

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



F11a

Addendum

DATE: April 13, 2010
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item F11a, Friday, April 16, Coastal Development Permit No. P-9-23-76-8961-A2-R (Breskal)

The purpose of this addendum is to: add public comments.

Two letters, attached, were received via facsimile on April 13, 2010 from Annie Evans, representing the Evans Family Trust, and Sanford Evans, the current property owner of Lot #2 of the subject lot split, stating their support for staff's recommendation for denial for the reconsideration request to delete Special Condition No. 2 of permit P-9-23-76-8961 prohibiting development on one parcel of a three parcel subdivision.

CALIFORNIA COASTAL COMMISSION

South Central Coast District
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Ventura, CA 93001
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F11a

Filed: 3/10/2010
180th Day: N/A
Staff: ADB-V
Staff Report: 3/24/2010
Hearing Date: 4/16/2010

**STAFF REPORT: REQUEST FOR RECONSIDERATION**

APPLICATION NO.: P-9-23-76-8961-A2-R
APPLICANT: Saul Breskal
AGENT: Lynn J. Heacox
PROJECT LOCATION: 28004 Sea Lane, Malibu, Los Angeles County [APN: 4460-033-029]

PROJECT DESCRIPTION: Request to delete Special Condition No. 2 of permit P-9-23-76-8961 prohibiting development on one parcel of a three parcel subdivision. The application also includes the proposal to retire the development potential of one separate parcel in Topanga pursuant to a Transfer of Development Credit (TDC).

COMMISSION ACTION AND DATE: The Commission denied Coastal Development Permit Application No. P-9-23-76-8961-A2 on February 11, 2010.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan; "Engineering Geologic and Geotechnical Engineering Report for Proposed Residence and Swimming Pool at 28004 Sea Lane Drive, Malibu, California," Donald B. Kowalewsky, Environmental & Engineering Geology, 3/31/2008; Permit P-9-23-76-8961 (Kraft & Evans);

EXHIBITS:

- Exhibit 1.** Vicinity Map & Aerials
- Exhibit 2.** Parcel Map
- Exhibit 3.** Land Use Plan Map
- Exhibit 4.** Applicant's Request for Consideration on CDP P-9-23-76-8961-A2
- Exhibit 5.** Average Size of Parcel within ¼ mile of Subject Parcel (table)
- Exhibit 6.** California Coastal Zone Conservation Commission hearing transcripts from November 29, 1976, December 6, 1976, and December 9, 1976
- Exhibit 7.** Resolution of Approval and Permit P-9-23-76-8961
- Exhibit 8.** Text from P-9-23-76-8961-A2 Staff Report

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission deny the request for reconsideration because no new relevant information has been presented that could not, with reasonable diligence, have been presented at the November hearing, and no errors in fact or law have been identified that have the potential of altering the Commission's decision.

PROCEDURAL NOTE

The Commission's regulations provide that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of the denial of an application, or of any term or condition of a coastal development permit which has been granted (Title 14 Cal. Code of Regulations Section 13109.2).

The regulations also state (id. at § 13109.4) that the grounds for reconsideration of a permit action shall be as provided in Coastal Act Section 30627, which states, in part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the Commission's initial decision.

Cal. Pub. Res. Code § 30627(b)(3). Section 30627 (b)(4) of the Coastal Act also states that the Commission "shall have the discretion to grant or deny requests for reconsideration."

The applicant submitted a request for reconsideration of the Commission's February 11, 2010 decision on March 10, 2010, stating the grounds for its request within the 30-day period following the final vote, as required by Section 13109.2 of the regulations. If a majority of the Commissioners present vote to grant reconsideration, the permit application will be scheduled for a subsequent Commission hearing, at which the Commission will consider it as a new application (Title 14, Cal. Code of Regs., Section 13109.5(c)).

SUMMARY OF APPLICANT'S CONTENTIONS

The request for reconsideration is based on the assertion that "relevant new evidence [was] not available at the hearing" and an "error of fact" had occurred that could potentially alter the Commission's initial decision. The applicant's agent submitted a letter (Exhibit 4) which states the following as the basis for requesting reconsideration:

The information not [available] was an alternative condition that could have been imposed which would have resulted in the proposed project protecting more than 7.3 acres of pristine ecologically sensitive habitat.

Staff made the erroneous claim that the application was equivalent to a new subdivision and then in reliance on that claim stated that the removal of the deed restriction on the subject lot is the equivalent of creating a new parcel that was smaller than what the current zoning specified.

The Staff made an erroneous claim by mis-interpreting the transcripts of the original hearing on the subdivision.

It is erroneous to conclude that the deed restriction was to be permanent.

I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission grant reconsideration of Coastal Development Permit No. P-9-23-76-8961-A2-R pursuant to the staff recommendation.*

STAFF RECOMMENDATION TO DENY RECONSIDERATION:

Staff recommends a **NO** vote on the motion. Following the staff recommendation will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY RECONSIDERATION:

The Commission hereby denies the request for reconsideration of the Commission's decision on coastal development permit application no. P-9-23-76-8961-A2 on the grounds that no "error of fact or law" occurred that has the potential of altering the Commission's initial decision, and no relevant new evidence has been presented that could not, in the exercise of reasonable diligence, have been presented at the original hearing.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Location

On February 11, 2010, the Commission denied the proposed development that is the subject of the underlying permit application. The proposed development was a request to delete Special Condition No. 2 of Coastal Development Permit (CDP) P-9-23-76-8961, which prohibits development on the most landward parcel (designated "Lot 1" and herein sometimes referred to as the "subject parcel") of a three parcel subdivision. Approval of this amendment would allow for the future development of the subject parcel with a single family residence. The applicant also proposes to retire the development potential of a separate parcel in Topanga through the transfer of development credit (TDC) program.

The subject site is a 16,760 sq. ft. vacant lot located at 28004 Sea Lane, Malibu, Los Angeles County [APN: 4460-033-029] (Exhibit 2). The parcel is located in the Escondido Beach community between the first road and the ocean in the City of Malibu (Exhibit 1). There are two lots (one 20,220 sq. ft. and one 33,210 sq. ft.) developed with single family residences between the subject property and the beach. The Certified City of Malibu LCP designates the subject site as RR-2, or one residential unit per two acres (Exhibit 3).

B. Grounds for Reconsideration

Pursuant to Section 30627 (b)(4) of the Coastal Act, the Commission has the discretion to grant or deny requests for reconsideration. Section 30627(a)(1) states that the Commission shall develop procedures that the Commission will use in deciding whether to grant reconsideration of any decision to deny an application for a coastal development permit, and shall follow those procedures in making that decision.

Section 30627 (b)(3) states in relevant part that the valid bases for a request for reconsideration include (1) "that an error of fact or law has occurred" that could alter the Commission's initial decision or (2) that there is "relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter". If the Commission votes to grant reconsideration, it will consider the permit application as a new application at a subsequent hearing.

C. Issues Raised by the Applicant

The applicant's request for reconsideration, attached as Exhibit 4 of this report, contends that relevant new evidence was not available at the hearing and errors of fact occurred which have the potential for altering the Commission's initial decision. The applicant has cited four points of contention:

1. Modify Proposal to Two Transfer Development Credits
 - a. There is no Relevant New Evidence that, in the Exercise of Reasonable Diligence, could not have been Presented at the Hearing.

The applicant contends that there is a basis for the Commission to reconsider its permit decisions because there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter. In this case, the

applicant's agent has stated that if he had been given the opportunity at the hearing, he would have offered the retirement of two TDC parcels instead of one. The applicant's agent, Mr. Heacox, states that:

I did not anticipate, nor should I have anticipated, that members of the Coastal Commission would focus on the three lot subdivision that was approved in 1977 and would raise the question of what mitigation would have been required in 1977 had the Transfer Development Credit (TDC) program been available at the time. This discussion was raised by the Commission after the public hearing had been formally closed. Accordingly, I was not able to address the issue in my presentation. After the public hearing was closed, the staff indicated that if the Transfer Development Credit program had been available in 1977, staff would have recommended approval of the three lot subdivision and required that "two" Transfer Development Credits be provided to mitigate the creation of two new parcels in a developed area. Several commissioners showed interest in staff's comments. ... if I had been given the opportunity to respond to a Commissioners' inquiry, I would have offered two TDC's but also would have advised them that I was unaware if a second TDC would be available.

The Commission does not agree that this represents new evidence that, in exercise of reasonable diligence, could not have been presented at the hearing. The issue of incorporating the retirement of two TDC parcels as mitigation for the impacts of the proposed project was not even considered by the Commission. The applicant's account of the discussion at the hearing is not accurate. The applicant is only correct in asserting that a statement was made by staff after the public comment period of the hearing was closed, which did not afford the applicant's agent an opportunity to respond (there is no way to know how the applicant's agent would have responded or whether he would have, in fact, proposed the retirement of a second TDC parcel). However, Mr. Ainsworth's statement was made during staff's follow-up remarks after the close of the public hearing and it was not in response to any question or statement by one of the Commissioners. He stated that:

If the applicant were to come forward today with two lots, before the City of Malibu on this parcel, to further subdivide this, they couldn't do it because it wouldn't meet the minimum lot size requirements... Under the TDC program, the original subdivision would have required two TDCs because... there was one lot subdivided into three parcels so they would have been required to have two TDCs for this particular lot, not one if it were under the program; under the TDC program. We don't believe that the subdivision complies the minimum density standards.

However, the Commissioners did not, at any time during the public hearing discuss the idea of a second TDC parcel being retired. Commissioner Blank did ask if staff would have recommended approval of the CDP amendment if the applicant had offered to retire a TDC parcel that was equivalent in market value to that of the proposed project site. When asked about such a proposal at the hearing by the Commission, staff responded that:

...if the lot met the minimum density standards here, we would have considered a TDC here, but we were not comfortable with that; removing a restriction that the Commission had clearly placed on this to limit this development to two parcels.

The Commission made no findings regarding the retirement of two TDCs as mitigation. As found by the Commission, the proposed amendment would result in a density of development that would exceed the maximum allowed by the policies of the certified Malibu Local Coastal Program (LCP) and as a result, the applicant's proposal cannot be approved. The applicant's willingness to retire an additional TDC is not relevant new evidence.

Further, there is no reason why the applicant or his agent, in the exercise of reasonable diligence, could not have determined whether he was willing to offer additional mitigation measures, such as additional TDCs, as part of his proposal. Similarly, there is no reason such willingness could not have been communicated to the Commission during the agent's presentation in the public hearing as part of alternative mitigation proposals. It would not have been necessary to indicate that a second TDC lot was identified or secured. It is possible for an applicant to propose the retirement of a TDC and actually locate a lot and effectuate the retirement subsequently, as a condition of approval.

In conclusion, there is no relevant new evidence that, in the exercise of reasonable diligence, could not have been presented at the hearing. For the reasons stated above, this claim presents no basis for reconsideration pursuant to Section 30627(b)(3) of the Coastal Act.

2. Whether Removal of the Restriction on the Lot is Equivalent to a Subdivision

a. There was no Error of Fact or Law that Could Alter the Commission's Decision

The applicant's agent contends that: "staff made the erroneous claim that the application was equivalent to a new subdivision and then in reliance on that claim stated that the removal of the deed restriction on the subject lot is the equivalent of creating a new parcel that was smaller than what the current zoning specified". The applicant's agent further states that:

It was an error on the part of the Staff to treat our request to eliminate a deed restriction on one of three existing legal lots as a new subdivision. This is a legal lot, with a separate address, a separate APN number and a separate owner. Eliminating a deed restriction is not the equivalent of creating a new lot.

The Commission disagrees that this is an error of fact or law that could alter the original decision on the amendment request. The findings do state that: "While the proposed amendment would not technically effectuate a new land division, it is *tantamount* to a land division in that it would allow for the development of a parcel currently restricted from development, and it would change the terms of a prior land division to make it effectively

create an additional lot” (emphasis added). This is a *conclusion* based on the facts, not a *fact* itself. Furthermore, the conclusion is not erroneous. The findings acknowledge that the property in question is an existing lot that was created through a subdivision action approved by the Commission in a CDP. However, it is a parcel that cannot be developed, in accordance with the terms and conditions of CDP P-9-23-76-8961. As such, the proposed deletion of the development restriction results in allowing development of an additional residential unit where none is now allowed, resulting in an increase in density. In fact, the applicant’s own amendment request acknowledges that the result of the project would be to increase density and that it raises cumulative impact issues, as evidenced by the applicant’s proposal retire one parcel through a TDC transaction as mitigation. The issue of whether the proposed deletion of the deed restriction is equivalent in effect to that of creating an additional lot was raised by staff as well as the applicant’s representative and considered by the Commission. It does not represent any error of fact or law and it would not alter the Commission’s decision.

For the reasons stated above, this claim presents no basis for reconsideration pursuant to Section 30627(b)(3) of the Coastal Act.

3. Whether Staff Misinterpreted the Original Hearing Transcripts

a. There was no Error of Fact or Law that Could Alter the Commission’s Decision

The applicant’s agent contends that: “staff made an erroneous claim by misinterpreting the transcripts of the original hearing on the subdivision”. However, his letter does not give any examples of errors in transcribing the hearing proceedings or interpreting the meaning of the Commission’s 1977 action (it should be noted that staff did not actually review a formal transcript of the 1977 hearing, but rather transcribed an audio tape of the hearing). Furthermore, staff is not aware of any errors made in transcribing the hearing proceedings. The action was also stated on the tape and the project description and condition of approval were put into writing at the time in the Resolution of Approval and Permit, dated February 3, 1977.

The applicant’s agent is attempting to re-argue the question of which restriction should govern development on the project site: 1) the Commission’s 1977 action adding a condition that allows: “**No future development in perpetuity on Lot 1**”, or 2) the language of the deed restriction that was later recorded and approved administratively by staff, even though it is not consistent with the condition of approval in that it only prohibited *residential* development. This issue was raised by the applicant in response to the staff report and during the public hearing. The question of whether **no** development or **no residential** development is allowed on the site is not particularly relevant to the applicant’s proposal to remove the restriction and construct **residential** development, because either one would prohibit the development of a residence. Nonetheless, the issue was properly raised by staff and the applicant’s representative and considered by the Commission. It does not represent any error of fact or law and it would not alter the Commission’s decision.

For the reasons stated above, this claim presents no basis for reconsideration pursuant to Section 30627(b)(3) of the Coastal Act.

4. Whether the Deed Restriction is Permanent

a. There was no Error of Fact or Law that Could Alter the Commission's Decision

The applicant's agent contends that: "It is erroneous to conclude that the deed restriction was to be permanent". He states that:

In 1977 no one knew that the TDC program would be available in 1979, but it would be short sighted to think that the Commission was not aware that programs were being developed to allow for the orderly development of Malibu. There is nothing in the public record that would leave one to believe that the Commission would not have removed the deed restriction if such a request was before them when the TDC program was operative...

