CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA 89 SOUTH CALIFORNIA ST., SUITE 200 VENTURA, CA 93001 (805) 641-0142 Filed: 10/6/95 49th Day: 11/24/95 180th Day: 4/3/95 Staff: TAD-VNT

Staff Report: 12/1/95

Hearing Date: December 12-15, 1995

Commission Action:

STAFF REPORT: CONSENT CALENDAR

WIBC.

APPLICATION NO.: 4-9

4-95-180

APPLICANT:

Dr. Theodore Polos

AGENT:

Eric L. Searcy, Architect

PROJECT LOCATION:

21122 Pacific Coast Highway, City of Malibu, Los Angeles

County.

PROJECT DESCRIPTION:

Construction of a new 3,707 sq. ft., 25'-4" high, 2 story, triplex, with enclosed 3 car garage, and a new septic system, to replace a 2 story triplex destroyed

by the 1993 Old Topanga Firestorm.

Lot area:

5,982 sq. ft. 1,746 sq. ft. 755 sq. ft.

Building coverage: Pavement coverage: Landscape coverage:

0 sq. ft.

Parking spaces:

3

Ht abv fin grade:

25'-4"

LOCAL APPROVALS RECEIVED:

City of Malibu Planning Department Approval in Concept. City of Malibu Environmental Health

Department Septic Approval in Concept, Authorization State Lands Commission.

SUBSTANTIVE FILE DOCUMENTS:

California Coastal Act of 1976, as of January 1995, Soil, Geology & Seismicity Investigation, dated May 12, 1994, prepared by Technosoil, Inc., Wave Uprush Study, dated April 13, 1994, and

Response Letter, dated November 14, 1995,

prepared by David C Weiss - Structural Engineer & Associates, Inc., Coastal Development Permit #

5-84-298.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby <u>grants</u> a permit, subject to the conditions below, for the proposed development on the grounds that 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. Standard Conditions.

- 1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. <u>Compliance</u>. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
- 4. <u>Interpretation</u>. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 5. <u>Inspections</u>. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
- 6. <u>Assignment</u>. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 7. <u>Terms and Conditions Run with the Land</u>. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions.

1. Assumption of Risk

Prior to the issuance of the Coastal Development Permit, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from storm waves, erosion or flooding and the (b) applicant hereby waives any future claims of liability against the Commission or its successors in interest for damage from such hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

2. Plans Conforming to Geologic Recommendation

All recommendations contained in the Soil, Geology & Seismicity Investigation, dated May 12, 1994, prepared by Technosoil, Inc., shall be incorporated into all final design and construction including <u>foundations</u>, <u>grading</u> and <u>drainage</u>. All plans must be reviewed and approved by the consultants. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans.

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

3. Wild Fire Waiver of Liability

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

4. Construction Responsibilities and Debris Removal

The applicant agrees not to store any construction materials or waste where it is subject to wave erosion and dispersion. In addition, no machinery will be allowed in the intertidal zone at any time. The permittee shall remove from the beach any and all debris that result from the construction period.

IV. Findings and Declarations.

The Commission hereby finds and declares as follows:

A. Project Description and Background

The applicant proposes the construction of a new 3,707 sq. ft., 25'-4", 2 story, triplex, with 3 car garage, and new septic system, to replace a 2,880 sq. ft. triplex destroyed by the 1993 Old Topanga Firestorm. This project is located at Las Flores Beach on the seaward side of PCH. Pursuant to P.R.C. Section 30610(g)(1) no Coastal Permit is required for the replacement of a structure destroyed by disaster, if the structure(s) does not exceed either floor area, height, or bulk of the destroyed structure by 10%. In this case the proposed structure to replace the triplex exceeds the previous by 31%, and therefore a Coastal Permit is required.

B. Shoreline Development

Sections 30251 and 30253 of the Coastal Act are designed to protect the scenic and visual qualities of the coast and to protect life and property in areas of high geologic, flood and fire hazrds:

Section 30251:

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

Section 30253:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

All projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. The Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:
 - (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
 - (2) adequate access exists nearby, or,
 - (3) agriculture would be adversely affected. Dedicated access way shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the access way.

