rocks were put in and/or whether the CCC ever permitted them.

We do not at this time have sufficient information to determine whether the proposed pool, deck and existing rocks intrude upon state sovereign lands. Development of information sufficient to make such a determination would be expensive and time-consuming. We do not think such an expenditure of time, effort, and money is warranted in this situation, given the limited resources of this agency and the circumstances set forth above. Accordingly, the CSLC presently asserts no claims that the project intrudes onto sovereign tide and submerged lands. This conclusion is without prejudice to any future assertion of state tideland ownership, should circumstances change, or should additional information come to our attention.

However, a review of our files indicates that this property is subject to an Irrevocable Offer to Dedicate Public Access Easement recorded in 1983 by previous property owners, Alan and Linda Landsburg. This easement was accepted by the CSLC in 1996. The dedication provides for a public access easement which shall be "... a 25 foot wide strip of beach as measured inland from the water line (document shall state that the daily high water line is understood by both parties to be ambulatory from day to day, as will the 25 foot wide strip of dry, sandy beach). In no case shall said access be closer than 10 feet from the approved development."

Based on the foregoing, we have concluded that at certain times of the year, the existing rocks and the proposed swimming pool may intrude into, and interfere with, the public access easement accepted by the CSLC. Therefore we object to the project as proposed. We understand that your clients are willing to consider recording a new public access easement that would more clearly define the public's rights on the beach at this location. CSLC staff would be willing to work with CCC staff in determining whether the recordation of a new public access easement would be appropriate as part of the CCC's consideration of the proposed project.

If you have any questions, please contact Jane E. Smith, Public Land Management Specialist, at (916) 574-1892.

Sincerely,



Robert L. Lynch, Chief
Division of Land Management

cc: Craig Ewing, City of Malibu


EXHIBIT 11 (page 2 of 2)

CDP 4-00-135 (Perez)

Letter from CSLC dated 4/28/99

FAX TRANSMISSION

LAW OFFICES OF FRANK P. ANGEL
10851 WEST PICO BOULEVARD
THIRD FLOOR
LOS ANGELES, CALIFORNIA 90064-2126
TEL: (310) 470-9897
FAX: (310) 474-7083

To: John Ainsworth
Fax #: (805) 641-1732
From: Frank P. Angel, Esq. 
Re: Perez Project - 22432 PCH Malibu

Date: October 26, 1999
Pages: 8, including this cover sheet

COMMENTS: Documents per our telephone discussion attached (including 1985 administrative permit accepted by the then-applicant, my fax letter to Jane Smith of today, and my letter to Craig Ewing of September 23, 1989. Please keep me fully notified of all further determinations your office or the Legal Division may make in this matter, and any other requests made to the Ventura District Office seeking elimination of reserved public lateral beach access areas to accommodate new development on beaches seaward of existing structures. Please also be advised that my office formally notified Mr. Charles Perez' attorney (Ms. Diane C. De Felice from the Law Offices of William D. Ross) and his architect (Mr. Michael Barsocchini) of the 1985 permit and the access permit condition. (It was mailed to them on September 23.)

Thank you for your assistance.

THE INFORMATION CONTAINED IN THIS FAX TRANSMISSION MAY BE PROTECTED BY THE ATTORNEY-CLIENT AND/OR ATTORNEY WORK PRODUCT PRIVILEGE(S). IT IS INTENDED FOR THE USE OF THE NAMED RECIPIENT, AND THE PRIVILEGES PROTECTING THIS INFORMATION ARE NOT WAIVED BY THIS FAX TRANSMISSION. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND BY RETURNING THE FAX TRANSMISSION TO US AT THE ABOVE ADDRESS VIA U.S. MAIL.

EXHIBIT 12 (page 1 of 8)
CDP 4-00-135 (Perez)
Facsimile from Frank Angel, Esq.

NOV 25 1985

STATE OF CALIFORNIA—THE RESOURCES AGENCY

CALIFORNIA

GEORGE DEURMEHAN Governor

CALIFORNIA COASTAL COMMISSION SOUTH COAST DISTRICT

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90803
(213) 890-5071

Page 1 of

Date: November 1, 1985

Permit Application No. 5-85-695 PE:WR

ADMINISTRATIVE PERMIT

APPLICANT: Alan Landsburg

PROJECT DESCRIPTION: Placement of rock revetment seaward of single family residence.

PROJECT LOCATION: 22432 Pacific Coast highway

EXECUTIVE DIRECTOR'S DETERMINATION:

Pursuant to PRC Section 30624, the Executive Director hereby determines that the proposed development, subject to Standard and Special Conditions as attached, is in conformity with the provisions of Chapter 3 of the Coastal Act of 1976, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3, and will not have any significant impacts on the environment within the meaning of the California Environmental Quality Act. Any development located between the nearest public road and the sea is in conformity with the public access and public recreation policies of Chapter 3.

