

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Filed: 9-21-95
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 Staff: SPF-V *SPF*
 Staff Report: Oct. 25, 1995
 Hearing Date: Nov. 14-17, 1995
 Commission Action:

**RECORD PACKET COPY**STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 5-86-349A2

APPLICANT: Ellen Johnson

AGENT: None

PROJECT LOCATION: 1876 Lookout Drive, Malibu; Los Angeles County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Construction of a two story single family residence with septic system, and amended to allow the addition of 623 sq. ft. to the existing 2,132 sq. ft. single family residence within the same footprint.

DESCRIPTION OF AMENDMENT: Modification of special condition 4 attached to permit amendment 5-86-349A (Johnson) to allow for the retirement of residential development rights on a lot, for Gross Structural Area (GSA) credit, which is located outside the small lot subdivision where the development is proposed.

LOCAL APPROVALS RECEIVED: Los Angeles County Building permits for the addition.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development permits 5-86-349 (Pt. Dume Development Corp.), 5-86-349A (Johnson), 4-95-195A (Eide); the Malibu/Santa Monica Mountains Land Use Plan; and a report entitled Cumulative Impacts of Small Lot Subdivision Development in the Santa Monica Mountains Coastal Zone (Jan. 1979).

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

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

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission determine that the proposed development with the proposed amendment, subject to the conditions below, is consistent with the requirements of the Coastal Act.

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby approves the amendment for the proposed development, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Special Conditions

NOTE: Unless specifically altered by the amendment, all conditions attached to the previous permit and subsequent amendment remain in effect.

4. Revised Plans or Retirement of Additional Lots

Prior to issuance of a Coastal Development Permit, the applicant shall submit plans, for the review and approval of the Executive Director, indicating that the gross structural area of the proposed residence (garage excluded) conforms to the maximum allowable gross structural area of 2,123 sq. ft. as determined by the slope intensity formula pursuant to Policy 271(b)(2). These plans must indicate which portions of the residence are to be removed and must state that any such removal of the residence would be completed within 120 days of the issuance of the permit.

Alternatively, pursuant to Policy 271 (b)(2) the maximum allowable gross structural area may be increased by 500 sq. ft. by extinguishing development rights on each lot contiguous to the building site or by 300 sq. ft. for each lot which is not contiguous but which is in either the Malibu Bowl Small Lot Subdivision, El Nido Small Lot Subdivision, Malibu Vista Small Lot Subdivision, or the Malibu Mar Vista Small Lot Subdivision. Prior to the issuance of the permit, the applicant may submit, for the review and approval of the Executive Director, evidence that the development rights have been extinguished on any combination of contiguous or non-contiguous lots which would bring the development in conformance with Policy 271 of the Malibu LUP.

Further, the applicant may choose to submit, for review and approval of the Executive Director, evidence that all potential for future development has been permanently extinguished on one or more contiguous or non-contiguous parcels, and submit revised plans showing a reduction in the size of the single family residence consistent with Policy 271 of the Malibu LUP. If the applicant chooses to submit revised plans, these plans must show which portions of the residence are to be removed and the final square footage. Furthermore, the plans must state that the removal of the square footage shall be completed within 120 days of the issuance of the permit.

5. Condition Compliance

All requirements specified in the foregoing condition that the applicant is required to satisfy as a prerequisite to the issuance of this permit must be fulfilled within 90 days of Commission action. Failure to comply with such additional time as may be granted by the Executive Director for good cause, will nullify this permit approval.

III. Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Background

The applicant is proposing to modify special condition 4 attached to permit amendment 5-86-349A (Johnson) to allow for the retirement of residential development rights on a lot, for Gross Structural Area (GSA) credit, which is located outside the small lot subdivision where the subject development is proposed. The purpose of this action is to increase the GSA of the applicant's lot and thus bring the residence into conformance with the GSA. The applicant has been unable to find a vacant lot within the Malibu Bowl small lot subdivision which can be restricted from future development in exchange for GSA credit. The applicant has found a potential lot within the Malibu Vista Small Lot Subdivision.

