

**CALIFORNIA COASTAL COMMISSION**

SOUTHERN CENTRAL COAST AREA  
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**RECORD PACKET COPY**

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Staff: J Johnson *for*

Staff Report: 6/20/02

Hearing Date: 7/11/02

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 4-02-038

APPLICANTS: Paul and Judy Fogel

PROJECT LOCATION: 6301 Gayton Place, City of Malibu (Los Angeles County)

**PROJECT DESCRIPTION:** Construct a two story, 33.25 ft high, 6,572 sq. ft. single-family residence with attached four car garage with basement, driveway, patio, pool, septic system, grade 1,460 cubic yards of material and export 480 cubic yards to a disposal site located outside the coastal zone.

Lot area:	95,018 sq. ft.
Building coverage:	3,973 sq. ft.
Pavement coverage:	4,781 sq. ft.
Landscape coverage:	12,400 sq. ft..
Parking spaces:	four covered
Max. Height above finished grade:	33.25 ft.

**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **Approval** of the proposed project, with the recommended conditions addressing conformance with geologic recommendations, wildfire waiver of liability, landscape, erosion control and fuel modification, agricultural operation plan, drainage and polluted runoff control plan, and disposal of excavated material. The applicant proposes to construct a two-story residence with attached four-car garage and basement, driveway, patio, pool, septic system, grade 1,460 cubic yards of material and export 480 cubic yards to a site located outside the coastal zone. The site is currently planted with rosemary since the late 1990's (Exhibits 1 - 10).

The project site is located in an area with a mixture of single-family residences, equestrian facilities and agriculture. The proposed development is located along the top of the east face Zuma Canyon near Cavalleri Road and north of Pacific

Coast Highway and Point Dume. As conditioned, the proposed residence is consistent with the visual resource, landform alteration, hazard, and water quality requirements of the Coastal Act.

**STAFF NOTE**

The applicant has raised some concerns about the time and cost required to process this application in letters to Staff, and Assemblymember Fran Pavley (Exhibits 11 – 14). This application was received on February 13, 2002 and filed as complete on March 11, 2002 in compliance with the 30- day review period required by the Permit Streamlining Act. The application was tentatively scheduled for Commission action within about five months at the July 9 – 12, 2002 meeting, in the order of other applications filed. The Commission needs to act on this application by the August 6 – 9, 2002 Commission meeting as required by the Permit Streamlining Act to be consistent with the six month application processing time frame allowed by the Permit Streamlining Act. A review of the applications processed adjoining the subject property and a past application on the subject property indicated that these applications were acted on by the Commission within three and four months of filing the application (Coastal Permit Nos. 4-99-092, Gayton Place Ranch and 4-99-091, Perrone). The application processed on the subject lot in 1991 was acted on (denied) by the Commission within about three months of filing the application (Application No. 5-91-176, Morgan).

**LOCAL APPROVALS RECEIVED:** City of Malibu, Planning Department, Approval In Concept, dated February 5, 2002; City of Malibu Environmental Health Department, In-Concept Approval dated December 6, 2001; City of Malibu Geology and Geotechnical Engineering Review, Approved In-Concept, dated 12/5/01.

**SUBSTANTIVE FILE DOCUMENTS:** Addendum Report No. 1, GeoConcepts, Inc. dated November 21, 2001; Limited Geologic and Soils Engineering Investigation by GeoConcepts, Inc. dated October 4, 2001; Results of percolation testing by Donald B. Kowalewsky, dated October 12, 2001; Coastal Permit No. 5-90-199, Morgan et. al.; Coastal Application No. 5-91-176, Morgan et. al.; Coastal Permit No. 4-99-091, Perrone; Coastal Permit No. 4-99-092, Gayton Place Ranch.

**STAFF RECOMMENDATION:**

**MOTION:** *I move that the Commission approve Coastal Development Permit No. 4-02-038 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.

**I. 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. Plans Conforming to Geologic Recommendations**

Prior to the issuance of a coastal development permit the applicant shall submit, for review and approval by the Executive Director, evidence of the geology and geotechnical consultants' review and approval of all project plans. All recommendations contained in the Addendum Report No. 1, GeoConcepts, Inc. dated November 21, 2001; Limited Geologic and Soils Engineering Investigation by GeoConcepts, Inc. dated October 4, 2001; Results of percolation testing by Donald B. Kowalewsky, dated October 12, 2001, shall be incorporated into all final design and construction plans including site preparation, grading, and foundations. All plans must be reviewed and approved by the consultants.

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 that may be required by the consultant shall require an amendment to the permit or a new coastal development permit.

#### **2. WILDFIRE WAIVER OF LIABILITY**

Prior to the issuance of a Coastal Development Permit, the applicant shall submit a signed document which shall indemnify and hold harmless the California Coastal Commission, its officers, agents and employees against any and all claims, demands, damages, costs, expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wild fire exists as an inherent risk to life and property.

#### **3. LANDSCAPE, EROSION CONTROL AND FUEL MODIFICATION PLANS**

**PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised landscaping and erosion control plans, prepared and signed by a licensed landscape architect, a qualified resource specialist, or qualified landscape professional for review and approval by the Executive Director. The revised plans shall incorporate the following criteria:

##### **A) Landscape Plans and Erosion Control Plans**

- 1) All graded and disturbed areas, except for the proposed agricultural area consistent with Special Condition Number Four below, as a result of the proposed project on the subject site, except as noted below, shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation

all landscaping shall consist primarily of native/drought resistant plants, except for the proposed agricultural area **consistent with Special Condition Number Four** below, 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. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements of the proposed development and the existing on-site fire break and may include gravel and rock areas within Zone A of the Fuel Modification Plan and other appropriate areas to minimize erosion on-site. In areas proposed for planting, such planting shall be adequate to provide 50 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils and the building pads where development is proposed;

- 2) 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 applicable landscape requirements;
- 3) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.
- 4) Vegetation within 20 feet of the proposed residence and garage and driveway may be removed to *mineral earth*, ~~vegetation within a 200-foot radius~~ of the structures may be ~~selectively thinned in order to reduce~~ fire hazard. However, such ~~thinning shall~~ only occur in accordance with an approved long-term Fuel Modification Plan submitted pursuant to this special condition. The Fuel Modification Plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the Fuel Modification Plan has been reviewed and approved by the Los Angeles County Fire Department, Forestry Division, Fire Prevention Bureau. Any irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.
- 5) The final drainage/erosion control plan shall be implemented within 30 days of completion of final grading. By acceptance of this permit, the applicant agrees to maintain the drainage devices on a yearly basis in order to ensure

that the system functions properly. Should the devices fail or any erosion result from the drainage as a result of the project, the applicant or successor in interests shall be responsible for any necessary repairs and restoration.

- 6) Fencing, if any, shall be limited to the area of the agricultural operation delineated on the Agricultural Operation Plan approved pursuant to Special Condition Number Four, surrounding the pool, and along Gayton Place. Any fencing of the subject parcel shall be identified on the final approved landscape and fuel modification site plan.

**B) Interim Erosion Control Plan**

- 1) The landscape/erosion control 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 to be left undisturbed such as native vegetation 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 geo-fabric covers or other appropriate cover, install geo-textiles 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 through out 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.
- 3) 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 geo-textiles 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 (5) 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 and fencing report, prepared by a licensed Landscape Architect, qualified Resource Specialist, or qualified landscape professional that certifies in writing that the on-site landscaping and fencing is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species, plant coverage and fencing on site.

If the landscape monitoring report indicates the landscaping and fencing 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 and fencing plan for the review and approval of the Executive Director. The revised landscaping and fencing plan must be prepared by a licensed Landscape Architect, a qualified Resource Specialist, or qualified landscape professional 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.

#### **4. AGRICULTURAL OPERATION AND DELINEATION PLAN**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and approval of the Executive Director, an Agricultural Operation Plan for all agricultural plantings and operations on the subject site. The Plan shall be prepared by a qualified biologist, botanist, or landscape architect with agricultural resource conservation and native plant species expertise and shall include but not be limited to the following requirements:

1. The plan shall specifically identify the agricultural planting areas on the subject site.
2. Agricultural practices shall be designed and implemented to minimize erosion and prevent excessive sediment and pollutants from adversely impacting water quality by incorporating BMPs such as:
  - Diversions
  - Grassed waterways
  - Sediment basins
  - Terraces
  - Critical area planting
  - Crop residue use
  - Conservation cover
  - Filter strips
3. Agricultural practices shall minimize the release of pesticides into the environment by implementing Integrated Pest Management (IPM) strategies that apply pesticides only when an economic benefit to the producer will be achieved and apply pesticides efficiently and at times when runoff losses are

least likely shall be implemented. Pesticide runoff shall be carefully managed in a comprehensive manner, including evaluating past and current pest problems and cropping history, evaluating the physical characteristics of the site, selecting pesticides that are the most environmentally benign, using anti-backflow devices on hoses used for filling tank mixtures, and providing suitable mixing, loading and storage areas.

