

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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Commission Action:



## RECORD PACKET COPY

### STAFF REPORT: MATERIAL AMENDMENT

**APPLICATION NO.:** 4-97-168-A2  
4-97-169-A1

**APPLICANT:** Russell Shears

**AGENT:** Alan Block

**PROJECT LOCATION:** 4-97-168-A2 - 26520 Latigo Shore Drive, Malibu  
4-97-169-A1 - 26524 Latigo Shore Drive, Malibu

#### DESCRIPTION OF PROJECT PREVIOUSLY APPROVED:

**4-97-168 & 4-97-169** – Construction of two 3,206 sq. ft., 3-story, 28 ft. high, single family residences, with attached 439 sq. ft. garages, driveways, septic systems, and 200 cu. yds. of grading each (100 cu. yds. cut, 100 cu. yds. fill). Revision of existing Assumption of Risk Deed Restriction as required under Coastal Development Permit 5-88-794 (Lachman) to reflect proposed project designs and locations at 26520 and 26524 Latigo Shore Drive, Malibu.

**4-97-168-A1** – Increase size of single family residence by 50 sq. ft. to allow for construction of 3, 256 sq. ft. single family residence.

**DESCRIPTION OF AMENDMENT:** Applicant proposes installation of a concrete erosion control structure underneath the existing residences, consisting of grade beam footings atop existing caissons, with gunite extensions between the grade beam footings; and installation of a stairway from the lower deck of each residence to grade. Grading in the amount of 10 cu. yds. of fill is proposed for the installation of the erosion control structure at 26520 Latigo Shore Drive. Recordation of new assumption of risk deed restriction.

**LOCAL APPROVALS RECEIVED:** City of Malibu, Approval in Concept, dated 9/5/01, City of Malibu Geology and Geotechnical Review Sheet, Approval in Concept, dated 9/5/01.

**SUBSTANTIVE FILE DOCUMENTS:** Coastal Development Permits: 4-97-168, 4-97-168-A1, 4-97-169 (Shears), and 5-88-794 (Lachman); GeoSystems Letter to Mr. Russell Shears, dated 8/20/01; Geosystems letter to Mr. Shears, dated 12/19/01, Malibu Santa Monica Mountains certified Land Use Plan

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**PROCEDURAL NOTE:** The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) *The Executive Director determines that the proposed amendment is a material change,*
- 2) *Objection is made to the Executive Director's determination of immateriality, or*
- 3) *The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.*

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Code of Regulations Section 13166. In this case, the Executive Director has determined that the proposed amendment is a material change to the project and has the potential to affect conditions required for the purpose of protecting a coastal resource.

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**I. STAFF RECOMMENDATION:**

**MOTION:**        *I move that the Commission approve the proposed amendment to Coastal Development Permits No. 4-97-168, and 4-97-169 pursuant to the staff recommendation.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment 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 PERMIT AMENDMENT:**

The Commission hereby **approves the proposed amendment** to the coastal development permit on the grounds that the development as amended and subject to conditions, 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 amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

**II. STANDARD AND SPECIAL CONDITIONS**

**Note: Unless specifically altered by the amendment, all standard and special conditions previously applied to Coastal Development Permits 4-97-168 and 4-97-169 continue to apply. In addition, the following new special conditions are hereby imposed upon the proposed project as amended pursuant to CDP 4-97-168-A2 and 4-97-169-A1.**

**NEW SPECIAL CONDITIONS:**

**1. Revised Assumption of Risk/Shoreline Protection**

- A. By acceptance of this permit, the applicant acknowledges and agrees to the following:
- (1) The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
  - (2) The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
  - (3) The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
  - (4) The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
  - (5) No shoreline protective device shall be constructed, now or in the future, for the purpose of protecting the residential development approved pursuant to coastal development permits **4-97-168** and **4-97-169** including, but not limited to, the residence, foundations, erosion control structures, decks, driveways, staircases, or the septic system in the event that these structures are threatened with imminent damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future and by acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- A. Prior to issuance of the coastal development permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

## **2. Construction Responsibilities, and Debris Removal**

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

## **3. Bluff Revegetation and Restoration**

The applicant shall submit, for the Executive Director's review and approval, a bluff revegetation plan which shall include the following:

### **Landscaping**

(1) All disturbed areas on the subject site and down to the toe of the bluff shall be planted and maintained for erosion control purposes within (90) days of receipt of issuance of the coastal development permit.

(2) Plantings should be of native plant species indigenous to the Santa Monica Mountains as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. Invasive, non-indigenous plant species which tend to supplant native species shall not be used. Plantings shall be done using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils.

(3) Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the above applicable requirements.

### **B. Interim Erosion Control Plan**

(1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.

(2) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate

approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

### **C. Monitoring**

Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

## **III. FINDINGS AND DECLARATION**

The Commission hereby finds and declares:

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

#### **Approved Project, Location and Setting**

The approved project includes the construction of two, three-story, 28 ft. high, 3,406 sq. ft. single family residences, each with 439 sq. ft. garage, driveway and septic system at 26520 and 26524 Latigo Shore Drive. The structures were constructed on caisson foundations which required approximately 100 cu. yds. of cut and 100 cu. yds. of fill per lot. In a subsequent amendment (4-97-168-A1) the square footage of the residence at 26420 was increased by 50 sq. ft. to 3,456 sq. ft. This amendment was determined by the Executive Director to be immaterial, was duly noticed, and became effective on June 16, 1999..

The subject sites are two adjacent lots, each approximately 8,820 sq. ft. in size, which extend from the edge of the pavement of Latigo Shore Drive, at the Caltrans encroachment line, to the mean high tide line. The lots consist of a small level area which drops down over a bluff face to the sandy beach below. The bluff is composed of sandy fill and rises on a 1.7:1 slope, 35 ft. above a narrow sandy beach.

Access to the project site is from Pacific Coast Highway to Latigo Shore Drive, a private street which borders the properties on the northwest side. The properties are bordered by existing single family residence to the west, and a five unit condominium to the east.