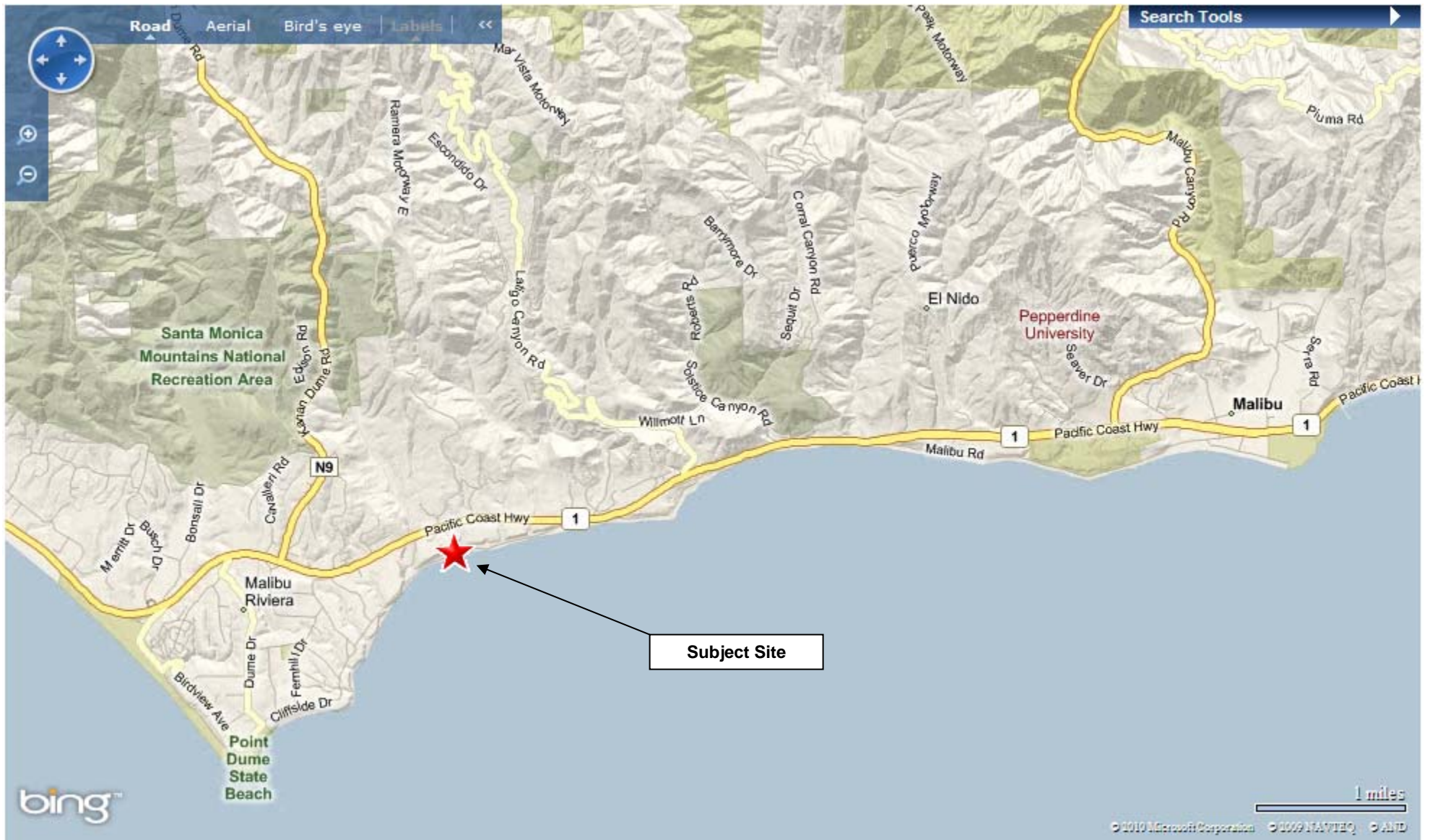
The applicant's statements regarding what the Commission would have done in the past are speculative at best and not at all relevant to the question of reconsideration. The only potential error alleged is that the Commission allegedly erroneously *concluded* that the deed restriction in question was to be permanent. Even if this conclusion were erroneous (which it is not), only errors of *fact* or *law* that could alter the Commission's decision can be considered grounds for reconsideration. The Commission's conclusion is based on the facts concerning the required deed restriction. The conclusion itself is not a fact. Furthermore, the conclusion is not erroneous. The Commission originally required that a deed restriction be recorded against the title of the property so that it would run with the land and stand as notice to future owners and other interested parties of the restrictions applying to the property. The Commission required that the deed restriction apply *in perpetuity*, which of course means for eternity or forever. So it is clear that the Commission's intent in 1977 is that the deed restriction would permanently restrict development on the subject parcel. The Commission's conclusion in the findings for the 2010 amendment that the deed restriction *is* permanent does not represent any error of fact or law and it would not alter the Commission's decision.

For the reasons stated above, this claim presents no basis for reconsideration pursuant to Section 30627(b)(3) of the Coastal Act.

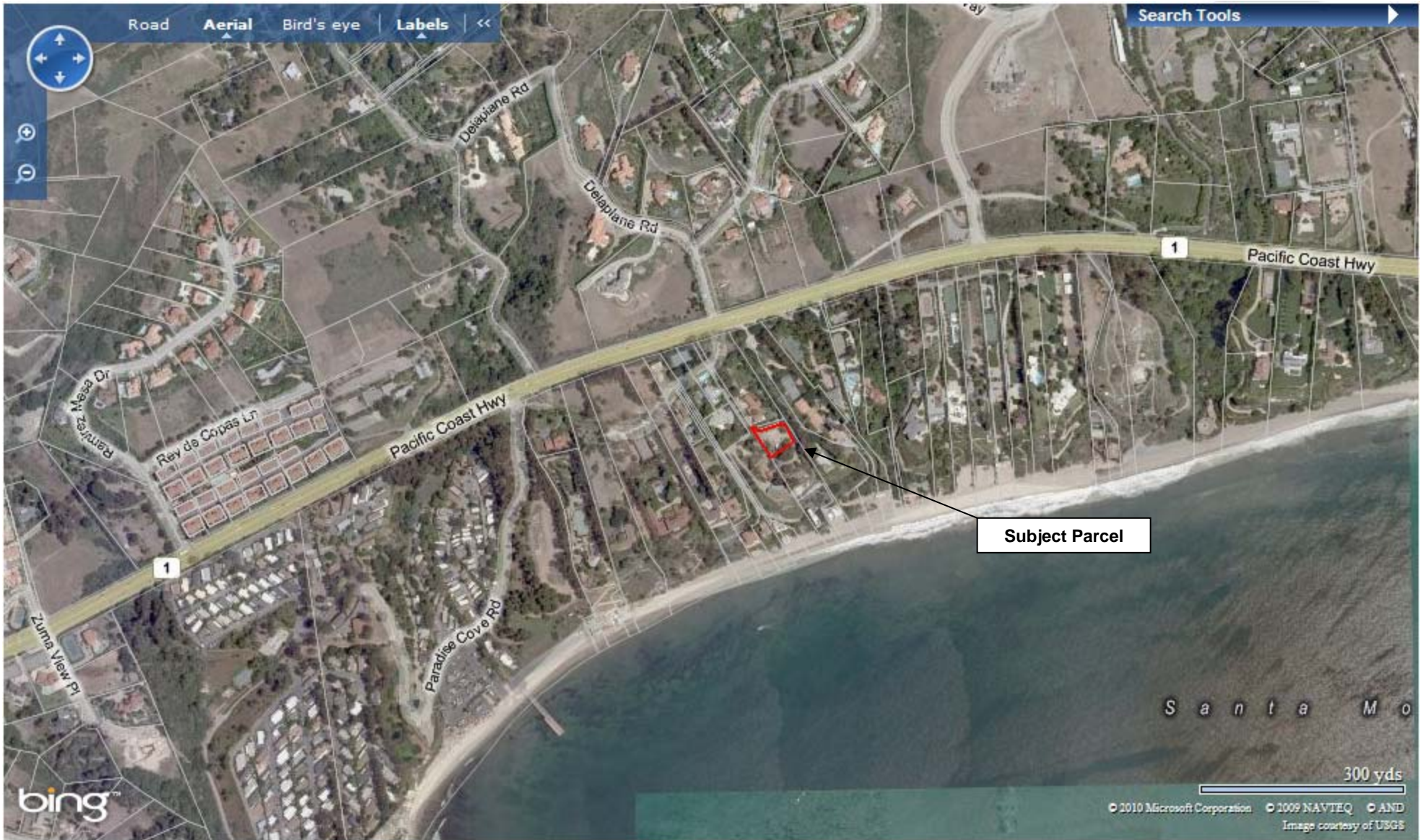
D. Conclusion

In summary, the Commission finds that the applicant has not pointed to any error of fact or law that could have altered the Commission's initial decision or could cause the Commission to change its decision now, and he has not presented any relevant new evidence that, in the exercise of reasonable diligence, could not have been presented at the original hearing on the matter. Consequently, there is no basis for reconsideration, and the applicant's request for reconsideration is denied. Moreover, pursuant to Section

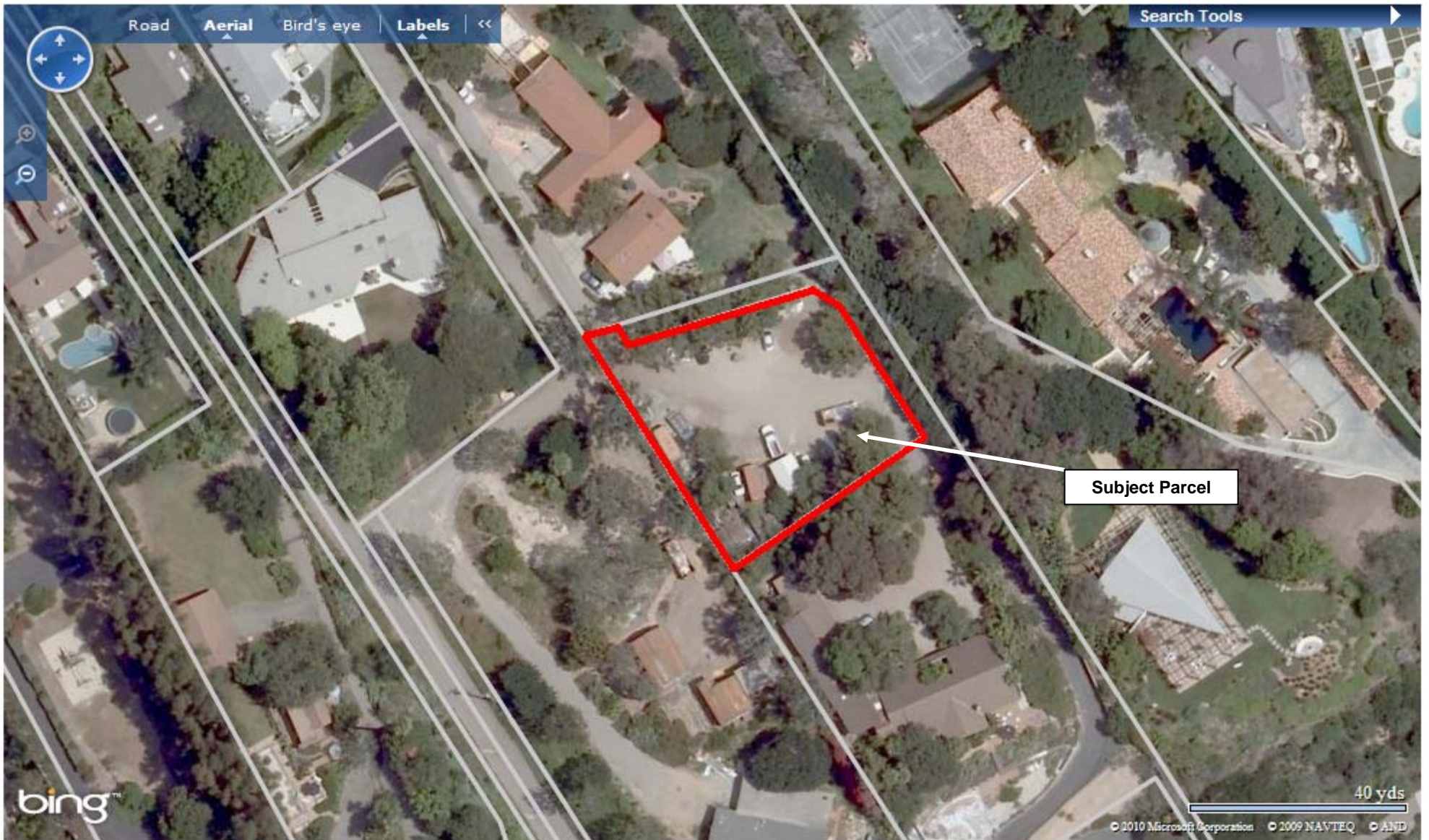
30627(b)(4) of the Coastal Act, even if the applicant meets the criteria for reconsideration, the Commission has the discretion to grant or deny the request. In this case the applicant has not met the criteria for reconsideration, and the Commission denies the request.



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| Exhibit No. 1 |
| CDP P-9-23-76-8961-A2-R |
| Vicinity Map & Aerials |

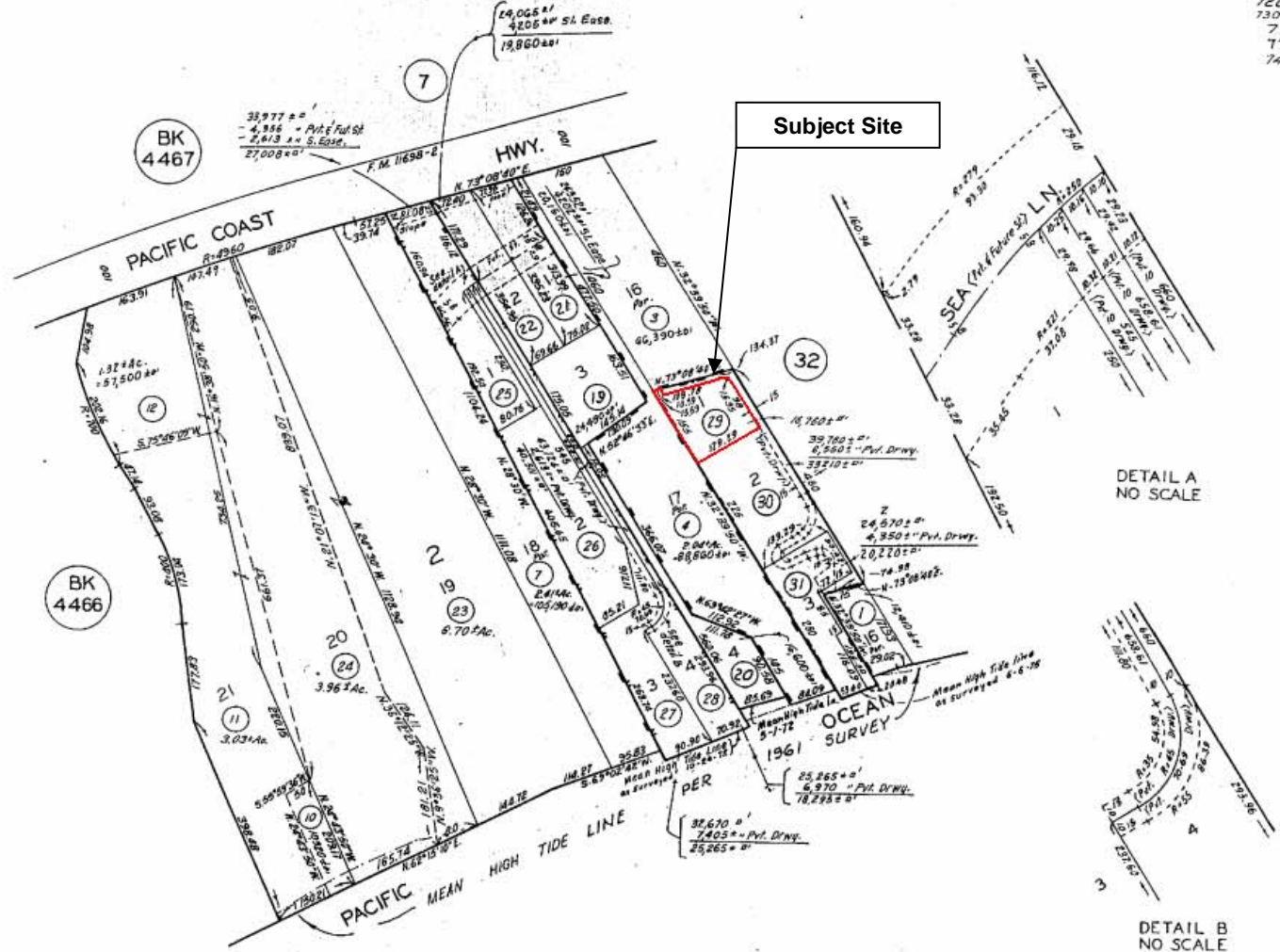


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| Exhibit No. 1 |
| CDP P-9-23-76-8961-A2-R |
| Vicinity Map & Aerials |



