

## CALIFORNIA COASTAL COMMISSION

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

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Commission Action:



STAFF REPORT: REGULAR CALENDAR

*W21a*

APPLICATION NO.: 4-95-167

APPLICANT: Sea Mesa Limited c/o Login AGENT: Marny Randall, Lynn Heacox  
and Sherman Stacey

PROJECT LOCATION: 26880 Pacific Coast Highway, City of Malibu

PROJECT DESCRIPTION: Construction of a 6,016 sq. ft., 28 ft. high single family residence, 730 sq. ft. garage, 700 sq. ft. guest house, 7,200 sq. ft. tennis court, pool, septic system and 1,000 cu. yds. of grading (500 cu. yds. cut and 500 cu. yds. fill) on a 60,118 sq. ft. blufftop site.

Lot area:	60,118 sq. ft. (1.4 acres)
Building coverage:	5,140 sq. ft.
Pavement coverage:	10,300 sq. ft.
Landscape coverage:	29,000 sq. ft.
Parking spaces:	5
Ht abv fin grade:	28 ft.

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department Approval in Concept, City of Malibu Geology Department Approval and City of Malibu Health Department Approval.

SUBSTANTIVE FILE DOCUMENTS: Certified Malibu/Santa Monica Mountains Land Use Plan, Coastal Development Permits: 5-90-1139 (Sea Mesa Limited); 5-89-514 (Robertson)

SUMMARY OF STAFF RECOMMENDATION:

The proposed project involves the construction of a 6,076 sq. ft., 28 ft. high single family residence on the seaward side of Pacific Coast Highway. At the height proposed, the structure would obstruct the view of the ocean from the Highway. The site was one of a four lots created as a result of a subdivision approved in 1989 (5-89-514). In 1991, the Commission approved a residence on the adjacent lot to the east of the project site subject to special conditions which included reducing the height of the proposed structure (5-90-1139, Sea Mesa LTD.). Staff is recommending approval of the proposed residence, guest

unit and tennis court subject to special conditions which include requiring the applicant to submit revised plans demonstrating that the residence height is reduced below the horizon line (approximately 23 ft. high from finished grade), recordation of a future improvements deed restriction, submittal of drainage and erosion control plans, landscaping plans and archeological monitoring. The height limitation special condition which requires reduction of the home's height by approximately 5 feet suggests that the project's modification could occur by simply excavating the to reduce the elevation of the pad in combination with changing the roof design. This condition is the subject of disagreement between staff and the applicant. The applicant's agents contend, in part, that: 1) reduction of the height of the structure by approximately 4 to 5 ft. would necessitate the construction of a one story residence; there is no evidence to support this assertion. 2) Pursuant to the City of Malibu's Municipal Code, the size of a one-story residence on this site would result in a reduction of the house gross structural area by 2/3 of the first floor, (approximately 2,300 sq. ft.), due to the Code's restriction of grading amounts, yard setbacks and impermeable lot coverage standards; there is no evidence to support this assertion. 3) The Commission's approval of three other single family residences along the area's 27 mile coastline did not require height reduction; there is no evidence to support this assertion. 4) The review of the subdivision recognized that views would be obstructed by future residences and these views were determined to be insignificant views; there is no evidence to support this assertion. 5) The retirement of three [sic] undeveloped parcels under the Commission's TDC program as a condition of approval for the subdivision was mitigation for the creation of new lots and for any visual impacts that future development may have; there is no evidence to support this assertion. Staff has researched, to the maximum extent feasible, those opinions and the permit history presented by the applicant and asked for additional information. To date staff has not received additional substantive evidence or information to support any of the enumerated assertions and therefore, disagrees with the contentions made. One letter of objection has been received by two property owners located immediately below the proposed project on Malibu Colony Drive (Exhibit 1). As set forth in the staff report text, the proposed project, which obstructs the view, is not the environmentally superior alternative. Thus, staff recommends approval of the project, subject to special conditions.

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## II. STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

### I. Approval with Conditions.

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, 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, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies 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.
2. Expiration. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## III. Special Conditions

### 1. Revised Plans

Prior to the issuance of the coastal development permit, the applicant shall submit revised plans subject to the review and approval of the Executive Director which illustrate that the height of the structure and tennis court fencing do not exceed the horizon line, which is an approximate elevation of 132 ft. Specifically, the currently proposed structure would need to be reduced in elevation a minimum of 5 ft. to accomplish this end.

### 2. Future Improvements

Prior to the issuance of a coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the Coastal Development Permit No. 4-95-167; and that any additions to permitted structures, future structures or improvements to either property, including but not limited to clearing of vegetation and

grading, that might otherwise be exempt under Public Resource Code Section 30610(a), will require a permit from the Coastal Commission or its successor agency. Removal of vegetation consistent with L. A. County Fire Department standards relative to fire protection is permitted. 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.

### 3. Plans Conforming to Geologic Recommendation

All recommendations contained in the Updated Engineering Geologic Memorandum Report, dated June 14, 1994 and Update Geotechnical Engineering Report dated June 13, 1994 shall be incorporated into all final design and construction including including slope stability, pools, foundations and drainage. All plans must be reviewed and approved by the consultants. Prior to the issuance of permit the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans.

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.

### 4. Drainage and Erosion Control Plans

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a run-off and erosion control plan designed by a licensed engineer which assures that run-off from the roof, patios, and all other impervious surfaces on the subject parcel are collected and discharged in a manner which avoids ponding on the pad area. Site drainage shall not be accomplished by sheetflow runoff over the face of the bluff which descends to Malibu Colony Road on the southern portion of the parcel. The erosion control plan shall include application of geotextiles or other appropriate materials to prevent erosion of the slope surface during establishment of new plantings. The drainage plan shall include installation of slope dewatering devices if determined necessary by the Consulting Engineer.

### 5. Landscape and Irrigation Plan.

Prior to the issuance of a Coastal Development Permit, the applicant shall submit evidence to the satisfaction of the Executive Director that the landscaping and irrigation plan submitted, including the amount of water to be delivered to the slope surface, has been reviewed and found acceptable and consistent with the recommendations to ensure slope stability set forth by the geotechnical consultant.

The landscape architect shall verify that the plan incorporates the following criteria:

- (a) All disturbed soils shall be planted with drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Native Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species, or species which require artificial irrigation beyond that necessary to establish new plantings, shall not be used. The applicant shall use a mixture of seeds and plants to increase the potential for successful site stabilization. Such planting shall be adequate to provide 90 percent coverage within 6 months and shall be repeated, if necessary, to provide such coverage. The plan shall specify the measures to be implemented and the materials necessary to accomplish short-term stabilization.
- (b) A temporary, drip irrigation system shall be implemented to water the new plantings and use of a sprinkler system shall not be allowed. As an alternative, hand watering may be carried out to establish the landscaping, provided that only the minimum amount of water necessary to establish the plantings is applied. No permanent irrigation of the slope shall be permitted. The plan shall include a note to this effect and shall provide detailed watering requirements and scheduling to ensure plant survival. The plan shall set forth the weekly quantities of total water delivery to the slope surface deemed necessary to ensure plant survival during establishment.
- (c) The plan shall specify that plants shall be of primarily low profile species which will not allow for vegetation to exceed the horizon line, identified at an approximate 132 ft. elevation

#### 6. Archaeological Resources.

By acceptance of this permit the applicant agrees to have a qualified archaeologist(s) and appropriate Native American consultant(s) present on-site during all grading, excavation and site preparation that involve earth moving operations. The number of monitors shall be adequate to observe the activities of each piece of active earth moving equipment. Specifically, the earth moving operations on the project site shall be controlled and monitored by the archaeologist(s) with the purpose of locating, recording and collecting any archaeological materials. In the event that an area of intact buried cultural deposits are discovered during operations, grading work in this area shall be halted and an appropriate data recovery strategy be developed, by the applicant's archaeologist, and the Native American consultant consistent CEQA guidelines and implemented, subject to the review and approval of the Executive Director.

#### IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description

The applicant is proposing the construction of a 6,016 sq. ft., 28 ft. high single family residence, 730 sq. ft. garage, 700 sq. ft. guest house, 7,200 sq. ft. tennis court, pool, septic system and 1,000 cu. yds. of grading (500 cu. yds. cut and 500 cu. yds. fill) on a 60,118 sq. ft. blufftop site. The site has been the subject of a past coastal development permit involving the subdivision of two parcels into four single family residential lots, ranging in size from 1.3 to 2.2 acres. The approval was subject to special conditions regarding cumulative impact mitigation and septic system approval.

The site is located on the seaward side of Pacific Coast Highway in the City of Malibu. The site contains a coastal bluff which descends to a private street, Malibu Cove Colony Drive and a row of beachfront lots between the property and the ocean. Site drainage is by sheet flow runoff towards the south and is concentrated in south-trending tributary canyons.

B. Background

The subject permit application was originally scheduled for the November 1995 Commission meeting. Based on the fact that the applicant was and is in disagreement with the staff recommendation (special condition #1), she requested a postponement. The applicant subsequently submitted four additional letters for staff review and analysis. The application was rescheduled for the February 1996 Commission meeting. Based on the fact that the applicant's agent was injured the week prior of the Commission meeting the applicant requested a second postponement of the Commission and submitted a waiver of the 180 day permit action time line. This request was granted by the Commission. Thus, the application is scheduled for the March 1996 Commission meeting.