Additional reasons for this determination, and for any special conditions, may be discussed on the reverse (Page 2).

NOTE: The Commission's Regulations provide that this permit shall be reported to the Commission at its next meeting. If one-third or more of the appointed membership of the Commission so request, a permit will not be issued for this permit application. Instead, the application will be removed from the administrative calendar and set for public hearing at a subsequent Commission meeting. Our office will notify you if such removal occurs.

This permit will be reported to the Commission at the following time and place:

Thursday, November 21, 1985 9:00 a.m.

Holiday Inn-LAX 9901 La Cienega Blvd, Los Angeles Ca. 90045

IMPORTANT - Before you may proceed with development the following must occur:

For this permit to become effective you must sign Page 2 of the enclosed duplicate acknowledging the permit's receipt and accepting its contents, including all conditions, and return it to our office. Following the Commission's meeting, and once we have received the signed acknowledgment and evidence of compliance with all special conditions, we will send you an authorization to proceed with development.

PETER DOUGLAS
Executive Director

by: *PDK*
Title: Staff Analyst

EXHIBIT 12 (page 2 of 8)
CDP 4-00-135 (Perez)
Facsimile from Frank Angel, Esq.

Permit Application No. 5-85-695STANDARD 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 this permit is reported to the Commission. 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. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. 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.
7. 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.

EXECUTIVE DIRECTOR'S DETERMINATION (continued):

See attached page.

SPECIAL CONDITIONS:

See attached page.

ACKNOWLEDGMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Alan W. Landis
Applicant's Signature
ALAN W. LANDIS

11-21-85
Date of Signing

EXHIBIT 12 (page 3 of 8)
CDP 4-00-135 (Perez)
Facsimile from Frank Angel, Esq.

page 3
5-85-695

EXECUTIVE DIRECTOR'S DETERMINATION.

A. Project Description. Applicant proposes to install an armored wedge of rock along the entire width of his property seaward of an existing structure. The wall extends and ties into a wall on east of the property. It extends 31 feet seaward onto the sandy beach and is 15 feet high.

B. Coastal Access. Based on Section 30210, 30211, and 30212 the Commission has required lateral access when seawalls are constructed. In numerous cases including 5-85-202 (Levee) 5-82-579 (Surfside Colony) and 5-84-298 (Polos) the Commission has found that revetments reduce the sand area available for public recreation and increase the rate of sand loss on the beaches. The effect of increased sand loss is that there is less beach available for recreation and other residents are obliged to construct revetments. Because of this and the Commissions mandate to provide maximum access, an offer of access to the interface of the sand and the rock will be required. Although many parts of Carbon Beach are privately held, there is some evidence that members of the public have walked on the beach in the past. The issuance of the permit is not to 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. Therefore the issuance of this permit will not reduce access and is consistent with Section 30211.

C. Hazards. No structure can protect a house from all storm waves. A reduced sandy area, resulting from more revetments and higher wave energy, reduces protection afforded to structures by the beach itself. This structure may increase the safety of the house. Section 30253 requires the Commission to minimize hazards. The Commission can approve this project only if the applicant assumes the risk from wave hazards.

SPECIAL CONDITIONS.

1. Lateral Access. Prior to transmittal 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 mean high tide line to the interface of the sand and the recetment. The part of the access area that is less than ten feet from the seaward edge of the existing residence and decks shall be limited to pass and repass only and only when storm conditions make areas farther from the residence impassable.

EXHIBIT 12 (page 4 of 8)
CDP 4-00-135 (Perez)
Facsimile from Frank Angel, Esq.

page 4
3-85-695

The document shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed. 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.

2. Assumption of Risk. Prior to transmittal of the permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from wave hazards and flooding and the applicant assume the liability from such hazards; (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards; and (c) the applicant understands that construction in the face of these known hazards may make him ineligible for public disaster funds or loans for repair, replacement, or rehabilitation of the property in the event of any damage these hazards. However nothing in this restriction is intended to make the development necessarily ineligible for disaster relief funds in the event of damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

After you have signed and returned the duplicate copy of this Administrative Permit, you will be receiving the legal forms to complete (with instructions) from our San Francisco office. When you receive the documents, if you have any questions, please call Debbie Benrubi at (415) 543-8555.

EXHIBIT 12 (page 5 of 8)
CDP 4-00-135 (Perez)
Facsimile from Frank Angel, Esq.