### **Permit History**

On December 13, 1988, the Commission approved the subdivision of a .85 acre parcel into three lots, and the construction of three, three-story, single-family residences [5-88-794 (Lachman)]. The (10) special conditions of approval for the parcel subdivision included the following: assumption of risk, lateral and vertical access dedications, State Lands determination, storm design certification, construction methods and materials agreement, future improvements deed restriction, no beach level development agreement, revised plans, and cumulative impacts mitigation. These conditions are attached as Exhibit 1. The most westerly of the lots was subsequently developed under this permit.

On August 28, 1997, the applicant submitted coastal development permit applications ( 4-97-168 and 4-97-169) for the development of the remaining two lots. The structures proposed were substantially reduced in bulk from those originally approved under permit 5-88-794, and the concept of a stringline was implemented in order to address the issues of access and seaward encroachment of development. These permits were approved by the Commission at the November 5, 1997 hearing subject to the revision of the existing assumption of risk deed restriction as required under CDP 5-88-794, and the addition of (1) new special condition regarding plans conforming to geologic recommendations (Exhibit 2). All other conditions for the underlying subdivision of land remained in effect (See Exhibit 1).

The applicant submitted an amendment proposal (4-97-168-A1) on April 15, 1999 for the addition of 50 sq. ft. to the residence located at 26520 Latigo Shore Drive. This amendment was determined by the Executive Director to be immaterial, was duly noticed, and became effective on June 16, 1999.

### **Present Amendment**

On September 7, 2001, the applicant submitted an application to amend permits 4-97-168 and 4-97-169 to include the installation of a concrete erosion control device consisting of grade beam footings atop existing caissons, with gunite extensions between the footings; and installation of stairways from the lower deck of each residence to grade for each of the subject properties (Exhibit 4).

The installation of the erosion control grade beams and gunite extension at 26520 Latigo Shore Drive will involve grading in the amount of 10 cu. yds. of fill (Exhibit 5). No grading is required for the proposed development at 26524 Latigo Shore Drive. The installation of the stairs and erosion control device will not affect the finished contours or elevations of the proposed project. As the erosion control footings and gunite extensions are to be located beneath the residences, there will be no visual impacts from the installation of this feature. In addition, the proposed erosion control structure is located at an elevation landward of the caissons supporting the residences (which are located at the 22' elevation). As the previous Commission actions determined that this location was acceptable and removed from the area of constant wave hazard, pursuant to the wave uprush study completed by David Weiss in November 21, 1988, and updated in 1997, the currently proposed development will

not be subject to wave action. The improvements proposed also conform to the prevailing stringline for the properties as shown in Exhibit 4. Thus there will be no impacts to access posed by the development, and no new or increased visual impacts associated with the addition of the erosion control structure and stairways.

## **B. Geology and Hazards**

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.***

Section 30253 of the Coastal Act states in pertinent 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...***

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

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

The applicant is currently proposing the construction of an erosion control structure beneath each of the existing residences which will consist of the installation of grade beam footings atop existing caissons, and connected by a gunite expanse as shown in Exhibits 4-6. The proposal also involves the installation of a staircase from the lower deck of each residence to grade, to be located within the existing permitted deck stringline for the residences.

As a condition of approval of CDP 5-88-794, **Special Condition 7** required that the applicant record a future improvements deed restriction recognizing that coastal development permit 5-88-794 applied to the approved development only, and that any future development, additions, or improvements to the properties would require a new coastal development permit. This deed restriction was also required to note that no permanent improvements, with the exception of one public path or stairway, would be constructed within the geologic set back area, or under the floors, or seaward of the existing structures. These additional restrictions were inserted in order to address concerns involving the development being subject to potential wave hazard and its location on the bluff face which could result in the necessity of constructing shoreline protective devices, and which would

be contrary to the hazards policies of the Coastal Act and Malibu/Santa Monica Mountains certified LUP.

The geologic set back area noted above is located on the adjacent property to the west. The development currently proposed does not involve the extension of permanent improvements within the geologic setback area as there are none located on the subject properties.

The erosion control structures proposed under this application, while located beneath the existing structures, are remedial in nature, and will serve to stabilize the lower portion of the bluff slope from degradation. The installation of these structures is proposed in order to remedy what is described in the City of Malibu building permits as a "soil grading violation" that occurred during the previous grading for the construction of the buildings, which resulted in unnecessary the degradation of the bluff face (Exhibits 5-6). The staircases which are the other portion of the current proposal are to be located within the existing permitted deck stringline. As proposed, they will not be extending the seaward footprint of the existing structures; however, they will be extending the lower deck footprints in a seaward direction (Exhibits 5-6).

Under CDP 5-88-794 (**Special Condition 8**), the applicant agreed that the approval of CDP 5-88-794 was predicated upon the applicant's assertions that no beach development, including leachfields or seawalls would be necessary to protect the development. As such, the applicant was required to submit plans and approvals which demonstrated that the proposed development and septic systems would not require protection from a seawall, involved no waivers of the Los Angeles County Plumbing Code, and were not located on the beach (below elevation 16, as shown on the approved Exhibits).

The applicant is currently proposing emplacement of an erosion control structure beneath each of the residences, and stairs from the lower deck of each house to grade. The stairs are proposed to be attached to, and supported by, the existing residences which were constructed on caisson grade beam foundations. The submitted plans for both of the properties depict the most seaward portions of these structures to be above the 16 foot elevation (Exhibits 5-6). In addition, the proposed erosion control structure is located at an elevation landward of the caissons supporting the residences (which are located at the 22' elevation). As the previous Commission actions determined that this location was acceptable and removed from the area of constant wave hazard, pursuant to the wave uprush study completed by David Weiss in November 21, 1988, and updated in 1997, the currently proposed development will not be subject to wave action. Therefore the Commission finds the proposed project to be in conformance with **Special Condition 8** of CDP 5-88-794, mandating no beach level development, and Section 30235 of the Coastal Act.

The seaward development of the staircases will inherently be subject to greater risk for impact from storm surge damage. The construction of the erosion control structure beneath the residences may also be affected by tidal action during extremely severe storm events. As a 'hard' structure, any tidal action that acts upon the erosion control structure may have additional negative affects on the local shore profile and coastal processes. Therefore, the Commission requires the applicant through **Special Condition 1**, to acknowledge the risks of developing on the beach, and to waive any rights to the future development of any shoreline protection device in order to protect the proposed structures which he may otherwise have under the Public Resources Code Section 30235. The Commission finds



that, as conditioned, the installation of the erosion control structures and stairs are not contrary to the Commission's previous action in CDP 5-88-794 **Special Condition 8** requiring recordation of a future improvements deed restriction.