4. Agricultural practices shall minimize nutrient loss by developing and implementing comprehensive nutrient management plans based on crop nutrient budgets, identification of the types, amounts and timing of nutrients necessary to produce a crop based on realistic crop yield expectations and identification of onsite environmental hazards.
5. Agricultural practices shall reduce water loss to evaporation, deep percolation and runoff, remove leachate efficiently, and minimize erosion from applied water by implementing a managed irrigation system that includes the following components:
  - Irrigation scheduling
  - Efficient application of irrigation water
  - Efficient transport of irrigation water
  - Use of runoff or tailwater
  - Management of drainage water
6. The applicant shall implement the agricultural management measures submitted to the Commission as part of this project, including rodent control, deer control, chemical use, fertilizers, drainage and erosion control, irrigation and weed control.

**5. DRAINAGE AND POLLUTED RUNOFF CONTROL PLAN**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, 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. 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, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85<sup>th</sup> percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), 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 30<sup>th</sup> 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.

**6. Disposal of Excavated Material**

**Prior to the issuance of the coastal development permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of the material.**

**IV. Findings and Declarations**

The Commission hereby finds and declares:

**A. Project Description and Background**

The applicants propose to construct a two story, 33.25 ft high, 6,572 sq. ft. single-family residence with attached four car garage with basement, driveway, patio, pool, septic system, grade 1,460 cubic yards of material and export 480 cubic yards to a disposal site located outside the coastal zone at 6301 Gayton Place, City of Malibu, Los Angeles County (Exhibits 1 – 10).

The subject property includes a building site created as part of a previous three-lot subdivision approved in Coastal Permit Number 5-90-199, Morgan. The property descends past the building site adjacent to Gayton Place at a 4:1 slope with a topographic relief of 90 feet. Two residences have been approved on the other two lots of this subdivision in Coastal Permit Numbers 4-99-091, Perrone and 4-99-092, Gayton Place Ranch. In 1991, the Commission denied a proposed three-story residence, guesthouse, pool terrace, and garage totaling

17,550 sq. ft. with 6,766 cubic yards of grading on the subject site, as it was inconsistent with the Coastal Act.

Surrounding development is a mixture of single-family residential development and horse raising and agriculture. Vegetation is ruderal and consists primarily of grasses, with some mustard plants. The subject property has been planted with rosemary and thyme. There is a minor amount of natural vegetation near the building site including a eucalyptus tree that would be affected by the project's fuel modification area.

The Coastal Slope Trail as identified on the Los Angeles County Park and Recreation Trail Map dated 1985 is located as close as about 600 feet north of the project site as it crosses from Bonsall Drive to Zuma Canyon Creek to the northeast of the project site then westerly up the canyon to Cavalleri Road and then northeast to Kanan Dume Road. Due to the location of the proposed residence relative to this trail, the project's public visibility from Bonsall Drive, a distance of about one half mile, is limited. The project site will not be visible from Pacific Coast Highway or other scenic public roadways.

**B. Geologic Stability and Hazards**

**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, instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

The proposed development is located in the Santa Monica Mountains, an area 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. 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.

The prominent geomorphic features in the area are Pt. Dume to the south and the LUP-designated Significant Ridgeline to the east. Physical topographic relief across the lot is about 90 feet. Slope drainage presently is by sheet flow runoff.

**1. Geology**

The applicant has submitted geology reports titled; Addendum Report No. 1,

GeoConcepts, Inc. dated November 21, 2001; Limited Geologic and Soils Engineering Investigation by GeoConcepts, Inc. dated October 4, 2001; Results of percolation testing by Donald B. Kowalewsky, dated October 12, 2001. In the Limited Geologic and Soils Engineering Investigation by GeoConcepts, Inc. dated October 4, 2001, the report concludes that:

It is the finding of this corporation, based upon the subsurface data that the proposed project will be safe from landslide, settlement or slippage and will not adversely affect adjacent property, provided this corporation's recommendations and those of the City of Malibu and Uniform Building Code are followed and maintained.

Given the findings and recommendations of the consulting engineer and geologist, the Commission finds that the development is consistent with Section 30253 of the Coastal Act so long as all recommendations regarding the proposed development are incorporated into the project plans. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by these consultants as conforming to their recommendations, as noted in Special Condition Number One (1) for the final project plans for the proposed project.

## **2. Wildfire**

The Coastal Act also requires that new development minimize the risk to life and property in areas of high fire hazard. The Coastal Act recognizes that new development may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to establish who should assume the 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 his~~ property.

Vegetation in the coastal areas of the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, Terrestrial Vegetation of California, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from these associated risks. Through the waiver of liability, the applicant acknowledges and

appreciates the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development, as incorporated by Special Condition Number Two (2).

### **3. Erosion**

Surface drainage is proposed to be collected and dissipated to avoid erosion impact which may affect the site or the surrounding area. A drainage plan is needed to collect drainage from the building and driveway through a system of drains, splash walls, walls, and swales and conveys it to a rip rap energy dissipater.

The Commission finds it necessary to require the applicant to include interim drainage and erosion control measures for several reasons. A landscaping component, review and approval by the consulting engineering geologist, measures for replanting, soil stabilization, maintenance, sedimentation control, and monitoring are all necessary to minimize the potential for erosion and disturbed soils and thereby ensure site stability and stream protection. Approval with Special Condition Number Three (3) is necessary, therefore, so that the landscape and erosion control plan and the agricultural operation plan, as required by Special Condition Number Four (4), can ensure site stability and avoidance of the potentially adverse impacts of erosion and sedimentation on the blue line stream in Zuma Canyon Creek in a manner consistent with PRC Section 30253.

Further, Special Condition Number Six (6) is necessary to ensure that excess excavated material is disposed of in an appropriate disposal and that a permit be obtained if the disposal is in the Coastal Zone. The applicant has submitted a letter received March 8, 2002, confirming that this excess material is proposed to be exported to the Calabasas Landfill in Agoura or the Bradley Landfill in Sun Valley. Therefore, the applicant has met this Special Condition.

Therefore, the Commission finds that only as conditioned is the proposed project consistent with Section 30253 of the Coastal Act.

### **C. Coastal Resources and 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 that:

*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.*

Section 30240 (b) of the Coastal Act states:

*Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

Section 30107.5 of the Coastal Act, defines an environmentally sensitive area as:

*"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

As described above, the proposed project includes the construction of a residence and garage and an agricultural operation on the remaining portion of the two-acre property. The site is considered a "hillside" development, as it involves moderately sloping terrain with soils that are susceptible to erosion.

The proposed development will result in an increase in impervious surface, which in turn decreases 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 including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic

species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, 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 (infiltrate, filter or treat) the amount of stormwater produced by all storms up to and including the 85<sup>th</sup> percentile, 24 hour storm event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in Special Condition Number Five (5), and finds this will ensure the proposed development and agricultural operation will be ~~designed to minimize adverse impacts to coastal resources~~, in a manner consistent with **the water and marine policies of the Coastal Act**.

Furthermore, interim erosion control measure implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that Special Condition Number Five (5) is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

The applicant proposes to conduct agricultural uses on the majority of the subject parcel, about one and one half acres, beyond the location of the residential development. Vegetation on this property prior to the planting of the existing rosemary in late 1990's consisted of non-native grasses and other vegetation. The subject property is not located in any area determined to be ESHA.

By limiting the agricultural use to appropriate agricultural practices that minimize pesticide and nutrient use, the surrounding coastal resources located in Zuma Canyon Creek and the offshore waters beyond the watershed will be better protected. Special Condition Number Four (4) requires the applicant to prepare an agricultural plan specifically identifying the proposed agricultural area. In addition, this agricultural plan will require agricultural practices to minimize potential impacts to coastal resources in the watershed. With this condition, the proposed agricultural use areas will be conducted in a manner consistent with the protection of coastal resources, and consistent with the Coastal Act.

The project site also includes landscaping surrounding the residence and garage and driveway. To address the need for a landscape plan, minimize erosion hazards for the disturbed and graded areas proposed for the development, and minimize the alteration of physical features, Special Condition Number Three (3) is necessary. Special Condition Number Three (3) will help to ensure that the biological productivity and quality of coastal waters, such as Zuma Canyon Creek located to the west of the site and to offshore kelp beds and waters, are maintained and protected against significant disruption. Therefore, to ensure that no adverse impacts on the site and beyond the subject site will occur from increased runoff, Special Condition Number Three (3) requires a landscape, erosion control and Final Fuel Modification Plan to landscape all graded and disturbed areas on the project site including the requirement to revegetate the building pad on the areas beyond the developed area of the building pad allowed for development. The landscape plan and fuel modification plan needs the language of this Special Condition to be added to the final approved plans.