FAX TRANSMISSION

LAW OFFICES OF FRANK P. ANGEL
10951 WEST PICO BOULEVARD
THIRD FLOOR
LOS ANGELES, CALIFORNIA 90064-2126
TEL. (310) 470-9897
FAX (310) 474-7083

To: Jane Smith; Curtis Fossum

Date: October 26, 1999

Fax #: (916) 5741925

Pages: 7, including this cover sheet

From: Frank P. Angel, Esq. 

Re: Perez Project - 22432 PCH, Malibu

COMMENTS:

Copies of rock revetment coastal permit no. 5-85-695 and my letter to City of Malibu Planning Director dated September 23, 1999 are attached. As I mentioned to you, I urge the State Lands Commission to accept the 1985 extension of the lateral access easement, which makes sense since the Commission already accepted the easement granted in connection with the 1982 coastal permit which was for the residence itself.

As I further mentioned to you, development of a totally dispensable private deck, pool and spa within the reserved lateral access area, if approved, supported or endorsed in any way by the State Lands Commission or the Coastal Commission staff, would be an egregious, precedent-setting action - one least expected from these two agencies, and one making a hoax out of approved mitigation of the adverse impacts of shoreline structures on beaches and public lateral access to beaches. It would take away the very mitigation the Coastal Commission deemed necessary to allow approval of the coastal permits for the shoreline structures to begin with, and touted by it to the public as being necessary to mitigate these structures adverse effects.

Please keep me fully apprized of all your determinations in this matter or regarding any other attempt to take away public access mitigations to accommodate seaward extensions of new development. I thought the trend with the Coastal Commission was toward shoreline retreat. I can't imagine any benefit to the public or the environment from allowing the placement of new structures closer to the mean high tide line than existing structures already subject to wave action.

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EXHIBIT 12 (page 6 of 8)

CDP 4-00-135 (Perez)

Facsimile from Frank Angel, Esq.

LAW OFFICES OF
FRANK P. ANGEL
10881 WEST PICO BOULEVARD
THIRD FLOOR
LOS ANGELES, CALIFORNIA 90064-2226
TELEPHONE (310) 470-8897
FACSIMILE (310) 474-7083
E-MAIL FRANKANGEL@EARTHLINK.NET

September 23, 1999

Craig Ewing
City of Malibu Planning Director
23555 Civic Center Way
Malibu, CA 90265

Re: Perez Project -- Plot Plan Review No. 98-104

Dear Mr. Ewing:

This letter serves to confirm, as I indicated before the Planning Commission yesterday night, that as a condition of approval of the coastal development permit for the existing rock revetment on the Perez property (permit no. 5-85-695), located at 22432 Pacific Coast Highway, the prior property owner was required, consistently with the public access provisions of the California Coastal Act of 1976 (Pub. Resources Code, §§30210, 30211, 30212), to accept an irrevocable offer to dedicate a lateral public access easement along the entire width of the property, from the mean high tide line to the revetment. Furthermore, by the express terms of the public access permit condition, when storm conditions make public easement areas further from the residence impassable, "[t]he part of the access area that is less than ten feet from the seaward edge of the existing residence and decks" must be available to the public to pass and repass. (Special permit condition # 1.) The prior owner accepted this condition. (See enclosed copy of the Coastal Commission permit, as issued.) The condition runs with the land and is binding on all successors of the prior owner.

As I informed the Planning Commission and you, we urge you to refrain from drawing, or causing or allowing the drawing of, a new stringline for this ocean-fronting property, that would permit development of any pool or spa seaward of the seaward edge of the existing deck, because any such new development would obviously be located smack-dab within the area reserved for public access, and would directly interfere with the public's right to pass and repass. As such, the drawing of a new stringline seaward of the seaward edge of the existing deck would purport to allow an egregious violation of the cited coastal permit condition. (It also would create a public nuisance.) Hence, the only legally acceptable stringline to be applied to the Perez property for the proposed pool and spa is the line running along the seaward edge of

EXHIBIT 12 (page 7 of 8)

CDP 4-00-135 (Perez)

Facsimile from Frank Angel, Esq.

Craig Ewing
City of Malibu Planning Director
September 23, 1999

the existing deck. We urge you to accept that line. The City's Planning Director should not, through improper stringline drawing, become a party to violations of the Coastal Act or previously issued coastal development permits.

The Coastal Act sets civil penalties for violations of the Act itself or any previously issued coastal permit. Penalties for intentional and knowing violations range from \$1,000 to \$15,000 per day for each day in which the violation persists, and anyone may maintain a court action for the recovery of penalties. (Pub. Resources Code, §§30805, 30820, subds. (b), (c).) Copies of this letter (with enclosure) are provided to the applicant's architect, Mr. Michael E. Barsocchini, and his legal counsel, Ms. Diane C. De Felice, to serve as formal notice, or reminder, as the case may be, of the public access easement and its scope.