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| Vicinity Map & Aerials |

720520101
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910606



DETAIL A
NO SCALE

DETAIL B
NO SCALE

CODE
10853

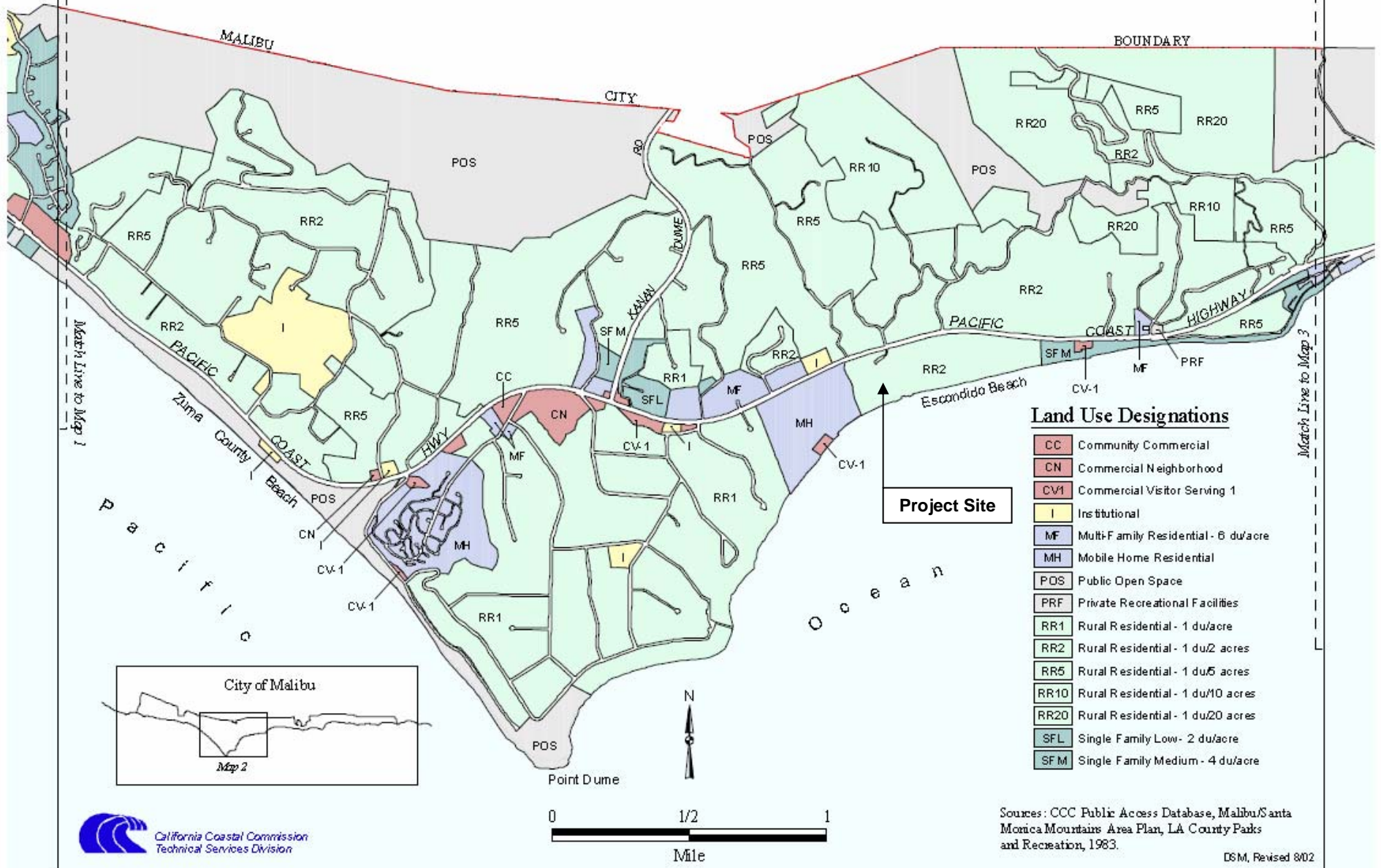
PARCEL MAP --- P. M. 73 - 100
 TRACT NO. 12935 --- M. B. 248 - 39 - 40
 PARCEL MAP --- P. M. 39 - 85
 PARCEL MAP P. M. 46 - 68

FOR PREV. ASSMT SEE:
4460 - 33

ASSESSOR'S MAP
COUNTY OF LOS ANGELES, CALIF.

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|-------------------------|
| Exhibit No. 2 |
| CDP P-9-23-76-8961-A2-R |
| Parcel Map |

Local Coastal Program - City of Malibu Land Use Map 2: Zuma Beach to Escondido Beach



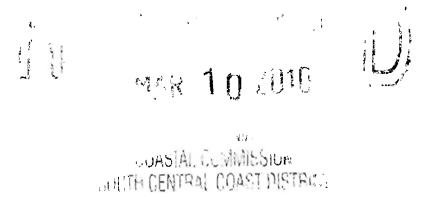
Land Use Designations

| | |
|------|--------------------------------------|
| CC | Community Commercial |
| CN | Commercial Neighborhood |
| CV-1 | Commercial Visitor Serving 1 |
| I | Institutional |
| MF | Multi-Family Residential - 6 du/acre |
| MH | Mobile Home Residential |
| POS | Public Open Space |
| PRF | Private Recreational Facilities |
| RR1 | Rural Residential - 1 du/acre |
| RR2 | Rural Residential - 1 du/2 acres |
| RR5 | Rural Residential - 1 du/5 acres |
| RR10 | Rural Residential - 1 du/10 acres |
| RR20 | Rural Residential - 1 du/20 acres |
| SFL | Single Family Low - 2 du/acre |
| SFM | Single Family Medium - 4 du/acre |

Sources: CCC Public Access Database, Malibu/Santa Monica Mountains Area Plan, LA County Parks and Recreation, 1983.
DSM, Revised 8/02

The Land and Water Co.

14872 Sunnycrest Lane
Huntington Beach, CA 92647
714-766-6525 / Fax 714-766-6509 / Cell 714-614-0620
Lheacox@verizon.net



March 10, 2010

California Coastal Commissioners
Mr. Jack Ainsworth, District Director
Mr. Andrew Berner, Staff Analyst
California Coastal Commission
89 S. California St., 2nd Fl.
Ventura, CA 93001

A2

Re: Request for Reconsideration on Coastal Permit P-9-23-76-8961-A~~1~~ Denied by the Commission on February 11, 2010.

Dear Commissioners:

We request that you reconsider your denial of the above referenced Coastal Development Permit. Public Resources Code Section 30627 provides that the applicant may request reconsideration from the Commission for any decision of denial. The basis of the decision shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.

I am requesting reconsideration of the above referenced application for the following reasons:

1. RELEVANT NEW EVIDENCE NOT AVAILABLE AT THE HEARING:

I was not given the opportunity to provide important information to the Commissioners at the hearing that could have altered their decision.

A. The information not able was an alternative condition that could have been imposed which would have resulted in the proposed project protecting more than 7.3 acres of pristine ecologically sensitive habitat.

I did not anticipate, nor should I have anticipated, that members of the Coastal Commission would focus on the three lot subdivision that was approved in 1977 and would raise the question of what mitigation would have been required in 1977 had the Transfer Development Credit (TDC) program been available at the time. This discussion was raised by the Commission after the public hearing had been formally closed. Accordingly, I was not able to address the issue in my presentation. After the public hearing was closed, the staff indicated that if the Transfer Development Credit program had been available in 1977, staff would have recommended

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| Exhibit No. 4 CDP P-9-23-76-8961-A2-R Reconsideration Request 3/10/2010 |
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approval of the three lot subdivision and required that “two” Transfer Development Credits be provided to mitigate the creation of two new parcels in a developed area. Several Commissioners showed interest in staff’s comments. Clearly the property owner’s application only sought to remove the condition restricting development on “one” parcel and therefore only “one” Transfer Development Credit was offered. An alternative proposal to offer “two” Transfer Development Credits in lieu of “one” was not on the table.

When I heard the above discussion, I stood at the podium in the hope that a Commissioner would call on me to comment at which point I could have offered two Transfer Development Credits to double the mitigation and eliminate the development rights on two lots in sensitive habitat (ESHA) from ever being developed with two homes. This would insure that 7.3 acres of ESHA will be preserved in the future. However, the public hearing was closed and I was unable to provide this important additional mitigation for consideration.

The most important policy that is stated throughout the Malibu LCP is that when there are several alternative ways to develop a project, the project that results in the least damaging environmental impacts shall be the alternative that is approved. The two TDC proposal, doubling the mitigation, was an alternative project that was not considered during the hearing and would have been the least environmentally damaging alternative. This is the same mitigation that would have been applied in 1977 had the TDC program been operative. At the time of the hearing, I had no way of knowing that some of the Commissioner might be willing to consider this option.

B. Even if I had been given the opportunity to respond to a Commissioners’ inquiry, I would have offered two TDC’s but also would have advised them that I was unaware if a second TDC would be available. It was not reasonable for me to gather this information when, before the hearing, I did not know that a second Transfer Development Credit might be considered for additional mitigation. Following the public hearing I did locate a second Transfer Development Credit and therefore can modify my original proposal by offering two Transfer Development Credits instead of one, which is relevant new evidence that could not have been presented to the Commission at the public hearing.

2. ERRORS OF FACT:

A. The Staff made the erroneous claim that the application was equivalent to a new subdivision and then in reliance on that claim stated that the removal of the deed restriction on the subject lot is the equivalent of creating a new parcel that was smaller than what the current zoning specified. The majority of the lots in Malibu are smaller than the zoning requirement and are being developed using a formula that reduces the size of a structure on smaller lots.

It was an error on the part of the Staff to treat our request to eliminate a deed restriction on one of three existing legal lots as a new subdivision. This is a legal lot, with a separate address, a

separate APN number, and a separate owner. Eliminating a deed restriction is not the equivalent of creating a new lot. The test for removing the deed restriction from a legal lot should be based upon the development policies of the LCP and not the subdivision policies of the LCP. In 1977 there were no site specific constraints to developing this lot with the exception of the residential deed restriction. In 2010 the same is also true. The lot can be developed under the LCP with a 3800 square foot Day Care Facility, Equestrian Facility or Green House, If the deed restriction is removed the owner can construct a 3800 square foot home. The development of this lot will be in full compliance with the intent and spirit of the Coastal Act of 1976 and the Malibu LCP.

B. The Staff made an erroneous claim by mis-interpreting the transcripts of the original hearing on the subdivision. Staff quoted the transcripts which said that the Commission imposed the deed restriction in 1977 to restrict "all development in perpetuity" due to cumulative impacts of the residential development. The deed restriction states, however, that only "residential development" is restricted. The restriction was signed by the Chairman of the Regional Commission and recorded. The recorded deed restriction is in many ways the equivalent of a contract between the applicant and the Coastal Commission. The deed restriction is the enforceable restriction on the property. If the deed restriction was unclear, it would be appropriate to examine the public record but the restriction is clear and it stands alone. It can't be re-interpreted to mean something it doesn't say.

C. It is erroneous to conclude that the deed restriction was to be permanent. In 1977 no one knew that the TDC program would be available in 1979, but it would be short sighted to think that the Commission was not aware that programs were being developed to allow for the orderly development of Malibu. There is nothing in the public record that would leave one to believe that the Commission would not have removed the deed restriction if such a request was before them when the TDC program was operative. The issues discussed by the Commission to impose the deed restriction were broad cumulative impact issues that affected all of Malibu and did not include site specific constraints that would have precluded development of the restricted lot..

CONCLUSION:

Reconsideration is warranted because there is relevant new information that was not available and could not have been presented at the public hearing. Accepting two TDC's as mitigation for removing the deed restriction presents a unique opportunity for concentrating new development along the Malibu coastal terrace where adequate infrastructure and public services are in existence, and where new development will have minimal impacts on Environmentally Sensitive Habitat Areas. Accepting two TDC's in exchange for removing the deed restriction will result in a project that is the least environmentally damaging alternative.

Reconsideration is warranted because there are errors of fact by concluding that the Commission wanted to deed restrict all development on the lot in perpetuity. Such a restriction could result in

property taxes not being paid and the property being sold for tax liens due the limited value. Such a sale by the State would eliminate any and all deed restrictions negating the intent of the Commission when issuing the original permit. Clearly the Commission only wanted to restrict new residential subdivisions which was the very reason for creating the TDC program.

Reconsideration is also warranted because of errors in interpreting the LCP. The test for removing the deed restriction from a legal lot should be based upon the development policies of the LCP not the subdivision policies of the LCP. This is a legal lot. If the deed restriction is removed the owner can construct a 3800 square foot home which will be in full compliance with the intent and spirit of the Coastal Act of 1976 and the Malibu LCP.

Thank you for your time. Your attention to this matter is appreciated.

Sincerely,
The Land and Water Company



Lynn J. Heacox
LJH:jt:CCCRconsideration031010.wpd

P.S. Staff: I am anticipating that additional information will be provided to you by our attorney over the next couple of weeks.

| Average Size of Parcel within ¼ mile of Subject Parcel | | | | |
|---|--------------------------|-----------------------------|---------------------------|--|
| APN | Size (Gross Acre) | Size (Gross Sq. Ft.) | Size (Net Sq. Ft.) | |
| 4460-033 | | | | |
| 001 | 0.28 | 12,406.00 | 12,406.00 | |
| 003 | 1.52 | 66,389.80 | 66,389.80 | |
| 004 | 2.04 | 88,818.84 | 88,818.84 | |
| 007 | 2.41 | 104,979.60 | 104,979.60 | |
| 010 | 0.24 | 10,320.00 | 10,320.00 | |
| 011 | 3.03 | 131,986.80 | 131,986.80 | |
| 012 | 1.32 | 57,499.20 | 57,499.20 | |
| 019 | 0.56 | 24,489.00 | 24,489.00 | |
| 020 | 0.38 | 16,592.00 | 16,592.00 | |
| 021 | 0.56 | 24,350.00 | 20,150.00 | |
| 022 | 0.55 | 24,063.00 | 19,860.00 | |
| 023 | 6.70 | 219,852.00 | 219,852.00 | |
| 024 | 3.96 | 172,497.60 | 172,497.60 | |
| 025 | 0.78 | 33,977.00 | 27,008.00 | |
| 026 | 0.99 | 43,120.00 | 40,511.00 | |
| 027 | 0.75 | 32,670.00 | 25,265.00 | |
| 028 | 0.58 | 25,265.00 | 18,295.00 | |
| 029* | 0.38 | 16,758.00 | 16,758.00 | |
| 030 | 0.91 | 39,749.00 | 33,210.00 | |
| 031 | 0.56 | 24,568.00 | 20,220.00 | |
| 4460-032 | | | | |
| 001 | 4.38 | 190,792.80 | 190,792.80 | |
| 002 | 2.26 | 98,445.60 | 98,445.60 | |
| 003 | 2.26 | 98,445.60 | 98,445.60 | |
| 004 | 1.74 | 75,794.40 | 75,794.40 | |
| 005 | 2.78 | 121,096.80 | 121,096.80 | |
| 006 | 2.26 | 98,445.60 | 98,445.60 | |
| 007 | 2.26 | 98,445.60 | 98,445.60 | |
| 008 | 0.22 | 9,470.00 | 9,470.00 | |
| 009 | 2.17 | 94,525.20 | 94,525.20 | |
| 010 | 1.79 | 77,972.40 | 77,972.40 | |
| 017 | 1.37 | 59,880.00 | 32,330.00 | |
| 018 | 2.22 | 96,703.20 | 96,703.20 | |
| 019 | 2.56 | 111,513.60 | 98,445.60 | |
| 021 | 2.25 | 98,010.00 | 75,358.80 | |
| 022 | 2.53 | 110,206.80 | 84,506.40 | |
| Average | 1.76 | 73,872.14 | 69,983.54 | |

*Subject Parcel (4460-033-029)

| |
|---|
| Exhibit No. 5 |
| CDP P-9-23-76-8961-A2-R |
| Average Size of Parcel within ¼ mile of Subject Parcel |

Torrance City Council Chambers
November 29, 1976
P-9-28-76-8961
Kraft & Evans

Chairwoman: Next is 8961

[pause]

Chairwoman: Permit 8961

[pause]

Deputy Director: 8961 madam chairman and commissioners is request for division of 69,000 sq. ft. beach front parcel into three lots. One lot is 16,000 sq. ft., center one 29,000 sq. ft., and the beach front portion, which is lot three, would be 24,000 sq. ft. There is to be construction of a two story, single family dwelling on lot number three which is the beach one. And to demolish a cabana, which presently exists on lot three. And there is presently a single family residence which would reside which would exist on lot two if were subdivided out. This is about 460 ft off the Coast Highway and extends down over this grade and over the bluff and down onto the beach. The problems here are the land use and the lateral access problems. As we pointed out in the staff summary, all and all and with the feeling of the development of the coastal plan is and the fact that further lot subdivisions leads to further intensification in the area and further growth inducing throughout the area. We have also shown that this is a lot on the beach and would require a lateral access condition. So our findings lead us to the fact that we cannot feel that this can be subdivided into three lots and the additional construction of another single family residence is not the appropriate use of the lot [inaudible]. [inaudible] the subdivision you have two houses on one lot and we talked about the approval lot splits previously going on and about the residential development with the lateral access condition should be applied [inaudible], we feel it will have substantial adverse effect and we are recommending denial.