### **Hazards**

The proposed development is located in the Malibu/Santa Monica Mountains area, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu/Santa Monica Mountains area include earth movement, landslides, erosion, and flooding. Fire is also 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. Beachfront property is susceptible to additional hazards from storm waves, tsunamis, and liquefaction.

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

The original permit action on the subject sites (CDP 5-88-794) required the applicant to record and assumption of risk deed restriction which would acknowledge that the applicant understood and assumed the risks inherent to building in a location that was subject to natural hazards, and to waive any claim of liability on the part of the Commission relative to its approval of the subdivision. Under CDP # 4-97-168 and 4-97-169, the applicant proposed to revise the assumption of risk (originally required and recorded under CDP 5-88-794) to reflect the altered project design and locations of the individual residences. One additional special condition was also applied to the projects, at this time, which required the applicant to submit plans demonstrating conformance with geologic recommendations. The permit was issued, however, review of the legal records indicates that the applicant's proposal to revise the assumption of risk deed restriction was not carried out.

The Commission finds that due to the possibility of liquefaction, storm waves, surges erosion, flooding, and wildfire, the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicants' representative has submitted a proposal, on behalf of the applicant, to record a new assumption of risk deed restriction for the properties which will reflect the current design and locations of the structures as approved under CDP 4-97-168 and 4-97-169, and which will incorporate the proposed stairs and erosion control structures which are the subject of this permit amendment. The applicant's recordation of a revised assumption of risk, as proposed by the applicant, and as required by **Special Condition 1**, 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. Moreover, through acceptance of **Special Condition 1**, the applicant also agrees to indemnify the Commission, its officers, agents and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

A portion of the proposed development is located directly on the bluff face. The installation erosion control structures will be located beneath the existing residences and will utilize existing (abandoned) caissons from previously permitted development efforts at the site. The proposal involves the addition of grade beams atop these caissons, and the creation of a gunite extension between the grade beam rows (Exhibits 4-6). According to the letter, dated 12/19/01, and submitted by the applicant's geologist, the stated purpose of the erosion control structure is to, "**protect the surface of a pre-existing fill slope which underlies the residences**". The letter states that this unconsolidated fill slope was originally created by the construction of Old Pacific Coast Highway, now known as Latigo Shore Drive, circa 1940. This is consistent with Commission records and history of the site, and was addressed in the earlier coastal permits for the site.

Additional undermining of the bluff has occurred in more recent times. During the construction of the existing residences, alterations to the bluff face occurred, which resulted in the current configuration of the bluff face. Exhibits 5-6 approximate the existing bluff contour beneath the residences, and demonstrate the steepening of the bluff face beneath the residences and the accelerated recession of the toe of the bluff slope from its pre-construction condition and location (approximately the 16 foot elevation), which occurred as a result of the construction. The installation of the erosion control structure beneath the residences will serve to protect the remaining slope toe from further erosion.

The alteration to the bluff that will occur with the installation of the erosion control structures is minor and does not significantly alter the bluff landform from its existing state. The installation of any structure beneath the residences, and along the bluff face will, however, may lead to increased erosion and loss of vegetation on the bluff face adjacent to the residences if left exposed. Therefore, the Commission requires the applicant, through **Special Condition 3**, to submit a bluff restoration plan which will provide for the revegetation of the disturbed areas of the site, and slopes adjacent to the residences. Revegetation of the bluff face and toe will slow the erosion processes acting on the bluff and bluff toe, and will increase the infiltrative capacity of the bluff in accommodating runoff from Latigo Shore Drive and the fill slope/bluff during storm events. For the reasons set forth above, the Commission finds that, as conditioned, the proposed project is consistent with Sections 30250(a) and 30235 of the Coastal Act.

#### **D. Public Access**

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

Coastal Act Section 30210 states that:

***In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and***

**recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.**

Coastal Act Section 30211 states:

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

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

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

Section 30251 of the Coastal Act states that:

**The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.**

Finally, Section 30253 of the Coastal Act states in pertinent 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, 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.**

Coastal Act Sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development shall not interfere with the public's right to access the coast. Likewise, Section 30212 of the Coastal Act requires that adequate public access to the sea be provided to allow the use of dry sand and rocky coastal beaches. All projects requiring a coastal development permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. Based on the access, recreation, and development sections of the Coastal Act, the Commission has required public access to and along the shoreline in new development projects and has

required design changes in other projects to reduce interference with access to and along the shoreline. The major access issue in such permits is the occupation of sand area by a structure in contradiction of Coastal Act Sections 30210, 30211, and 30212.

Additionally, past Commission review of shoreline residential projects in Malibu has shown that individual and cumulative adverse effects to public access from such projects can include encroachment on lands subject to the public trust (thus physically excluding the public); interference with the natural shoreline processes necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and/or ability to use public tideland areas.

In the case of the currently proposed project, the applicant is proposing to install a staircase from the lower deck of each residence to grade, and the construction of an erosion control structure which involves installing grade beams atop existing caissons, and the installation of a gunite extension between the grade beams to hold the existing slope beneath the residences in place. In the previous Commission action (CDP 5-88-794) involving the property, the Commission required the applicant to record both a vertical and a lateral public access easement across the lots as a special condition of approval of the residences. The vertical easement is located on the adjacent property to the west, and is not affected by the subject properties that are the subject of this permit amendment. The lateral easement recorded extends from the ambulatory mean high tide line to the line approximating the toe of the bluff, shown as elevation 16 on the maps provided by the applicant (Exhibits 4-6). The currently proposed developments are located above the 16 foot elevation, and, therefore, the Commission finds that the proposed development is consistent with the previous Commission actions regarding the recordation of vertical and lateral access easements on the properties.

The Commission notes; however, that the presence of construction equipment and building materials, or storm debris on the subject site could pose hazards to beach-goers or swimmers if materials were discharged into the marine environment or left inappropriately/unsafely exposed on the property. Debris from the staircases and erosion control structures could also pose additional hazards to downcoast properties as they wash back onto shore. Therefore, the Commission requires the applicant, through **Special Condition 2**, to promptly remove any debris from the property, during the construction process. Therefore, as conditioned, the proposed project is in conformance with past Commission action and will not impede the public's ability to access or safely use public tideland areas.