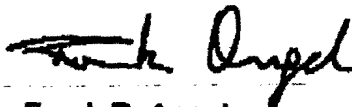
Also, should you draw a stringline seaward of the existing deck line without new California Environmental Quality Act (CEQA) review, a CEQA violation would result. Reliance on the CEQA review previously undertaken would be improper given the proposed structures' direct, previously undisclosed adverse impacts on public access. Thus, additional environmental review would have to be performed, consultation with the Coastal Commission and the State Lands Commission would have to occur, and a new environmental document would have to be prepared and circulated. Yet, notwithstanding CEQA compliance, the coastal permit violation would remain.

We continue to demand timely notification of any further determination or action in this matter. Also, please advise us when the applicant's appeal of the Planning Commission's decision will be heard by the City Council.

Should you have any further questions, please call.

Very truly yours,

LAW OFFICES OF FRANK P. ANGEL



Frank P. Angel

cc: Gary Timm, Assistant District Director, California Coastal Commission
South Central Coast Area Office
Richard R. Terzian, Esq., Interim City Attorney
Diane C. De Felice, Esq.
Michael E. Barsocchini, AIA

EXHIBIT 12 (page 8 of 8)

CDP 4-00-135 (Perez)

Facsimile from Frank Angel, Esq.

**PEREZ PROJECT: REVIEW OF PLANNING
DIRECTOR'S INTERPRETATION OF ZONING
REGULATIONS/PLOT PLAN REVIEW NO. 98-104**

EXHIBIT 13

CDP 4-00-135 (Perez)