Chairwoman: Thank you, we see pictures on this, um, I think? Would you like to see pictures?

Staff Analyst: Madam Chairman, these are not my pictures. Wednesday, the last day I worked, the applicant submitted a letter pulling this from the agenda and apparently just put it back on the agenda Friday.

Chairwoman: Okay.

Staff Analyst: So these are the applicant's pictures and I have five of them I believe.

Chairwoman: Pictures of the applicant showing us his lot.

Staff Analyst: Perhaps we can....

Senior Staff: [speaking to staff] There are six, there are six, did you loose one?

Chairwoman: Can we get the lights down please?

Mr. Verner Kraft: We have one more slide but this shows our property... um,

Chairwoman: Where is your property?

Mr. Kraft: From here to here. This shows the beach cabana, that's on there, our proposed house would be right in this area here. The Evan's home is up here.

Chairwoman: Now this is, um, now let me get this clear, this is all one lot now?

Mr. Kraft: This is all one parcel, yes.

Chairwoman: And you're proposing to split it into two?

Mr. Kraft: Into three.

Chairwoman: Into three?

Mr. Kraft: I'll explain that in just a moment Madam Chairman.

[Moving onto another slide.]

Mr. Kraft: Now this is a side view looking at the property, again the Evan's house here, our property extends through the clear area... we've been in the process of landscaping it, oh, for the last four years. Our pad will be right in here, the garage will be right here coming out, and the house will end approximately at the back of the cabana [inaudible].

[Moving onto another slide.]

Mr. Kraft: Now this is a picture from the road looking down to where the garage will in there area here the house starting about here going down the slope and stopping somewhere at the back of the cabana right here... a little bit this side.

[Moving onto another slide.]

Mr. Kraft: This is looking back towards Malibu proper. The picture is reversed, that's why I hesitated here. This shows our property right in here, looking down.... [responding to inaudible], the castle[?] is on the other side. But there are two homes right here on the beach, just about right on the... this is Dr. Feldman's home.

[Moving onto another slide.]

Mr. Kraft: Now again, this is reversed too [referring to the slide]. This is looking up toward Paradise Cove. This shows the beach combined [inaudible], there are two homes built right here in the area. Our home will have an approximate elevation of the Linder's[?] home right here, inaudible. And right in.... [interrupted] Pardon me?

Commissioner #1: Is that going to be in the sand?

Mr. Kraft: Oh no, we're back um... this has been graded and it is in the process of being landscaped. Our um, well I showed you... we are about....

Commissioner #2: What kind of filter are you using there [in reference to the quality of the slides]?

Mr. Kraft: I don't know sir, my daughter took these pictures.

Chairwoman: Okay, the bottom of your house would be behind, where the cabana is?

Mr. Kraft: Behind, you can see the growth there.

Chairwoman: Okay. I think we have a picture now.

Commissioner #3: By demolishing the cabana, there will then be the possibility of another structure on that [inaudible]?

Mr. Kraft: I will explain that Commissioner. Here are the two homes that were built, here, within the last year. This one is in the finishing

stages of completion right now. And our level will be just about this level, standing back probably a little further than this home. [Pause] Alright, I guess that is all the pictures.

Chairwoman: Okay, so... the question is [interrupted], what?

Commissioner #4: How wide is it?

Mr. Kraft: Wide is what, the lot?

Commissioner #4: Yes.

Mr. Kraft: The beach front is approximately 72 feet, then it goes back 150 ft. and then it spreads out to approximately 150 ft., then goes back 607 ft. sir.

Commissioner #5: [inaudible]

Mr. Kraft: Yes sir.

Commissioner #5: 72 x 50?

Mr. Kraft: No, no the 72... well there would be a total of 24,000 sq ft.... well I'll go back. [interrupted] Do you want me go back and I can show you exactly where it is, or can we go ahead?

Chairwoman: Yeah, I think in the project description it is all described if you take a look at the first page of your staff report.

Mr. Kraft: Now can we have the lights again.

Chairwoman: Yeah, can we have the lights. Let um, can I have your name again?

Mr. Kraft: We are the Kraft's. Mr. and Mrs. Verner Kraft.

Chairwoman: And your address?

Mr. Kraft: 3217 Long Ridge Ave. Sherman Oaks. Our Malibu address is 28012.

Chairwoman: Mr. Kraft, you are the applicant, I think that if you read the staff summary, which I'm sure you have, that the issues have to do with the lot split, maybe you should address that issue?

Mr. Kraft: That's the whole point. I'd just like to give a brief summary before my wife takes over the presentation of the application. We bought this property approximately 4 years ago. It had been the late summer of 1972, before this Commission even came into effect. We bought with the specific purpose of building a home... that's our home, it's the home we've been dreaming about and been planning for for over 4 years now. There were unusual circumstances when we bought the property, we bought it in conjunction with Mr. and Mrs. Sanford Evans, our co-owners of the property... to be divided in three ways. One parcel was to go to us to build our home. The middle parcel was there, um, the home on the right now [reference the slide] would be their home, the small and vacant parcel to the rear would be left vacant for use of both parties for additional parking etc. Now, we have been active in the Malibu area for more than 6 years, my three daughters have gone to school in the area. In fact, I have two in the area [interrupted].

Chair: Okay, lets just.... It's getting late and [interrupted]...

Mr. Kraft: Okay, alright, this is very emotional... we been here [interrupted].

Chair: I know, okay.

Mr. Kraft: Before I turn this over [interrupted]....

Chair: Lets... while you're right on that because that's the question that one of the Commissioners asked me and wanted to know, that the third lot, there are several lots, but the third lot has no intention of building on... the idea would be for additional parking, is that what you said?

Mr. Kraft: That's exactly right. It's used for [interrupted].

Commissioner #2: I was talking about where the cabana was.

Mr. Kraft: Yes, the cabana would be demolished.

Chair: The use of that area [interrupted]?

Commissioner #2: What is the future of the proposed use of that area?

Mr. Kraft: Directly behind the cabana is where we plan on building our home.

Commissioner #2: You're going to be right above that.

- Mr. Kraft: We're back some 40 ft. above the [interrupted].
- Commissioner #6: But that's lot 3.
- Mr. Kraft: That's lot 3, right.
- Commission #4: Why can't you just have two lots to do[?] with.
- Mr. Kraft: Well, we could have easily have done that. But we thought in the dividing of the lots this way then the one person would not be burdened with the higher tax rate which would probably go along with the property.
- Chair: Okay, thanks.
- Commissioner #5: Why wouldn't you just say, why wouldn't you just divide it into two lots?
- Mr. Kraft: If need be, if that would get us a yes vote, yes.
- Chair: Let us let Mrs. Kraft speak [inaudible]. She's gonna get to the guts of the issue here.
- Mrs. Kraft: Can you hear me?
- Chair: Yes.
- Mrs. Kraft: Okay, I would like to answer to the staff report under land use. After the State's exhaustive study, we are established as not being in an area which is designated for purchase by the state. The Coastal Commission has indicated that Sea Lane is not practical for resort or recreation use. Vertical access to the beach area is now $\frac{1}{4}$ of a mile up the coast, and I say toward Paradise Cove, in Paradise Cove. Escondido Canyon is presently one mile down toward Santa Monica, that is access and the State has proposed, as of last summer, that there will be another access $\frac{1}{2}$ mile down the coast again toward Santa Monica. Our shoreline is now being used daily by joggers, scuba divers, sightseers, fisherman, everyday, all year long by residents and visitors alike.
- Our single family home will not change the traffic pattern because for four years we have been commuting 3 times a week from Sherman Oaks through Malibu Canyon to our property to maintain the landscaping there. The congestion caused by our proposed single family home does not compare with that of numerous condominium complexes in the Dume Bay area. The build

[inaudible] alone has 300 units crammed on the hillside, each one of those units holds a single family. We are asking for one house for one family on 24,000 sq. ft. Surely, this is a preferable use of Malibu land and of Pacific Coast Highway. We do not interfere with any view, we are not visible from Pacific Coast Highway, behind us as you saw, would be a landscaped hillside. Our side for building would be on a 40 ft. bluff well behind the line of natural vegetation, and in addition, we have replaced the dry fire potential underbrush with retardant landscaping since the Malibu fire two years ago. We are requesting to build our home on our property, 24,000 sq. ft. of a 69,000 sq. ft. parcel. In order to do this, we must also ask for the division of land for each of the owners. We would accept a condition of agreement not to sell or build on this number one parcel on the parcel map; which is a 1600, rather 16,000 sq. ft. lot in perpetuity. The parcel would be used for vegetable gardens, children's play equipment, and additional parking as needed. The area has been used in this manner since purchase by its owners. The perpetuity clause on the lot number 1 will also allow the owners to request a separate assessment base for taxation.

Chair: What you're saying is that you would accept a condition saying that you would not for perpetuity ever build and then you would hope that would get a reduction in the assessment... as opposed to putting a piece of each of that on end [inaudible]?

Mrs. Kraft: Right.

Chair: Are you almost finished?

Mrs. Kraft: I have to go onto findings.

Chair: Well then let me ask you [interrupted].

Mrs. Kraft: Yes.

Chair: Oh okay.

Mrs. Kraft: It's very brief. The two adjacent properties seen in the last slide we granted building permits by the Coastal Commission and therefore a precedent has been established for the appropriate land use in this immediate area, that of a single family home. The Coastal Commission has indicated that Sea Lane and our parcel is not practical for resort and recreational uses I previously stated. Therefore in our R1-20 zone, our request to build our home on 24,000 sq. ft. would be a reasonable request and appropriate land use. Consistent lateral access is agreeable to owners, and I repeat

the existing cabana would be replaced by our home on a 40 ft. bluff and would thereby actually open up more beach area than now exists. And my husband and I sincerely request the approval of our wish to build our home.

Chair: and your daughters...

Mrs. Kraft: and our son.

Chair: and your son. So what you're saying, if I could clarify it, I don't mean to put words in your mouth. There are two units there, there are two units there now the cabana and house on the top. You would sort of take away the cabana, put your house in back, open up the area where the cabana is now, and have a deed restriction that says you won't build on that lower lot.

[Several voices at once]

Chair: Now wait a minute. Let's be sure we know what lot it is.

Commissioner #2: I just read the project description, and the project descriptions states that they will be building on Lot 3 which presently contains the cabana.

Mrs. Kraft: Correct.

Commissioner #2: But your building up higher than the cabana?

Mrs. Kraft: Correct. 40 ft. above.

Chair: Behind it, so your not gonna be... where the cabana is you'll be back further from the beach. Okay, so is that clear to everybody what we are talking about?

Commissioner #2: So there will be no structures where the cabana currently is?

Mrs. Kraft: Again?

Commissioner #2: So there will be no structures where the cabana currently is?

Mrs. Kraft: No, no there will be pilings. At the base of the bluff. Behind the cabana will be the pilings for the house.

Chair: Commissioner [inaudible].

Commissioner: Currently there are two structures there right? The home and the cabana?

Mrs. Kraft: Correct.

Commissioner: And [inaudible] still there will be two structures.

Mrs. Kraft: Correct, correct.

Commissioner: Another problem, do you have any concerns about the lateral access provision?

Mrs. Kraft: No

Commissioner: You'd be willing to offer that?

Mrs. Kraft: Yes, consistent lateral access.

Commissioner: Presently there is not lateral access.

Chair: Okay, Commission [inaudible].

Commissioner: Do you presently own the land with the Sanford Evans?

Mrs. Kraft: Since September of 1972.

Commissioner: Are you able, um, are you able to act for Sanford Evans [interrupted]?

Mrs. Kraft: They are here.

Commissioner: in the restrictions?

Mrs. Kraft: There is a letter in your file to that fact.

Commissioner: Has staff seen the plans for this house?

Staff: Yes

Commissioner: How far from the bluff are they?

Mr. Kraft: 115... oh, from the bluff or the ocean?

Commissioner: I asked staff.

Staff: How far from the bluff you mean back or what are you talking about?

Commissioner: I would like to know where the house is going to be exactly? And I want to know is it going to be on the bluff or on the beach?

Staff: Can I show that slide again?

Commissioner: [inaudible] same and its going to be partly on the bluff, am I right?

Mrs. Kraft: Correct.

Commissioner: Here's what I want to know, where's it going to be on the bluff?

Mr. Kraft: Here, I can show you right here. Um, our garage will be right here. This is the one bluff coming down, our garage will be right about in here.

Commissioner: Where is the seaward limit of your house?

Mr. Kraft: Right at the back of the cabana here, maybe five feet behind the existing cabana.

Commissioner: Is that the roof of the cabana?

Mr. Kraft: That is the roof of the ca.... [interrupted].

Commissioner: and that is the edge of a bluff, isn't that so?

Mr. Kraft: that's [inaudible] yes.

Commissioner: If that's the bluff [interrupted]

Mrs. Kraft: Sir, it's not a shear bluff... it is a slope [interrupted].

Commissioner: Excuse me. I am looking and I see a roof top and I see this perspective and I see that there is a bluff. I would like to know if that bluff is sand over 15ft high?

Mr. Kraft: It's about 40.

Commissioner: The bluff is 40 ft above the sand.

Mr. Kraft: Yes sir.

Commissioner: Then I would like to know how far from the edge of the 40 ft. bluff this house is going?

Mr. Kraft: It will come from here...[interrupted]

Staff: Excuse me but if could interrupt the applicant for a minute. Commissioner [inaudible] it looks from the plans here that the house extends from the, um is that the 30ft.? [pause] Between the 30 and 40ft contour line up to the 80 and 90ft. contour line, which is partly on the slope.