In addition, Special Condition Number Three (3) also requires the applicant to implement a landscape plan with native plant species to stabilize and vegetate the site. The Commission further notes that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Direct adverse effects from such landscaping result from the direct occupation or displacement of native plant community habitat by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant species habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area, Special Condition Number Three (3) also requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used except for the agricultural areas approved for planting under Special Condition Number Four (4). Special Condition Number Three (3) further requires an interim erosion control plan to minimize erosion of the site and sedimentation offsite

during the construction of the project and requires a landscape monitoring report five years from the date of receipt of the Certificate of Occupancy for the residence.

Finally, the proposed development includes the installation of an on-site septic system to serve the residence. The applicants' geologic consultants 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 in-concept 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, is consistent with Sections 30231 and 30240 of the Coastal Act.

**D. Visual Resources/Landform Alteration**

**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. ...***

The Commission evaluates the proposed project in terms of the impact of the project on coastal views and from scenic highways, public land and trails. The proposed development overlooks a portion of Zuma Canyon and is not visible from the Pacific Coast Highway, a designated scenic route. The site is located to the east and approximately one-half mile uphill of Zuma Creek, a USGS-designated blue line stream surrounded by a disturbed oak woodland. Both the creek and woodland areas are designated environmentally sensitive habitat areas in the certified Malibu/Santa Monica Mountains Land Use Plan (LUP).

The site is not visible from this resource area. The site is not visible from Kanan Dume Road, a designated scenic route, because of intervening topography. The site is visible from public land to the north and from a segment of the Zuma Ridge Trail approximately 600 feet to the north, but does not create a significant visual impact for the reasons noted below.

The residence is partially cut or keyed into the slope. The site is located along a



minor ridgeline where Gayton Place is located. The proposed single-family residence is located in an area where other large single-family residences are also located along this minor ridgeline. This minor ridgeline is along the approximate route of Cavalleri Road and Gayton Place. The proposed development is similar in character to this surrounding area.

The proposed development includes a moderate amount of grading for the proposed structure and access driveway. The location of the residence on an existing building pad and the relatively short driveway from Gayton Place results in a minimum of necessary alteration of a natural landform. As noted, the project design is similar in character to the surrounding area. For these reasons, the project does not raise an issue relative to visual resources under PRC Section 30251. Therefore, the Commission finds that, as conditioned, the project is consistent with Section 30251 of the Coastal Act.

**E. Septic System**

The Commission recognizes that the potential build-out of lots in Malibu and the Santa Monica Mountains, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area.

Section 30231 of the Coastal Act states that:

*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.*

The proposed septic system consists of a 3,000-gallon septic tank. The installation of a private sewage disposal system was reviewed by the City Environmental Health Department and received in-concept approval. The approval indicates that the system complies with the minimum requirements of the City of Malibu Plumbing Code. The Commission has found in past permit actions that compliance with the City health and safety codes will minimize any potential for wastewater discharge that could adversely impact coastal waters. Therefore, the Commission finds that the proposed septic system is consistent with Section 30231 of the Coastal Act.

**F. 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).*

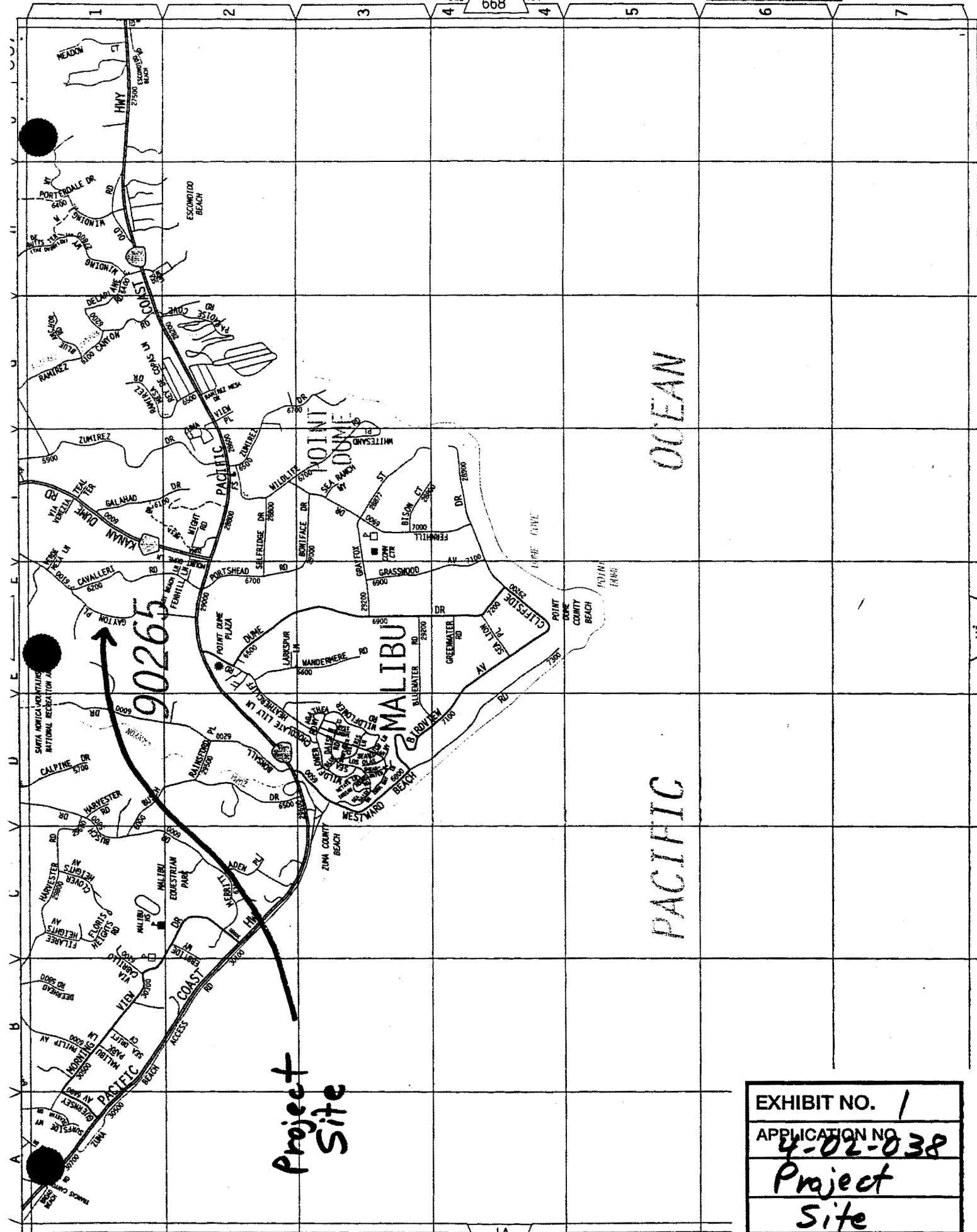
Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3.

Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

**G. California Environmental Quality Act**

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, 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 City of Malibu has determined that this proposed project is categorically exempt from CEQA.

The proposed development would not cause significant, adverse environmental effects which would not be adequately mitigated by the conditions imposed by the Commission. Therefore, the proposed project, as conditioned, is found consistent with CEQA and with the policies of the Coastal Act.



OCEAN

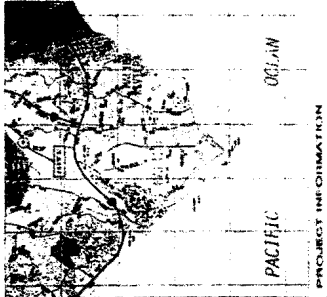
PACIFIC

Project Site

90265

EXHIBIT NO. 1
APPLICATION NO. 4-02-038
Project Site

VICINITY MAP



PROJECT INFORMATION

PROJECT NAME: [Redacted]  
 PROJECT ADDRESS: [Redacted]  
 OWNER: [Redacted]  
 ARCHITECT: LESLIE LIPPICH ARCHITECT & ASSOCIATES  
 PREPARED BY: [Redacted]

AREA TABULATION

USE	AREA (SQ. FT.)	% OF TOTAL
RESIDENTIAL	1,234,567	78%
PUBLIC USE	345,678	22%
TOTAL	1,580,245	100%

- 1 SITE PLAN
- 2 BASEMENT PLAN
- 3 FIRST FLOOR PLAN
- 4 SECOND FLOOR PLAN
- 5 ROOF PLAN
- 6 EXTERIOR ELEVATIONS
- 7 EXTERIOR ELEVATIONS
- 8 SITE SECTIONS