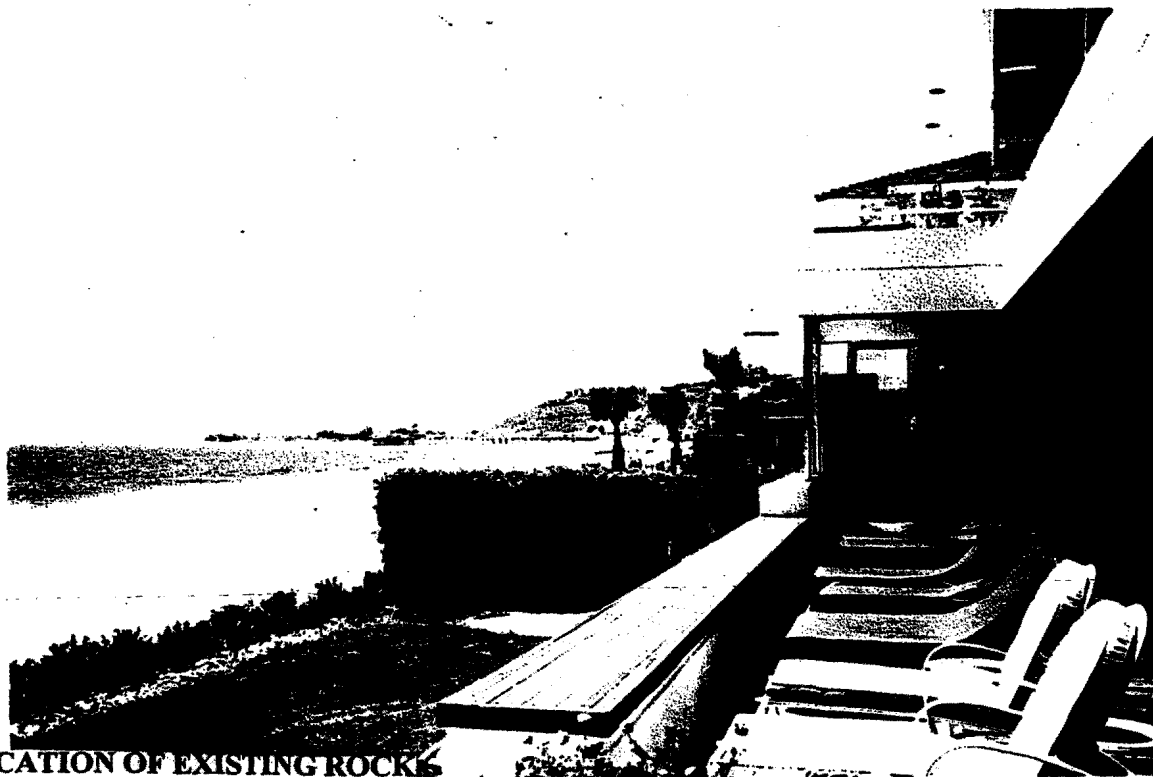
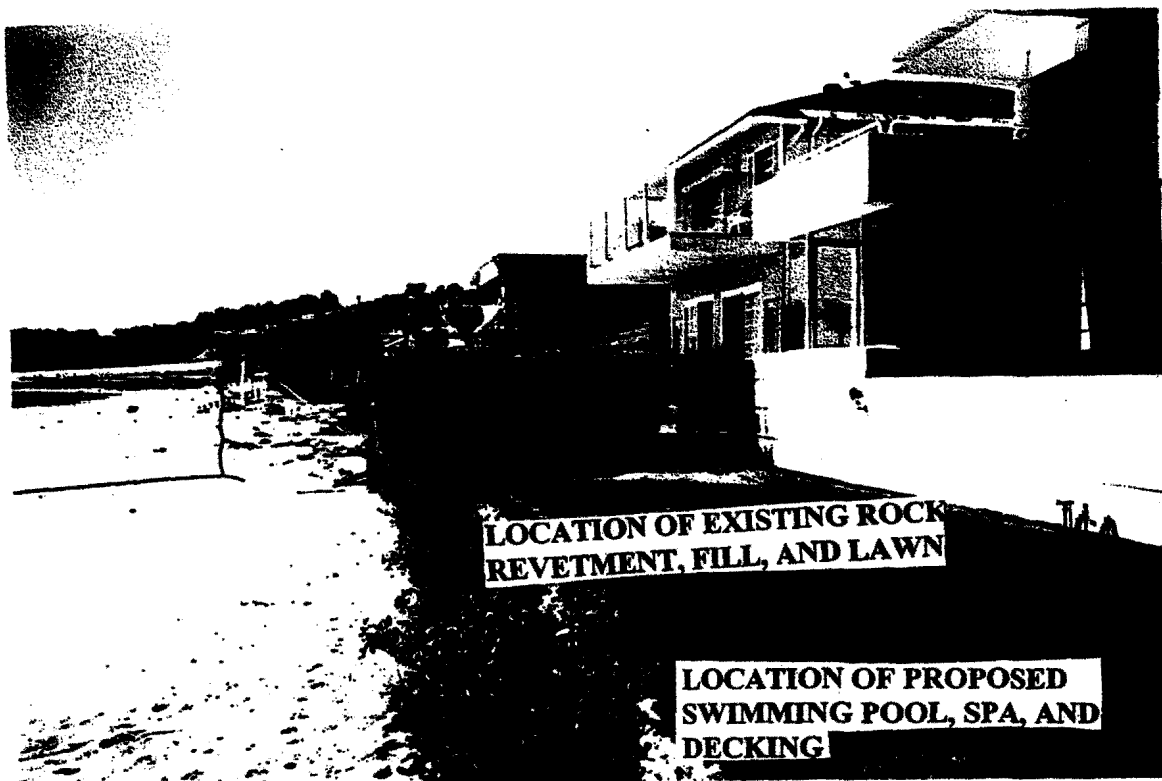
**Correspondence from Frank
Angel, Esq. received 2/28/99**



Wave uprush at the Perez residence, 22432 Pacific Coast Highway. Note scour and sand loss beneath the building itself, all landward of the location of the pool and spa, as proposed by the applicant.



Swimming pool destroyed due to wave action during 2/1998 El Niño storms. This pool was located at 22446 Pacific Coast Highway, on the lot next to the lot immediately to the west of the Perez lot.



**LOCATION OF EXISTING ROCK
REVETMENT, FILL, AND LAWN**

**LOCATION OF PROPOSED
SWIMMING POOL, SPA, AND
DECKING**

EXHIBIT 14

CDP 4-00-135 (Perez)