### **Stringline**

As a means of controlling seaward encroachment of residential structures on a beach to ensure maximum public access, protect public views, and minimize wave hazards as required by Coastal Act Sections 30210, 30211, 30251, and 30253, the Commission has, in past permit actions, developed the "stringline" policy. As applied to beachfront development, the stringline limits the seaward extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks to a similar line drawn between the nearest corners of the adjacent decks. The Commission has applied this policy to numerous past permits involving infill on sandy beaches and has found it to be an effective policy tool in preventing further encroachments onto sandy beaches. In addition,

the Commission has found that restricting new development to building and deck stringlines is an effective means of controlling seaward encroachment to ensure maximum public access as required by Sections 30210 and 30211 and to protect public views and the scenic quality of the shoreline as required by Section 30251 of the Coastal Act.

The proposed addition of staircases from the lower deck to grade for each of the existing residences will not extend the development beyond the previously approved stringline. It thereby conforms to the previously approved deck stringline for the properties which was previously approved, as drawn between the nearest adjacent deck corners on the neighboring parcels (Exhibits 4-6). Therefore, the Commission finds that the project is in conformance with the Coastal Act Sections 30210, 30211, and 30251.

#### **E. Local Coastal Program**

Section 30604(a) of the Coastal Act states that:

***Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).***

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. Thus, the proposed amendment, as conditioned, 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 amendment, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for the Malibu/Santa Monica Mountains area, is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

#### **F. California Environmental Quality Act**

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit Amendment application to be supported by a finding showing the application 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 effects which the activity would have on the environment.

The proposed project, as conditioned, would not cause significant, adverse environmental effects. Therefore, the proposed amendment is found consistent with CEQA and with the policies of the Coastal Act.

COASTAL DEVELOPMENT PERMIT

Page 2 of 6  
Permit No. 5-88-794

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. 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.

SPECIAL CONDITIONS:

1. 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 shoreline erosion, flooding, and bluff erosion, and the applicant assumes the liability from such hazards; (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards.

PE:tn  
51780

EXHIBIT NO. 1
APPLICATION NO.
4-97-168-A2
4-97-169-A1
PERMIT CONDITIONS 5-88-794

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.

## 2. Lateral Access

Prior to the transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director an easement for 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.

The easement shall extend the entire width of the property from the mean high tide line to the line approximating the toe of the bluff, shown as elevation 16 on the maps provided by the applicant. (Exhibit 3)

The easement shall be recorded free of prior liens except for tax liens and free of prior 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 successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

## 3. Vertical Access

Prior to the transmittal of the permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director an easement for public access for pass and repass from Pacific Coast Highway to 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.

The easement be described in metes and bounds and shall extend from the Pacific Coast Highway to the ordinary high tide of the Pacific Ocean, generally within the geologic setback along the western property line. The easement shall not be less than 10 feet in width, and shall be sited and designed to accommodate reasonable and safe pedestrian access from the highway to the area along the beach dedicated in condition 2.

EXHIBIT NO. 1
APPLICATION NO.
4-97-168 A2 4-97-169 A1
PERMIT CONDITIONS 5-88-794

A more detailed description may either follow the stairway proposed in exhibit 3, or otherwise follow a potential switch-back within the general area identified as geologic setback in Exhibit 3 if the stairway cannot be feasibly constructed. The exact configuration of the easement shall be determined by the Executive Director. The easement shall enable a private or public agency accepting maintenance and liability to enter, improve and maintain the access in order to provide pedestrian access to the shoreline.

The easement shall be recorded free of prior liens except for tax liens and free of prior 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 successors and assigns of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

In addition to all other recording, there shall be an explanatory note on the final parcel map.

If and when a vertical public access way has been constructed within 500 feet of the applicant's property and such accessway has been opened for public use and either a private association acceptable to the Executive Director or a public agency has accepted the responsibility for operation and maintenance of the accessway, the applicant may request an amendment to this permit to remove the recorded easement. Such amendment must be approved by the California Coastal Commission prior to the removal or revision of the recorded easement.

#### 4) State Lands

Prior to the transmittal of a permit the applicants shall obtain a written determination from the State Lands Commission that:

(a) No State lands and/or lands subject to the public trust are involved in the development, or

(b) State lands and/or lands subject to the public trust are involved in the development and all permits that are required by the State Lands Commission have been obtained, or

(c) State lands and/or lands subject to the public trust may be involved in the development, but pending a final determination, an agreement has been made with the State Lands Commission for the project to proceed without prejudice to that determination.

#### 5) Storm Design.

Prior to the transmittal of the Coastal Development Permit, the applicants shall submit certification by a registered civil engineer that the proposed structure is designed to withstand storms comparable to winter storms of 1982-83.

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APPLICATION NO.	
	4-97-168 A2
	4-97-169 A1
PERMIT CONDITIONS	
	5-88-794



6) Construction Methods and Materials.

Prior to transmittal of the permit the applicant shall provide subject to the review and approval of the Executive Director 1) revised grading plans with plan notes and 2) an agreement with the Executive Director both of which provide a) that no stockpiling of dirt shall occur on the beach, seaward of elevation 20, b) that all grading shall be properly covered, sand bagged and ditched to prevent runoff and siltation, c) that earth-moving operations shall be prohibited between November 1 and March 31, d) that measures to control erosion must be implemented at the end of each day's work, and e) evidence that plans for this erosion prevention conform to applicable County ordinances, f) entry for excavation shall be from Pacific Coast Highway and Latigo Shores Drive and shall not be from the beach.

Pursuant to this agreement, during construction, disturbance to sand and intertidal areas shall be minimized. Beach sand excavated shall be re-deposited on the beach. Local sand, cobbles or shoreline rocks shall not be used for backfill or construction material. No road or ramp shall be constructed to the beach. The applicant shall prevent siltation or discharge of silt, chemicals or waste concrete on the beach.