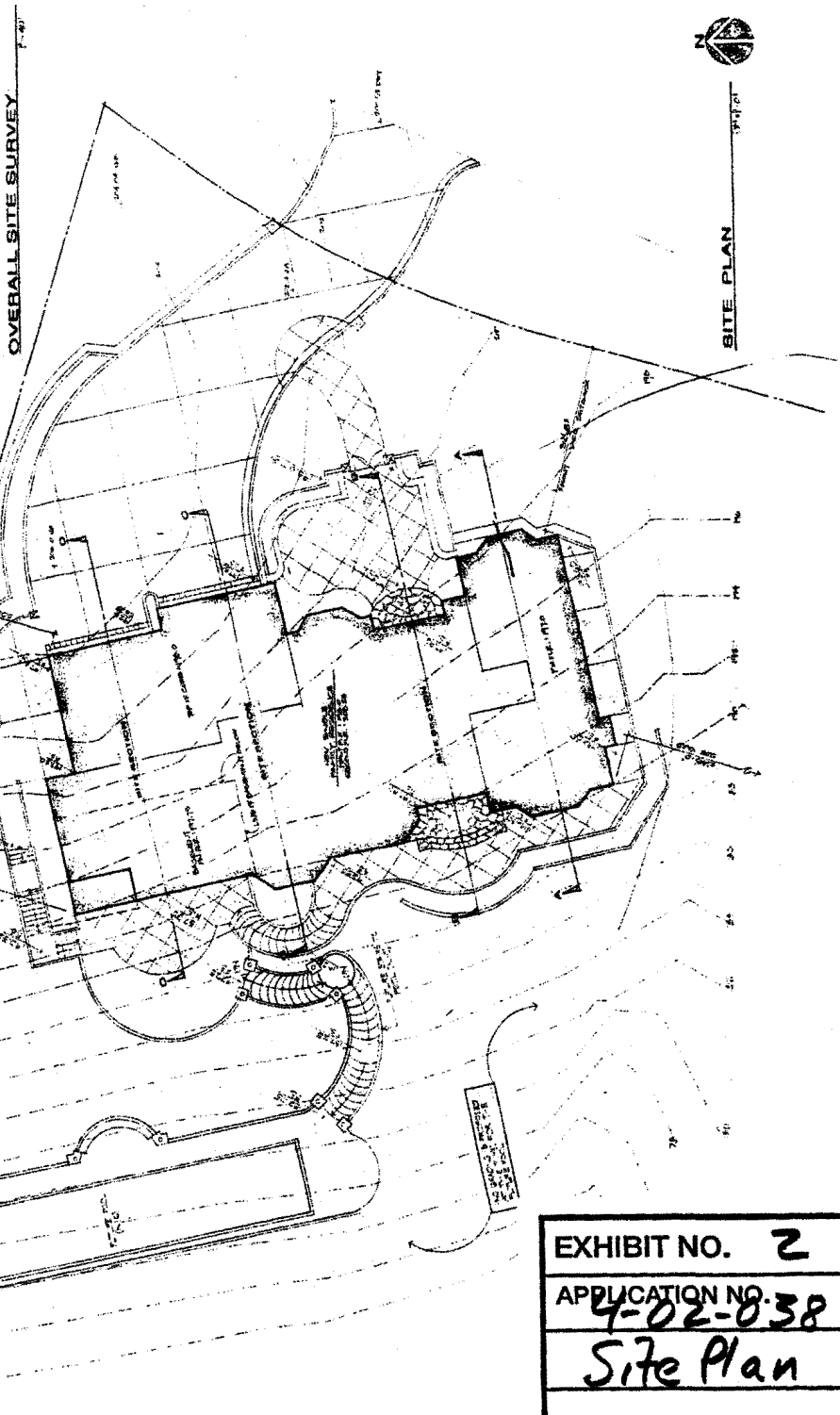
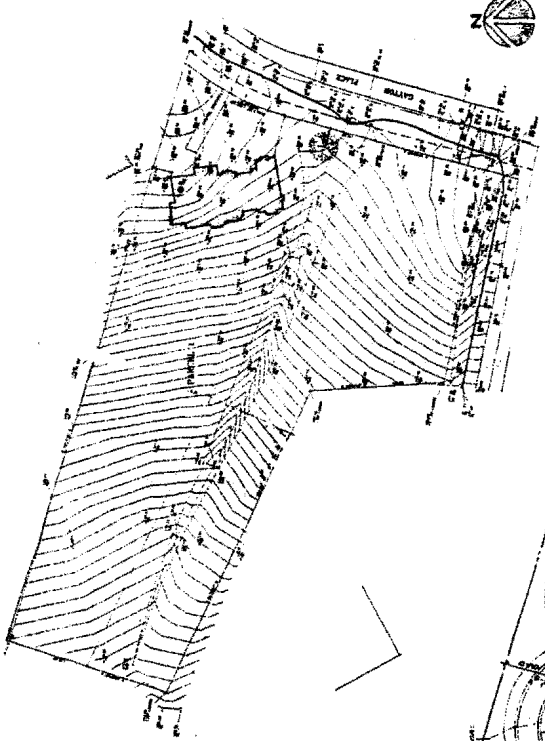


EXHIBIT NO. 2  
 APPLICATION NO. 4-02-038  
 Site Plan

SYMBOL	BOTANICAL NAME	COMMON NAME
○	AGAVE FLORIBUNDA	SPIDER PLANT
○	CACTUS AZOTICALIS	CHRISTMAS CACTUS
○	CITRUS (LEMON)	LEMON
○	HEMIPHYLLIS ABUTTELII	HEMIPHYLLIS
○	LAGERHEIMIA INDICA	LAGERHEIMIA
○	PLATANUS HISPANICA	PLATANUS
○	AGAPANTHUS LILIPALMIS	AGAPANTHUS
○	ABUTILON CALIFORNICA	ABUTILON
○	ANTHEMIS NONATA	ANTHEMIS
○	CRANTONIA CALIF.	CRANTONIA
○	HEMIPHYLLIS FLORIDA	HEMIPHYLLIS
○	LOMBARDIA ASPERATA	LOMBARDIA
○	LAVANDULA ASTRATA	LAVANDULA
○	PEROVSKIA TOURNEFORTII	PEROVSKIA
○	PELLAEONIA HEARTII	PELLAEONIA
○	ROSA CALIFORNICA	ROSA
○	MILVUS INTEGRIFOLIA	MILVUS
○	TRACHELOSPERHUM JON.	TRACHELOSPERHUM
○	DRUM LITENSIS	DRUM LITENSIS
○	CALIF. SANDWOOD	CALIF. SANDWOOD
○	BIRD BURNING	BIRD BURNING
○	BIRD BURNING	BIRD BURNING
○	BIRD BURNING	BIRD BURNING
○	BIRD BURNING	BIRD BURNING
○	BIRD BURNING	BIRD BURNING
○	BIRD BURNING	BIRD BURNING
○	BIRD BURNING	BIRD BURNING

