

CALIFORNIA COASTAL COMMISSION

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

Filed: 4-8-96
 49th Day: 5-27-96
 180th Day: 10-5-96
 Staff: SPF-VNT *SWJ*
 Staff Report: 6-18-96
 Hearing Date: July 9-12, 1996
 Commission Action:



STAFF REPORT: PERMIT EXTENSION REQUEST

W26a

APPLICATION NO.: 5-91-755E

APPLICANT: Lunita Pacific

AGENT: Richard Scott

PROJECT LOCATION: Northeast corner of Lunita and Bailard Road, City of Malibu; Los Angeles County

PROJECT DESCRIPTION: Request for a one year extension of coastal development permit 5-91-755 approved for the construction of 38 attached condominium units with 52 covered and 59 uncovered parking spaces, septic system, pool, spa, and tennis court, and extension of Bailard Road. Grading consists of 18,049 cubic yards of cut and 15,392 cubic yards of fill.

LOCAL APPROVALS RECEIVED: Approval in concept from the Los Angeles County Department of Regional Planning.

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains Land Use Plan. Coastal Development Permit Application 5-88-300 (Lachman).

PROCEDURAL NOTE.

The Commission's regulations provide that permit extension requests shall be reported to the Commission if:

- 1) The Executive Director determines that due to changed circumstances the proposed development may not be consistent with the Coastal Act, or
- 2) Objection is made to the Executive Director's determination of consistency with the Coastal Act.

If three (3) Commissioners object to an extension request on the grounds that the proposed development may not be consistent with the Coastal Act, the application shall be set for a full hearing as though it were a new application. If three objections are not received, the permit will be extended for an additional one-year period.

STAFF RECOMMENDATION:

The staff recommends that the extension be granted for the following reasons:

No changes circumstances have occurred since the approval of the coastal development permit, therefore the project remains consistent with the Chapter 3 policies of the Coastal Act.

I. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. Project Description

The applicant has requested a one year extension of the coastal development permit approved for the construction of 38 attached condominium units with 52 covered and 59 uncovered parking spaces, septic system, pool, spa, and tennis court, and extension of Bailard Road. Grading consists of 18,049 cubic yards of cut and 15,392 cubic yards of fill. On March 12, 1992 the Commission approved the proposed project subject to eight special conditions (see Exhibit 1). On February 23, 1994, the applicant's agent was notified by Commission legal counsel of the automatic extension granted for this development which extended the expiration date of this permit to March 12, 1996 (See Exhibit 2).

It should be noted that the development proposed under 5-91-755 was originally approved by the Commission under coastal development permit 5-88-300 (Lachman). This coastal development permit was approved on May 11, 1989. An extension to that coastal development permit was applied for on April 26, 1991. There was an objection to the immaterial extension request. The extension was scheduled for a regular Commission hearing and was subsequently denied by the Commission when four Commissioners voted that there were changed circumstances. In response to this denial, a new application, 5-91-755 (Preferred Financial), for the exact same development was submitted. In the staff report for 5-91-755 (Preferred Financial), it was noted that no evidence was submitted which showed that the approval of the project would prejudice the City's ability to prepare a local coastal program or that the project was out of conformity with the provisions of Chapter 3 of the Coastal Act (See Exhibit 3). As such, the Commission approved the project for a second time with the exact same conditions as imposed in 5-88-300 (Lachman).

Staff initially determined that this extension request was immaterial and that there were no changes circumstances that might affect the consistency of the project with the Coastal Act. Notices of that determination were sent out on March 29, 1996. Staff received two written objections; one on April 4, 1996, the other on April 12, 1996 (Exhibits 4 and 5 respectively). The applicant was notified of the objection to the extension request on April 8, 1996 and informed that the item would be scheduled for the next available Commission hearing.

B. Grounds for Extension Approval

On March 12, 1992 the Commission approved the project, finding it in conformance with the Chapter 3 policies of the Coastal Act pursuant to eight special conditions. The permit was not due to expire until March 12, 1996.

Section 13169 of the California Code of Regulations requires that the Executive Director determine whether or not there are changes circumstances that may affect the consistency of the permitted permit with the Coastal Act. Section 30604(a) 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 Chapter 3 (commencing with Section 30200) and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200). A denial of a coastal development permit on grounds it would prejudice the ability of the local government to prepare a local coastal program that is in conformity with Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for that conclusion.

This section provides that the Commission shall issue a permit only if the project will not prejudice the ability of the local government to prepare a certifiable LCP. The Commission found in the approval of Coastal Development Permit 5-91-755 that the proposed project, as conditioned, was consistent with the Chapter 3 policies of the Coastal Act and would not prejudice the County of Los Angeles to prepare a LCP in conformity with the provisions of Chapter 3. In addition, when reviewing the project, the Commission reviewed all issues raised by the opposition, including traffic, density, alteration of natural landforms, sewage disposal, mitigation of cumulative impacts and archaeology. The questions raised by the opposition were addressed and mitigated through special conditions.