The requirement for the applicant to extinguish the development rights of up to two lots within the Malibu Bowl Small Lot Subdivision was required under coastal development permit amendment 5-86-349A(Johnson). This amendment was approved by the Commission on November 17, 1993. In 5-86-349A, the applicant was applying for the after-the-fact approval of a 623 sq. ft. addition to the single family residence. Since this lot is located within a small lot subdivision, the size of the residence is restricted by the Gross Structural Area (GSA) formula. The slope intensity formula is intended to limit the size and intensity of development based on the slope and size of the land. As a result, there is an incentive to combine the smaller, steeper lots to provide buildable site for full size residences. For this lot, the maximum GSA is 2,132 sq. ft; the actual size of the residence is 2,746 sq. ft.. Thus, the residence exceeds the GSA by 623 sq. ft. As such, the Commission approved the after-the-fact request for the addition to the residence with a special condition which required that the applicant either submit revised plans to reduce the square footage of the residence, extinguish the development rights of lots within the same small lot subdivision to increase the GSA, or do a combination of both. With the extinguishment of development rights of a non-contiguous lot, the applicant could increase the GSA by 300 feet per lot.

The original residence was approved by the Commission under 5-85-349 (Pt. Dume Development Corporation) in June of 1986. The project allowed for the construction of a 2,123 sq. ft. residence and a private septic system. Special condition 1 of the original permit required the recordation of a future improvements deed restriction which would require any additions to the residence or improvements to the lot be reviewed and approved by the Commission. Special condition 2 of the permit 5-86-349 required the applicant to submit revised plans which showed that the proposed residence was in conformance with the GSA. The GSA had been calculated at 2,123, the applicant was proposing a 2,230 sq. ft. residence. The applicant did submit revised plans but then built the residence larger than approved. The residence prior to the additions by the current application was 2,263 sq. ft. The current application added 483 sq. ft. by building out the understory. This addition brought the residence to its current size of 2,746 sq. ft..

B. Cumulative Impacts

Section 30250(a) of the Coastal Act states:

(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.

The Commission, in past permit action, has recognized certain development constraints common to small lot subdivisions including geologic and fire hazards, limited road access, septic and water quality problems and disturbance of the rural community character. As a means of controlling the amount and size of development in small lot subdivisions, the Commission has developed the Slope Intensity- Gross Structural Area Formula. The Commission has required conformance with this formula since 1979 and has applied it to every residential project located in the rural small lot subdivisions in the Santa Monica Mountains.

Policy 271(b)(2) of the Malibu/Santa Monica Mountains Land Use Plan requires that new development in small lot subdivisions comply with the Slope Intensity Formula for calculating the allowable gross structural area (GSA) of a residential unit. The basic concept of the the formula assumes that the suitability of development of small hillside lots should be determined by the physical characteristics of the building site, recognizing that development of steep slopes has a high potential for adverse impacts on coastal resources.

Additions to a residence restricted by a GSA may be done by increasing the GSA. Pursuant to policy 271 of the Malibu/Santa Monica Mountains Land Use Plan, the maximum allowable gross structural area (GSA) as calculated, may be increased as follows:

- (1) Add 500 square feet for each lot which is contiguous to the designated building site provided that such lot(s) is (are) combined

with the building site and all potential for residential development on such lot(s) is permanently extinguished.

- (2) Add 300 square feet for each lot in the vicinity of (e.g. in the same small lot subdivision) but not contiguous with the designated building site provided that such lot(s) is (are) combined with other developed or developable building sites and all potential for residential development on such lot(s) is permanently extinguished.

Under the first amendment, the Commission required that the applicant either reduce the size of the residence or extinguish the development potential on lots within the same small lot subdivision to increase the GSA of the subject lot. The applicant has stated that there are no vacant lots available for retirement within the subject small lot subdivision. The applicant is therefore requesting to retire the development rights of lots in a nearby small lot subdivision. Specifically, the applicant has located a lot within the Malibu Vista small lot subdivision. The applicant argues that "in the same vicinity" can include other small lot subdivisions. Policy 271 of the LUP states in part:

Add 300 square feet for each lot in the vicinity of (e.g. in the same small lot subdivision) but not contiguous with the designated building site provided that such lot(s) is (are) combined with other developed or developable building sites and all potential for residential development on such lot(s) is permanently extinguished.