**Photo of Revetment, Lawn & Fill
where Pool, Spa & Deck are Proposed**

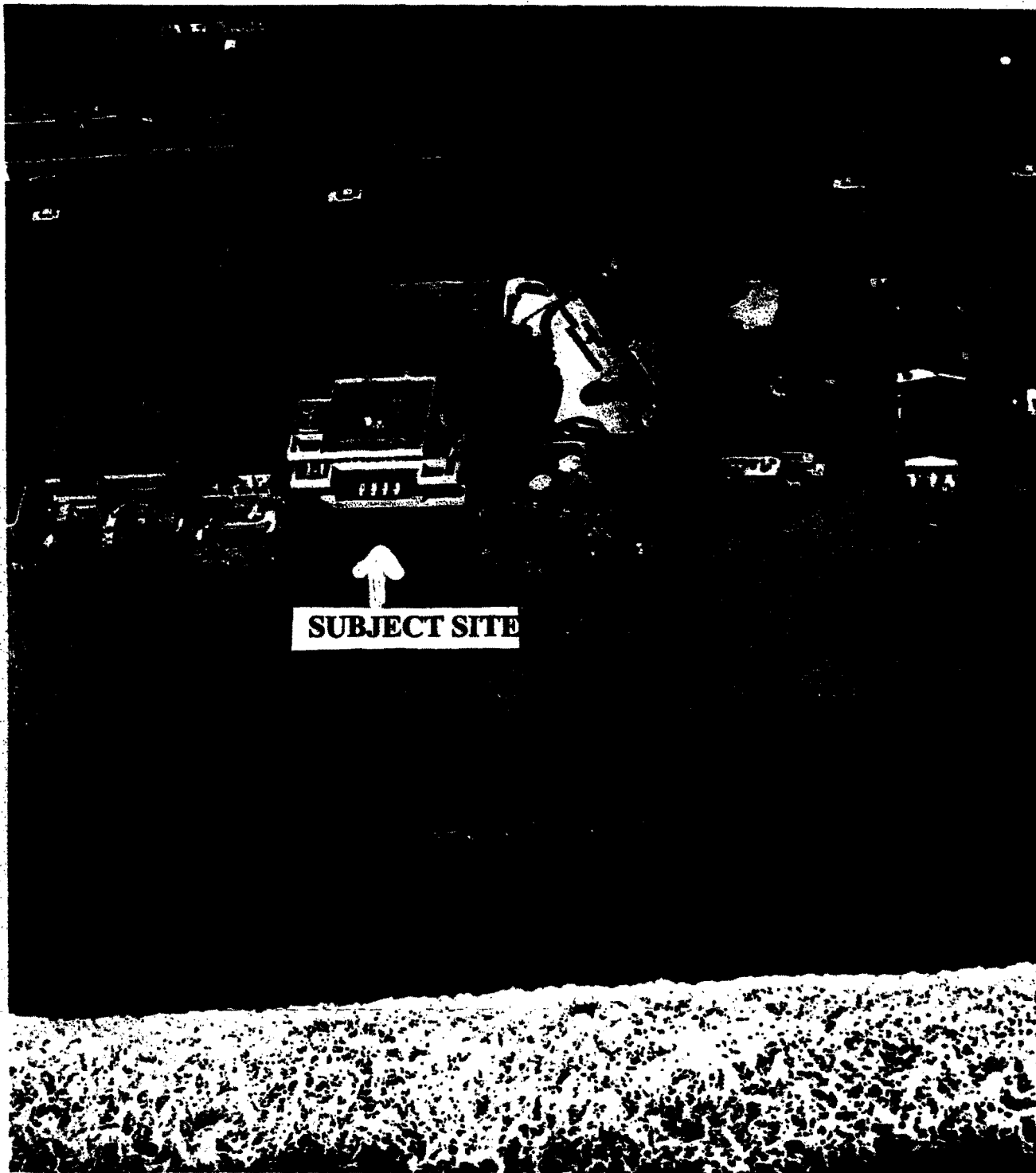


EXHIBIT 15

CDP 4-00-135 (Perez)