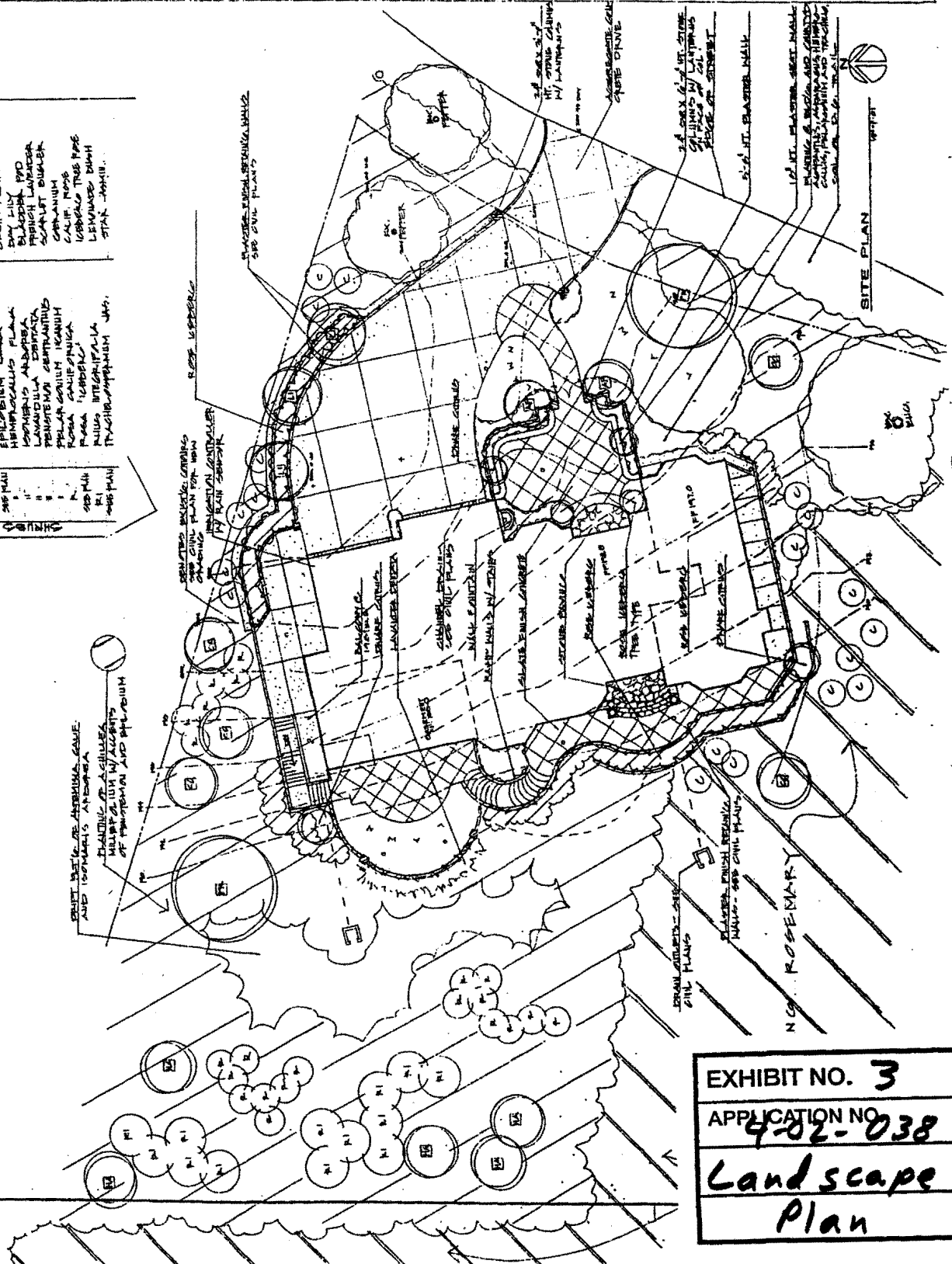
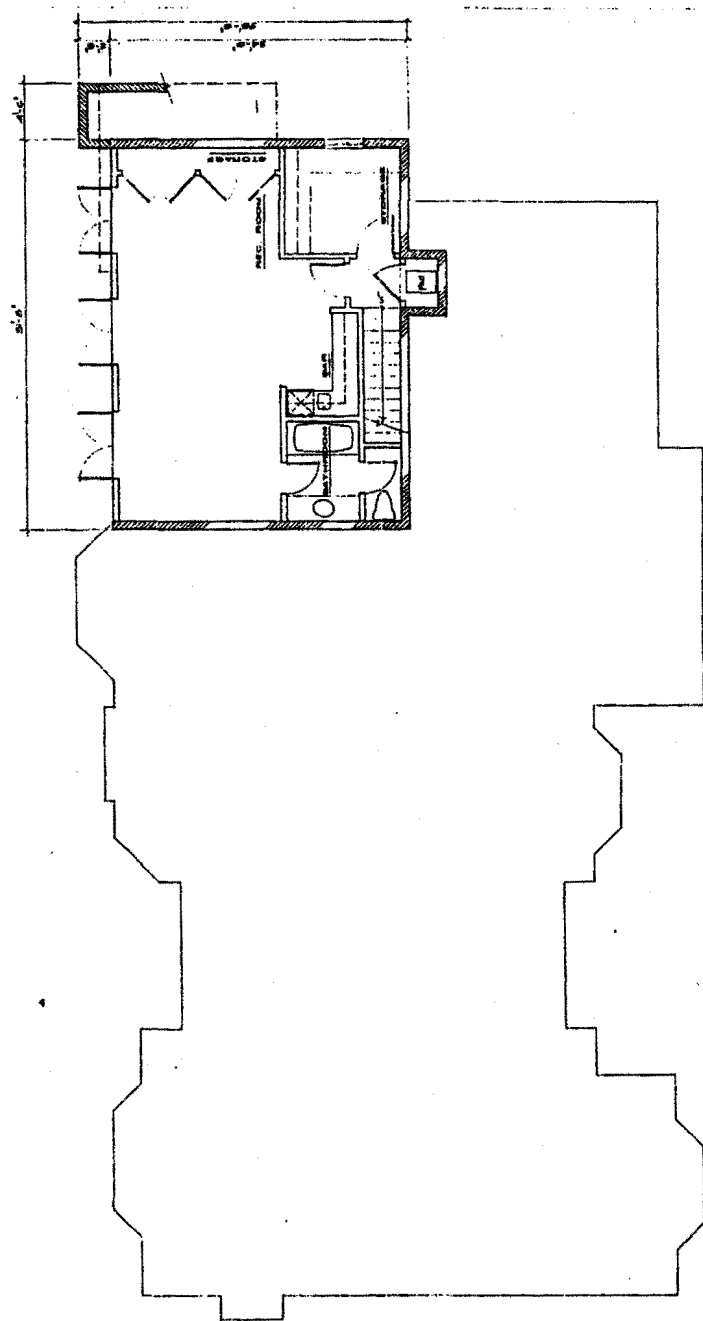


EXHIBIT NO. 3  
 APPLICATION NO.  
 4-02-038  
 Landscape  
 Plan

CUSTOM RESIDENCE  
for  
PAUL & JUDY FOGEL  
8801 Canyon Place  
MILBURN, CALIFORNIA

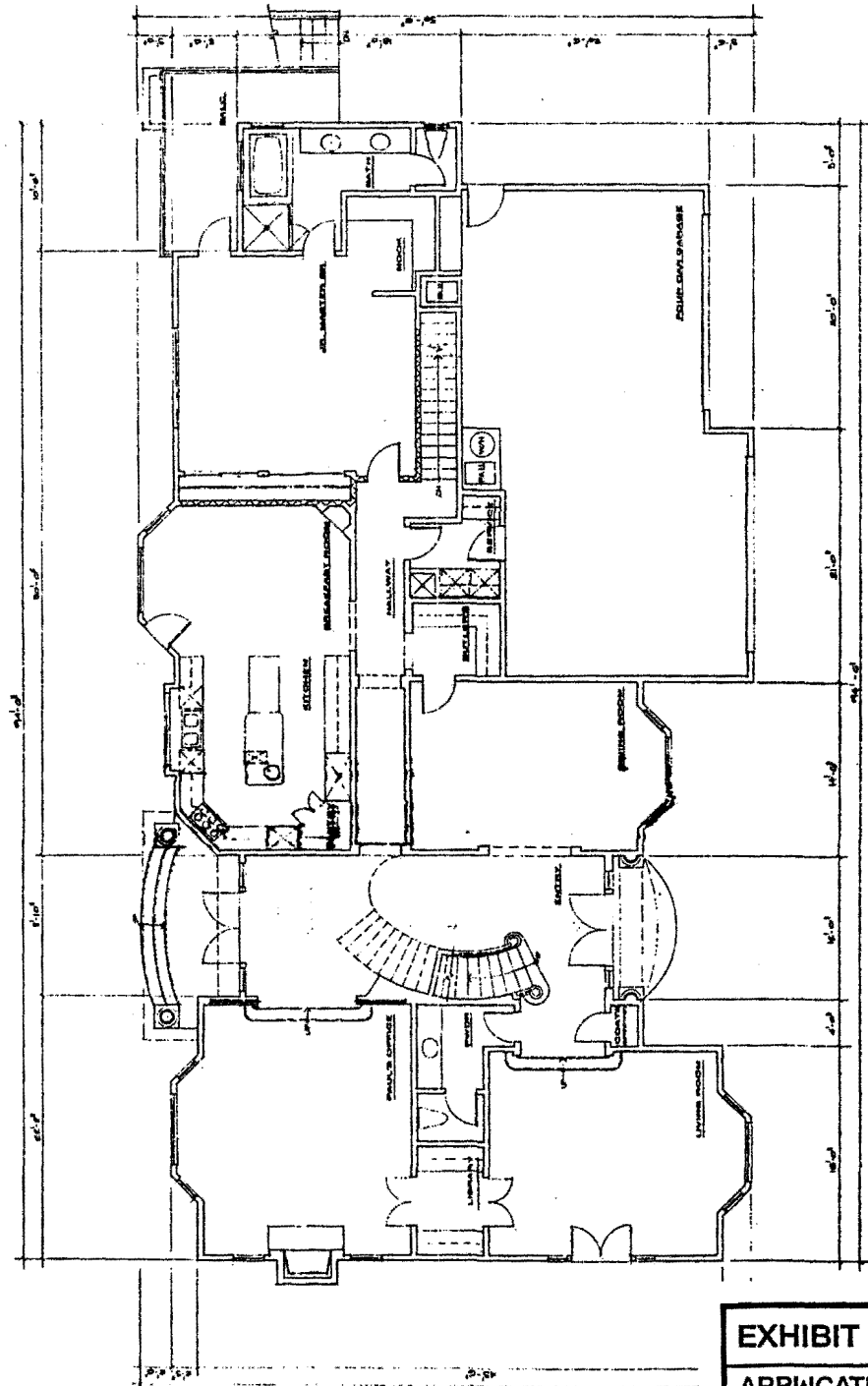
DATE	12-10-68
BY	J.M.C.
NO. OF SHEETS	2 OF 2
REVISIONS	
PROJECT	
BASEMENT FLOOR PLAN	