C. Visual Resources

Section 30251 of the Coastal Act states that:

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

In addition, the certified LUP contains a number of policies regarding viewsheds and the protection of unobstructed vistas from public roads, parks and beaches consistent with the Coastal Act. These policies have been certified as consistent with the Coastal Act and used as guidance by the Commission in numerous past permit actions in evaluating a project's consistency with Section 30251 of the Coastal Act. Policy 125, for example, suggests that new development be sited and designed to protect public views from scenic highways to and along the shoreline. Policy 129 further suggests

that structures be designed and located to create an attractive appearance and harmonious relationship with the environment. And finally, policy 130 suggests that along scenic highways, new development, including buildings, fences, paved areas and landscaping, be sited and designed to protect public views to the ocean, be visually compatible with and subordinate to the character of its setting and be sited so as to not significantly intrude in to the skyline.

As stated previously, the site is located on Pacific Coast Highway (PCH), which parallels the ocean through the 27 miles of the coastline in the Malibu Coastal Zone. The diverse physical and scenic features of the coastline include wide sandy beaches, marine terraces and bluffs, steep-sided promontories and secluded coves. Protection of this visual resource, a view corridor to the ocean, is mandated by Section 30251 of the Coastal Act. The site is located immediately west of Latigo Canyon Road and is less than one mile east of Escondido Beach. The seaward side of this stretch of PCH is screened in part by development due to the inland location of the highway. However, this area does contain unobstructed views along blufftop segments of the highway, including at the subject parcel. The Commission notes that in contrast to this stretch of PCH (Latigo Canyon Road to Escondido Beach), the views along several segments of PCH that are located predominantly east of the Malibu Civic Center area, have been obstructed by residential and commercial development. The Commission further recognizes that the visual qualities of the Malibu coast line have and continue to attract large numbers of visitors to the area in order to take advantage of the ocean views.

In past permit actions, which are located in the area of the subject parcel, the Commission has required protection of the coastal views. For example in 1991, the Commission approved the construction of a 10,100 sq. ft. single family residence on the adjacent parcel to the west of the subject site [5-90-1139, (Sea Mesa Limited)]. In order to ensure that the project did not obstruct the view of the ocean from PCH, consistent with Section 30251 of the Coastal Act, a special condition requiring the applicant to reduce the height of the structure below the ridgeline was imposed. In coastal development permit 5-90-1009 (Cher), the applicant originally applied for the construction of a residence with security walls 10 to 15 ft. in height. In response to concerns raised by staff, the applicant performed a viewshed analysis which evidenced that the bulk of the structure was located on the seaward side of the lot, which is lower in elevation. As evidenced in the staff's analysis, the horizon line traveling southbound was maintained and was an improvement over the site's previously existing building. Additionally, at the request of Commission staff, the applicant revised the plans to step the security walls down the slope of the property in order to minimize the visual impacts of the project. The Commission approved the project subject to special conditions which included the requirement of landscape screening to soften and screen the impacts of the security walls.

The proposed residence is 28 ft. high and will be constructed at a pad elevation of approximately 109 ft. The house will therefore, be 137 ft. in elevation at its highest point. The proposed 7,200 sq. ft. tennis court is located closest to PCH on the northern section of the site. The tennis court is proposed at the finished elevation of 122.5 ft. and will be enclosed by a combination of concrete wall and chainlink fence. On the landward side, the concrete wall be 4 1/2 ft. height from finished grade with a 6 ft. high fence

on top for a maximum height of 10 1/2 ft. and finished elevation of 132.5 ft. On the seaward side a 12 ft. high chain link fence is proposed and will reach a finished elevation of 134.5 ft. The 14 ft high guest house and 13 ft. high garage are sited at elevations of 115 ft. and 110 ft. (respectively) and will reach elevations of 129 ft. and 123 ft.

In order to determine whether or not the proposed project would impact the ocean view along PCH, staff requested that the applicant stake the site with poles at the approximate elevation levels of the residence and at the elevation of the tennis court fence. Staff visited the site with the applicant and determined after the visit that the height of the structure would intrude into the horizon line and impact the view of the coast from PCH. The applicant's agents confirmed this assertion and indicated that from Pacific Coast Highway traveling northbound, the horizon line was at an approximate elevation of 132 ft. The estimates made by the agents were not the conclusions of a scenic evaluation and therefore, the Commission cannot agree with certainty that the horizon line is at an exact 132 ft. elevation. Further, the applicant did not re-stake the site to confirm that a structure, at the maximum height of 132 ft., would be below the horizon line when traveling both south and north on PCH. The Commission notes that this sight/horizon line analysis must be performed to confirm that elevation 132 ft. is the correct height of the horizon line.

Following staff's initial determination, the applicant's agents requested that subsequent site visits be made by staff to insure that maximum review and thorough visual analysis be performed. As presented by the agents, the view obstruction was minimal and the structure's approximate 5 ft. intrusion into the horizon line and ocean view should be allowed. Staff's numerous site visits to the area have served to underscore the obvious intrusion that the structure as represented by the stakes would have on scenic coastline. As stated previously, the site is located on a stretch of PCH where segments of the highway are sited approximately 500 ft. landward of the ocean. Further, some of the segments of PCH that traverse this area are topographically lower than the residential parcels on the seaward side of PCH. As such, the scenic view opportunities along the highway in this area are limited solely to bluff sites with lower elevations than PCH, such as the subject property and to the areas two sandy beach areas.

As set forth in the staff summary, the applicant's agents have argued that reducing the height of the structure is not consistent with the Coastal Act and would pose a hardship to the applicant. In summary, the assertions made include the following: 1) reduction of the height of the structure by approximately 5 ft. would necessitate the construction of a one story residence; 2) pursuant to the City of Malibu's Municipal Code, the size of a one-story residence on this site would result in a reduction of the house by 2/3 of the first floor, approximately 2,300 sq. ft., due to the Code's restriction of grading amounts, yard setbacks and impermeable lot coverage standards; 3) the approval of three other single family residences along the area's 27 mile coastline did not require height reduction; 4) staff recognized in their review of the subdivision that views would be obstructed by future residences and determined that these were insignificant views; and 5) retirement of two undeveloped parcels under the Commission's TDC program as a condition of approval for the subdivision was mitigation for the creation of new lots and for any visual impacts that future development may have. As stated previously and as described in more detail below, the assertions enumerated above are not supported by any evidence.



In response to the above enumerated assertions made by the applicant and her agents staff had several meetings and telephone conversations with the applicant's agents. Based on these discussions, staff investigated further the potential impacts associated with the proposed project and the implications of redesigning the project to the environmentally preferred alternative -- a approximate 23 ft. high structure. First, the applicant's agent contends that the reduction of the height of the structure by approximately 5 ft. would necessitate the construction of a one story residence. This contention is not supported by any evidence. In approvals of development located in scenic areas, the Commission has required that structure heights be reduced to as low as 23 ft. and the applicants have maintained the ability to build two story homes (4-92-179, Prichett). In the case of this project, the reduction of the home's height by approximately 5 feet suggests that the project's modification could occur by simply changing the roof design.

Second, the applicant's agent stated that pursuant to the City of Malibu's Municipal Code, the size of a one story residence on this site would result in a reduction of the gross structural area of the house by 2,306 sq. ft., due to the Code's restriction of grading amounts, yard setbacks and impermeable lot coverage standards. Staff contacted the City of Malibu Planning Department to investigate whether design modifications would result in a structure of approximately 4,000 sq. ft. total size. A review of the allowable lot coverage for this site, as evidenced in the City's permit file, indicated that the maximum allowed impermeable lot coverage that the applicant was allowed equaled 19,066 sq. ft. and the applicant is proposing lot coverage of 14,940 sq. ft. Therefore, the applicant is entitled to an additional 4,126 sq. ft. of impermeable (i. e. structure) coverage than requested. Moreover, a review of the City's Municipal Code evidenced that a revised design would afford the applicant the potential for increased structural area. For example, the Code's limit on grading did not include grading amounts necessary for the structure's foundation. As such, the applicant could consider excavation or a "step design" to increase the structure's height and maintain the ocean view from PCH. With respect to lot coverage, the applicant could potentially change the design of the tennis court and substitute the court with a permeable surface. This option in combination with the remaining allowed structural area for the site would increase the potential impermeable lot coverage by approximately 11,300 sq. ft. (7,200 sq. ft. tennis court and 4,126 additional structural area). Additionally, the applicant could construct the proposed guest unit on the second floor of the garage, (providing it met the maximum height requirements), and also increase the amount of impermeable lot coverage by an additional 700 sq. ft. These changes in lot coverage would afford the applicant a potentially larger structure of approximately 12,000 sq. ft. (7,200 sq. ft. tennis court, 4,126 sq. ft. additional area, and 700 sq. ft. guest unit).

Third, the applicant's agent contend that the approval of three other single family residences along the area's 27 mile coastline did not require height reduction and therefore, requiring the reduction of this structure is arbitrary. As stated in the preceding text, the protection of ocean views is mandated by Section 30251 and along this stretch of PCH the Commission has sought to protect the remaining coastal views. Clearly, views along several segments of PCH, which are located predominately to the east of the Malibu

Civic Center, have been obstructed by residential and commercial development that occurred before the Coastal Act in many instances. The Commission underscores that such view obstructions, were the basis for the language of Section 30251 and they emphasize the necessity to protect the existing scenic ocean vistas. In 1991, under coastal development permit 5-90-1139 (Sea Mesa Ltd.), the Commission found it necessary to protect this same stretch of the view corridor by conditioning the approval of the project to reduce the height of the structure, fencing and landscaping to an elevation below the horizon line. The approval of a higher structure would have adversely impacted this vista and given the site's proximity to PCH from the coast within this segment of the highway, vistas are limited. If anything, it would be arbitrary to allow the higher structure here while not allowing it on the adjacent parcel.