Aerial Photo of Subject Site

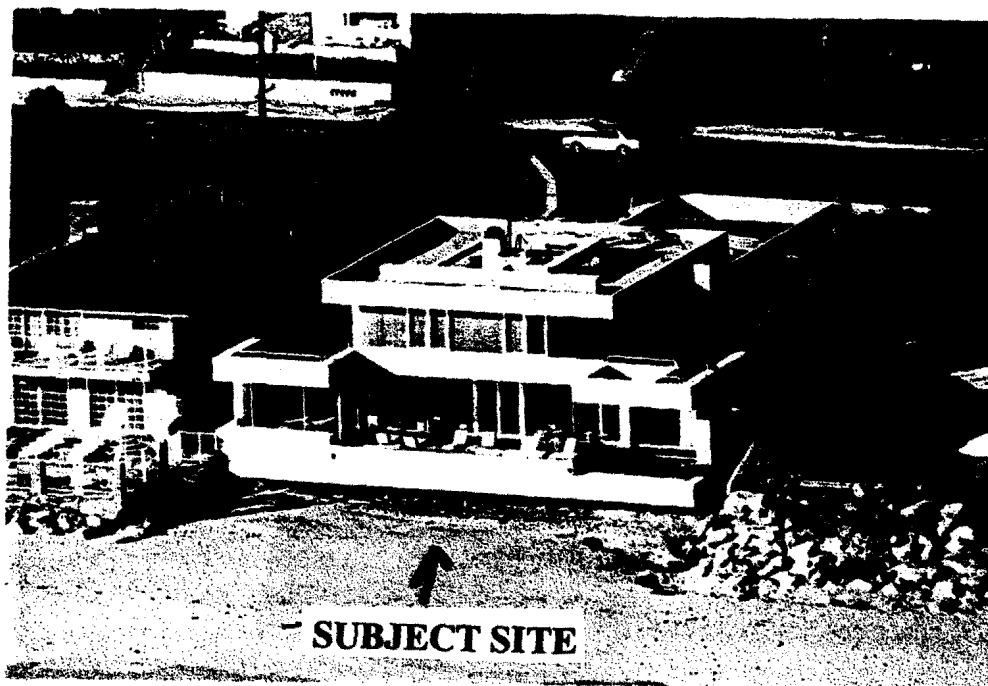


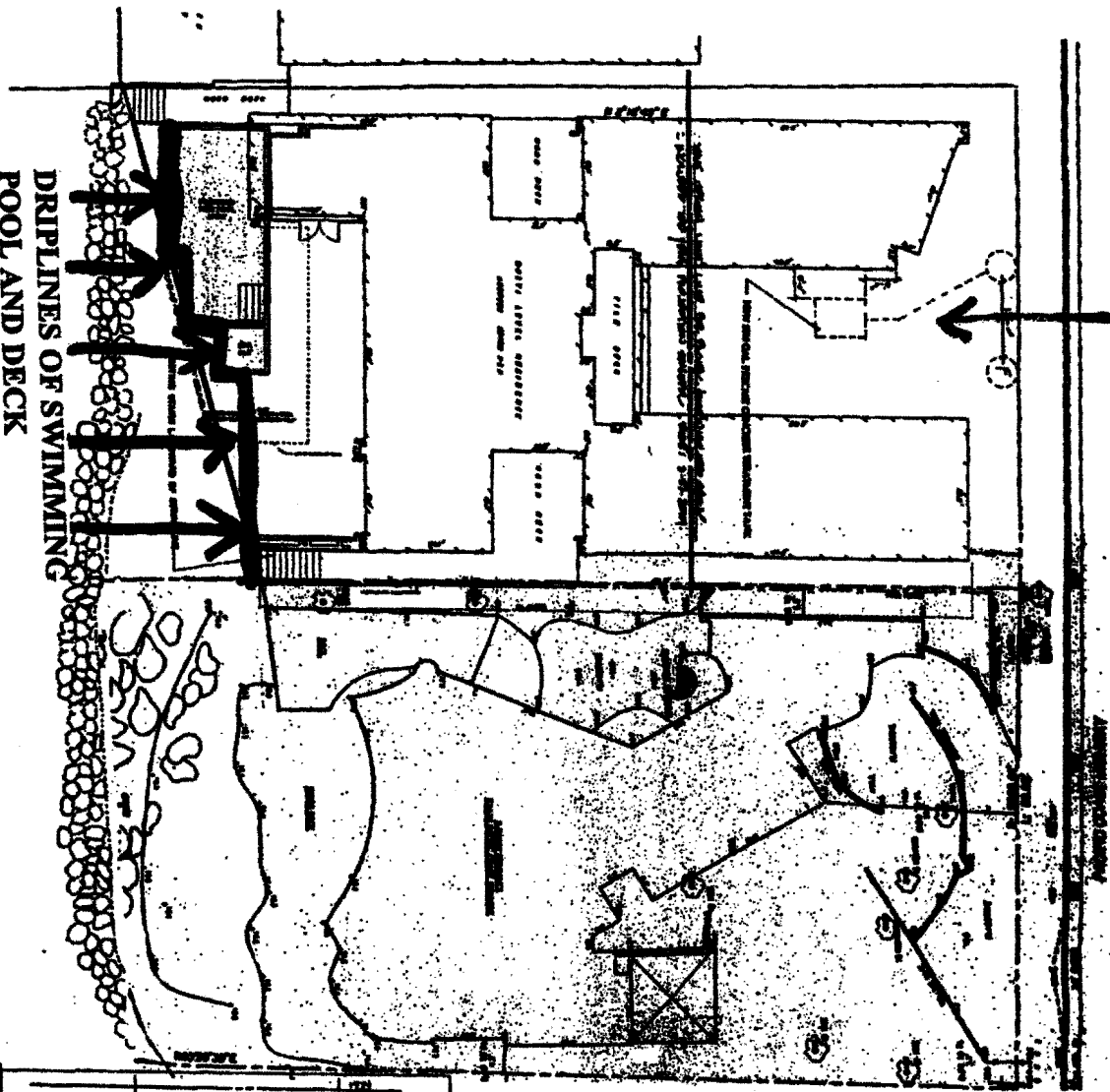
EXHIBIT 16

CDP 4-00-135 (Perez)