LESLIE UPPICH ARCHITECT & ASSOCIATES  
ARCHITECTS  
DESIGN PLANNING  
PHONE (916) 835-1343  
708 FIVE CEMETARY, SUITE 210  
CALIFORNIA CALIFORNIA 91103



BASEMENT FLOOR PLAN

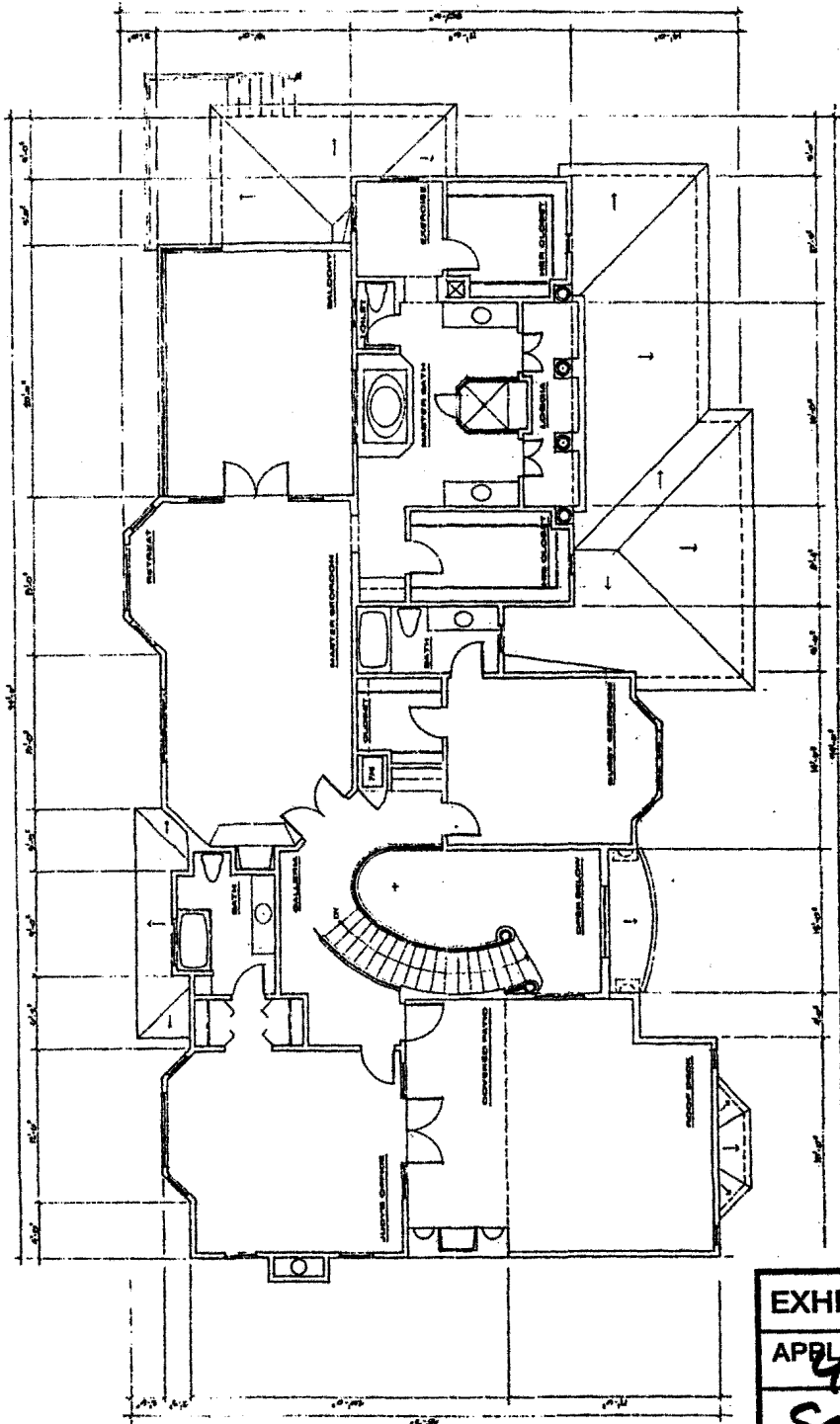
EXHIBIT NO. 4
APPLICATION NO. 4-02-038
Basement
Floor Plan



FIRST FLOOR PLAN. 2000. MOST ACCURACY REF. DRAWING INTO 10.00 FT. SCALE.

EXHIBIT NO. <b>5</b>
APPLICATION NO. <b>4-02-038</b>
<b>First Floor</b>
<b>Plan</b>