Fourth, the applicant's agent has asserted that "staff investigated the viewshed issue and determined that approval of this subdivision (coastal development permit 5-89-514) would result in the construction of homes that would block views to the ocean..." Moreover, he states that, "staff then determined that view blockage in this location was not significant..." These assertions are not supported by the Commission action. There is nothing in the findings for that report which supports this assertion. Specifically, the subdivision in question proposed a land division only as the applicant did not propose building pad locations or grading associated with the development of subsequent single family residences. Given the relatively flat topography of the subject sites, which range in size from 1.3 to 2.2 acres and given the number of possible building pad locations and designs of future structures viewshed issues of such development could not have been analyzed. While the Commission did not make specific findings relative to the visual implications of future development proposals, the report notes in the project description that, "Portions of the property are visible from Pacific Coast Highway, a designated scenic highway in the Malibu/Santa Monica Mountains Land Use Plan."

The Commission has previously approved several subdivisions (e. g. Javid, Zwan and Thorne) in the Malibu/Santa Monica Mountains area where the visual impacts of future residences would be analyzed at the time individual permits were sought for each residence. However, where the majority of the site proposed for subdivision is visible from a scenic highway and where grading amounts associated with building pads and with accessway creation are identified, the visual implications of such development (landform alteration) was analyzed and not the future single family dwellings (Javid). In cases where the proposal did not identify pad locations due to the lot being relatively flat and the availability of more than one potential building site, a detailed review of future projects in comparison to Section 30251 did not typically occur. As stated in the above case scenarios, there is a difference between such subdivision approvals and approvals where the Commission has found that lot reconfiguration or grading changes would result in future SFR development that might not be visible from park areas, trails or designated scenic highways (Thorne, Anden). In the case of this project any development on this site will be visible from PCH -- the issue is designing such development so as not to intrude into the horizon line and the public's coastal view. Therefore, there is no factual basis to the agent's claim that because the Commission did not specifically analyze the visual impact of each future residence under the subdivision permit that the Commission does not consider this viewshed to be an importance resource worth protecting and no future analysis regarding residential development is required.

Fifth, the applicant's agent contends that the retirement of two undeveloped parcels under the Commission's TDC program as a condition of approval for the subdivision were mitigated for the creation of new lots and for any visual impacts that future development may have. This too, is without basis and has not been supported by any substantive examples nor by the Commission findings in the staff report. Historically, the Commission has required that the impacts of increased development that would occur in the Malibu/Santa Monica area as a result of creating additional lots be mitigated by retiring the development potential of lots within the Coastal Zone by a number of lots equal to the number of new lots created. Since 1978, the Commission has approved numerous subdivisions and multi-family projects and found such projects to be consistent with Section 30250(a) of the Coastal Act pursuant to the applicant's required participation in the TDC program. These approvals, however, do not obviate future development proposals required consistency with all Chapter 3 policies of the Coastal Act, including Section 30251.

For all the reasons stated above, the residence as proposed is not consistent with the Coastal Act, is not the environmentally preferred alternative and would impact the scenic resources found along the coastline. Therefore, the Commission finds it is necessary to require the applicant to submit revised project plans which illustrate that the project's height is reduced to an elevation that insures the structure, ancillary developments, and landscaping do not exceed the horizon line.

Further, the Commission notes that concerns about the potential future impacts on coastal resources and visual scenic quality might occur with any further development of the subject property. Therefore, the Commission finds it is necessary to require the applicant to include a future improvements deed restriction that specifically limits the development to that proposed once the required height restrictions are made. Thus, the findings and special conditions attached herein will serve to ensure that the proposed project results in the development of the site that is consistent with and conforms to the Chapter 3 policies of the Coastal Act. The Commission finds that as conditioned, the proposed project is consistent with Section 30251 of the Coastal Act.

#### D. Geologic Stability

Section 30253 of the Coastal Act states in part that new development shall:

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

The proposed development is located on a coastal bluff that descends to Malibu Colony Road, a private road. Slope gradients on the site vary from 40:1 to as steep as 1:1 on the south-facing, descending bluff. The applicant has submitted an Updated Engineering Geologic Memorandum Report, dated June 14,

1994 and Update Geotechnical Engineering Report dated June 13, 1994 The Engineering Geologic Report dated July 15, 1993. The report states that the adjacent property to the west contains an active landslide that is attributed to a broken water line. The report further states that site's gross stability is favorable with a factor of safety in excess of 1.5, which exceed the minimum factor of safety required by the City of Malibu Department of Building and Safety. The report identifies however, that as a precaution, "the installation of hydraugers and the installation of french drains are recommended to control perched water and groundwater." Further, the report states with respect to site stability that the insurance of a conservative approach to the site development would be achieved by siting development outside of a 2:1 geologic setback plan that extends upward of the slope along Malibu Colony Road. As proposed by the applicant the swimming pool will encroach into this setback area.

The report identifies that drainage should not be allowed to pond on the pad or against any foundation or retaining wall. The applicant has not submitted drainage plans. The Commission notes that the combination of placing impermeable surfaces on the site, watering the landscaped areas and installing an on-site septic system could potentially cause future stability problems. The erosion caused by proposed grading and development in close proximity to the ocean is area of concern as well. There is clearly a need to incorporate erosion control devices to handle heavy, prolonged rain storms into the project plans in order to reduce the impact of site runoff onto the beach. Therefore, the Commission finds it necessary to condition the project to provide detailed drainage and erosion control plans indicating a system that will carry water off the site in a non-erosive fashion. The applicant shall be responsible for any necessary maintenance repairs to the drainage structures and shall be responsible for the restoration of eroded areas. Furthermore, as set forth in special condition #5, the Commission finds it necessary to require the applicant to submit a landscape and irrigation plan consistent with the recommendations to ensure slope stability as specified by the geotechnical consultants.

The applicant's geotechnical investigation concluded that:

Based upon our investigation, the proposed development is free from geologic hazards such as landslides, slippage, active faults, and undue differential settlement provided the recommendations of the Engineering Geologist and Geotechnical Engineer are complied with during construction. The proposed development and installation of the septic system will have no adverse effect upon the stability of the site or adjacent properties.

Based on the recommendations of the consulting geologist the Commission finds that the development is consistent with Section 32053 of the Coastal Act so long as all the recommendations made by the geologic and soils consultants are incorporated into the project plans. Therefore, the Commission finds it necessary to require the consulting Engineering Geologists and Soils Engineer as conforming to their recommendations. The Commission finds that as conditioned, the proposed development is consistent with Section 30253 of the Coastal Act.

E. Septic System

The Commission recognizes that the potential build-out of lots in Malibu, 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.

A favorable percolation test was performed on the subject property which indicates that the percolation rate exceeds the maximum Plumbing Code requirements for the project. In addition, the applicant has submitted septic system "Approval" from the City of Malibu Department of Environmental Health. As reviewed by the City and as set forth in the geotechnical analysis of the septic system, the proposed project will not adversely impact the biological productivity and quality of the coastal waters located approximately 400 ft. south of the subject site. Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

F. Cumulative Impacts of New Development.

The proposed project involves the construction of a 6,016 sq. ft. single family residence and a 700 sq. ft. second unit which is defined under the Coastal Act as new development. New development raises issues with respect to cumulative impacts on coastal resources. In particular, the construction of a second unit on a site where a primary residence exists intensifies the use of a site and impacts public services, such as water, sewage, electricity and roads. Sections 30250 and 30252 of the Coastal Act address the cumulative impacts of new development.

Section 30250(a) of the Coastal Act states:

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 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 the surrounding parcels.

Section 30105.5 of the Coastal Act defines the term "cumulatively," as it is used in Section 30250(a), to mean that:

the incremental effects of an individual project shall be reviewed in conjunction with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

Section 30252 of the Coastal Act discusses new development requiring that the location and amount of new development should maintain and enhance public access to the coast. The section enumerates methods that would assure the protection of access and states that such maintenance and enhancement could be received by (in part), "...providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads... and by, assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by..."

In addition, the certified Malibu LUP, which the Commission considers as guidance for implementing the Chapter 3 policies of the Coastal Act, contains policy 271 which states:

"In any single-family residential category, the maximum additional residential development above and beyond the principal unit shall be one guest house or other second unit with an interior floor space not to exceed 750 gross square feet, not counting garage space."

The issue of second units on lots with primary residences consistent with the new development policies of the Coastal Act has been a topic of local and statewide review and policy action by the Commission. These policies have been articulated in both coastal development permit conditions and policies and implementing actions of LCPs. Further, the long-time Commission practice in implementing development has upheld these policies, such as the 750 sq. ft. size limit in the Malibu Coastal Zone.

The Commission notes that concerns about the potential future impacts on coastal resources and coastal access might occur with any further development of the subject property. Impacts such as traffic, sewage disposal, recreational uses, visual scenic quality and resource degradation would be associated with the development of the additional unit in this area. Therefore, the Commission finds it is necessary to require the applicant to include a future improvements deed restriction that limits future development, subject to the Commission's review. Thus the findings and special conditions attached to this permit will serve to ensure that the proposed development results in the development of the site that is consistent with and conforms to the Chapter 3 policies of the Coastal Act. The Commission finds that as conditioned, the proposed project is consistent with Section 30250(a) and with all the applicable policies of the Coastal Act.

#### F. Public Access

New development on a beach or between the nearest public roadway to the shoreline and along the coast raise issue with the public access policies of the Coastal Act.

Section 30210

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 resources from overuse.

Section 30211

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.

A conclusion that access may be mandated by Section 30212 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 publically-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and ability to use and cause adverse impacts on public access such as above.