All beach front projects requiring a coastal development permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. The Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline. The major access issue in such permits is the occupation of sand area by a structure and the impacts of the structure on the beach profile and the future availability of sand supply, in contradictions of Coastal Act policies 30211, 30212, and 30221. However, a conclusion that access may be mandated does not end the Commission's inquiry. As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with ... the need to protect ... rights of private property owners..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the U.S. Supreme Court's decision in the case of Nollan vs. California Coastal Commission. In that case, the court ruled that the Commission may legitimately require a lateral access easement where the proposed development has either individual or cumulative impacts which substantially impede the achievement of the State's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate those impacts.

The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access of such projects can include among others, encroachment on lands subject to the public trusts thus physically excluding the public; interference with natural shoreline processes which are necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to an ability to use and cause adverse impacts on public access such as above.

The proposed reconstruction is located on a curving section of Las Flores Beach which becomes the point upon which the existing Sea Lion Inn is located. The Sea Lion Inn is located on a fill area that extends onto State tidelands and is protected by a large rock revetment. Vertical public access to this area is physically blocked by private development and lateral access around the point is restricted to only periods of very low tide.

The proposed project is setback further from the shoreline than the previous structure and will not physically block lateral access along the beach. The proposed design for the triplex includes a concrete bulkhead located under the structure to protect the septic system and structure from high tides and extreme storm waves. The applicant's consulting engineer has provided a wave uprush report that indicates the shielding affect of the adjacent upcoast rock revetment will minimize wave impact on the proposed bulkhead. The consulting engineer also indicates that the proposed blukhead design will not adversely impact adjacent properties. Further given that the beach in front of this property is a rocky cobble beach devoid of sand wave action off the proposed bulkhead during high tides and storm periods will not result in significant changes to the beach profile. Therefore, because the proposed bulkhead will not alter the beach profile there will be no associated adverse impacts to lateral access along the beach

In order to avoid negative impacts on public access, the project must also not be located on public lands. Pursuant to Public Resources Code sections 30401 and 30416, the State Lands Commission is the agency entrusted with management of all state lands, including tide and submerged lands; the Commission is compelled to both respect the State Lands Commissions assertion of jurisdiction over this area and to also avoid issuing a permit for the project which the Lands Commission has indicated could not be permitted. applicant has received a letter from the State Lands Commission. time, the State Lands Commission asserts no claim that either the development intrudes onto sovereign lands or that it lies in an area subject to a public easement. This letter indicates that boulders were placed by the applicant on sovereign land, but that these boulders have since been removed and the State Lands Commission has given the applicant clearance to proceed with their development. Therefore, the Commission finds that this development is consistent with the public resource sections regarding public access, and encroachment onto public lands.

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. The proposed development is located on a rocky beach, and as such, is subject to flooding and wave damage from storm waves and storm surge conditions.

Taken literally, Section 30253 might require denial of any beachfront development, because on an eroding coast, no development can be assured of safety. While this decision would free the developer from the hazard of periodic storm waves, it would deny the applicant use of his property during the years when there are no storms, and deny the applicant the same use presently enjoyed by his neighbors. To carry out this policy, the Commission has generally required new development including additions to conform to a stringline, and in some cases to extend no further seaward than the existing house. As applied to beachfront development in past Commission actions, the stringline, in most situations, limits extension of a structure to a line drawn between the nearest corners of adjacent structures and/or decks (emphasis added). In addition, the Commission has approved the "stringline policy" in the certified Malibu/Santa Monica Mountains Land Use Plan, as well as in numerous permit decisions:

On sites exposed to potentially heavy tidal or wave action, new development and redevelopment shall be sited a minimum of 10 feet landward of the mean high tide line. In a developed area where new construction is generally infilling and is otherwise consistent with LCP policies the proposed new structure may extend to the stringline of existing structures on each side.