In the past the Commission has interpreted Policy 271(b)(2) to mean that non-contiguous lots used to increase the residential GSA by 300 sq. ft. should be located in the same small lot subdivision as the proposed development to ensure the cumulative development impacts within that subdivision were mitigated. However, the reference in Policy 217(b)(2) indicating non-contiguous retirement lots be located in the "in the vicinity" suggest that nearby small lot subdivisions could be considered in the "vicinity".

As previously stated, the purpose of the GSA credit program is to reduce the impacts of development within small lot subdivisions and maintain the rural character of these "rural villages." When a lot is retired within the same small lot subdivision, there is a reduced potential of buildout and thus there is a reduction in the development pressures related to water usage, septic capacity, traffic, geologic hazards, and habitat loss. If a lot is to be retired in a different small lot subdivision, the Commission must address whether or not that small lot subdivision is within the vicinity of the area and whether or not the small lot subdivision is subject to the same development patterns and pressures as the subject lot. Both these criteria must be met in order for the extinguishment of the development rights of a lot to have a positive effect on the buildout potential of the area.

Both the Malibu Vista Small Lot Subdivision and the adjacent Malibu Mar Vista Small Lot Subdivision are located along Latigo Canyon Road. These two small lot subdivisions are within the vicinity of Malibu Bowl, which is located along Corral Canyon Road. These two small lot subdivisions can be considered within the same vicinity as Malibu Bowl, as they are less than a mile to the west of the subject small lot subdivision, drain into adjacent canyons and feed into the Santa Monica Bay in close proximity. Likewise, the El Nido Small Lot Subdivision, which is located on Corral Canyon, south of the subject

Malibu Bowl Small Lot Subdivision, is also within the same vicinity. The El Nido and Malibu Bowl Small Lot Subdivisions are located on Corral Canyon Road, the main access into this canyon is Pacific Coast Highway. Similarly, the Malibu Vista and Malibu Mar Vista small lot subdivisions are located on the lower half of Latigo Canyon Road and access to this canyon road is Pacific Coast Highway. The traffic generated by these small lot subdivisions does impact Pacific Coast Highway. Other small lot subdivisions in the Santa Monica Mountains would not qualify as with the same vicinity because they are too far away, are not within similar watersheds, do not have similar development pressures and geologic and topographic constraints and do not affect the same areas.

These four small lot subdivisions also have similar development patterns and pressures. In 1979 a study of the small lot subdivision areas was completed; this study addressed the number of buildable lots within each small lot subdivision and the potential individual and cumulative impacts associated with the buildout of these small lot subdivision. The impacts associated with each small lot subdivision, as identified in this study, is shown in Exhibits 4-7. In all four small lot subdivisions there are buildable lots which if built out will have adverse impacts on the areas such as an increase in traffic along the canyon roads and Pacific Coast Highway; an increase water usage and septic usage and thus decrease water quality and quantities; adverse environmental impacts through the removal of vegetation and non-point source pollution into Santa Monica Bay; an increase in geologic instability through an increase of structures and development on these very steep, unstable slopes; an increase fire hazard; an increase in geologic hazard; and an increase in soil erosion from the grading required to develop these lots. These small lot subdivisions are in close proximity and as such the build-out of these subdivisions will adversely impact, as outlined above, the immediate area of Malibu.