In the case of this project, the site descends to a private road -- Malibu Colony Road. Seaward of the road, single family residences exist. Presently access to Escondido beach is located less than one mile to the west of the project site and approximately one mile east of the site is an accessway to Corral/Solstice State Beach. Vertical access opportunities do not exist through the project site and there is no evidence of any public prescriptive access that exists on the site. Therefore, the proposed development will have no adverse impact on public access and is consistent with the relevant public access sections of the Coastal Act.

## G. Archaeological Resources

Section 30244 of the Coastal Act states that:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Archaeological resources are significant to an understanding of cultural, environmental, biological, and geological history. The Coastal Act requires the protection of such resources to reduce potential adverse impacts through the use of reasonable mitigation measures. Archaeological resources can be degraded if a project is not properly monitored and managed during earth moving activities conducted during construction. Site preparation can disturb and/or obliterate archaeological materials to such an extent that the information that could have been derived would be lost. As so many archaeological sites have been destroyed or damaged as a result of development activity or natural processes, the remaining sites, even though they may be less rich in materials, have become increasingly valuable. Further, because archaeological sites, if studied collectively, may provide information on subsistence and settlement patterns, the loss of individual sites can reduce the scientific value of the sites which remain intact. The greater province of the Santa Monica Mountains is the focus of one of the most important concentrations of archaeological sites in Southern California. Although most of the area has not been systematically surveyed to compile an inventory, the sites already recorded are sufficient in both number and diversity to predict the ultimate significance of these unique resources.

An Archaeological Assessment of the project site was prepared in conjunction with the original approval of the subdivision by the County (coastal development permit 5-89-514). The County required, as one of the conditions of approval of the Tentative Tract Map, that if subsurface cultural resources are encountered, they shall not be disturbed and a qualified archaeologist reviews the finds and makes recommendations for their removal, preservation, and mitigation measures, if applicable. Additionally, the City Archaeologist visited the site with the Qun-Tan Shup City Chumash cultural resource manager. The report prepared by Topanga Anthropological Consultants concluded that no pre-historic sites or significant sites are present in the project area. Pursuant to this report, the City requires that:

All excavations will stop if indications of an archaeological site are observed during project construction. If an archaeological site is discovered, all work will cease until adequate mitigation measures are implemented.

The Commission has, in past hearing and voting, required on-site archaeologists and Native American consultants to monitor grading and site preparation operations in areas where cultural resources are or may be present. The Commission finds that, in this case, there is a known archaeological site near the project site, there is a potential for cultural resources to be present on the site where they could be disturbed by grading operations. In order to ensure that archaeological resources, if any, are properly identified and adequate mitigation measures are implemented, the Commission finds it necessary to require the applicant to have an



archaeologist and Native American consultant on site during all grading operations. The Commission finds that the proposed project, as conditioned, is consistent with Section 30244 of the Coastal Act.

#### H. 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's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

#### I. 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 which consists of a house that reaches an elevation of 137 ft. is not the environmentally superior alternative. The Commission finds that, 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.

0111R

EXHIBIT NO. 1
APPLICATION NO.
4-95-167
Letter of objection

26902 Malibu Cove Colony Dr.  
Malibu, Ca. 90265  
Feb. 5, 1996

Rebecca Richardson  
California Coastal Commission  
89 S. California St. # 200  
Ventura, Ca. 93001

Re: Permit number: 4-95-167

Applicant: Sea Mesa Limited c/o Login

Because of the distance of today's hearing from the project site, we are expressing our concerns once again, regarding this development via correspondence.

Three major concerns which may lead to serious problems are at issue:

1. The septic system - devices must be employed that attend to the effluent and waste water at its origin and not below the cliff
2. Reduction of the height limit of all structures to avoid offensive blocking of the shore line
3. Sufficient set-back from the bluff because of the known instability of the cliff, particularly with the advent of swimming pool incidents in the event of a disaster.

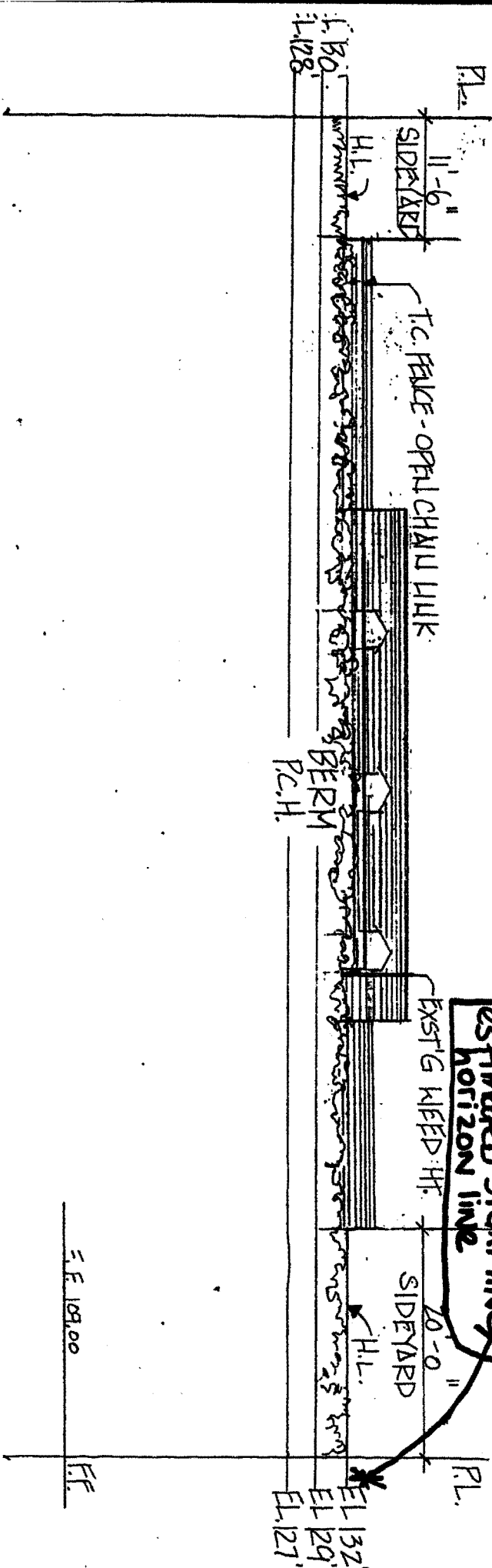
We do appreciate your attention to these concerns at this time, so that serious incidents do not occur in the future and that precedents that encourage continued short sightedness are not part of the picture.

As you can gather, we are devoted residents in Malibu, specifically on Malibu Cove Colony Dr., the road containing 50 residences directly below the proposed development.

Yours truly,

Ms. Sandra Radoff-Bernstein  
Dr. Donald Bernstein  
Dr. Peter Frumkes





\* 132' EL.  
is the  
applicant's  
estimated sight line/  
horizon line

EXHIBIT NO. 3
APPLICATION NO. 4-95-167
elevation

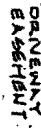
APPLICATION # 4-95-167 / 26880 P.C.H., MALIBU  
ELEVATION/VIEW FROM PACIFIC COAST HWY.  
SCALE: 1/8" = 1'-0"  
PREPARED BY MARY RANDALL