Although the certified Malibu/Santa Monica Mountains Land Use Plan is no longer legally binding upon the new City, many standards contained in the LUP are still applicable to development within the City and will continue to be used as guidance. The Commission has found the stringline policy to be an effective means of controlling seaward encroachment to insure maximum public access as required by Sections 30210 and 30211 and to protect public views and the scenic quality of the shoreline as required by Section 30251 of the Coastal Act.

In this case, the applicant proposed a stringline from the nearest adjacent corner from the residence to the east and extended to the nearest adjacent corner of the the Sea Lion resturant. Staff did not believe this was an appropriate stringline given the Sealion resturant is located on an artificial fill point that extends onto State Tide Lands. However, given the configuration of the coast on the western portion of the lot the proposed structure is adequately setback from the beach and as discussed above will not adversely impact access along the beach. It should also be noted the the proposed structure is setback further on the the lot than the pre-existing development and will have less of an impact on the scenic and visual qualities of the area that the pre-existing structure.

Finally, the Coastal Act recognizes that new development, such as the proposed additions, may involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to establish who should assume the risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use his property.

The Commission finds that due to the unforseen possibility of wave attack, erosion, and flooding, the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission must require the applicant to waive any claim of liability on the part of the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development. The Commission finds that the project, as conditioned, is consistent with Chapter 3 policies of the Coastal Act.

C. Geologic Stability

Section 30253 of the Coastal Act states:

New development shall:

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

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all vegetation, thereby contributing to an increased potential for erosion and landslide on the property. The applicant has submitted a Soil, Geology & Seismicity Investigation, dated May 12, 1994, prepared by Technosoil, Inc.

The May 12, 1994, report states:

Landslides

Because of the low gradient of the site and the characteristics of the underlying materials the subject site is not subject to landsliding. Although some of the slopes in the area are underlain by landslides, the slope directly across PCH from the site is free from landslides (Yerkes and Campbeell, 1990). Therefore, it is our opinion that the subject site is not at risk from landsliding either on site or from offsite areas.

Liquefaction

Provided the following recommendations with regard to the support of the proposed structure on bedrock are implemented, liquefaction is not expected to affect the proposed structure.

CONCLUSIONS AND RECOMMENDATIONS

Risk to the site from seismic induced hazards, with the exception of shaking, is considered to be very low. Risk due to significant shaking at the site is considered to be moderately high.

Based on the evaluation of the site conditions, it is recommended the proposed structure be supported on end bearing piers or friction piles founded in bedrock underlying the subject site.

Based on the recommendations of the consulting geologists the Commission finds that the development is consistent with Section 30253 of the Coastal Act so long as the geologic consultant's geologic recommendations are incorporated into the project plans. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by the consulting Engineering Geologist as conforming to their recommendations.

Additionally, in order to minimize erosion, the Commission finds it necessary to require the applicant not to utilize construction equipment within the intertidal zone or to store materials or waste where it might be subject to wave action. Finally, due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from the associated risks. Through the wavier of liability the applicant acknowledges and appreciates the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Only as conditioned is the proposed project consistent with Section 30253 of the Coastal Act.

D. Septic System

The Commission recognizes that the potential build-out of lots in the Santa Monica Mountains, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area. Section 30231 of the Coastal Act states that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.

The applicant proposes the construction of a new private septic system to accommodate the sewage needs for the proposed development. The applicant has submitted evidence from the City of Malibu Environmental Health Department that the proposed septic system is in conformance with the minimum requirements of the City of Malibu Uniform Plumbing Code. The City of Malibu's minimum health code standards for septic systems have been found protective of coastal resources and take into consideration the percolation capacity of soils along the coastline, the depth to groundwater, etc. Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

E. 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 sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development as conditioned will not prejudice the City of Malibu's ability to prepare a Local Coastal Program which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

F. CEOA

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 CEQA and the policies of the Coastal Act.

1803M TAD-VNT



