**Photo of Subject Site Prior to
Rock Revetment in 1985**

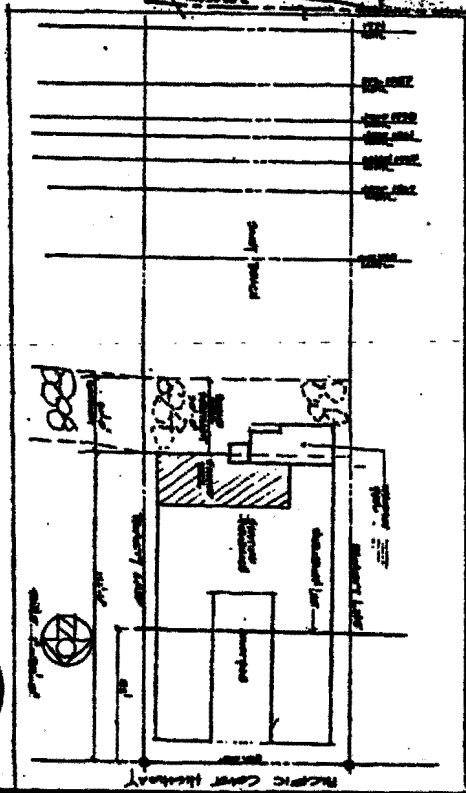
SUBJECT SITE

DIAPHRAGMS OF SWIMMING
POOL AND DECK



SITE PLAN

EXISTING BUILDING
RECONSTRUCTION
NEW



EXISTING BUILDING
RECONSTRUCTION
NEW

AREA TABULATION

EXISTING AREA	6,075 S.F.
RECONSTRUCTED LIVING SPACE	1,200 S.F.
RECONSTRUCTED KITCHEN SPACE	2,000 S.F.
RECONSTRUCTED BATH SPACE	2,000 S.F.
TOTAL EXISTING FLOOR AREA	6,075 S.F.

SHEET INDEX

1	TITLE SHEET & SITE PLAN
2	RECONSTRUCTED LIVING LEVEL PLAN
3	RECONSTRUCTED KITCHEN LEVEL PLAN
4	RECONSTRUCTED BATH LEVEL PLAN
5	RECONSTRUCTED DECK LEVEL PLAN
6	RECONSTRUCTED SWIMMING POOL
7	RECONSTRUCTED SWIMMING POOL
8	RECONSTRUCTED SWIMMING POOL
9	RECONSTRUCTED SWIMMING POOL
10	RECONSTRUCTED SWIMMING POOL
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16	RECONSTRUCTED SWIMMING POOL
17	RECONSTRUCTED SWIMMING POOL
18	RECONSTRUCTED SWIMMING POOL
19	RECONSTRUCTED SWIMMING POOL
20	RECONSTRUCTED SWIMMING POOL

EXHIBIT 17
CDP 4-00-135 (Perez)
Public Lateral Access Easement

SITE PLAN

BARBOCCHINI & ASSOCIATES, INC.
ARCHITECTS
 MICHAEL E. BARBOCCHINI, AIA - 310-466-3825
 10000 WILSON BOULEVARD, SUITE 100, BEVERLY HILLS, CA 90210

MAILED 10/10/00

STATE OF CALIFORNIA

GRAY DAVIS, Governor

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-6202



PAUL D. THAYER, Executive Officer
(916) 574-1800 FAX (916) 574-1818
California Relay Service From TDD Phone 1-800-735-2922
from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1892
Contact FAX: (916) 574-1926

August 29, 2001

File Ref: SD 98-08-13.5

Sabrina Haswell
California Coastal Commission
89 South California Street, Suite 200
Ventura, CA 93001

Dear Ms. Haswell:

SUBJECT: Coastal Development Permit (CDP) Application No. 4-00-135,
Perez

You have requested comments from the staff of the California State Lands Commission (CSLC) as to language Coastal Commission staff is proposing to include in the staff report for the subject application. The language relates to the recordation of a new Offer to Dedicate Lateral Public Access. The proposed language will require that the easement be located along the "southern beachfront portion of the lot as measured from the pool and deck driplines to the ambulatory mean high tide line."

CSLC staff believes the proposed language will be more definitive and practical in defining the easement on both the inland and waterward side of the Perez property. Therefore, we do not object to the language as proposed.

If you have any questions, please feel free to call me at (916) 574-1892.

Sincerely,

Jane E. Smith
Public Land Management Specialist
Southern California Region

RECEIVED

AUG 29 2001

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

EXHIBIT 18

CDP 4-00-135 (Perez)

Letter from CSLC dated 8/29/01