RECEIVED

OCT 17 1995  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

SIZE CAPACITY — 2014 RELEASE UNDER E.O. 14176

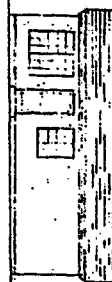
51 7 20 51



RECEIVED  
AUG 2 1955  
CITY OF MALIBU

**RANDALL LANDSCAPE DESIGN**  
909 EUCLID STREET, #6  
SANTA MONICA, CALIF. 90403  
310-395-2615

REVISIONS	6



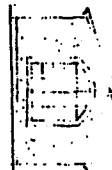
SOUTH ELEVATION  
GUEST HOUSE



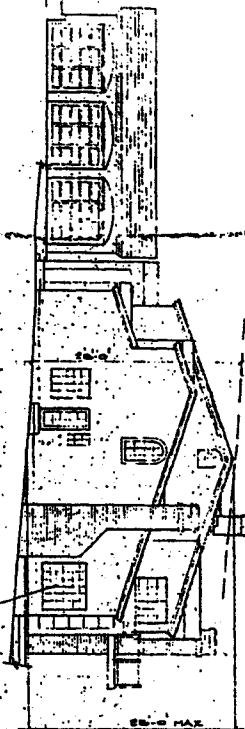
EAST ELEVATION



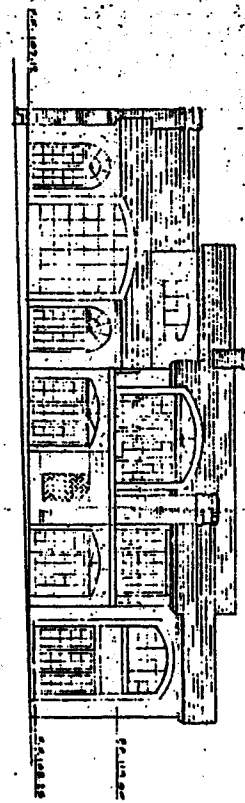
NORTH ELEVATION



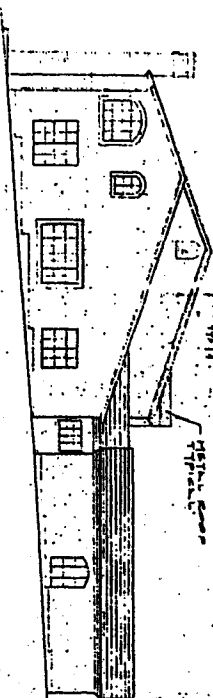
WEST ELEVATION



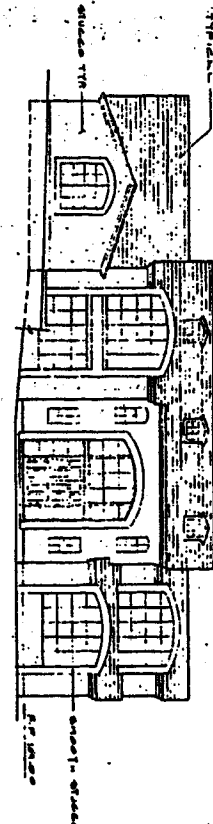
RIGHT (WEST) ELEVATION



LEFT (EAST) ELEVATION



FRONT (NORTH) ELEVATION



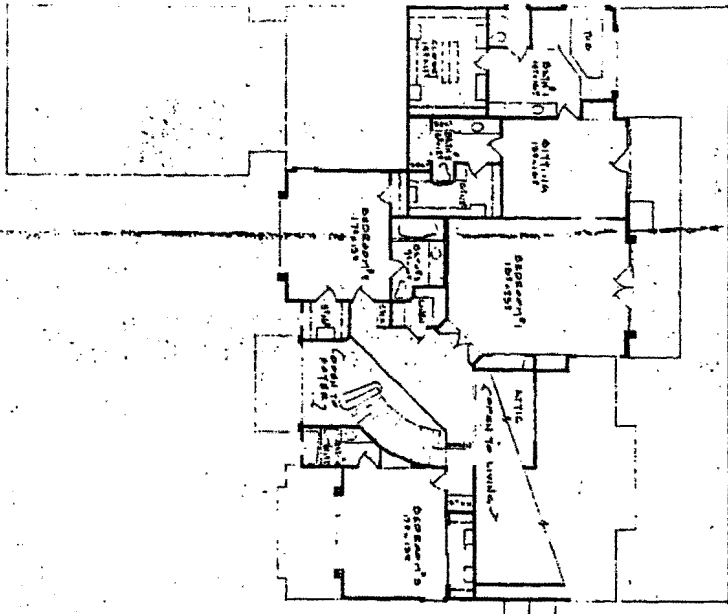
REAR (SOUTH) ELEVATION



**EXHIBIT NO. 5**  
**APPLICATION NO.**  
**4-95-167**  
**elevations**

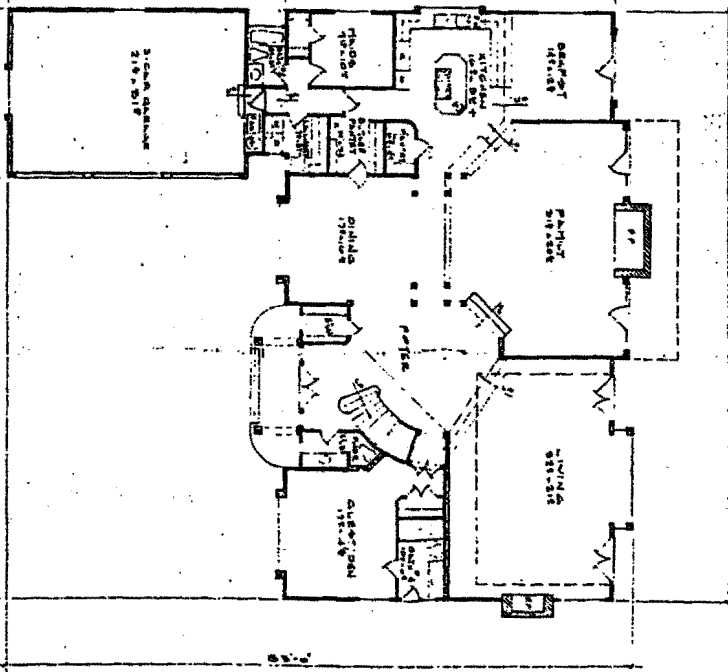
MAY 15 1995

SECOND FLOOR PLAN 3300 SQ. FT.

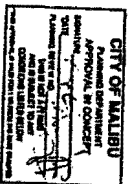
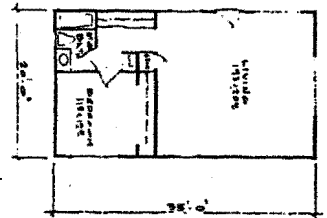


MAIN HOUSE  
3300 SQ. FT.

First Floor Plan 3110 SQ. FT.



GUEST HOUSE  
700 SQ. FT.



MAY 15 1995

EXHIBIT NO. 6
APPLICATION NO. 4-95-167
floor plan

EXHIBIT NO. 7

APPLICATION NO.

4-95-167

(1062)



# City of Malibu

23555 Civic Center Way, Malibu, California 90265  
(310) 456-CITY FAX (310) 456-3356

Planning Department

January 25, 1996

Rebecca Richardson, Coastal Program Analyst  
California Coastal Commission  
South Central Coast Area  
89 South California Street, Suite 200  
Ventura, CA 93001

Subject: 26880 Pacific Coast Highway/Coastal Development Permit Application No. 4-95-167/Plot Plan Review No. 95-041 (Login)

Dear Ms. Richardson:

In response to your request, the following is a summary of our conversations regarding the above-cited project. The proposed project is a single-family residence which consists of the construction of a 6,016 square foot, 28 foot-high single-family residence with a 730 square foot garage, 700 square foot single-story guest house, 7,200 square foot tennis court, pool, driveway, and septic system on a 60,118 square foot bluff top lot on the seaward side of Pacific Coast Highway.

You have indicated that Coastal Commission staff will be recommending that the project not exceed the horizon line at approximately the 132 foot elevation (22-23 feet in height from grade) and that the applicant has indicated that she will oppose this recommendation. You have also indicated that one of the applicant's grounds for opposition to this height limitation is that any project revision that would result in a reduction in structure size because any revision would not conform with the City of Malibu's Interim Zoning Ordinance property development and design standards for maximum impermeable lot coverage and maximum allowable grading. The applicant therefore contends that the only option available would be to reduce the size of the house. However, I have reviewed the project and identified the following options.

First, the Interim Zoning Ordinance's maximum impermeable lot size requirement is directly related to the size of the parcel. The maximum allowed for this project is 19,066 square feet and the applicant is proposing 14,940 square feet. Therefore, an additional 4,126 square feet of impermeable coverage would be allowed. The City would also allow for the tennis court to be constructed of permeable surfaces such as grass or clay, thereby providing an additional 7,200 square feet of allowable impermeable coverage.



25 96 (THU) 19:59

CITY OF MALIBU

TEL: 310 456 3356

EXHIBIT NO. 7

APPLICATION NO.

4-95-167

(2062)

Rebecca Richardson

January 25, 1996

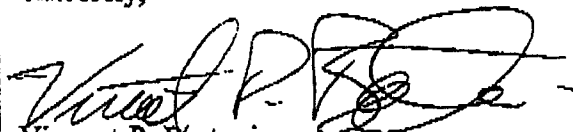
Page 2

Second, the Interim Zoning Ordinance exempts from the maximum allowable grading requirements all "excavation for foundations and other under structure excavation and incremental excavation for basements and safety purposes." The reason for this exemption is to encourage the notching of residences into hillsides and thereby minimizing their visual impacts. Therefore, if the proposed residence were required to be lowered, then the additional grading would not be counted towards the maximum allowed and would not be in conflict with the Interim Zoning Ordinance.

Please keep in mind that both of these options listed above are have been reviewed for zoning consistency and not from a geologic or environmental health standpoint. Any of these revisions may not be feasible due to the project site's geology or potential impacts on the private sewage disposal system. Therefore, additional review would be required by the City Geologist and City Environmental Health Specialist for these options.

If you should have any questions, please contact me at (310) 456-2489, extension 234.

Sincerely,



Vincent P. Bertoni

Senior Planner

cc: Paula Login



MARNY RANDALL  
909 Euclid Street, #6 / Santa Monica, California 90403 / 310-395-2615

EXHIBIT NO. 9
APPLICATION NO. 4-95-167
Letters from Applicant
1 of 6

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JAN - 8 1996

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

January 5, 1996

Rebecca Richardson, Coastal Program Analyst  
California Coastal Commission  
89 S. California Street, Suite 200  
Ventura, Calif. 93001

By Fax: 805-641-1732

RE: Coastal Development Permit Application 4-95-167

Dear Rebecca:

This letter is in response to yours of December 21, 1995.

Regarding projects which have been conditioned with height limits for view protection and have subsequently been fenced or planted to eliminate those views: In researching bluff projects in Malibu, I simply made a mental note as I went through the files that any views that may have been initially preserved seem to have vanished. My point in mentioning this to you was not to point out violations, but simply was a statement regarding the basic human need for privacy and security. I didn't make a list of the case numbers and therefore cannot forward one to you now.

As to similar projects where height limits have not been imposed, there are three that I listed in my letter to you of 10/15/95. They are:

5-90-1009 (Cher/25142 Pacific Coast Highway, Malibu)

The staff report on this project refers to a pre-existing structure as justification for a lack of a view preservation condition. This previously existing residence was nowhere near the size of the 15,800 sq. ft. residence approved under this permit. Also, the previous residence was not 35' tall, nor was it surrounded by a privacy wall. The project approved under this permit is both 35' tall and surrounded by a 6' to 8' high privacy wall guaranteed to block all views over the site from P.C.H. This most certainly is not a case of replacing like with like.