Commissioner: Now, what we are confronted with is not just a house and nice [inaudible], but suspectedly[?] we are talking about a house to built partly on a very beautiful bluff down there.

Chair: We were aware of that, we could see that.

Commissioner: [inaudible]

Staff: It's a sloping bluff.

Commissioner: It doesn't diminish the fact that this is a 40ft. bluff.

Staff: Right.

Commissioner: Now I'd like to see the elevations of the house.

Staff: Here is a picture, it's very clear; there is a bluff there.

Commissioner: Go to the picture before that.

[several voices at once]

Mrs. Kraft: Sir that white... there is the top of a camper that is on the bluff.

Commissioner: Now this is the site of the house?

Mr. Kraft: Right here, our garage will be right here. It will come out and down.

Commissioner: [inaudible]

Mr. Kraft: Right.

Commissioner: Where is the foundation?

Mr. Kraft: Right in here sir.

Commissioner: Where will be the farthest seaward point of construction?

Mr. Kraft: It will be at the back of these trees sir.

Commissioner: Behind the trees?

Staff: Right at the back of the cabana.

Mr. Kraft: yes.

Commissioner: What are you going to do to get from the house down onto the beach?

Mr. Kraft: There will be a walkway going to... [interrupted]

Commissioner: We've got another element [inaudible]. That's what I want to know?

Mrs. Kraft: No, we are not going to cut away sir, we going to put a stairway.

Commissioner: The husband says we're going to put in a walkway but the wife is not.

Unknown man: C'mon, what is this... stairway or walkway.

Commissioner: Let me see the plans so someone knows what they are going to do. [interrupted] Never mind that, let me see the plans.

Staff: Commissioner, I mean Mr. Heacox.

Commissioner: It's late but it's not too late [inaudible].

Staff: [inaudible] elevations, that will extend up to the first curve on the road over in this area at the 40ft. elevation... it will be steps up to this point. But the most seaward portion of the home appears to be by the plans at the location of the [inaudible].

Chair: The applicant says its behind, [interrupted]. Yeah.

Mrs. Kraft: According to our geologist, we must drill for pilings right behind the cabana at the toe, of the um, at the beginning of the bluff there and that will be where... that's the beginning of the house.

- Commissioner: Don't you already have a walkway down to the cabana? There's some sort walkway, so there will be some sort of a new....
- Mrs. Kraft: Oh no, no, no, no
- Chair: Okay, um....
- Commissioner: I have a question, I would like to know... there's a major discrepancy in the plot plan [inaudible]. There's a [interrupted].
- Unknown woman: We can't hear you.
- Commissioner: I have a question Mr. Smith[?]. Would you please describe the discrepancy [inaudible] the other commissioners to know about it.
- Mr. Smith: The plot plan submitted, which is this sheet, shows the whole structure, the seaward extension of it being at approximately the 15ft contour and midway between the 10 and 20ft contour. The topo maps submitted by the applicant, shows the cabana being at approximately the 15ft. contour also, which would indicate that the proposed structure and the seaward extensions of the contour are virtually the same location; according to the plans.
- Commissioner: Actually the house is going to protrude onto the sand in front of the cabana?
- Mr. Smith: That's what the plans show.
- Commissioner: That is what the plan does show, that means that the elevation provided is really not accurate and that a large part of the house will stick way the devil over the bluff. I'm sure you were aware at some point right?
- Mrs. Kraft: We hired a geologist, and an architect, and a surveyor, and this is what they gave us... and what can I say?
- Commissioner: Can we be clear on this discrepancy and reconvene next week?
- Commissioner: [inaudible] I think the best for all parties concerned, particularly the applicants is that we get a topo drawing with this superimposed showing exactly where the extent of this house is going to come off of that lower cut and how far out.
- Mrs. Kraft: Could I request something, we would be very happy to realign the house if you would think.... [interrupted]

- Chair: Okay, I think what we ought to do is have you get together with the staff and come back next week either a realignment or we know what we're doing and some kind of alternative, so we can make a decision because as you know we are only going to meet a couple more times and in the interests of getting a vote one way or another, we've got know what we're talking about. Yes.
- Staff: One problem madam chairman, you're asking us to realign a house that we are denying.
- Chair: We're not denying, you're just recommending... [interrupted inaudible] and what we are saying is ... there is concern... well first we have to know where it's going and I think that's what we should come back with next week.
- Commissioner: I would insist on knowing the present description and I would like to see photos of the existing driveway and I want to know that that driveway is going to be not exceeded or improved or changed and I want to know how its going to serve this structure in its actual location to get access to the beach.
- Mrs. Kraft: There is no driveway that will give access to the beach.
- Chair: Okay, what's happening here is that obviously we are not going to get any further here today. I think what's happened is that everybody's tired and we're, we don't know what we're looking at.
- Commissioner: I'm not tired. Excuse me but I want to know what I'm voting on.
- Chair: Okay, we aren't clear where this house is going on the lot and I think it would be better probably to come back next week and be sure. We're going to carry these over ... it looks like so you'd be first thing in the morning.
- Mrs. Kraft: We have people here to speak on our behalf, they don't have to come....?
- Chair: No, we will finish the hearing but I think we want to be clear what we're talking about.
- Commissioner: I would also like to see the photographs again relative to the adjacent properties to see where they intrude on the beach.
- Chair: Okay, we didn't bring pictures because as Lynn said the people withdrew and changed their mind... they weren't quite prepared.

Commissioner [calling upon inaudible name] ladies and gentleman.

Commissioner: I object to this procedure. I don't think its right to hands these plans to the staff. [inaudible] staff deal with the applicant here and design it, and then come back and then give it to the Commission.

[several voices heard at once; inaudible]

Chair: We're asking the staff to let us know what we are voting on. We don't know where the house is being placed on the lot.

Mrs. Kraft: Would it be possible for you to tell us how far out... [interrupted by gavel]

[several voices heard]

Commissioner: It is my understanding madam chairman [inaudible] up, go back, and give us the location on the property. Now they can do that by taking a section of the [inaudible], and by looking at the section of the [mountain?] they can shape the [mountain?] comes down and put the house on it and it should be a very simple matter for their architect or their engineer to do that... I don't think that's too complicated. Many of the other things people are concerned about [inaudible], I think otherwise they're not going to get a vote from [inaudible]. It's my feeling, and I think the Commission should make it quite clear, that it's the applicant's responsibility, not our staffs' responsibility.

Chair: Okay, let's continue the hearing. So anyone who's here to speak can speak and then we'll have to come back next week. Is there anyone else who wants to speak in favor of this application? Let's hear from [inaudible] people and we'll leave the hearing open for next week. Yes [responding to a gentleman at the podium]

David Whiner: My name is David Whiner (?), and I am a neighbor and I feel that this project of the proposed home is consistent with development in the area and would be an asset to the neighborhood and I really feel that the staff should vote for it.

Chair: [inaudible]. Is there anyone else who would like to speak in support?

Sanford Evans: Yes, I'm Sanford Evans of 28006 Malibu Road in Malibu and I'm, my wife and I, are the partners with the Kraft's. I don't have anything functional to add other than we do look at the proposed

split and property division which we have had under way since we bought the place in 1972 and a slightly different view than the Kraft's in that it is our home at the present time and has been since 1972 so while they may be thinking about building their dream home we do live in ours at the moment and we would definitely hope that you do see fit to give us this split because I am quite sure that we would be unable, in the event that there could be only one family to live on that land to be that family because requiring those relatively large lots to be single family properties your undoubtedly aware is having a tendency of making very baronial estates the only way that that land can be enjoyed at least at the present. So we do hope you'll see it...

Commissioner: Mr. Evans, are you [inaudible] present residence or is it theirs?

Mr. Evans: Our house you couldn't see very in any of those photos but up above the higher bluff.

Commissioner: What access to the beach to you use?

Mr. Evans: We would retain a very small use of the beach alongside the Kraft's... [interrupted]

Commissioner: The question is what access do you use?

Chair: How do you get down to the beach?

Mr. Evans: We, again you couldn't see in that picture but there is an existing driveway to the beach [interrupted]

Commissioner: Driveway?

Mr. Evans: ... which we walk down...

Commissioner: Is it paved?

Mr. Evans: Yes it's paved.

Commissioner: You have a paved driveway that extends from your property to the beach?

Mr. Evans: That's correct. Which is... we have never referred to that where they are going to build as the bluff; that is a sloping thing. There's a much higher bluff that we are behind. The driveway goes down to the top of the lower bluff. It goes down to about the elevation of

about 15 or 20ft over the cabana and from there, there is a one person walkway currently to the beach.

Commissioner: [inaudible], you never use it?

Mr. Evans: No, I use it very frequently.

Commissioner: Is it for one person?

Mr. Evans: Well it's a narrow pathway.

Commissioner: Is it paved?

Mr. Evans: No, it's just stepping stones.

Chair: Are there any other questions or comments?

Commissioner: You gave an address on Malibu Rd?

Mr. Evans: If I did it is a mistake. It is 28006 Pacific Coast Highway or West Sea Lane as it's called now.

Commissioner: You did.

Mr. Evans: It was an error than. It's 28006 West Sea Lane.

Chair: Any more questions:

Commissioner: I have one last question of the other gentleman.

Chair: Mr. Kraft.

Commissioner: During which time did your daughters attend school in Malibu?

Chair: [name inaudible] that's irrelevant. Do you have a relevant question you'd like to ask?

Mr. Kraft: I don't mind answering.

Chair: It's irrelevant and I don't want to encourage it. Do you have any other questions Commissioner? [Pause] What I would like to do is hold the hearing... is there anyone who would like to speak in opposition to this application? [Pause] Then we have two options, one is to close the hearing and vote only on the other issues and leave it open for further input. [Pause with several voices] Let's leave it open continuing to hear it next week and you'll comeback

and give us as much information as you can, alternatives...
[interrupted]

Mrs. Kraft: What section of the agenda will we be?

Chair: You will be... we're going to... it looks to me as soon as I talk to the rest of the Commissioners that we just have a few left. We're either going to get through today or we'll go directly, this will be the first thing in the morning before we hear any of the others next week it would be here at 9 o'clock. I would suggest that you talk to Lynn before you leave and make sure you have what kind of information he thinks you ought to bring back next week so we have everything before us.

Commissioners, it's twenty of six and we have [counting up], one, two, three, four.... [interrupted]

Commissioner: Before we leave this, do we have a whitepaper(?) on Malibu, will indicate to us what the population will be at its current zoning and level of subdivision and what the additional subdivisions will mean in terms of population of Malibu please.

Commissioner: Not discriminating, do you have a 'black paper.'

Chair: Okay. Commissioners, we have six more applications ...

[end]

Torrance City Council Chambers
December 6, 1976
P-9-28-76-8961
Kraft & Evans

Chairwoman: Okay, let's hear permit number 8961.

Commissioner: Is that an addendum?

Chair: Yes, we are starting with the addendum leftover from last week. There are four items put in front of you, the first one is getting continued. We're skipping 9169 and we are going to 8961.

Staff: Madam Chairman and Commissioners, as you recall last week on 8961 was the request for the three lots splits; you recall the pictures showed the cabana sitting on the beach, a cut where a roadway came down the beach, and then another development sitting up on the top of the bluff, and was proposed to divide the parcel into one smaller parcel more inland between the house and the top of the bluff and the pacific coast highway, one large lot for the house on top of the bluff, and then the third lot on the bluff face to build a single family home approximately where the roadway came down and where the cabana was. We've gone through all of the hearing and we've seen all the slides of it and everything, we can show the slides again on it and the applicant was asked to provide more information today with sketches of renderings because there was uncertainty as to how far out onto the beach this house was going to come. Staff, in review of the plans, feels, from the blueprints that that house is going to come out onto the beach approximately right to the front edge of the cabana.

But the applicant was asked to provide the renderings and sketches to show you where it came out. So the public hearing was scheduled on the basis that the applicant would bring this additional information back to you today to define exactly where that house was going to come.

Chair: Okay. There is a hearing on 8961 is open, remains open... could we have the applicant please? Could we confine our remarks to the questions we ask how far its going to come based on the sketch?

Let's have you name for the record please?

Mrs. Kraft: Jennie and Mike Kraft.

Chair: Alright, we're not hearing you.

Mrs. Kraft: Am I on?

Staff: [directing Mrs. Kraft) You really have to speak right into it.

Mrs. Kraft: I don't think it's on? [pause] It's on... thank you.

Jennie, Vern and Jennie Lou Kraft, 3217 Long Ridge Ave., Sherman Oaks. The property in question is 280102 Sea Lane, Malibu. And we have submitted schematic drawings to staff showing exactly the location of the existing cabana and an overlay with the location of the proposed home.

Chair: Okay staff, now can we see that? [pause] And while that is getting ready I gather there is a difference in opinion between you and the staff as to where it comes to; is that correct?

Mrs. Kraft: I believe that the new drawings will make it very clear.

Chair: Okay well Mel, you said that from your reading of the drawings that it comes to the front edge of the cabana?

Staff: Approximately the front edge of the where the cabana is.

Mrs. Kraft: If you look at the drawings and I think they will be self-explanatory. The architect is here... Madam Chairman, the architect is here to answer questions.

Chair: Okay. Lynn, did you want to say something?

Staff: Yeah. The drawings submitted now indicate the front edge of the home will be at the rear edge of the cabana.

Chair: That's what Mrs. Kraft said originally, I believe. Commissioners, are there any questions for Mr. or Mrs. Kraft?

[no reply]

Chair: Does that change the recommendation of the staff?

Staff: No it doesn't.

Chair: If there are no questions, is there anything else that you would like to say?

[several voices heard]

Chair: Okay while we are waiting is there anyone else who wants to... [interrupted]

Commissioner: Where is the other existing home? Is it one or two?

Chair: Mr. Kraft or Mrs. Kraft do you want to... [interrupted]

Mrs. Kraft: Yes, I'm sorry, yes.

[Chair distracted by drawings brought in front of Commissioners]

[pause]

Commissioner: The lot fronting Pacific Coast Highway is a sub-standard lot according to this division? Because the zoning is R1-20?

Mrs. Kraft: The number one lot?

Commissioner: Yes.

Mrs. Kraft: Correct.

Commissioner: 16,000 sq. ft. lot is zoning R1-20.

Mrs. Kraft: Correct, there was a variance on that through regional planning, however that is the one that we had the perpetuity clause on; no construction, etc. The number one lot.

Chair: Are there any other questions? If not is there anyone else who wants to speak in favor or is opposed to this application?

[no reply]

Chair: Okay, then I'm going to close the hearing on permit number 8961.

Commissioner: I'd like some clarification. You said a perpetuity?

Mrs. Kraft: That we would not build on that lot.

Commissioner: Now that lot, number one and three are owned by you? And then the one in the middle is owned by the other party?

Mrs. Kraft: Correct.

Chair: Any other questions?

[pause]

Chair: And the hearing on permit number 8961 is closed. Is there a motion?

[pause]

Chair: Approval per applicant by Commissioner [inaudible], second by Commissioner [inaudible]... is there any discussion? We're going to take it [inaudible] because there are only 7 Commissioners, is there anyone who is going to vote against this application?

[pause]

Chair: And there are two. So that means that the application would be denied. Now we ought to explain this to the audience, since this is our last week of operation, I think there are a couple options. One is that you ask to have it continued, or continued since there was a straw(?) vote and they want to go before the new commission you then have a place standing in line. Otherwise, if its [inaudible] start over.

Mrs. Kraft: Will the other Commissioners be here later? Could we have a vote on this later today?

Chair: Our problem is we expect one other commissioner here who was supposed to be here at 9, and then we expect two more in the afternoon but one has to leave. So I think the most commissioners we're going to have today, if not correct, is nine.