Therefore, given the proximity of these four small lot subdivisions to each other and the interconnected cumulative adverse impacts which could result from the buildout of these subdivisions, retirement of lots in any these four subdivisions will contribute to the reduction of these impacts. The Commission therefore finds, that a lot within the El Nido, Malibu Vista or the Malibu Mar Vista Small Lot Subdivision could be considered within the vicinity of the subject lot and thus could be used for the extinguishment of development rights for the purpose of increasing the GSA of the subject property. Special condition 4 shall be modified to allow for the extinguishment of development rights in the El Nido, Malibu Vista and Malibu Mar Vista Small Lot Subdivisions to increase the applicant's GSA. Since either the submittal of revised plans or the extinguishment of two non-contiguous lots is required in order for the subject lots to be in conformance with the Coastal Act, the Commission finds it necessary to require the applicant to fulfill the requirements of special condition 4 within 90 days of Commission approval. Only as conditioned is the proposed development consistent Section 30250 of the Coastal Act.

C. Violation

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred.

D. Local Coastal Program.

Section 30604 of the Coastal Act states that:

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

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

E. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of 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)(i) 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 impact which the activity may have on the environment.

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

1805M

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SUBJECT
ES.MTS
90265

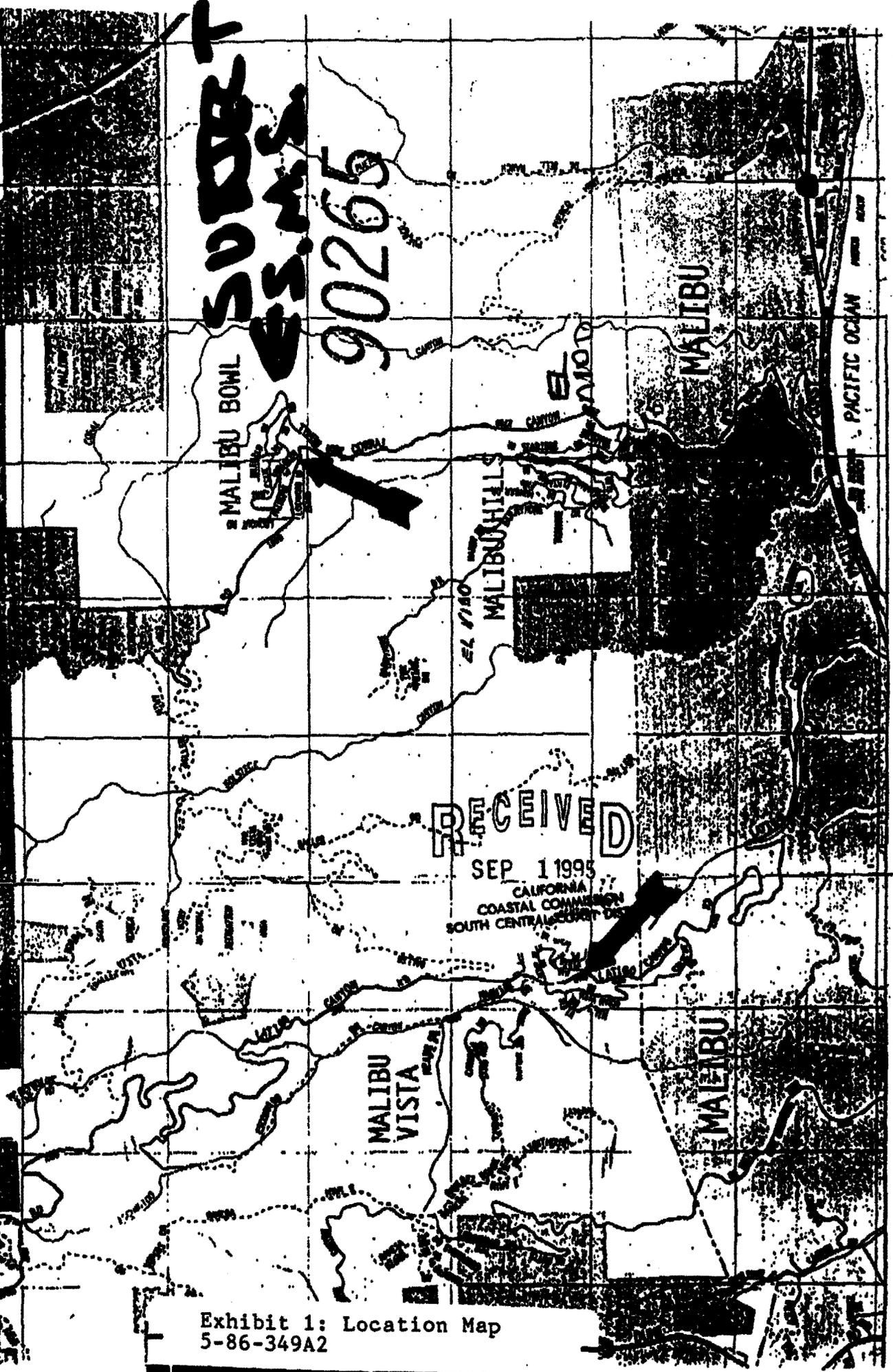


Exhibit 1: Location Map
5-86-349A2



MOUNTAINS RESTORATION TRUST

~~24955 Pacific Coast Highway, Suite C-301, Malibu, California, 90265 (310) 456-5625 Fax (310) 456-1948~~
7050 Owensmouth Avenue, Suite 206, Canoga Park CA 91303 Tel (818) 346-9675 Fax (818) 346-9676

August 2, 1995

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

RECEIVED
SEP 1 1995
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

RE: Request for MRT Assistance in Satisfying Lot Retirement Condition for Coastal Development Permit No. 5-86-349A

Dear Mr. Douglas:

The Mountains Restoration Trust has been requested by Ellen Kamerling Johnson for assistance in satisfying a special condition of CDP No. 5-86-349A, requiring extinguishment of development rights on one non-contiguous lot in the vicinity of her residence located within the Santa Monica Mountains (see attached letter).

In spite of diligent efforts, Ms. Johnson has been unable to locate an available undeveloped parcel within the Malibu Bowl small lot subdivision. In an effort to assist the applicant, MRT contacted all owners of undeveloped lots within the Malibu Bowl and El Nido small lot subdivisions, but also to no avail.

The applicant is in a Catch 22 situation, unable to locate an available lot suitable for retirement within the Malibu Bowl subdivision. I am aware in the past Commission staff has expressed concern regarding the imposition of conditions which can not be satisfied by coastal permit applicants. I believe the Johnson's dilemma is an example of a condition which can not be readily satisfied.

As referenced above, the Mountains Restoration Trust has been requested to assist the Johnson's in satisfying their permit requirement. MRT has an available parcel in the Malibu Vista small lot subdivision, the adjacent small lot subdivision westerly of Malibu Bowl (see attached maps). The parcel MRT would consider for deed restricting has frontage along Latigo Canyon Road and has water service provided by L.A. County Waterworks District 29.

According to the 1979 study Cumulative Impacts of Small Lot Subdivision Development in the Santa Monica Mountains Coastal Zone both subdivisions derive primary access from Pacific Coast Highway. The study indicates that further buildout of both subdivisions would further impact Pacific Coast Highway, an important coastal access route.

To Preserve, Protect and Enhance the Natural Resources of the Santa Monica Mountains
Exhibit 2: Letter from Applicant's Public Benefit Corporation
representative

5-86-349A2

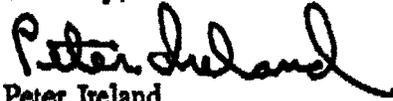
Peter Douglas
CDP No. 5-86-349A
August 2, 1995

An additional rationale for allowing a Malibu Vista parcel to mitigate a Malibu Bowl project is that the study identifies Malibu Vista as having twice the number of coastal impacts associated with continued buildout as does Malibu Bowl (see attached study sections).

Given the extreme difficulties experienced by the applicant in meeting the special condition of their coastal permit and the availability of a MRT property in the vicinity of the project site, I am requesting your review and approval to utilize the MRT Malibu Vista property to satisfy the lot retirement requirement of CDP No. 5-86-349A.

Thank you in advance for your timely consideration of this request.