Additionally, Page 6 of the Staff Report states "... the major ocean view opportunity in this area is to the west of the project..." This is exactly the same situation which exists on Pacific Coast Highway at the subject property in Application 4-95-167. - The major view in the area, from Pacific Coast Highway, heading west, is straight along the highway to the ocean and the bluffs at Point Dume;

55-81-35 (Chiate/27910 & 27920 Pacific Coast Highway, Malibu)

The Staff Report on this project does not address the issue of height at all though the existing structure (built under this permit) does appear to block a view which may have existed over the site prior to construction;

5-89-1034 (Chiate, now Saperstein/27930 Pacific Coast Highway, Malibu)

This project is presently under construction. It is obvious from looking at the site and the plans that the house will block any presently existing views of the ocean from P.C.H. The Staff Report does not address the issue of structure height at all. Grading only is discussed from the standpoint of visibility, not structures, and there is no condition regarding height on the permit.



January 5, 1996  
Rebecca Richardson  
Page 2

These three projects all seem to relate to the subject application because the views at these locations were apparently considered minor due to other existing elements on, or near, the sites. The horizon view over the subject property is extremely narrow (if fact, depending upon the atmospheric conditions and height of the weeds along P.C.H., on some days it is non-existent) and the larger, and more significant, view of the Point Dume bluffs will not be affected by the proposed development.

I was not able to locate the CDP number for the condominium project on Carbon Beach which I discussed with you on the telephone on Tuesday. That particular subdivision project was conditioned with view corridors which were removed by the Commission at the hearing. I'm not certain that there are direct parallels to be drawn between this case and the one under discussion now anyway.

However, I do strongly believe that, if the view to the horizon over the subject property is so important according to the Coastal Act, the issue should have been addressed at the subdivision approval stage. To have addressed it then would have allowed the applicant many choices regarding lot layout and site planning that are no longer options. It seems to me to be extremely unfair to require the purchase of TDC's without being absolutely clear about possible future restrictions which will radically impact site development.

Please let me know if you have any questions.

Sincerely yours,



Marry Randall

cc: Jack Ainsworth  
Gary Timm  
Lynn Heacox  
Paula Login

PAULA LOGIN  
26500 W. Agoura Road #326  
Calabasas, CA 91302  
(310) 456-3335

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DEC 14 1995

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

December 12, 1995

HAND DELIVERED

Mr. Gary Timms  
Mr. Jack Ainsworth  
Ms. Rebecca Richardson  
California Coastal Commission

RE: Coastal Development Permit No. 4-95-176; Lot 3, PM 21895

Dear Messrs. Timms, Ainsworth and Ms. Richardson:

To date, my family has spent, just on facilitators, engineers, exhibits and attorneys, the amount of over \$10,000 to prepare for the Coastal Commission Hearing and to demonstrate to staff that our proposed house does not impact views. When I met with you at the Property, Mr. Ainsworth, you were disingenuous when you made me believe that a spectacular ocean view from a second story was important and you agreed that there was very little, if any, view from the Pacific Coast Highway.

My family spent \$50,000 on land credits for the Coastal Commission, after we agreed to preserve a 20 foot view corridor only. No height restriction was required beyond what was in effect at the time the Coastal Approval was placed on the Property, therefore my family, in good faith, proceeded to spend more money toward developing the Property. Recently we installed a 12 inch water main across Pacific Coast Highway and along the property approximately 600 feet, at a cost of over \$100,000, which benefits the neighbors as well. Since, Mr. Timms, you were the staff Analyst on the original Coastal Development Permit for the subdivision, why now that you are in charge have you been avoiding your responsibility to this project? We relied, in good faith, upon the Coastal Commission's terms provided in the land subdivision and acted accordingly.

It appears you are discriminating against this subdivision. There are no other homes that the Coastal Commission required to be built without one inch being seen from the highway. When we met, Mr. Ainsworth, you also disclosed that Cher's home was built according to the same stringent requirements of our property. This was blatantly false. It is despicable for government to be so irresponsible and cavalier about the truth and I believe others would agree.

Government must act evenhandedly. Our home should be allowed to be built as submitted, where only five feet of my home can be seen by passing cars from an arbitrary spot two lots away for less than a second. Where our property fronts

EXHIBIT NO. 9
APPLICATION NO. 4-95-167
Letters from Applicant
2 of 6

Pacific Coast Highway, there is no view at all. And, most importantly, the glorious ocean view is directly in front of drivers' front windows facing the Point Dume vista, rather than out of their side windows.

We have done everything to be ecologically prudent. We have sacrificed a back yard by building our home very close to the bluff edge in order to maximize the open feeling to the public. We are using drought tolerant plants and recycled water. We have been extremely conscientious and spent money for public good. We consider the reduction of the height bad faith and a taking.

Consider this as formal notice, if my home is denied as submitted and I must get my attorneys, Roger Howard and Clare Bronowski from Christensen, White, Miller, Fink, Jacobs, Glaser and Shapiro involved, we will prevail. Consequently, not only will I sue to build my home, I will look for damages because you are singling this subdivision out, holding us to a punishing standard which none of the neighbors must adhere to. This makes you guilty of discrimination and changing the Coastal Agreement with us. If you do not right this wrong forthwith, I will sue for damages as follows:

- |    |                                       |                               |
|----|---------------------------------------|-------------------------------|
| 1. | Breach of contract for land credits   | \$50,000 refund               |
| 2. | Cost to carry land                    | \$15,000 per month            |
| 3. | Attorneys' costs                      | \$600 per hour                |
| 4. | Punitive damages                      | To be determined by the court |
| 5. | Hearing for Coastal preparation costs | \$10,000 reimbursement        |

Please reconsider your position. My home is in keeping with the neighborhood, modest, considering the location, and consistent with the Coastal Act.

Most sincerely,



Paula Login

cc: Sam & Marjorie Login  
Roger Howard, Esq.  
Clare Bronowski, Esq.  
Marny Randall  
Lynn Heacox  
Catherine Cutler, Esq.  
Ralph Faust, Esq.

COASTAL.LTR



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DEC 14 1995

# The Land & Water Company

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

## MEMORANDUM

TO: Mr. Jack Ainsworth & Ms. Rebecca Richardson  
FROM: Lynn J. Heacox  
DATE: 12/12/95  
RE: Coastal Development Permit No. 4-95-176 (Login);

Project: Request to construct a single family residence on a lot created by a Coastal Commission approval of a subdivision in 1989 (5-89-514).

Staff Recommended Condition: To reduce the height of the residence down to the horizon line, from 28' to 23', to protect views from the Pacific Coast Highway to the ocean.

Summary: This Memorandum is being provided as supplemental information, to my November 6, 1995 letter. My examination of the record indicates that; (1) staff investigated the viewshed issue and determined that approval of this subdivision would result in the construction of homes that would block views to the ocean (Note: homes on Lots 1 & 2 would have to be restricted to 8' and 13' respectively to preserve the view). (2) Staff then determined that view blockage in this location was not significant, for reasons discussed in detail in my previous letter. (3) Lastly, staff recommended approval of the subdivision to the Commission with conditions requiring the purchase of TDC's which would result in concentrating development and be, on balance, more protective of coastal resources. These cost the applicant \$50,000. The Coastal Commission approved the project as recommended.

In my opinion, staff is bound by the Coastal Commission's previous decision that views are not an issue to be further regulated with additional exactions and conditions.

## DISCUSSION:

1. July 13, 1989. After the application for the subdivision was submitted, staff considered the impacts on the viewshed from future development and requested that the applicant provide additional information on a view corridor. (Note: As required by CEQA and by the Coastal Act all subdivisions are reviewed with respect to future development and the impacts future development will have on the site and surrounding area). Staff specifically requested a copy of the "County's View Corridor Exhibit".

18822 Beach Blvd.  
Suite 209  
Huntington Beach, CA 92648

310-592-4340  
714-965-1622  
FAX: 714-965-1692

EXHIBIT NO. 9
APPLICATION NO. 4-95-1167
Letters from Applicant
3 of 6

MEMORANDUM

12/12/95

Page two

2. August 2, 1989. The applicant responded with a letter and a copy of the "View Corridor Exhibit". The "View Corridor Exhibit" was included as one of many County Conditions of Approval. The "Exhibit" specifically identifies the permitted locations of structures, not to exceed 35', and tennis courts. Your staff examined the "View Corridor Exhibit" to determine its' usefulness in protecting public views.

(Note: It has been your staffs usual practice to review all County imposed Conditions of approval to be sure nothing is being imposed that would be in conflict with the Coastal Act. When a conflict exists, staff will imposed corrective conditions.)

3. September 7, 1989. The applicant, Mr. Ian Robertson/Login Trust, and his agent, Ms. Susan McCabe, met with Mr. Bill Ponder to discuss viewshed and other Coastal Act issues. That meeting was followed up with a letter also dated September 7, 1989 in which the applicant proposed a "View Corridor" over Lot 2 for the benefit of the public. (Note: The "View Corridor" offered to the Coastal Commission staff was consistent with a view corridor restriction recorded at the request of a neighbor across the highway.)

November 27, 1995. I discussed the "View Corridor" issue with the previous applicant. Mr. Robertson's recollection was that the view corridor being offered was considered acceptable and no additional restrictions were being required on future development.

November 21, 1995. I discussed this issue with Mr. Bill Ponder, of your San Diego staff. He recalled this subdivision (Sea Mesa Subdivision) and stated that the staff evaluated the significance of the viewshed issue. He stated that it was staffs' final conclusion that the view blockage that would result from homes was not a big deal in this location. The bigger issues were stability and septic system use. The applicant also agreed to purchase TDC's which would concentrate development and mitigate the impacts of new building sites.

4. October 10, <sup>1996</sup>~~1995~~. Bill Ponder prepared a staff report with a recommendation for approval. This was reviewed and approved



MEMORANDUM  
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by his supervisor (Gary Timm ?). The staff recognized that future development would block views but the report was silent on the issue of view corridor protection and scenic resources. This is a clear indication that these issues were not relevant in this project. In fact development on Lots Nos. 1 & 2 could not proceed without blocking views. Development on Lots Nos. 3 & 4 would block views if located on the upper sites next to the highway, as shown on the "View Corridor Exhibit". View blockage was not an issue and was not discussed (note: It has been my experience that staff reports do not usually comment on irrelevant issues).