Commissioner: There are two other alternatives Madam Chairman for the applicants considered. The Commission has agreed that if we do not finish today's agenda, they will come this Thursday. Because this is a very short case, we could keep it and try and see if we have a full panel on Thursday to vote on it. If not, we would then continue to next Monday, which is the last possible hearing for this Commission to vote on it... next Monday. If we are unable to vote on it next Monday, then it would have to be continued until sometime into 1977.

Chair: I think probably the best thing would be to put it on for Thursday. We're expecting how many commissioners on Thursday?

Commissioner: Well I hope that we have all ten.

Chair: Well Commissioner [inaudible] will not be here on Thursday.

Commissioner: I won't be here in the morning.

Chair: You won't be here in the morning. Is there anyone else?

Commissioner: I'll be here in the morning but not in the afternoon.

Chair: You'll be here in the morning, not in the afternoon. Okay, I'm sorry but I think we'll have to continue it.

Mrs. Kraft: About what time on Thursday?

Chair: I can't tell you.

Commissioner: We'll have to see how many items get carried over from today.

Mrs. Kraft: Is it for voting only?

Commissioner: It would be voting only... and the missing commissioners would be provided information that makes them aware of this change so they would eligible to vote.

Mrs. Kraft: Is it in the record now that we have all signed the perpetuity clause for the small... [interrupted]

Chair: Yes, that isn't the problem, I think the objection has to do with those subdivisions.

Mrs. Kraft: Alright.

Chair: Alright, thank you.

[end]

Torrance City Council Chambers
December 9, 1976
P-9-28-76-8961
Kraft & Evans

- Chair: Okay, 8961. Permit number 8961.
- Commissioner: Madam Chairman, I address [inaudible]
- Chair: Thanks. There's a motion on this item?
- Commissioner: Yes.
- Commissioner: This is the one with the beach cabana involved [inaudible].
- Chair: Okay. Any discussion?
- Commissioner: This is the one with the house way on top of the [interrupted]...
- Commissioner: sitting on top of the bluff... [interrupted] sort of a roadway with a pad, and then there was a beach cabana and the house, the new house, was going to go on the pad and remove the remove the beach cabana... and come to about the inner edge of where the beach cabana was.
- Commissioner: And what about the dedication of the top lot? Is that involved... is that still...?
- Chair: Yes.
- Commissioner: Oh wait a minute... I have something here. Wait a minute, I have something. This is the one right?
- Commissioner: Right.
- Commissioner: The applicant would like to agree to the lateral access condition and she would agree to a deed restriction for lot 2 where would be no further development.
- Staff: I believe that should be lot 1... the 16,000.
- Commissioner: Lot 1 or 2?

- Staff: Lot 1.
- Commissioner: Is that including the condition?
- Commissioner: That's the 16,000 one isn't it Lynn?
- Staff: Right.
- Commissioner: I move that they be made part of the [inaudible].
- Chair: Is there anyone who is going to rule against this?
- Commissioner: [inaudible] objection.
- Chair: Okay. All in favor say 'I'.
- Commissioners: "I".
- Chair: Oppose?
- Commissioner: [single] No.
- Chair: Okay, motion is approved as conditioned. And, we do need revised findings.
- Commissioner: Let's take a quick look at it Madam Chairman. I would say... finding 3 to be deleted. Item 4 does hold because they put the lateral access condition in it. Item 5, either delete or modify the proposal will not have a substantial adverse biological affect as mitigated by the conditions.
- [Commissioner speaking out loud as he writes revised findings]
- And then in item 6, the proposal is consistent with the....
- Commissioner: What did you include the dedication of lot 1 on the deed restriction [interrupted]?
- Commissioner: That would be conditions.
- Commissioner: What about the findings?
- Chair: He's changing the findings. Okay, any objection to the changes in Findings? All in favor say "I".
- Commissioners: "I".

Chair: [inaudible].

[end]

CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION
SOUTH COAST REGIONAL COMMISSION

666 E. OCEAN BOULEVARD, SUITE 3107
P. O. BOX 1450
LONG BEACH, CALIFORNIA 90801
(213) ~~436-4204~~ (714) 846-0648



FILE COPY

RESOLUTION OF APPROVAL AND PERMIT

590-5071

Application Number: P-9-23-76-8961

Name of Applicant: Verner H. Kraft/Sanford Evans

3217 Longridge Avenue, Sherman Oaks, CA 91403

Permit Type: Standard
 Emergency

Development Location: 28012 Sea Lane, Malibu, CA

Development Description: Land division of one lot into three; demolish cabana on Lot 3; and construct a two-story, single-family dwelling on Lot 3, 33 feet above average finished grade, 60 feet above centerline of frontage road, with conditions. (A single-family dwelling presently existing on Lot 2.)

Commission Resolution:

- I. The South Coast Conservation Commission finds that the proposed development:
 - A. Will not have a substantial adverse environmental or ecological effect.
 - B. Is consistent with the findings and declarations set forth in Public Resources Code Sections 27001 and 27302.
 - C. Is subject to the following other resultant statutory provisions and policies:
County of Los Angeles ordinances.
 - D. Is consistent with the aforesaid other statutory provisions and policies in that:
approval in concept has been issued.
 - E. The following language and/or drawings clarify and/or facilitate carrying out the intent of the South Coast Regional Zone Conservation Commission:
application, site map, plot plan and approval in concept.

II. Whereas, at a public hearing held on December 9, 1976 at (date)
Torrance by a 8 to 1 vote hereby approves
 (location)

the application for Permit Number P-9-23-76-8961 pursuant to the California Coastal Zone Conservation Act of 1972, subject to the following conditions imposed pursuant to the Public Resources Code Section 27403:

Prior to issuance of permit, applicant shall submit evidence that a deed restriction has been recorded: 1. granting lateral public access up to 25 feet inland from the mean high tide line, however, in no case will said dedication be nearer than 5 feet to the proposed development; and 2. stating that Lot 1 shall have no development in perpetuity.

Condition/s Met On _____ By lh RJA

III. Said terms and conditions shall be perpetual and bind all future owners and possessors of the property or any part thereof unless otherwise specified herein.

IV. The grant of this permit is further made subject to the following:

A. That this permit shall not become effective until the attached verification of permit has been returned to the South Coast Regional Conservation Commission upon which copy all permittees have acknowledged that they have received a copy of the permit and understood its contents. Said acknowledgement should be returned within ten working days following issuance of this permit.

B. Work authorized by this permit must commence within 360 days of the date accompanying the Executive Director's signature on the permit, or within 480 days of the date of the Regional Commission vote approving the project, whichever occurs first. If work authorized by this permit does not commence within said time, this permit will automatically expire. Requests for permit extensions must be submitted 30 days prior to expiration, otherwise, a new application will be required.

V. Therefore, said Permit (Standard, ~~Emergency~~) No. P-9-23-76-8961 is hereby granted for the above described development only, subject to the above conditions and subject to all terms and provisions of the Resolution of Approval by the South Coast Regional Conservation Commission.

VI. Issued at Long Beach, California on behalf of the South Coast Regional Conservation Commission on February 3, 1977.

M. J. Carpenter

M. J. Carpenter
 Executive Director
 dh

7976

CALIFORNIA COASTAL ZONE CONSERVATION COMMISSION
SOUTH COAST REGIONAL COMMISSION



666 E. OCEAN BOULEVARD, SUITE 3107
P. O. BOX 1450
LONG BEACH, CALIFORNIA 90801
(213) ~~486-4204~~ (714) 846-0648
590-5071

PERMIT NO.

P-8961

RECEIVED

FEB 4 1977

South Coast Regional Commission

VERIFICATION OF PERMIT

The regulations of the California Coastal Zone Conservation Commission, Section 13510, specifies that no permit shall become effective until a copy thereof has been returned to the Regional Commission, upon which all permittees have acknowledged that they have received a copy of the permit and understand its contents. You are therefore requested to verify the following statement after completely reviewing your permit and return the signed verification to the Coastal Commission within ten (10) working days following the permit issuance.

The undersigned permittee acknowledges receipt of the California Coastal Commission's approval of Permit Number P-8961 and thoroughly understands the contents of the permit, including any conditions imposed.

Jennifer Kraft

Feb 3, 1977

Date

[Signature]

Permittee's Signature

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



Th15a

Addendum

DATE: February 8, 2010
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item Th15a, Thursday, February 11, Coastal Development Permit No. P-9-23-76-8961-A2 (Breskal)

The purpose of this addendum is to: add public comments and address any concerns raised.

In the attached letter dated February 2, 2010, Ms. Annie Evans states her support for staff's recommendation for denial for the request to delete Special Condition No. 2 of permit P-9-23-76-8961 prohibiting development on one parcel of a three parcel subdivision.

Ms. Evans, representing the Evans Family Trust, states several concerns regarding such a project. The Evans Family Trust is assumed to be the property owners of the immediately adjacent lot (described as Lot 2 in the staff report) between the subject parcel and the beach. Specifically, Ms. Evans discusses the short time period available for public comment; supportive of the Initial Findings found in the staff report; geological issues associated with the subject parcel and surrounding area; emergency access; and the location of the proposed TDC 'donor' parcel. Ms. Evans's concerns are valid and are discussed below.

With respect to the amount of time Ms. Evans had to respond to the public notice of this item, she argues, "this permit was dated January 28, 2010 which... is cause of our not being able to fully inform counsel of our concerns or to adequately garner neighborhood support or to have counsel represent us properly with our concerns." Although staff does its best to notify interested parties as early as possible, pursuant to Section 13015, notice of regular meetings of the commission must be dispatched no later than 10 days preceding the meeting. In this case, the 10 day threshold was not exceeded.

Ms. Evans states that there was a landslide in 1998 in the vicinity of the subject parcel which was caused by paving on the subject lot; however no evidence of this accusation has been submitted. The geological issues associated with the property are addressed specifically in the staff report on page 12 under, "Consistency with LCP." It was determined in a geologic and geotechnical engineering report including the results of percolation testing (listed in Substantive File Documents) and a conceptual grading plan for the project site that:

| |
|---|
| Exhibit No. 8 CDP P-9-23-76-8961-A2-R Text from 76-8961-A2 Staff Report |
|---|

From a geotechnical standpoint, proposed construction of a new residence is considered feasible. Provided the following recommendations are incorporated in the plans and implemented, all proposed construction will be safe from hazards related to landslide, settlement, or slippage. In addition, development will not adversely affect offsite property. Sewage disposal using a conventional seepage pit will not create groundwater mounding nor adversely affect stability of slopes on this or adjacent properties.

As such, the subject site possesses sufficient geologic stability to be developed and could accommodate a septic system.

The issue of using the subject parcel for emergency access could be of serious concern for the adjacent property owners, however, there is no evidence that suggests that the subject lot is required to act as one. Although it is convenient to have a vacant parcel accessible to emergency services, staff has not seen documentation asserting such a requirement.

Finally, the location of the TDC 'donor' parcel, though in another zip code, does meet the criteria for the TDC program. The Transfer Development Credit program acts in such a way as to ensure that no net increase in development occurs throughout the Santa Monica Mountains, even if land divisions are approved. The developability of existing parcels is extinguished at the same time new parcels are created, in order to accomplish this end. Because under this program land divisions do not add to the stock of parcels eligible for future potential development and, in fact, "transfer" development (parcels) to more appropriate areas, the potential cumulative impacts are mitigated. As discussed in detail in the staff report, the project as proposed to be amended is not consistent with the policies of the certified Malibu Local Coastal Program but the location of the proposed TDC parcel is not an issue.

February 2, 2010

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Sacramento, Ca 95825-8202

Dale Bonner et al
Business, Transportation & Housing
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Sacramento, Ca 95814

February 2, 2010

Letter requesting Denial of P-9-23-8961-A2/Evans

Page | 1

Exhibit No. 8
CDP P-9-23-76-8961-A2-R
Text from 76-8961-A2 Staff Report

Re: P-9-23-76-8961-A2 – Request for Denial of Applicants (Saul Breskal, Trustee of the Sea Lane Trust) and applicant's request to set aside deed restriction and condition of original Permit # P-23-76-8961.

Dear Commissioners and Staff:

I am responding as an interested party who would be greatly impacted by the granting of this permit which would go against the intention of the original permit (#P-23-76-8961- hereinafter referred to as 'Original Permit') and it would potentially create irreparable harm to our existing property at 28006 Sea Lane which is still retained by party 'Evans' of the original land split approved by the new Coastal Commission in 1976.

It must be noted that the applicant purchased the property subject to the 'Deed Restriction' as we were able to obtain a copy of it through the public records of their purchase and by accepting this as a condition of their purchase; they accepted the conditions written and recorded therein.

In response to the Commissioner's report on this Application for Amendment to Permit:

First, I would like to say that notice of the hearing regarding this permit was dated January 28, 2010 which should illustrate the short notice giving only a few short days to respond. This is cause of our not being able to fully inform counsel of our concerns or to adequately garner neighborhood support or to have counsel represent us properly with our concerns.

Secondly, it is noted that the Commission recommends 'DENIAL' of this permit amendment, despite the offering of a 'Donor Parcel' far removed from the impact that the 'approval' of this permit would cause. We SUPPORT the Initial Findings of the Commission.

Thirdly, it is important that the Commission be aware of certain known facts which may or may not have been presented by applicant. The most important being:

- There was a significant landslide in 1998 which necessitated the drilling of several wells to dewater the property in a major section of the bluff in the Sea Lane area. At the time, fortunately "Lot 1" (as referred to in Commission's report) was completely open and available to allow ingress and egress of emergency vehicles and drilling equipment.
- Further, in researching the cause of the slide, the cause was partially if not substantially caused by the paving of the landscape and the direct run-off from Sea Lane across "Lot 1" to our property at 28006 and down the bluff to "Lot 3" which also suffered major damage.
- Applicant should make the Commission is aware that their subject property which has annexed 'Lot 1' was significantly impacted by the slide.
- In the Commission's report it is stated in the section 'Consistency with LCP' (no page numbers are available), second paragraph that "...the subject site possesses sufficient geologic stability" and we dispute this finding most strongly and question the property's ability to 'accommodate a septic system.' This could greatly endanger our property! We do not find any substantiation of this statement in the Commission's report!

February 2, 2010

Letter requesting Denial of P-9-23-8961-A2/Evans

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Exhibit No. 8
CDP P-9-23-76-8961-A2-R
Text from 76-8961-A2 Staff Report

- Due to time constraints imposed by the scheduling of this hearing further documentation and substantiation is not available and we ask for a continuance for further review if the Commission has any inclination to consider approval of this amendment to applicant's permit.

Fourth objection: Access for Emergency Vehicles: While the original intent was to create a lot split wherein two co-owners could best co-exist as separate parcels and the original conditions of the approval were acceptable to the original applicants and parties involved (Kraft and Evans), the subject 'Lot 1' was deeded to third party as 'unbuildable in perpetuity' to allow another parcel to be developed. A condition at the time was access for emergency vehicles needing a turn around and the 'unbuildable Lot 1' was transferred for that purpose. Since the slide 'Lot 3' has been walled in and the access to several properties is especially vulnerable to fire, flood, slides and adequate emergency access needs to be considered. We question the fence on 'Lot 1' limiting turn around access which may go against conditions of other permits granted and certainly potentially endangers our property. Again, time to research and respond properly is limited and we just ask the Commission to take note of this potential issue.