7) Future improvements

Prior to transmittal of the permit the applicant shall provide a deed restriction for recording in a form and content acceptable to the Executive Director, which provides that Coastal Development Permit 5-88-794 is for the approved development only, and that any future additions or improvements to the property will require a new Coastal Development Permit from the Coastal Commission or its successor agency. The document should note that no permanent improvements with the exception of one public path or stairway noted on the present plans shall be constructed within the geologic set back area or under the floors or seaward of the existing structures. The deed restriction 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. It shall remain in effect for the life of the development approved in this permit.

8) No beach level development

Prior to issuance the applicant the applicant shall agree that this approval is based upon his assertions that no beach development, including leachfields or seawalls will be necessary to protect the development. Prior to issuance of the permit the applicant shall present final working drawings for an approved approved by Los Angeles County Health department for a septic system that 1) requires no seawall, 2) involves no waivers of the Los Angeles County Plumbing code, 3) is not located on the beach (below elevation 16 as shown on Exhibit 3)

EXHIBIT NO. 1
APPLICATION NO.
4-97-168-A2
4-97-169-A1
PERMIT CONDITIONS
5-88-794

9) Revised plans

Prior to transmittal of the permit the applicant shall submit revised plans that limit the development to three levels. For purposes of this condition a mezzanine and a basement are each levels.

10. Cumulative Impact Mitigation Condition

Prior to issuance of this permit, the applicant shall provide evidence to the Executive Director that development rights for residential use have been extinguished on one building site in the Santa Monica Mountains Coastal zone for each new building site created by the permit. The method used to extinguish the development rights shall be either

- a) one of the five lot retirement or lot purchase programs contained in the Malibu Santa Monica Mountains Land Use Plan (policy 272 2-6),
- b) a TDC-type transaction, consistent with past Commission actions such as 5-84-789 (Miller),
- c) or participation along with a public agency or private nonprofit corporation to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites. Retirement of a site that is unable to meet the County's health and safety standards, and therefore unbuildable under the Land Use Plan, shall not satisfy this condition.

The building site on which residential uses are extinguished must either be a legal lot in a small lot subdivision or a potential building site located in a Significant Watershed. Unsubdivided land within Significant Watersheds may be used to generate building sites in numbers based on densities consistent with the proposed densities of the Land Use Plan; sites that are unable to meet the County's health and safety standards shall not be counted.

EXHIBIT NO.
APPLICATION NO.
4-97-168 A2
4-97-169-A1
PERMIT CONDITIONS 5-88-794

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST AREA  
 87 SOUTH CALIFORNIA ST., SUITE 200  
 VENTURA, CA 93001  
 (805) 641-0142



Page 1 of 3  
 Date: November 24, 1997  
 Permit Application No. 4-97-169

**NOTICE OF INTENT TO ISSUE PERMIT**

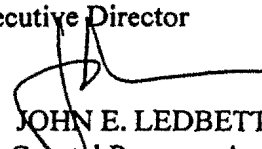
On November 5, 1997, the California Coastal Commission granted to Russ Shears, permit 4-97-168, subject to the attached conditions, for development consisting of: Construct 3-story, 28 ft. high, 3,406 sq. ft. single family home with 439 sq. ft. garage, driveway and septic system. 100 cu. yds. of grading (100 cu. yds cut, 100 cu yds fill). *Revise assumption of risk deed restriction, required under permit 5-88-794 (Lachman), to reflect proposed project design and location* more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Malibu, Los Angeles County at 26524 Latigo Shore Drive. (Lot 2)

The actual development permit is being held in the Commission office until fulfillment of the Special Condition #1, imposed by the Commission. Once this condition has been fulfilled, the permit will be issued. For your information, all the imposed condition is attached.

Issued on behalf of the California Coastal Commission by:

PETER DOUGLAS  
 Executive Director

By:   
 JOHN E. LEDBETTER  
 Coastal Program Analyst

**ACKNOWLEDGMENT:**

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. \_\_\_\_\_, and fully understands its contents, including all conditions imposed.

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Permittee

Please sign and return one copy of this form to the Commission office at the above address.

A5: 8/95

EXHIBIT NO. 2
APPLICATION NO.
4-97-168-A2
4-97-169-A1
PERMIT CONDITIONS
NO1 4-97-168 & 4-97-169

**NOTICE OF INTENT TO ISSUE PERMIT**

Page 2 of 3  
Permit Application No. 4-97-168

**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. **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.

**SPECIAL CONDITIONS:**

1. **Plans Conforming to Geologic Recommendation**

Prior to the issuance of permit the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans. All recommendations contained in Updated Soils and Engineering-Geologic Report, Geosystems, 12/17/96, shall be incorporated into all final design and construction including slope stability, pools, foundations and drainage. All plans must be reviewed and approved by the consultants.

EXHIBIT NO. 2
APPLICATION NO.
4-97-168 A2
4-97-169 A1
PERMIT CONDITIONS
NDI. 4-97-168; 169

**NOTICE OF INTENT TO ISSUE PERMIT**

Page 3 of 3

Permit Application No. 4-97-168

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

**IV. Note**

The standard and special conditions attached to the Permit for the subdivision which created the subject parcels [5-88-794 (Lachman)] remain in effect and are attached for reference as Exhibit 7.