The Coastal Commission approved the subdivision and the County Conditions of Approval, which included the "View Corridor Exhibit". The Coastal Commission made all the findings necessary under CEQA and The Coastal Act that this project and subsequent development would not have any significant impacts. View blockage was not an issue.

The Commission imposed supplemental corrective conditions for the purchase of three TDC's (Note: these cost the applicant \$50,000). Participation in this program would result in concentrating development and be on balance more protective of significant coastal resources (Section 30007.5 of the Coastal Act).

#### CONCLUSION:

To impose special viewshed protection conditions on this project after the issue was fully examined cannot be justified by the facts.

Your staff evaluated the issue in 1989 and determined that public viewshed protection was not an issue. I reconstructed the type of examination your staff would have completed in 1989, in my letter dated November 6, 1995, and came to the same conclusion.

Lastly, the Coastal Commission adopted findings, which state that the subdivision and future development would be consistent with the view protection policies of the Coastal Act. The applicant purchased three TDC's at a cost of \$50,000 and the permit was issued.

MEMORANDUM

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I believe the facts are clearly in support of the project as submitted. I think that once you carefully evaluate the circumstances, you will find that this home, which is for the most part hidden from view a (stealth home), will in no way violate any provision of the Coastal Act.



# The Land & Water Company

November 6, 1995

Mr. Jack Ainsworth  
Ms. Rebecca Richardson  
California Coastal Commission  
89 So. California Street, 2nd Fl.  
Ventura, CA 93001

RECEIVED

NOV 08 1995

CALIFORNIA  
COASTAL COMMISSION

EXHIBIT NO. 9

APPLICATION NO.

4-95-167

Letters from  
Applicant

4 of 6

Re: Coastal Development Permit No. 4-95-176; Lot 3, PM 21895.

Dear Mr. Ainsworth and Ms. Richardson:

I appreciate the extended time you gave me yesterday to discuss the above referenced project. Reflecting on your comments, I continue to believe you should support the design of the residence as submitted. This letter is intended to memorialize our position relative to this matter.

## SUMMARY:

In summary we believe the facts will show that the Coastal Commission, with a recommendation from staff for approval, approved a 4 lot subdivision in 1989. Staff recognized that the subdivision and the eventual construction of homes, on each of the approved lots, would reduce views from the Pacific Coast Highway toward the ocean. Staff carefully investigated the facts and concluded that the views were not significant.

Staff then determined that they would recommend approval of the subdivision with a condition requiring the applicant to participate in the Coastal Commission's Transfer of Development Credit (TDC) Program. Participation in this program would result in concentrating development and be on balance more protective of significant coastal resources. This position is consistent with Section 30007.5 of the Coastal Act. I quote; "The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division..." and that, "such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies."

In this instance, future development would be concentrated on four carefully planned parcels while other developable areas would be

18822 Beach Blvd.  
Suite 209  
Huntington Beach, CA 92648

310-592-4340  
714-965-1622  
FAX: 714-965-1692

Mr. Jack Ainsworth  
Ms. Rebecca Richardson  
November 6, 1995  
Page two

eliminated from future use and where the impacts of development would have been far greater. The project was approved by the Coastal Commission, the applicant purchased three TDC's at a cost of \$50,000 and the permit was issued.

#### EVALUATION OF SCENIC RESOURCES:

During staff's investigation of the project it was determined, using the technical elements of the Coastal Plan, that the view was a fourth priority for protection and had the "lowest scenic value". Staff recognized, from the topography shown on the subdivision map, that homes on Lots 1 & 2, would have to be constructed at a height not to exceed 8' and 13' respectively, to be below the horizon line (see attached exhibits). This was not a condition of future development or the applicant wouldn't have paid the \$50,000 for TDC's. It clearly was never staff's intent to protect insignificant views.

The dynamics of the Pacific Coast Highway in this location, including the changing grade, speed and curvature, were further evidence that the protection of view corridors in this location would not provide any significant public benefits. Indeed, most of the views are only available at generally right angles to the highway and then only for brief periods of time. The entire subdivision site is passed within 7 seconds at 50 mph and most of the view along this area is of graded landforms and ornamental vegetation. Significantly, a second view corridor to the ocean lies unimpeded and straight ahead of occupants travelling in the west bound lanes. It was clear that the limited views over the subdivision site to the ocean did not need to be preserved.

9  
p Staff then noted that the technical elements of the Coastal Plan identified an "atmosphere of openness" as a coastal resource to be considered when evaluating development. With this information staff worked with the applicant to implement development restrictions on Lot 2. The development restrictions did not protect views to the ocean but did provide for a continued "atmosphere of openness" protecting views along the ocean by restricting development within 180' of the highway to a height of 16' above the street. If a development was beyond this distance a home could be 28' above grade for 80% of the lot width and 35'

Mr. Jack Ainsworth  
Ms. Rebecca Richardson  
November 6, 1995  
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above grade within the remaining building area. Staff was rewarding the applicant by encouraging development away from the highway and protecting the "atmosphere of openness". Staff did not require any restrictions on Lots 1, 3 (applicant) & 4 but did recognize that the county identified and imposed specific buildable areas on the subdivision map which are located away from the highway a sufficient distance which would accomplish the same purpose.

#### STAFF ASSERTIONS:

Staff now seems to assert that viewshed protection did not need to be addressed during the subdivision hearing but is an issue to be considered during the residential development stage. This position is not supported by good planning or the law. The California Environmental Quality Act and the Coastal Act require staff to determine the environmental suitability of developing each to-be-created parcel prior to the approval of a subdivision. If this was not the case the Commission would be creating parcels that could not be built consistent with the Coastal Act. In this particular subdivision the development of Lots 1 & 2 will substantially impair the view toward the ocean and could not be built if the view was considered to be significant.

NO { It is clear that staff originally considered this view loss to be insignificant and that resource protection would be advanced to a greater degree by participation in the Commission's TDC program.

Staff erred by not elaborating the provisions of Section 30007.5 of the Coastal Act to the Coastal Commission when recommending approval of the subdivision. The factual information supporting the trade-off is, however, clear. The staff report was silent on the issue of view corridor protection and scenic resources which would indicate that these issues were not relevant. It is my experience that staff reports do not usually comment on irrelevant issues. For example; the staff report did not address the issue of habitat protection or recreation which would also indicate that those issues were not relevant. Staff did recommend that the applicant purchase three TDC's, at a cost of \$50,000, in order to concentrate development and recommended that the Commission find the project consistent with all resource protection policies

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(including scenic) which would naturally imply that homes could and would be built in compliance with the standards in effect at the time of approval (i.e. 35' high homes). The home being proposed by the applicant complies with the Coastal Commission standards in effect at the time of the subdivision.

CONCLUSION:

Without reservation, I believe that the facts are clearly in support of the project as submitted. I think that once you carefully evaluate the circumstances, you will find that this home, which is for the most part hidden from view (a stealth home), will in no way violate any provision of the Coastal Act.

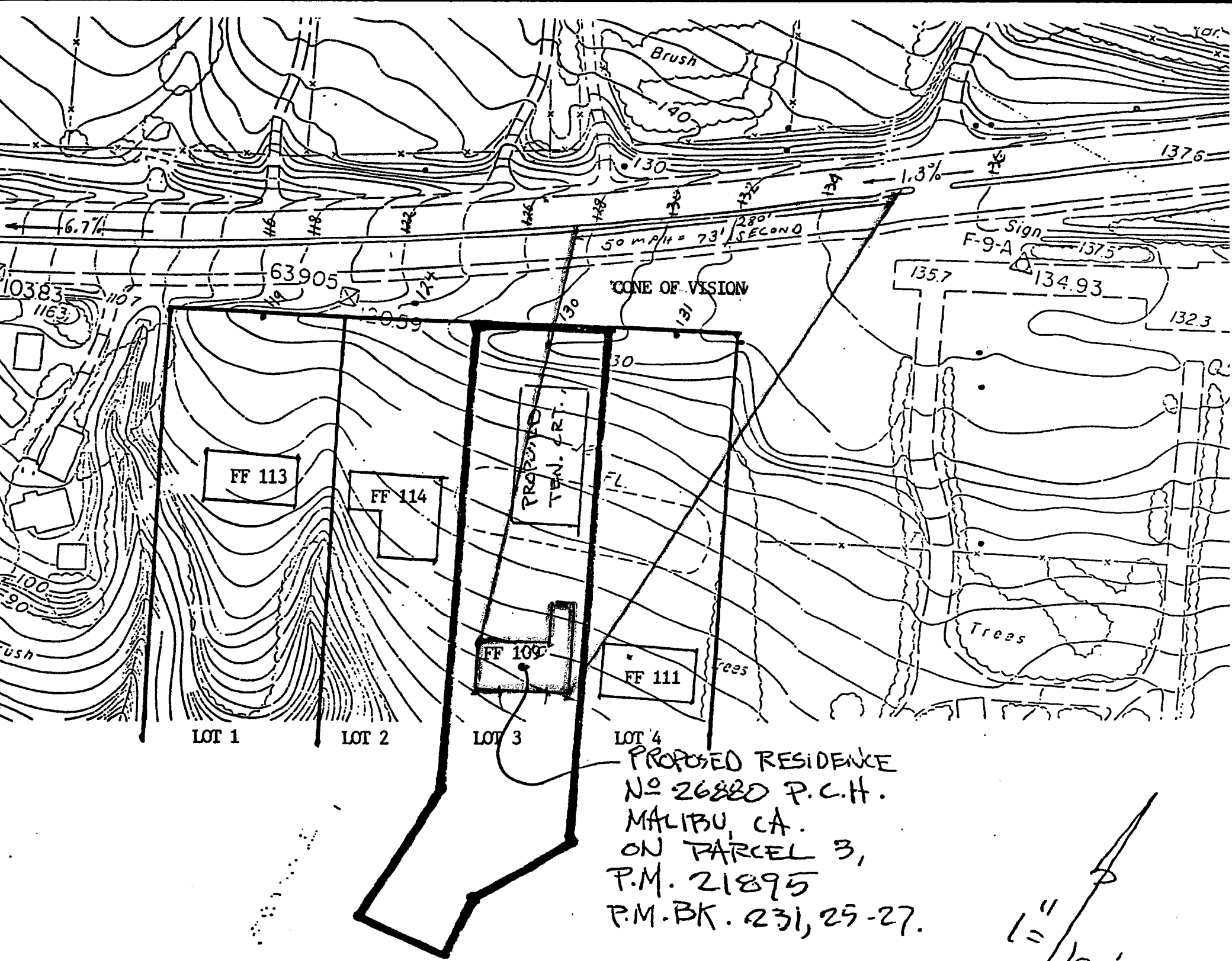
I thank you for your time in this matter and ask for your support. If you have any questions please don't hesitate to call.