Sincerely,



Peter Ireland
Executive Director

cc Tom Crandall
Gary Timm

MALIBU BOWL

187 lots

142 undeveloped lots

EXISTING SERVICES: Roads - roads serve all but two lots
Water - all but 14 lots have water
Sewage - all lots use septic systems

IMPACTS:

Coastal Access: Buildout of the subdivision would further impact Pacific Coast Highway, an important coastal access route. Corral Canyon Road, which has recreation potential serving Malibu Creek State Park would also be impacted.

Fire Hazard: 142 homes would be built in an area defined to have a moderate fire hazard, all depending on Corral Canyon Road as an evacuation route. The subdivision is surrounded by an area of high and extreme fire hazard.

Recreational Land: Subdivision is visible from the backbone trail which passes through Malibu Creek State Park.

Soils Erosion: Grading required for homesites, with the erosive soils present, would create erosion and sedimentation problems in downstream areas.

EL NIDO

347 lots

313 undeveloped lots

EXISTING SERVICES: Roads - roads to all lots
Water - 77 lots without water service
Sewage - all lots use septic systems

IMPACTS:

Coastal Access: Buildout of subdivision would further impact Pacific Coast Highway, an important coastal access route. Corral Canyon Road, which has recreation serving potential would also be impacted.

Fire Hazard: 313 homes would be built in an area having a high fire hazard, all depending on Corral Canyon Road as an evacuation route.

Slope: All of the unbuilt sections have greater than 20 percent slope, with about 60 percent of that area greater than 33 percent. Total landform modification would result from grading required for homesites.

Ecology: Water quality impacts would affect Solstice Canyon and Creek, an important habitat area.

Recreational Land: Solstice Canyon has been recommended for acquisition as part of the National Recreation Area, and would be impacted by the subdivision. The Department of Water and Power owns a large piece of land adjacent to the subdivision which has great recreational potential.

Soil Erosion: The area contains erosive soils, which due to the grading for homesites, would create erosion and sedimentation problems in Solstice Creek.

Water Quality: 313 additional septic systems would be added to Solstice Creek, which along with other pollutants would impact the ecological importance and recreational potential of the creek.

MALIBU VISTA

522 lots

492 undeveloped lots

EXISTING SERVICES: Roads - roads to all but 5 lots
Water - water service to all but 131 lots
Sewage - all lots use septic systems

IMPACTS:

Coastal Access: Buildout of subdivision would further impact Pacific Coast Highway, an important coastal access route.

Fire Hazard: 492 homes would be built in an area of high fire hazard, all dependent on Latigo Canyon road as an evacuation route.

Flood Hazard: Portions of the subdivision subject to flooding.

Geologic Hazard: Historic and recent landslides throughout the subdivision.

Slope: 45 percent of the subdivision has slopes steeper than 50 percent. These slopes would be severely altered by grading for homesites.

Recreational Land: Though not a part of any proposed acquisition program, a major series of waterfalls is immediately below the subdivision. A portion of the subdivision has a history of recreational use as a now defunct mountain camp.

Soil Erosion: Grading required for homesites, coupled with the erosive soils present, will create erosion and sedimentation problems in downstream areas.

Water Quality: 492 additional septic systems, as well as other pollutants, will impact the stream running to the waterfalls immediately below the subdivision, precluding possible recreational use.

MALIBU MAR VISTA

138 lots

138 lots undeveloped

EXISTING SERVICES: Roads - roads to all but 23 lots
Water - water service not available
Sewage - all lots use septic systems

IMPACTS:

Coastal Access: Buildout of subdivision would impact Pacific Coast Highway, an important coastal access route.

Fire Hazard: 138 homes would be built in an area of high and extreme fire hazard, all depending on Latigo Canyon Road as an evacuation route.

Slope: About 60 percent of the subdivision has slopes steeper than 50 percent. Grading required for home construction would severely alter the natural terrain.

Service: Major extensions of services would be required.

Soil Erosion: Grading required for home construction, coupled with the erosive soils found in the area, would create erosion and sedimentation problems in downstream areas.

Water Quality: 138 additional septic systems and other "nonpoint" source pollutants will impact the stream running to waterfalls immediately below the Malibu Vista subdivision, precluding possible recreation use.