97169noi/sm

EXHIBIT NO. 2
APPLICATION NO.
4-97-168 A2 4-97-169A1
CONDITIONS of NOI 4-97-168; 4-97-169

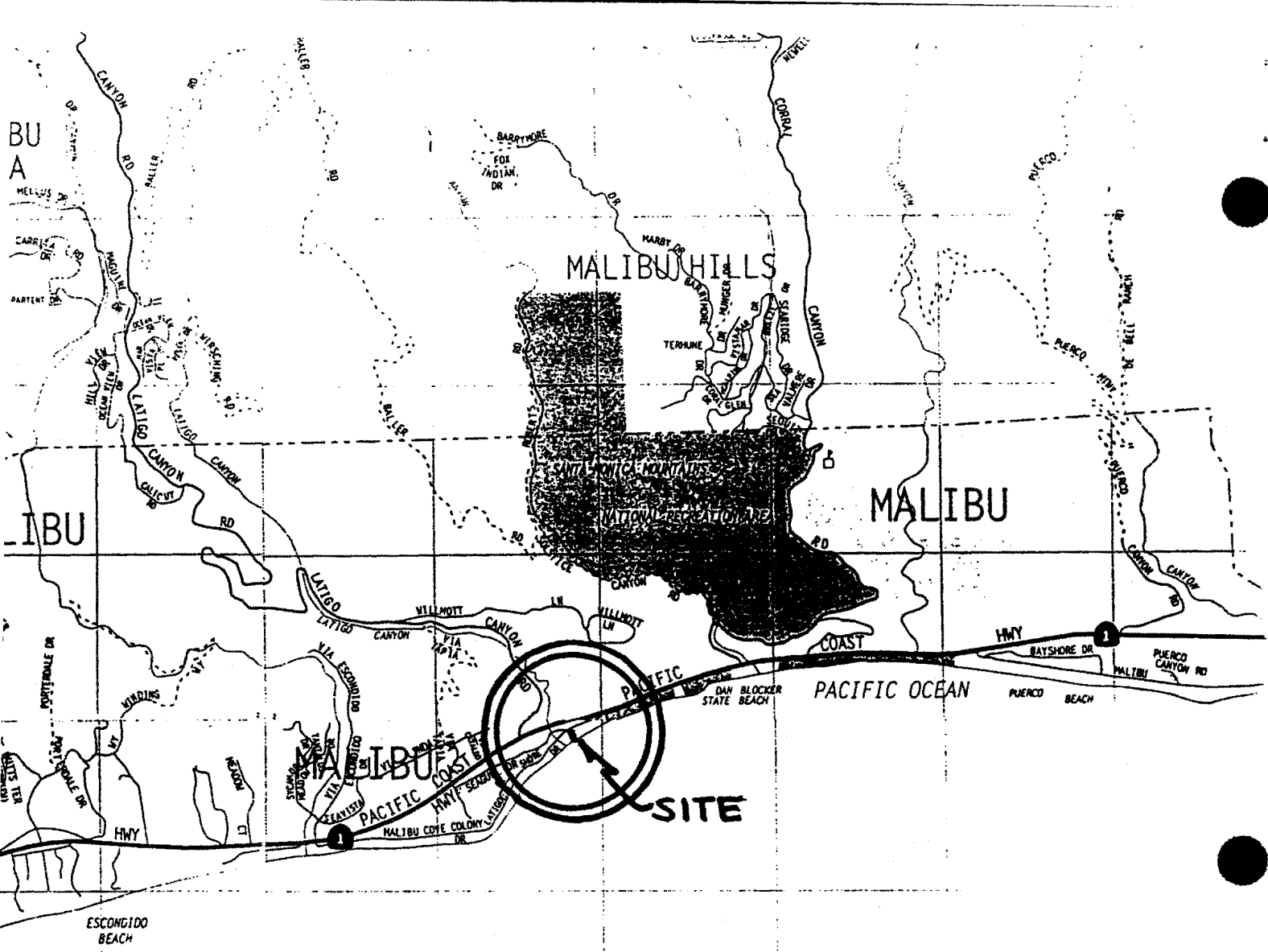
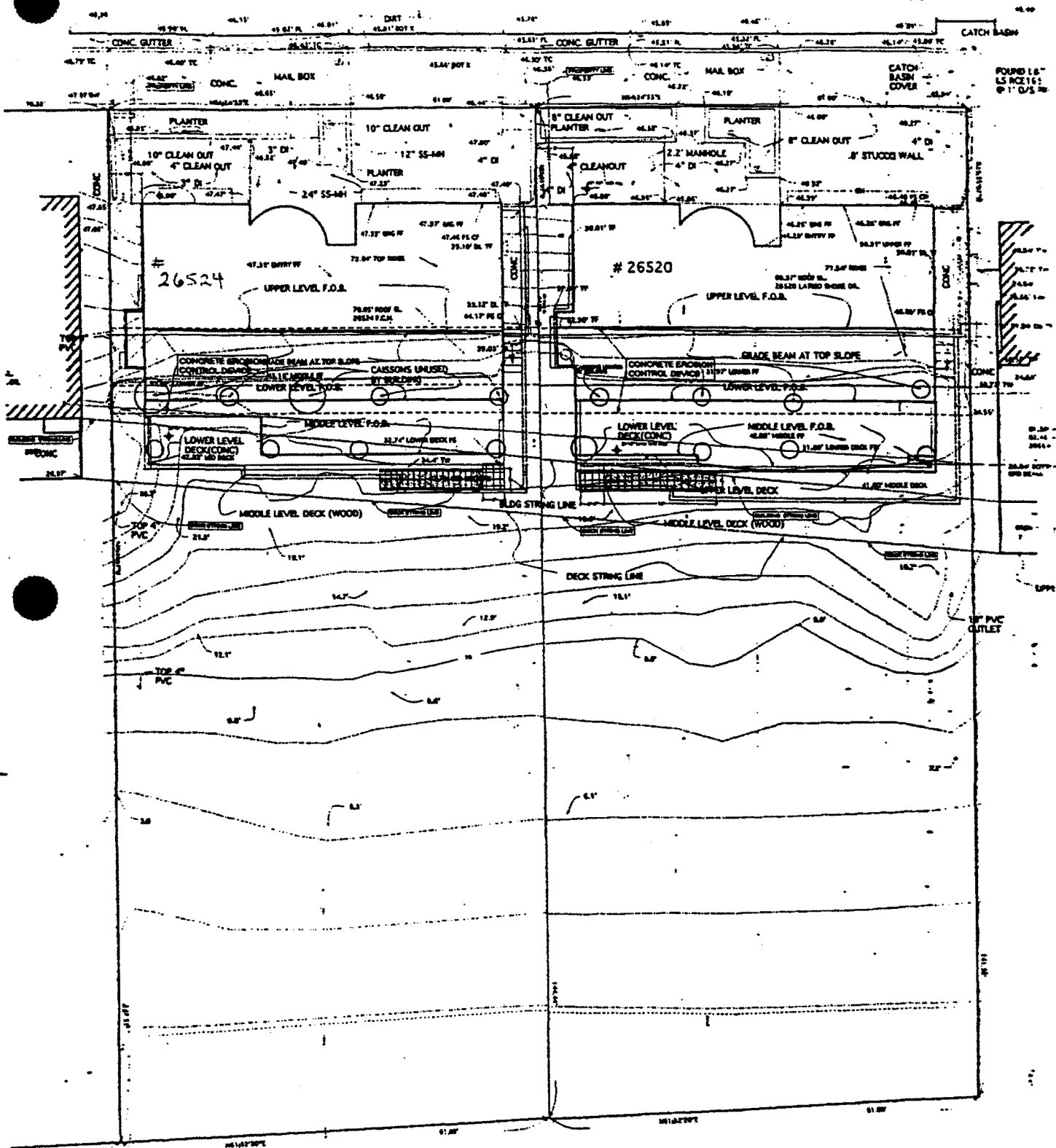