Fifth Objection: As so clearly and repeatedly stated by the Commission's detailed report, the amendment to the permit clearly is in direct opposition to the LCP and the neighborhood's current zoning and property size. There is no question that this amendment would be most contrary to the interests of the neighboring properties making it markedly questionable why this amendment would even be considered – although it is noted, as written in the Commissioner's report, that the 'original permit' was granted when the Commission was first enacted and is a fringe permit (not protected by current statute) which allows this amendment marginally open to review. We believe that the intent of immediately adjacent and subsequent powers of the Commission clearly support the DENIAL of this amendment. Further, the parties to the original permit made clear their intent for 'Lot 1' to be 'unbuildable in perpetuity' and that barring any substantial changes to use, zoning and lot sizes this amendment would be in major conflict with LCP. It is clear in the Commission's report that the 'Original Permit' is already non-conforming in terms of the lot sizes. Adding an additional residence on 'Lot 1' would create adverse conditions and would open the possibility that other properties would apply to put second residences on their properties as well. The applicant is asking for approval of an extraordinary non-conforming impact which is adverse to LCP and the Commission should have no choice but to DENY this permit amendment.

Sixth Objection: While it is convenient for applicant to have a 'Donor Parcel' in another area (Zip Code) to try to mitigate the opposition to their requested amendment, we believe that the current property owners and interested parties would agree that such a trade would NOT be beneficial to their needs and interests. As stated in the Commission's report – the 'Original Permit' was granted prior to the requirement for mitigation of cumulative impacts. The time for the mitigation was at the time of issuance of 'Original Permit' but current mitigation requirements were not in force at the time of issuance. In further objection, we believe that the mitigating parcel is so far from offsetting the immediate impact on our subject property and that of our neighbors (there are neighbors still residing in neighborhood since 'Original Permit' was granted and were originally party to allowing our 'Original Permit' to be approved subject to the condition on 'Lot 1' should remain 'Unbuildable in Perpetuity.')

Of other note: We have observed temporary sight boards being erected on the applicant's property, but we have not received notice of pending permits. We do note to the Commission that the potential improvements would greatly impact our view and use of our property. We request further time to review all the permit applications submitted by applicant on the subject and adjacent properties prior to any permit approvals.

In conclusion, we ask that the Commission unanimously DENY this amendment. Further, it is asked that the Commission further formalizes and corrects the grievous error or omission that allowed the 'Deed restriction' to be recorded with questionable language that was not approved per the 'Original Permit.' This matter should not be allowed to be presented to the Commission again in absence of a complete overhaul of the LCP. The needs of the neighboring properties which the 'Deed Restriction' has protected since 1976 needs to be enforced and 'Lot 1' should be 'unbuildable in perpetuity' and emergency access should be enforced on the applicant.

Again, the undersigned party represents a family trust in Sea Lane and is representing a party to the 'Original Permit.'

Respectfully submitted,



Annie Evans
c/o Evans Family Trust
28006 Sea Lane
Malibu, CA 90265
(310) 457-2297/Cell (310) 621-0456

As representative (temporary in lieu of counsel) of the Evans Family Trust, 28006 Sea Lane, Malibu, CA 90265.

Cc: Alternate Commissioners per attached list.
File
Counsel
Property Owners of Sea Lane, Malibu, CA 90265

*appointment dates
 **reappointment dates

ALTERNATES FOR COMMISSIONERS

| Governor's Appointments | Senate Rules Committee Appointments | Assembly Speaker Appointments |
|---|--|---|
| Public Members | | |
| <p>Lisa Wickert (for Steve Elman)</p> <p>45 Fremont St., Ste. 2000 San Francisco, CA 94105 (415) 904-5200</p> <p>*9/14/2007</p> | <p>April Vargas (for Sara Wan)</p> <p>P.O. Box 370265, Montara, CA 94307</p> <p>*8/4/2006</p> | <p>Dr. Clark E. Parker (for Dr. William A. Burke)</p> <p>45 Fremont St., Ste. 2000 San Francisco, CA 94105 (415) 904-5200</p> <p>*1/13/2010</p> |

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|---|---|---|
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CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
 89 SOUTH CALIFORNIA ST., SUITE 200
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 (805) 585-1800

Filed: 11/20/09
 49th Day: 1/8/10
 180th Day: 5/19/10
 Staff: ADB-V
 Staff Report: 1/27/10
 Hearing Date: 2/11/10



Th15a

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: P-9-23-76-8961-A2

APPLICANTS: Saul Breskal, Trustee of the Sea Lane Trust

AGENTS: Lynn J. Heacox

PROJECT DESCRIPTION: Request to delete Special Condition No. 2 of permit P-9-23-76-8961 prohibiting development on one parcel of a three parcel subdivision. The application also includes the proposal to retire the development potential of one separate parcel in Topanga pursuant to a Transfer of Development Credit (TDC).

PROJECT LOCATION: 28004 Sea Lane, Malibu, Los Angeles County [APN: 4460-033-029]

MOTION & RESOLUTION: Page 3

SUMMARY OF STAFF RECOMMENDATION: Staff recommends **DENIAL** of the proposal.

The standard of review for the subject amendment request is whether the development authorized by the underlying permit would be consistent with the applicable policies and provisions of the Malibu Local Coastal Program (LCP) if the subject condition were removed from that permit and the currently-proposed retirement of development potential were added to the scope of that project. The applicant proposes to delete a previously required condition of approval from Permit P-9-23-76-8961 in order to allow for the removal of a recorded deed restriction prohibiting development of the subject parcel. Removal of this deed restriction would allow for the future development of the site with a single family residence and associated accessory structures and uses. While the proposed project is not technically a land division, it is tantamount to a land division in that it would allow for the development of a parcel currently restricted from development. The proposed amendment would inevitably allow for the development of an additional dwelling unit within the subject area, thereby

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| Exhibit No. 8 CDP P-9-23-76-8961-A2-R Text from 76-8961-A2 Staff Report |
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increasing the density of development within the neighborhood and within the City overall. The subject parcel would be smaller than the average size of surrounding parcels and would not meet the minimum lot size (or maximum density) standard of two acres, which is inconsistent with the policies and provisions of the certified Malibu LCP. The applicant's proposed retirement of the development potential of a separate parcel, while potentially providing mitigation for the cumulative impacts of creating a new building site, will not bring the main project into conformity with these standards. In fact, it will exacerbate the main project's non-conformity with these standards. As such, even with the proposed lot retirement, the proposed amendment is not consistent with the average lot size or maximum density standards of the LCP. Therefore, staff recommends denial of the proposed amendment.

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EXHIBITS

- Exhibit 1.** Vicinity Map & Aerials
- Exhibit 2.** Parcel Map
- Exhibit 3.** Resolution of Approval and Permit P-9-23-76-8961
- Exhibit 4.** California Coastal Zone Conservation Commission Deed Restriction for P-8961.
- Exhibit 5.** Transfer Development Credit 'donor' site
- Exhibit 6.** California Coastal Zone Conservation Commission hearing transcripts from November 29, 1976, December 6, 1976, and December 9, 1976
- Exhibit 7.** LIP Designations RR2 (table)
- Exhibit 8.** Land Use Plan Map
- Exhibit 9.** Average Size of Parcel within ¼ mile of Subject Parcel (table)
- Exhibit 10.** Permit P-9-23-76-8961 (Kraft & Evans)

SUBSTANTIVE FILE DOCUMENTS: *Certified Malibu/Santa Monica Mountains Land Use Plan; "Engineering Geologic and Geotechnical Engineering Report for Proposed Residence and Swimming Pool at 28004 Sea Lane Drive, Malibu,*

California,” Donald B. Kowalewsky, Environmental & Engineering Geology, 3/31/2008; Permit P-9-23-76-8961 (Kraft & Evans).

I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No P-9-23-76-8961 for development as proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Following staff’s recommendation will result in denial of the permit amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby **denies** the proposed amendment to the coastal development permit on the grounds that the development as amended will not conform with the policies and provisions of the City of Malibu Local Coastal Program. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. STANDARD OF REVIEW

As described in greater detail below, the applicant is proposing an amendment to a coastal development permit approved in 1976. Section 13166 of the Commission’s regulations (14 CCR § 13166) governs the processing of amendments to permits. This section requires the executive director to reject an application for an amendment to an approved permit if the executive director determines that the amendment would lessen or avoid the intended effect of the approved permit (unless there is newly discovered material information that could not have been produced before the permit was granted). Clearly, the amendment proposed herein (which involves the proposal to delete a previously required condition of approval) would lessen or avoid the intended effect of the permit.

However, subdivision (e) of the above-referenced regulation provides that: "The procedures specified in this section shall apply to applications for amendments of permits issued under the California Coastal Zone Conservation Act of 1972, except as specified in Public Resources Code Section 30609". That section states, in part, that:

Where prior to January 1, 1977, a permit was issued and expressly made subject to recorded terms and conditions that are not dedication of land or interests in land for the benefit of the public or public agency pursuant to the California Coastal Zone Conservation Act of 1972 . . . the owner of real property which is the subject of such permit may apply for modification or elimination of the recordation of such terms and conditions pursuant to the provisions of this division. Such application shall be made in the same manner as a permit application.

In this case, permit P-9-23-76-8961 was approved in 1976, pursuant to the Coastal Zone Conservation Act of 1972, and is subject to recorded terms and conditions. Although the underlying permit did prohibit development on an entire parcel, because that requirement (which is the primary subject of this proposed amendment application) was to be effectuated through the recordation of a deed restriction on the subject parcel rather than, for example, dedication of an easement, and because it did not grant any rights to any third parties, it did not involve any actual dedication of land or interest in land. Accordingly, in this very narrow set of circumstances, the applicant may apply for this amendment, and the application must be considered by the Commission rather than being rejected outright.

The subject site is within the incorporated boundaries of the City of Malibu and, therefore, subject to the policies and provisions of the certified City of Malibu Local Coastal Program. Section 13.10.2 (B) of the Malibu Local Implementation Plan (LIP) provides that an applicant for an amendment to a Commission-approved CDP shall apply to the Commission (rather than applying to the City of Malibu) only where the amendment includes:

Development that would lessen or negate the purpose of any specific permit condition, any mitigation required by recorded documents, any recorded offer to dedicate or grant of easement or any restriction/limitation or other mitigation incorporated through the project description by the permittee, of a Commission-issued coastal permit.

In this case, the proposed amendment would clearly lessen or negate the purpose of the development prohibition condition of the subject CDP. As such, Permit Amendment application P-9-23-76-8961-A2 has been properly submitted for consideration by the Coastal Commission.

Finally, the subject permit was originally approved prior to the incorporation of the City of Malibu and prior to the adoption of the Malibu LCP. Nonetheless, the LCP is certified and applies to all new development within the City of Malibu. As such, the standard of review for the subject amendment request is whether the

development as amended and conditioned would be consistent with the applicable policies and provisions of the Malibu LCP.

B. PROJECT DESCRIPTION AND BACKGROUND

The applicant is requesting deletion of Special Condition No. 2 of permit P-9-23-76-8961, which prohibits development on the most landward parcel (designated "Lot 1" and herein sometimes referred to as the "subject parcel") of a three parcel subdivision. Approval of this amendment would allow for the future development of the subject parcel with a single family residence. The applicant also proposes to retire the development potential of a separate parcel in Topanga through the transfer of development credit (TDC) program. The subject site is a 16,760 sq. ft. vacant lot located at 28004 Sea Lane, Malibu, Los Angeles County [APN: 4460-033-029] (Exhibit 2). The parcel is located in the Escondido Beach community between the first road and the ocean in the City of Malibu (Exhibit 1). There are two lots (one 20,220 sq. ft. and one 33,210 sq. ft.) developed with single family residences between the subject property and the beach. The Certified City of Malibu LCP designates the subject site as RR-2, or one residential unit per two acres (Exhibit 8).

The present site was part of a land division approved by the California Coastal Zone Conservation Commission¹ ("Commission") pursuant to Coastal Development Permit (CDP) No. P-9-23-76-8961. This permit granted to Verner Kraft and Sanford Evans approval for a three lot subdivision, the demolition of a beach cabana, and the construction of a two-story, 33 ft. high, single family residence on the beach-front of the three lots.

Records in the CDP file indicate that staff² recommended that the Commission deny the land division. However, the CDP was approved, subject to two conditions. The Resolution of Approval and Permit, dated February 3, 1977 lists the approved development description and required conditions (Exhibit 3). However, it does not appear that revised findings were adopted in support of the CDP action. No official hearing transcripts were available for the three hearings held for this CDP. Staff was able to obtain copies of the hearing tapes for each hearing. Staff listened to these tapes and prepared unofficial hearing transcripts for each hearing (Exhibit 6).

After three hearing dates, November 29, 1976, December 6, 1976, and December 9, 1976, the South Coast Conservation Commission approved the permit subject to two conditions, requiring the provision of lateral public access

¹ This commission was the precursor to the California Coastal Commission and was created by and administered the California Coastal Zone Conservation Act 1972.

² It is noted that the staff member who processed CDP Application P-9-23-76-8961, Lynn Heacox, is serving as the applicant's agent in the subject CDP Amendment application.

and recordation of a deed restriction prohibiting development on the landward lot (Exhibit 2). It is the latter condition that the applicant proposes to amend.

At the time of the application, the project site was comprised of one 70,190 sq. ft. lot (1.6 acres), with one existing 3,524 sq. ft. single family residence built in 1963 and a beachfront cabana. The property was jointly owned by the Kraft and Evans families with the home occupied full-time by the Evans family and the cabana being used part-time by the Kraft's. In order to construct an additional residence on the property, the Kraft's and Evans's proposed to divide the property. According to the Commission hearing tapes, the two owners wanted to divide the original parcel in a manner that would create two ownerships of roughly the same size so that the property taxes assessed for each of the two owners would be approximately the same. However, because the Evans's residence was located in the middle of the property, the owners apparently proposed to split the lot three ways, with the Evans retaining ownership of a 33,210 sq. ft. middle parcel and the Kraft's owning two discontinuous parcels, one seaward and one landward of the Evans property, totaling 36,980 sq. ft.

Staff recommended denial of Application P-9-23-76-8961 because of the potential cumulative impacts to public access and recreation. During the hearing, the Commission raised concern about a three-way land division and asked the applicant to clarify why it was necessary to divide the property into three parcels since the applicants stated that their aim was to only develop two residences. In response to the Commission's concerns regarding the land division and the Commission's indication that it would follow staff's recommendation for denial, the applicant proposed to ensure that only two residences would ever be constructed on the property by recording a deed restriction prohibiting development on the most landward lot. The purpose of this deed restriction was to ensure that the third most landward lot would remain undeveloped in perpetuity, effectively creating only two developable lots as a result of the approved subdivision of land. The Commission further asked the applicants if they were willing to dedicate public lateral access along the sandy beach portion of the property, which the applicant agreed to do, and the permit was approved. At the time, the applicant proposed, and agreed, to the condition which specifically prohibited any development on the landward most lot, which the Commission states for record as, "...stating that Lot 1 shall have no development in perpetuity" (Exhibit 6). The Resolution of Approval and Permit, dated February 3, 1977 (Exhibit 3) reflects the Commission's approval of the permit and lists the following two conditions:

Prior to issuance of permit, applicant shall submit evidence that a deed restriction has been recorded: 1. granting lateral public access up to 25 feet inland from the mean high tide line, however, in no case will said dedication be nearer than 5 feet to the proposed development; and 2. stating that Lot 1 shall have no development in perpetuity.

The deed restriction recorded to satisfy Part Two of the condition (sometimes referred to herein as “Special Condition No. 2) was recorded in a manner that did not entirely comply with the Commission’s requirement, only stating “[t]here will be no residential development” on site rather than prohibiting all development (Exhibit 4). It is unclear why, aside from staff error, the language of the deed restriction does not match the condition exactly since the intent of the condition is very clear. Regardless, Special Condition No. Two of CDP P-9-23-76-8961 clearly prohibits all development on the subject site.