Sincerely,

The Land & Water Company

A handwritten signature in cursive script, appearing to read "Lynn J. Heacox".

Lynn J. Heacox  
LJH:jt:1



FF 113

FF 114

PROPOSED  
TEN. CRT.

FF 109

FF 111

LOT 1

LOT 2

LOT 3

LOT 4

PROPOSED RESIDENCE  
NO 26880 P.C.H.  
MALIBU, CA.  
ON PARCEL 3,  
P.M. 21895  
P.M.BK. 231, 25-27.

1" = 100'

HORIZON LINE 121

8'

PORION OF RESIDENCE  
BELOW HORIZON LINE

FF 113'

LOT 1 - THIS IS AN UNBUILDABLE LOT IF A HOME IS  
REQUIRED TO BE BELOW THE HORIZON LINE.



HORIZON LINE 127'

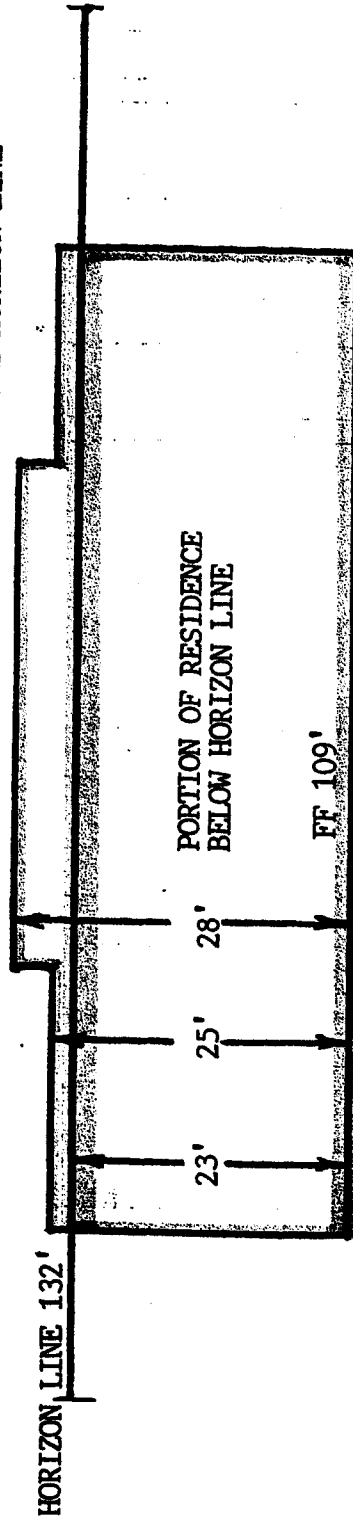
13'

PORTION OF RESIDENCE  
BELOW HORIZON LINE

FE. 114'

LOT 2 -

PORTION OF RESIDENCE  
ABOVE HORIZON LINE



HORIZON LINE 132'

PORTION OF RESIDENCE  
BELOW HORIZON LINE

28'

25'

23'

FF 109'

LOT 3  
(APPLICANT'S Lot)

HORIZON LINE 136'

25'

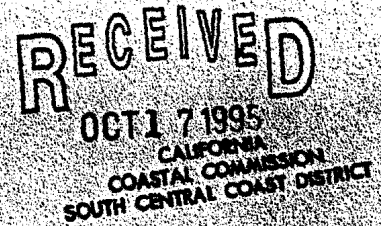
PORION OF RESIDENCE  
BELOW HORIZON LINE

FF 111

LOT 4

October 15, 1995

Rebecca Richardson, Staff Analyst  
California Coastal Commission  
89 S. California Street, 2nd Floor  
Ventura, Calif. 93001



RE: C.D.P. Application 4-95-167

Dear Rebecca:

Enclosed please find the following items:

1. A 1" = 20' scale section of the property and proposed development;
2. A 1/8" = 1'-0" scale elevation of the site and proposed development from P.C.H.;
3. 8 1/2" x 11" reductions of both the section and the elevation.

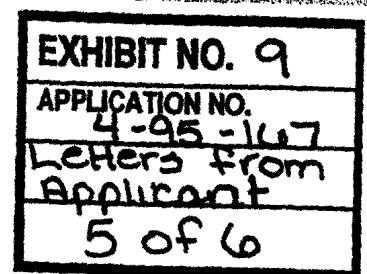
I would like to make a few points about the proposed project in relation to both the existing site conditions and the City of Malibu's Interim Zoning Ordinance.

First of all, the existing berm on the property between the applicants' site and Pacific Coast Highway ranges from El. 130.0' (at the eastern property line) to El. 129.0' (at the western property line). This berm is covered with naturally occurring vegetation which ranges from 2' to 4' in height. The horizon/site line from a passenger car on Pacific Coast Highway fronting the site is approximately El. 132.0'; therefore, the presently available horizon view from the Highway fronting the site is almost nil.

As you can see on the 'Elevation', the horizon view, such as it is, is maintained in the 20' sideyard to the west of the residence. Given the topography of the site, the vegetation, and the Highway elevation(s), the only existing horizon view from the Highway fronting this site is at this western end.

Secondly, the City of Malibu's Interim Zoning Ordinance places restrictions on building height, allowable gross structural area, grading volumes, impermeable area and yard setbacks that make this project impossible to build without placing 2/3 of the structure on the second floor as planned. If the applicants were to be required to eliminate that second floor area, the property would be significantly reduced in value.

In researching bluff top development in general along P.C.H., I have noticed that many, if not all, of the projects originally conditioned by the Commission with height limits to protect views from P.C.H. have been either planted or fenced, thus eliminating those views. I don't think the Commission can practically (or maybe even legally) demand that property owners forego any measure of privacy and security from the Highway.





MARNY RANDALL  
909 Euclid Street, #6 / Santa Monica, California 90403 / 310-395-2615

The restriction of landscape materials to a height not to exceed the centerline of the Highway has been proven to be impractical to design and build, and impossible to maintain and enforce.

Also, I would like to point out that other bluff top projects have been approved by the Commission without any condition(s) requiring views to the horizon to be kept completely clear. These include Cher's project 95-90-1009) and the two Chiate projects (5-89-1034 (now Saperstein) and 5-81-35).

To sum up, I think that the siting of the proposed structures, the 20' sideyard to the west of the residence, which can be gated with a openwork metal gate, the open fencing around the tennis court, and the spacing and species selection of the trees and shrubs in the proposed planting plan with maintain the perception of open space from P.C.H. that is the goal of the Commission's policy.

Please call me when you have had a chance to review the package.

Thank you for your time.

Sincerely yours,

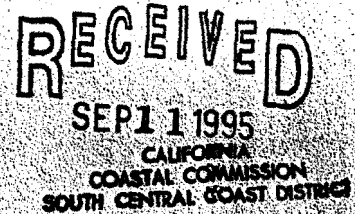
*Marny Randall*  
Marny Randall

*Encl.*

September 8, 1995

September 8, 1995

Ms. Rebecca Richardson  
Staff Analyst  
California Coastal Commission  
89 S. California Street, Suite 200  
Ventura, Calif. 93001



RE: Application #4-95-167

Dear Rebecca:

As you and I discussed last week, this project is on a bluff adjacent to Pacific Coast Highway and, consequently, we need to address the issue of any possible views from P.C.H. to the ocean. We believe that, due to the elevations of the property and P.C.H., and the positions of both elements, there is no significant view over the property which would justify requiring the property owner to build only a one story house. Also, due to Malibu's restrictions on grading and impermeable area, spreading the proposed square footage onto ground level wouldn't work.

We plan to have the surveyor stake the points that we want to flag on the property on September 18, 1995. I would appreciate it very, very much if you could, using a xerox copy of the site plan, circle the points on the house, or other elements, that you would like flagged. If you could fax this copy of the site plan to me at 310-395-2368 before Sept. 18, it would be very helpful. The applicant would, of course, like to flag as few points as possible, as it is costly to have each post built.

I am hoping that the carpenter can come out to build the posts during the week of the 25th of September and I would like to make an appointment to meet you, and possibly Jack Ainsworth also, on the site during the first week of October.

Please let me know if this will work for you. Thank you for your time and help.

Sincerely yours,

*Marny Randall*  
Marny Randall

Encl.

EXHIBIT NO. 9
APPLICATION NO. 4-95-167
Letters from Applicant.
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