EXHIBIT NO. 3
APPLICATION NO.
4-97-168-A2
4-97-169-A1
VICINITY MAP



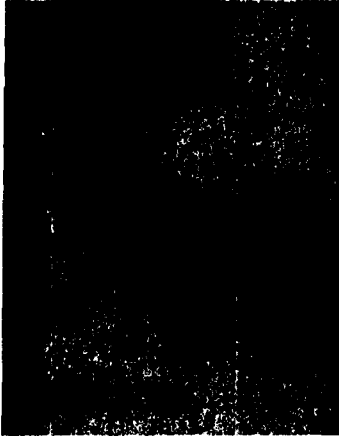
SITE PLAN

EXHIBIT NO. 4
APPLICATION NO.
4-97-168 A2
4-97-169 A1
Stringline & beach development

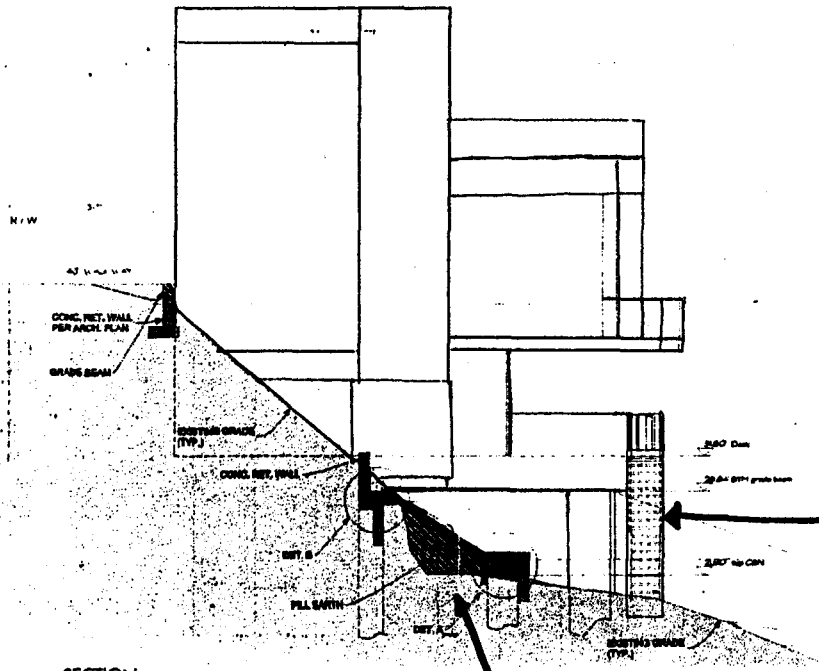
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DETAIL B

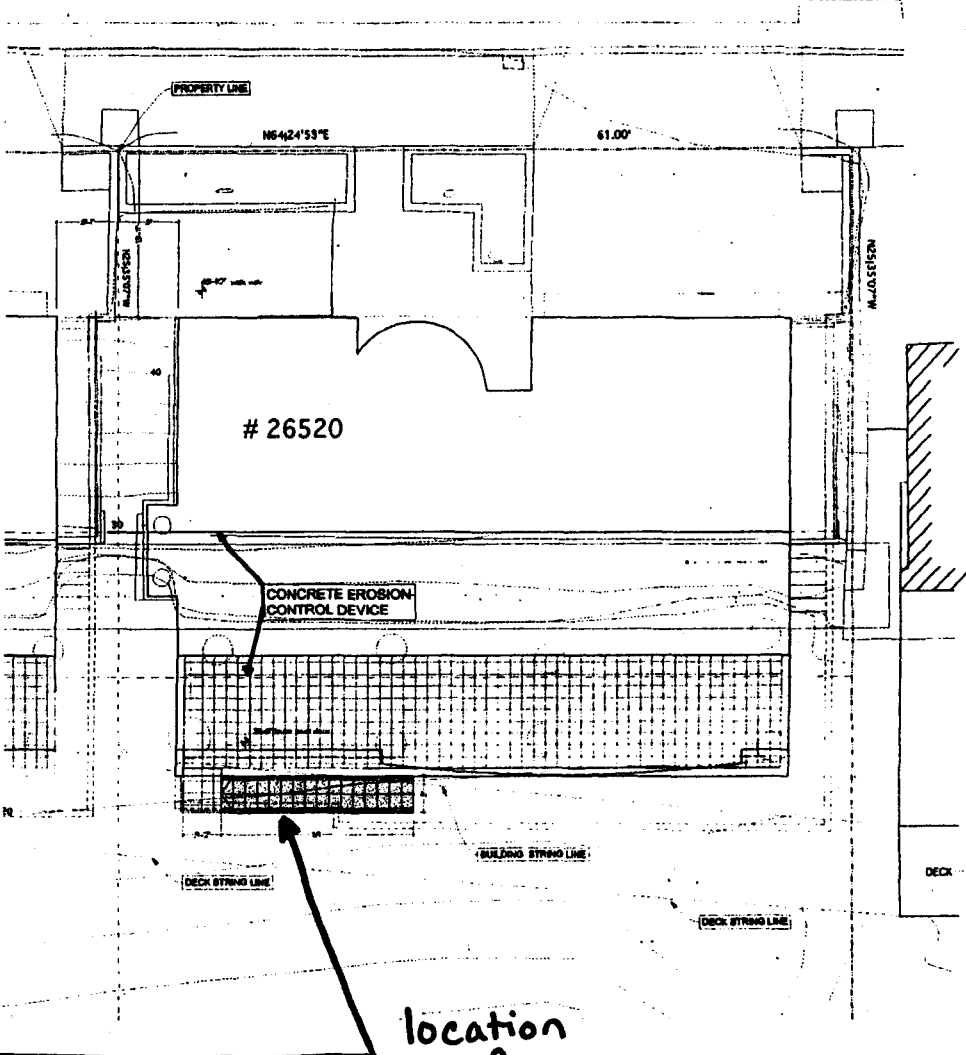


DETAIL A



SECTION

scale 1/4"=1'-0"



location of proposed stairs

PROJECT: Sheers / Perrillo Residence  
26520 Laigo Shore Dr.  
Malibu, CA 90265

BARSOCCCHINI & ASSOCIATES, INC.  
MICHAEL E. BARSOCCCHINI, A.I.A. (310) 498-3628  
3502 COAST VIEW DRIVE - MALIBU, CA 90265