Moreover, the Commission’s intent in restricting development on the property to no more than two dwelling units was clear. Although the preferred alternative would have been to re-configure the proposed parcel map such that only two parcels were created, the Commission approved the underlying subdivision as proposed by the applicants, with the development restriction on the third lot. Nonetheless, the recordation against the title of Lot 1 of a deed restriction prohibiting development of the parcel clearly places future buyers on notice that no development may be approved on the parcel, and presumably the development prohibition should be reflected in any negotiated sales price for the property.

Today, the three lots have three independent owners. The beachfront parcel, APN 4460-033-031, was sold by the Kraft’s in 1993 and is now owned by Cynthia Beck. The middle parcel, APN 4460-033-030, is still owned by the Evans family. According to public information, the subject parcel, APN 4460-033-029, was purchased for \$1,000,000 by the applicant in 2009.

| Lot No. | APN | Position | Owner | Size (sq. ft.) | Development |
|----------------|--------------|-----------------|--------------|-----------------------|--------------------|
| 3 | 4460-033-031 | Beachfront | Beck | 20,220 | Single-family |
| 2 | 4460-033-030 | Middle | Evans | 33,210 | Single-family |
| 1 | 4460-033-029 | Landward | Breskal | 16,760 | None |

The applicant is also proposing to extinguish the development rights of a separate lot through the TDC program in exchange for approval of residential development rights on the subject parcel. The other lot is a 21,780 sq. ft. (0.5 acres) vacant parcel located to the south of Topanga State Park and to the west of the Fernwood small-lot subdivisions (Exhibit 5). The parcel is made up of mountainous terrain likely to be environmentally sensitive habitat area (ESHA) and is adjacent to National Park Service (NPS) land. The closest existing development is approximately 0.4 miles away and there are no roads or other utilities servicing this or nearby parcels. The proposed “exchange” lot is owned by Alex Glasscock (the previous owner of the subject parcel) and was purchased in 2009 for \$58,000.

This is the applicant's second amendment application for the same proposal. Application number P-9-23-76-8961-A1 was rejected because staff determined that the proposed amendment would serve to lessen or avoid the intended effect of the original permit pursuant to Section 13166 of the California Coastal Commission Regulations (Title 14, Division 5.5). The applicant's agent argued that Section 30609 of the Public Resources Code (PRC) provides for such an amendment to be accepted and considered in a very narrow circumstance. Section 30609 states that:

Where prior to January 1, 1977, a permit was issued and expressly made subject to recorded terms and conditions that are not dedication of land or interests in land for the benefit of the public or public agency pursuant to the California Coastal Zone Conservation Act of 1972 the owner of real property which is the subject of such permit may apply for modification or elimination of the recordation of such terms and conditions pursuant to the provisions of this division. Such application shall be made in the same manner as a permit application. In no event however, shall such a modification or elimination of recordation result in the imposition of terms or conditions which are more restrictive than those imposed at the time of the initial grant of the permit. Unless modified or deleted pursuant to this section, any condition imposed on a permit issued pursuant to the former California Coastal Zone Conservation Act of 1972 shall remain in full force and effect.

As stated above, under Section 13166 of the Commission's regulations, the Executive Director may not accept an application for an amendment to a permit issued under the Coastal Act of 1976 or the Coastal Zone Conservation Act of 1972 if the amendment would lessen or avoid the intended effect of the approved permit, except under the provisions of PRC 30609, which allows such applications when the amendment would affect a condition of a permit approved pursuant to the Coastal Zone Conservation Act of 1972 that did not involve a dedication of land or interest in land for the benefit of the public or public agency. In this case, permit P-9-23-76-8961 was approved in 1976 pursuant to the Coastal Zone Conservation Act of 1972 and is subject to recorded terms and conditions. The deed restriction required by Special Condition Two (which is the subject of this amendment) did not involve a dedication of land or interest in land for the benefit of the public or public agency. As such, staff accepted this amendment application and it has been scheduled for consideration by the Commission.

C. CUMULATIVE IMPACTS

The following policies of Chapter Three of the Coastal Act are incorporated as part of the City of Malibu LUP:

Section 30250 (a)

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30252

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

In addition, the following LUP policies pertain to new development and cumulative impacts:

- 5.20 All residential development, including land divisions and lot line adjustments, shall conform to all applicable LCP policies, including density provisions. Allowable densities are stated as maximums. Compliance with the other policies of the LCP may further limit the maximum allowable density of development.**
- 5.33 Land divisions include subdivisions (through parcel map, tract map, grant deed, or any other method), lot line adjustments, redivisions, mergers, and certificates of compliance (except as provided in Policy 5.41). Land divisions are only permitted if they are approved in a Coastal Development Permit.**
- 5.34 Land divisions outside existing developed areas shall be permitted only in areas with adequate public services, where they will not have significant adverse effects, either individually or cumulatively, on coastal resources.**
- 5.35 The minimum lot size in all land use designations shall not allow land divisions, except mergers and lot line adjustments, where the created parcels would be smaller than the average size of surrounding parcels.**
- 5.36 Land divisions shall be designed to minimize impacts to coastal resources and public access. A land division shall not be approved if it creates a parcel that would not contain an identified building site that could be developed consistent with all of the policies of the LCP.**

- 5.37 *Land divisions shall be designed to cluster development, including building pads, if any, in order to minimize site disturbance, landform alteration, and removal of native vegetation, to minimize required fuel modification, and to maximize open space.*
- 5.38 *The City shall not approve a land division if any parcel being created would not be consistent with the maximum density designated by the Land Use Plan map, and the slope density criteria. Land divisions shall not be considered the principal permitted use in any land use category.*
- 5.39 *Any Coastal Development Permit for a land division resulting in the creation of additional lots shall be conditioned upon the retirement of development credits (TDCs) at a ratio of one credit per new lot created.*

Finally, the Malibu LIP has the following provisions regarding maximum density in the area of the proposed project site and cumulative impacts:

Section 3.3 Zoning Districts

A. Rural Residential (RR) Zone

1. Purpose

The RR District is intended for sensitively designed, large lot single family residential development, with agricultural uses and animal keeping which respects surrounding residents and the natural environment as accessory uses. This district incorporates a variety of natural resources and amenities.

2. Permitted and Conditionally Permitted Uses

Refer to Table B³ (Permitted Uses).

3. Lot Development Criteria

All new lots created within the RR District shall comply with the following criteria:

a. Minimum Lot Area. The minimum lot area for each parcel located in the RR District shall be based on the corresponding designation found on the Zoning Map as follows:

- i. RR-40: 40 acre minimum area*
- ii. RR-20: 20 acre minimum lot area*
- iii. RR-10: 10 acre minimum lot area*
- iv. RR-5: 5 acre minimum lot area*
- v. RR-2: 2 acre minimum lot area*
- vi. RR-1: 1 acre minimum lot area*

The minimum lot area requirements listed above represent the maximum density permitted in each RR designation. Any request to subdivide land within this zoning district will also require compliance with Chapter 15 (Subdivisions) of the Malibu Local Implementation Plan which establishes a slope/density formula for all subdivision applications.

Section 15.2, Findings for Approval of Land Divisions

³ Seen as Exhibit 7

B. A land division shall not be approved unless the City finds that the proposed land division:

- 9. Is consistent with the maximum density designated for the property by the Land Use Plan map and the slope density criteria (pursuant to Section 15.6 of the Malibu LIP).***

New development raises coastal issues related not only to direct individual impacts, but also to cumulative impacts, on coastal resources. The subdivision of property to create additional lots for development intensifies the use of the property, increasing impacts on public services, such as water, sewage, electricity and roads. New development also raises issues as to whether the location and amount of new development maintains and enhances public access to the coast and results in new adverse impacts to visual resources in the Coastal Zone. The Commission has long recognized that adverse cumulative impacts to coastal resources would result from an increase in the overall number of parcels in the Malibu/Santa Monica Mountains coastal zone area, particularly given the large number of undeveloped parcels and the limited availability of urban services. Even its predecessor, the Coastal Zone Conservation Commission, and the regional commissions recognized these impacts, as demonstrated in the discussion surrounding the approval of the underlying permit in this case.

As described above, Permit P-9-23-76-8961 allowed for the creation of three parcels through the recordation of a parcel map. However, it was three parcels only in form, not in substance. The South Coast Regional Coastal Zone Conservation Commission made it clear that only two lots should be allowed here, and it approved the three-lot subdivision only to accommodate the applicants' tax concerns and on condition that the third lot be made undevelopable (and thus effectively a non-parcel). To effectuate the Commission's clear intent to allow for only two building sites on the property, a deed restriction was required to be recorded across the entirety of the third parcel such that no development in perpetuity would be allowed on the parcel. The applicant now proposes to delete this condition from Permit P-9-23-76-8961, allowing for the removal of the deed restriction from the subject parcel, and the eventual development of the subject parcel with a single family residence and associated accessory structures and uses.

While the proposed amendment would not technically effectuate a new land division, it is tantamount to a land division in that it would allow for the development of a parcel currently restricted from development, and it would change the terms of a prior land division to make it effectively create an additional lot. The proposed amendment would inevitably result in the development of an additional dwelling unit within the subject area, thereby increasing the density of development within the neighborhood and within the City overall. The applicant also acknowledges that the project is creating a new

buildable parcel by proposing to retire an existing parcel as mitigation for the impacts of the proposed lot creation. As such, the proposed removal of the subject development prohibition must be reviewed for consistency with the cumulative impact and new development policies and provisions of the Malibu LCP in the same way that a land division application would be reviewed.

Consistency with LCP

Review of this proposal, as with any new development or land division, requires that the applicant demonstrate that the proposed building site can be developed consistently with the policies and provisions of the certified Malibu LCP. This includes geologic stability, water quality, visual resources, public access and recreation, new development, sensitive resources, etc. To that end, the applicant's agent submitted a geologic and geotechnical engineering report including the results of percolation testing (listed in Substantive File Documents) and a conceptual grading plan for the project site. Geologic stability is of particular importance in the subject area as adjacent parcels to the south and southwest have experienced bluff instability and land-sliding that required extensive repair and stabilization through soldier pile installation. The geology report states that:

From a geotechnical standpoint, proposed construction of a new residence is considered feasible. Provided the following recommendations are incorporated in the plans and implemented, all proposed construction will be safe from hazards related to landslide, settlement, or slippage. In addition, development will not adversely affect offsite property. Sewage disposal using a conventional seepage pit will not create groundwater mounding nor adversely affect stability of slopes on this or adjacent properties.

As such, the subject site possesses sufficient geologic stability to be developed and could accommodate a septic system. Additionally, the subject site does not contain any environmentally sensitive habitat area, native trees, public access trail, so the proposed amendment does not implicate any of the LCP's ESHA, tree, or trail policies or provisions.

However, the Malibu LCP also provides land use and zoning designations, including through the LUP Land Use Map and LIP Zoning Map, that locate development in areas able to accommodate it, and where it will not have individual or cumulative impacts on coastal resources, including public access, recreation, land and marine resources, and scenic and visual quality. The land use designations, applied in combination with the other applicable policies of the Land Use Plan, ensure that new development meets the requirements and conforms to Section 30250 and all other applicable Chapter 3 policies of the Coastal Act. The LCP requires that the minimum lot size in all land use designations shall not allow land divisions, except mergers and lot line adjustments, where the created parcels would be smaller than the average size of surrounding parcels. The LCP also requires that the parcel being created be

consistent with the maximum density designated for the area by the LUP Land Use Map. In this case, the Land Use Map designates the subject area as “Rural Residential” with a 2-acre minimum lot size or “RR-2”. As seen on the LUP and Zoning Maps, the existing parcels are a mix of sizes. Some of the parcels are lawfully non-conforming with regard to the maximum density, having been legally created prior to the incorporation of the City and the adoption of the LCP.

However, as discussed above, the Commission does not consider the subject parcel to have been created as a buildable parcel prior to cityhood, or prior to the adoption of the LCP, as it was clearly restricted from development. As such, the subject parcel does not constitute a legally non-conforming lot as to maximum density. Rather, the Commission must consider if the removal of the deed restriction and resultant creation of the parcel as a buildable lot is consistent with the density standard and minimum lot size requirement of the LCP.

Staff reviewed the parcel maps for the existing parcels surrounding the subject property (for a distance of a quarter mile around the subject property, and south of Pacific Coast Highway) and calculated the average size of the parcels within that area (Exhibit 9). Staff determined that the average lot size of surrounding parcels is 73,872 sq. ft. when calculated using the gross acreage and 69,983 sq. ft. when calculated using the net acreage (net of roads and other easements). The property in question is 16,760 sq. ft. in size and therefore considerably smaller than the average size of surrounding parcels.

Further, the parcel clearly does not meet the minimum lot size (or maximum density) standard of two acres. As such, the proposed parcel, if the development restriction were removed, would not be consistent with the certified LCP with regard to the average parcel size standard or the maximum density standard. As such, the proposed amendment to delete the condition of approval that prohibits development on the subject parcel so that the existing deed restriction could be removed is not consistent with these provisions of the certified Malibu LCP.

Proposed Mitigation through Lot Retirement

The application also includes the proposed retirement of the development potential of a separate parcel in Topanga pursuant to a Transfer of Development Credit (TDC) transaction. The lot that the applicant proposes to retire is a vacant parcel that contains vegetation that appears to be ESHA (although no site-specific biology report has been provided for the parcel). It is located well outside any developed area and is adjacent to parkland owned by the National Park Service (Exhibit 5). Commission staff has previously considered this parcel (among several others in the area) and determined that the parcel would qualify for credit under the TDC program. The applicant’s agent has asserted that the proposed project, in conjunction with the retirement of this separate parcel, would be the least damaging environmental alternative. The applicant’s agent further asserts that the retirement of a separate parcel in exchange for allowing the

subject property to become a buildable parcel (through the removal of the deed restriction) will serve to mitigate for the cumulative impacts of allowing the parcel to be developed.

Land divisions and the development of multi-family residential projects increase the number of parcels and/or the number of residential units that can be built over the number of existing parcels in an area. The Commission has long recognized that adverse cumulative impacts to coastal resources would result from an increase in the overall number of parcels in the Malibu/Santa Monica Mountains coastal zone area, particularly given the large number of undeveloped parcels and the limited availability of urban services. The Commission has consistently required the mitigation of the cumulative impacts of creating new lots through subdivision and of developing multi-family units by retirement of future development potential on existing parcels within the Santa Monica Mountains region. The retirement process is formalized as the Commission's Transfer of Development Credit (TDC) Program. The TDC program is implemented by the Commission through permit actions to mitigate the cumulative impacts caused by the existence of a large number of undeveloped parcels, the limited availability of public services, the impacts to major coastal access routes and the potential significant adverse environmental impacts that would result from developing the parcels and of providing services.

The requirement for mitigation of cumulative impacts through retirement of parcels is also required by the policies and provisions of the Malibu LCP. However, such mitigation is only used as a means of further reducing cumulative impacts from new development that is first found to be consistent with all other applicable policies and provisions of the LCP. This mitigation cannot substitute for compliance with specific policies and provisions. In this case, the proposed amendment is not consistent with the average lot size criteria or the maximum density standard applicable to the site. The retirement of a separate parcel, while potentially providing mitigation for the cumulative impacts of creating a new building site, will not bring the project into conformity with these standards.

As such, even with the proposed lot retirement, the proposed amendment is not consistent with the average lot size or maximum density standards of the LCP. Therefore, the Commission finds that the project is not consistent with the applicable policies and provisions of the certified City of Malibu Local Coastal Program and must be denied.

D. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits

a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission incorporates its findings on Local Coastal Program consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development, is not consistent with the policies of the Certified Local Coastal Program. There are feasible alternatives that would avoid the adverse environmental effects of the project, namely the “no project” alternative of retaining the development prohibition on the subject parcel. Therefore, the Commission finds that the proposed project is not consistent with the requirements of the Coastal Act to conform to CEQA.