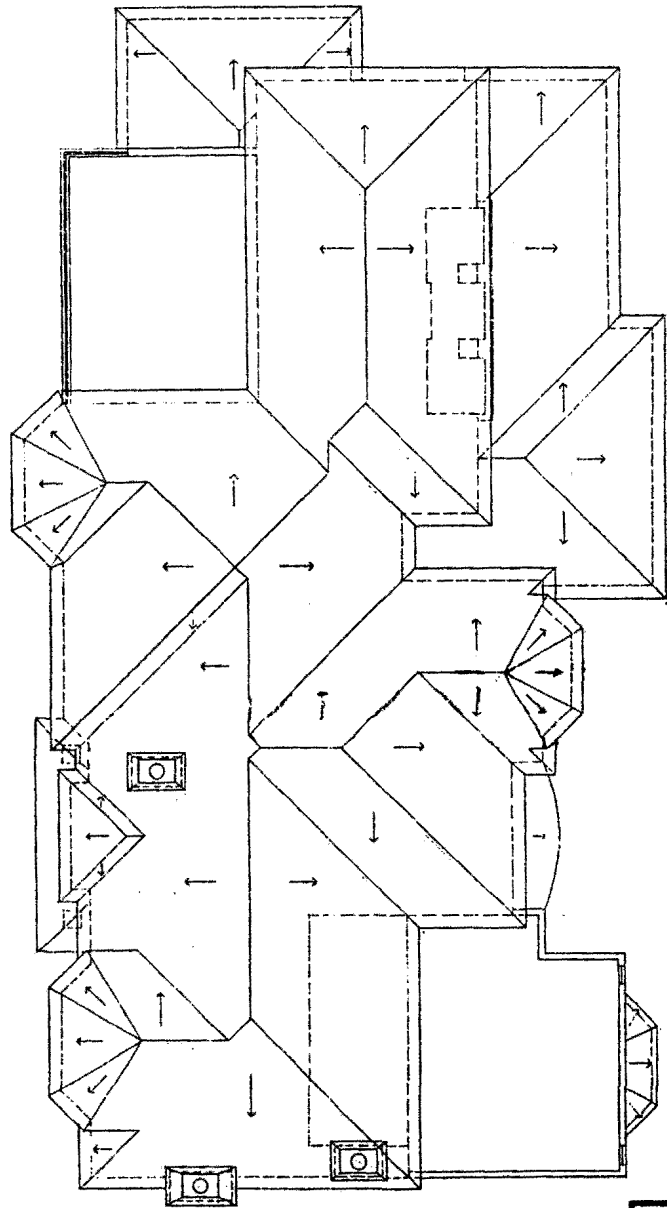
DATE: 12-15-62	REVISIONS:
JOB NO. 2-4-62	
SECOND FLOOR PLAN	



SECOND FLOOR PLAN (22x30 IMPROVED) 12/15/62

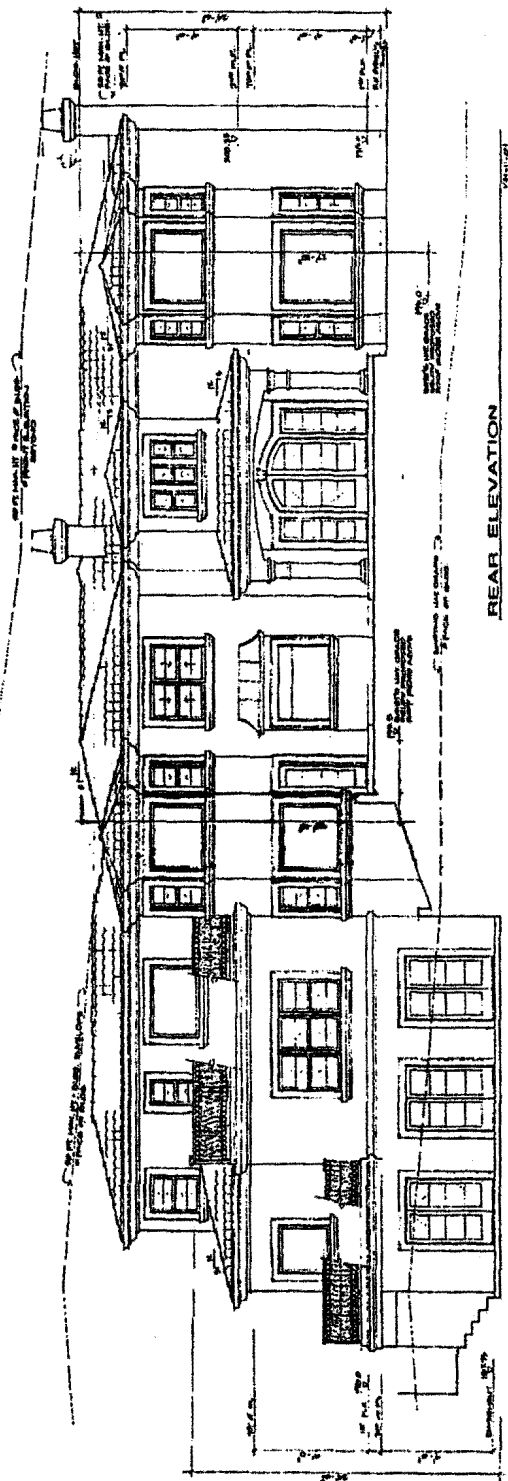
EXHIBIT NO. 6
APPLICATION NO. 4-02-038
Second Floor Plan



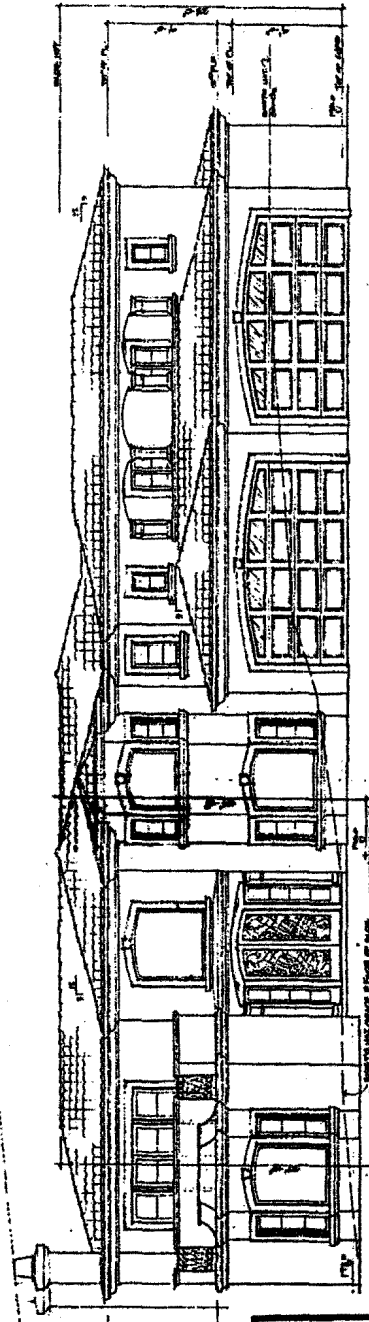


ROOF PLAN

EXHIBIT NO. 7
APPLICATION NO. 4-02-038
Roof Plan



REAR ELEVATION



FRONT ELEVATION

EXHIBIT NO. 8  
APPLICATION NO. 4-02-038  
Front & Rear  
Elevations

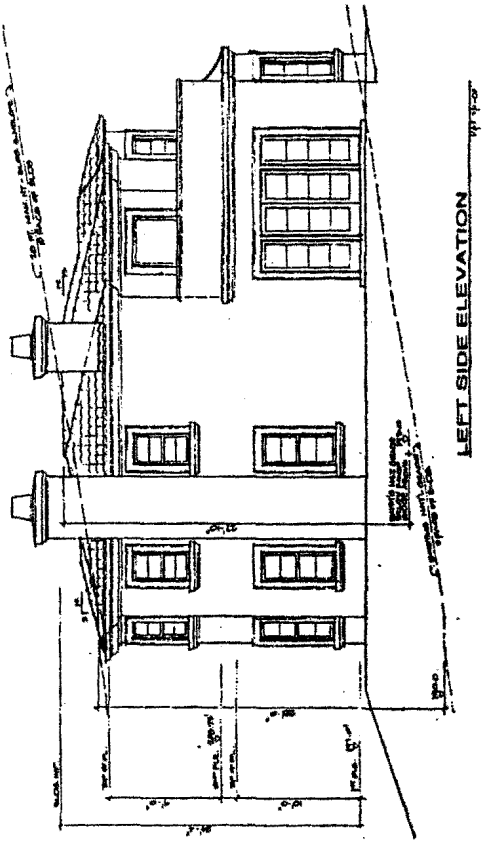
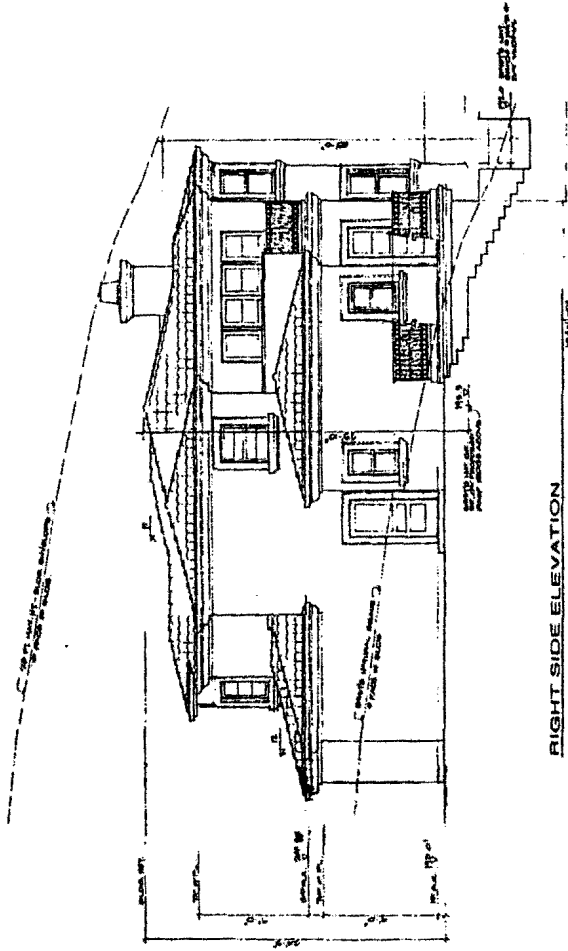


EXHIBIT NO. <b>9</b>
APPLICATION NO. <b>4-02-038</b>
<b>Right &amp; Left</b>
<b>Side Elevations</b>