CTON

EXHIBIT NO.	<b>5</b>
APPLICATION NO.	4-97-168A2; 4-97-168A1
26520 stringline; elevations	

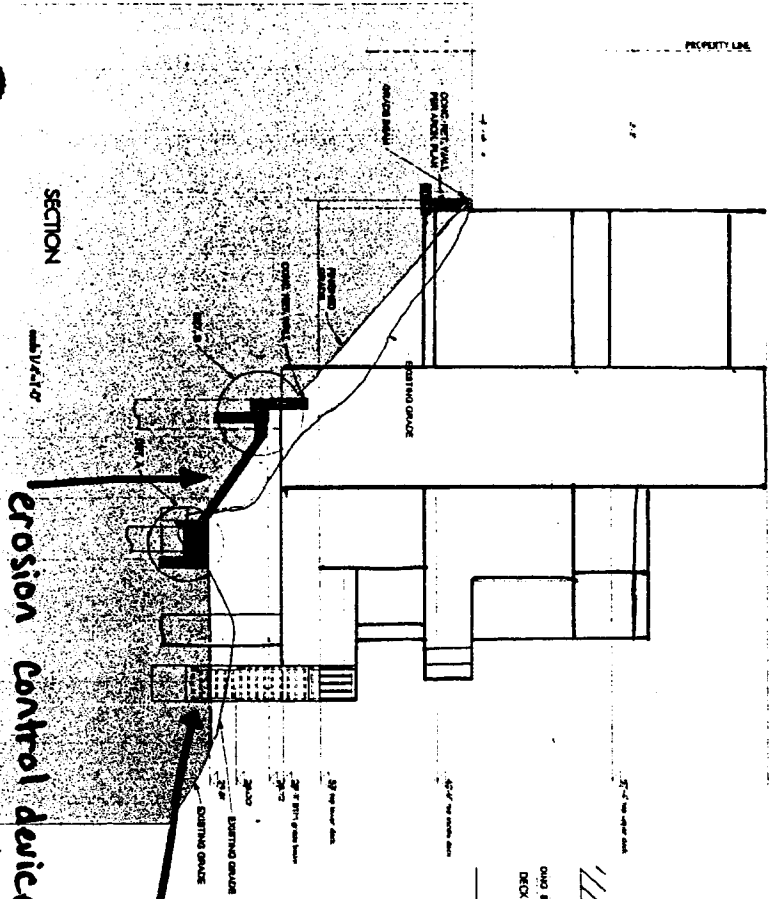




DETAIL B

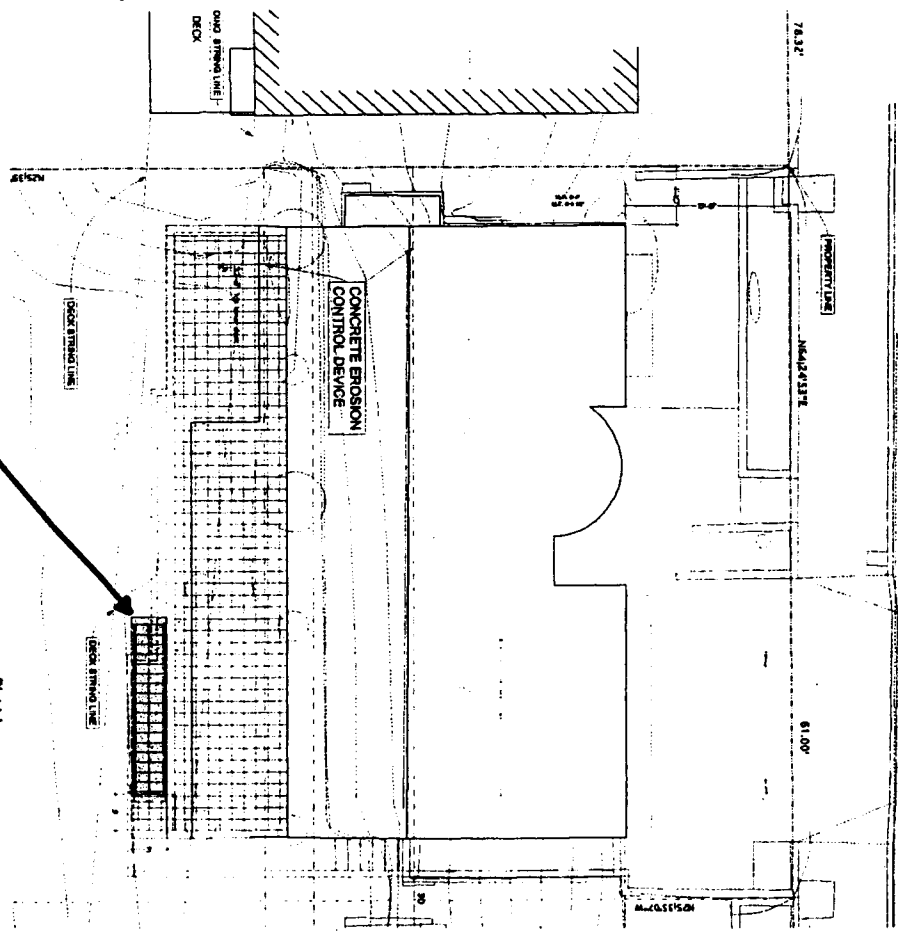


DETAIL A



SECTION

erosion control device



PLAN

location of proposed stairs

EXHIBIT NO.	6
APPLICATION NO.	4-97-168A2; 4-97-169A1
26524	Fringline; Elevations