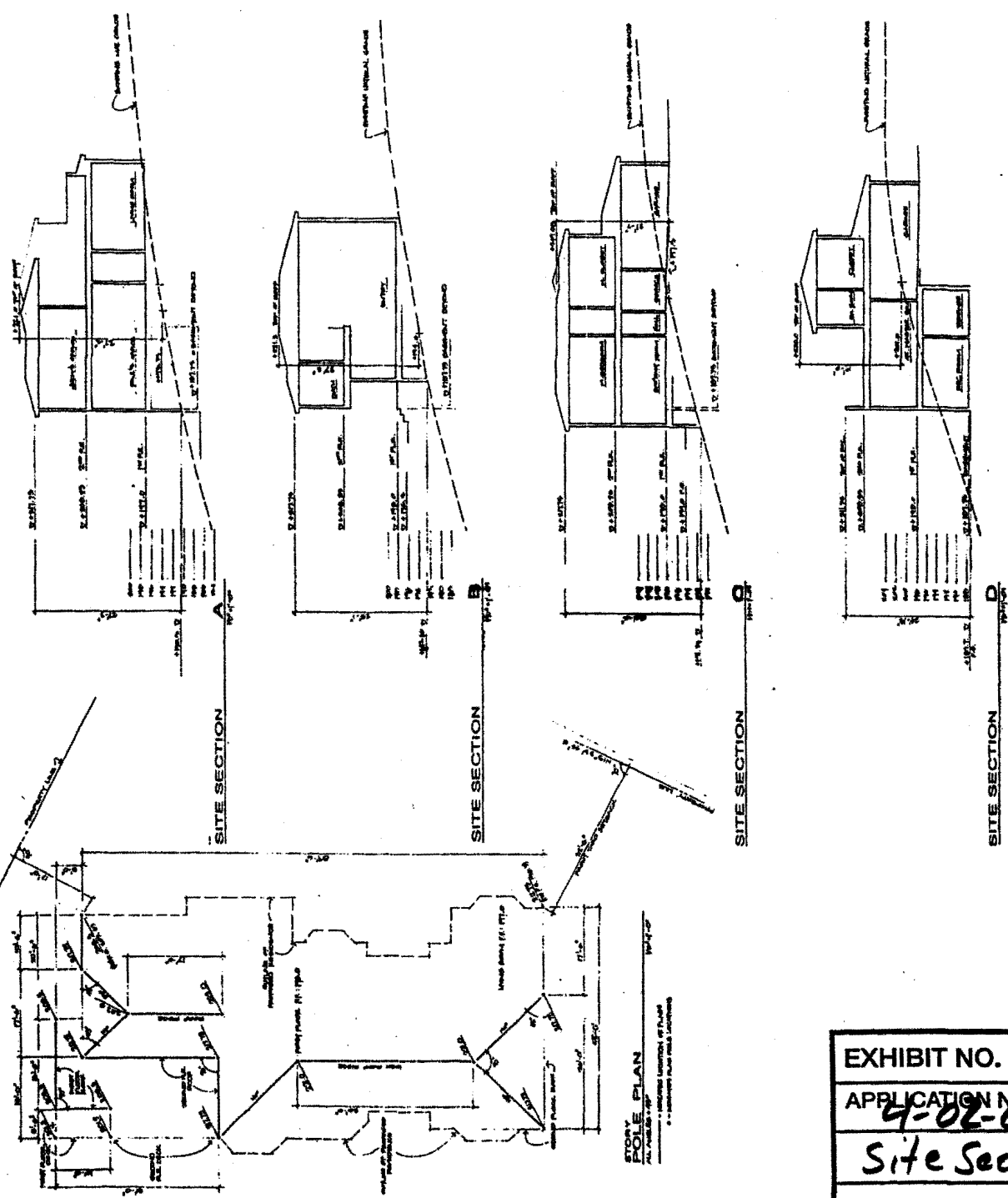


EXHIBIT NO. 10  
APPLICATION NO. 4-02-038  
Site Sections

TO: James Johnson  
Coastal Program Analyst  
California Coastal Commission

APR 24 2002

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

From: Judy Fogel  
Application #: 4-02-038  
Phone: 818 880-8731  
Fax: 818 880-8732

April 24, 2002

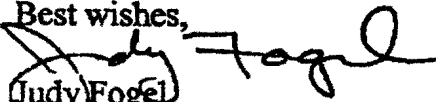
Dear James,

I am writing to say I took you up on your suggestion of writing your supervisor to ask why you were given our project when your case-load is so heavy. It is my understanding that you are handling some very involved, very complicated cases right now. It doesn't make sense that more work would be put on top of that.

You said you needed us to be patient, but my husband is being laid off by Boeing and we are hemorrhaging money. We have saved all our lives for this and can still make it if our file is processed in a timely manner. The state's hiring freeze makes this extremely difficult, but anything you would do would be immensely appreciated. I am sure you agree that no one wants it to be the state's policy to allow only rich people, who can survive the financial pain of waiting, to build in Malibu.

Thank you, James.

Best wishes,

  
(Judy Fogel)

P.S. You asked me not to phone you as it only prevents you from getting through this bottleneck of cases. I understand your difficult position and hope that you will understand ours. My contacting local politicians to help is only human nature when one is faced with a "hemorrhage" situation.

*financial*

EXHIBIT NO. 11
APPLICATION NO. 4-02-038
Letter from Applicant

April 9, 2002

Peter Douglas, Executive Director  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, California 94105-2219

RE: CDP PERMIT APPLICATION #4-02-038

Dear Mr. Douglas:

We submitted the above referenced Coastal Development Permit application for a single family residence at 6301 Gayton Place, Malibu, California, on February 13, 2002. We spoke with Mr. James Johnson, who has been assigned as the Coastal Program Analyst for the project, shortly after we submitted the application. We were notified in mid-March that our application is complete, and would be set for hearing at the July Commission meeting and that it would then take several months following that hearing for the legal documents which would be required as conditions of approval to be processed. In fact, Mr. Johnson told us that the entire process could take a year!

This property is part of a Parcel Map which was approved by the Commission under CDP #5-90-199. The property is not visible from Pacific Coast Highway or any other public road.

We assume that the potential impacts of development of the property were evaluated when the parcel map was reviewed by staff prior to approval by the Commission. We can't understand how it can possibly take so much time to prepare a Staff Report for what appears to us to be a very simple project on a property which has already been evaluated from a development potential standpoint.

We are planning to build our own home on the property, and it's an extreme hardship for us to carry the property for such a long time while we wait for a hearing, and then carry it for another several months while we wait for documents to be prepared that we are required to have recorded before we can obtain a permit. Judy is a teacher with LA Unified and I am an engineer.

Perhaps there are properties and developments that require such a long time to process because of their potential impacts on access or resources, but this is not one of them.

We would appreciate any help you can give us that will help to shorten this process. We have already spoken to Mr. Alnsworth and Mr. Timm, both of whom were sympathetic, but neither of whom had any suggestions for us.

Thank you for your time.

Sincerely yours,

Paul Fogel

*Paul Fogel*

Judy Fogel

*Judy Fogel*

Co. Sheila J. Kuehl, California State Senate  
Gray Davis, Governor, State of California

RECEIVED

MAY 1 2002

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

EXHIBIT NO. 12
APPLICATION NO. 4-02-038
Letter from Applicants

# Assembly California Legislature

**FRAN PAVLEY**

ASSEMBLY MEMBER, FORTY-FIRST DISTRICT

CHAIR, BUDGET SUBCOMMITTEE  
ON RESOURCES (NO. 3)  
COMMITTEE MEMBER:  
APPROPRIATIONS  
BUDGET  
EDUCATION  
NATURAL RESOURCES  
WATER, PARKS AND WILDLIFE

STATE CAPITOL  
P.O. BOX 942848  
SACRAMENTO, CA 94249-0041  
(916) 319-2041  
FAX (916) 319-2141  
DISTRICT OFFICE  
TORANGA CANYON BLVD.  
SUITE 205  
WOODLAND HILLS, CA 91367-2108  
(818) 598-4141  
(310) 996-3414  
FAX (818) 598-4180

*5/20  
Pat - What's the  
status of this?  
PD*

RECEIVED

MAY 1 2002

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CALIFORNIA COAST DISTRICT

April 29, 2002

Sara Wan, Chair  
Members of the Commission  
CALIFORNIA COASTAL COMMISSION  
89 South California Street, Suite 200  
Ventura, CA 93001

Re: **CDP Application No. 4-02-038**  
**6301 Gayton Place, Malibu**

Dear Chairperson Wan and Commissioners:

Enclosed is a letter to Peter Douglas from my constituents, Judy and Paul Fogel, a copy of which was sent to me with a request for assistance.

As I understand the Fogel's application, this was a four-acre parcel that was subdivided into three lots that have already been approved by the Coastal Commission. They further state that the homes on two of these lots were approved by the Commission within three months, but that they are being told to expect a wait of one year, apparently based, at least in part, on a vacancy in the Commission's legal staff. The Fogels say that there is nothing different about their lot or application from the other two. They are not in an ESHA. They are not visible. There are no legal issues since they are not disputing any of the Commission's findings.

They are asking for help in processing their application within a similar time frame to the other two parcels. They are willing to travel to wherever the Commission may be meeting in order to get on the first available agenda.

This is to ask for your assistance in moving this application forward in a timely manner, and would appreciate receiving a copy of any response that you may send to the Fogels on this issue.

Thank you for your anticipated assistance to these constituents.

Sincerely,

*Fran Pavley*

FRAN PAVLEY, Assemblymember  
FP:lr

EXHIBIT NO. 13
APPLICATION NO. 4-02-038
Letter from Assembly Member Pavley

RECEIVED

MAY 28 2002

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

May 23, 2002

Mr. Jack Ainsworth  
Supervisor of Planning and Regulation  
California Coastal Commission  
89 South California Street  
Ventura, California 93001

RE: CDP PERMIT APPLICATION NO. 4-02-038  
6301 Gayton Place, Malibu

Dear Mr. Ainsworth,

We have received indication from your staff that our project will be heard in July. This is extremely important to us as we are paying \$4000.00 a month in carrying charges. We submitted our application on February 13, 2002.

If there is anything else you need from us, please tell us now and please tell us the deadline for it. We will drive there to deliver anything you require. We are planning everything around this July hearing date.

Thank you for your help in meeting this deadline, Jack.

Sincerely,

*Paul Fogel*

Paul Fogel

*Judy Fogel*

Judy Fogel

Cc: Sheila J. Kuehl, California State Senate  
Sara Wan, Chair, California Coastal Commission

EXHIBIT NO. 14
APPLICATION NO. 4-02-038
Letter from
Applicants