The Commission found that the project was in conformance with the Chapter 3 policies of the Coastal Act as well as the policies of the Malibu/Santa Monica Mountains Land Use Plan (LUP). The policies included in this LUP include density determinations, which this project conformed with. Although the County prepared and certified LUP is no longer legally effective in the newly incorporated City of Malibu, the previous certified LUP continues to provide guidance as to the types of uses and resource protection needed in the Malibu area in order to comply with the Coastal Act policy. As the City of Malibu has not yet prepared an LUP (or LCP) which the Commission has certified, the Commission continues to use the LUP and past permit actions as guidance for determining consistency with the Coastal Act of 1976.

The first letter of objection received by staff asserts that the City of Malibu has enacted its General Plan and that the proposed development is contrary to this plan. As such, approval of this project would prejudice the City of Malibu's ability to prepare a Local Coastal Program, according to the letter (See Exhibit 4). However; as noted in the staff report for the approval of 5-91-755, there has been no evidence submitted which shows that the approval of this project will prejudice the City's ability to prepare a local coastal program (See Exhibit 3). Moreover, the City does not have a Commission certified General Plan, Land Use Plan or Local Coastal Program. The Commission's standard of review continues to be the Chapter Three policies of the Coastal Act of which this project is consistent with. Thus, the fact the City has an uncertified General Plan is not a changed circumstance which causes this development to be inconsistent with the Chapter three policies of the Coastal Act or prejudices the City's ability to prepare a local coastal program.

The second letter cites three objections to this extension request (Exhibit 5). The first objection is similar in nature to the objection noted above. As such, it can be concluded that this objection does not raise a changed circumstance as stated above.

The second changed circumstance cited is that there are new geologic conditions on the site. However, no evidence has been submitted which supports this assertion. The reports cited in previous letters reference old reports prepared prior to the Commission's review and approval of this project. Thus, these reports and the information provided have been reviewed by the Commission. There is no new information. Furthermore, the applicants have stated that no new geologic conditions have occurred. Thus is no evidence of any change to the geology of the site. Finally, the City of Malibu has raised no concerns over the geology of this site. Hence, it can be concluded that there is no change to the geology of the lot and thus no changed circumstance relative to the geology. As such, the project remains consistent with the Chapter three policies of the Coastal Act relative to geology and poses no threat to the City's ability to prepare a local coastal program.

The final changed circumstance noted in this letter references the involvement of a Commissioner who is no longer with the Commission. The change of Commissioners is not a changed circumstance which would cause any of the proposed development to be inconsistent with the Chapter 3 policies of the Coastal Act or prejudice the City's ability to prepare a local coastal program. Thus, the second objection letter cites no changed circumstances which would prejudice the City's ability to prepare a local coastal program or cause the project to be out of conformity with the Chapter 3 policies of the Coastal Act.

Finally, it should be noted that the applicant is continuing to work with the City of Malibu to obtain final permits, and the City has not raised any concern with regards to this project prejudicing the City's ability to prepare a local coastal program. In conclusion, the Commission finds that the proposed development is in conformity with the Chapter 3 policies of the Coastal Act, as approved under 5-91-755. The Commission finds that there are no changed circumstances which would bring this project out of conformance with the Chapter 3 policies of the Coastal Act or prejudice the City's ability to prepare a local coastal program and thus, the extension request is approved.

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 W BROADWAY, STE. 380
P.O. BOX 1450
LONG BEACH, CA. 90802-4416
(213) 590-5071

Page 1 of 5
Date: March 19, 1992
Permit Application No. 5-91-755

NOTICE OF INTENT TO ISSUE PERMIT

On March 12, 1992, the California Coastal Commission granted to PREFERRED FINANCIAL Permit 5-91-755, subject to the attached conditions, for development consisting of:

Construction of 38 attached condominium units with 52 covered and 59 uncovered parking spaces, septic system, pool, spa, tennis court, and extension of Bailard Rd. Grading consists of 18,049 c.y. of cut and 15,392 cy of fill.

more specifically described in the application file in the Commission offices.

The development is within the coastal zone in Los Angeles County at Northeast corner of Lunita Rd., & Bailard Rd., City of Malibu

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on March 12, 1992

PETER DOUGLAS
Executive Director

By: Peter Maloney-Lames
Title: Staff Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 5-91-755, and fully understands its contents, including all conditions imposed.

_____ Date

_____ Permittee

Please sign and return one copy of this form to the Commission office at the above address.

Exhibit 1: Notice of Intent for
5-91-755E 5-91-755

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NOTICE OF INTENT TO ISSUE PERMIT

Permit Application No. Page 2 of 5
5-91-755

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 in the application for permit, subject to any special conditions 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 project during its development, 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.

SPECIAL CONDITIONS:

1. Revised Residential Unit Floor Plans and Elevations

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised floor plans (including total gross floor area) and elevations (including surveyed and scaled existing grade) for each of the 38 condominium units in this development. Each said plan and elevation shall illustrate conformance to the Malibu/Santa Monica Mountains Land Use Plan height limit of 35 feet above existing grade (Policy 138b).

2. Landscape Plan

Prior to issuance of the coastal development permit, the applicant shall submit landscaping and fuel modification plans prepared by a licensed landscape architect for review and approval by the Executive Director. The plans shall incorporate the following criteria:

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- (a) All graded areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. To minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist primarily of native drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended Native Plant Species for Landscaping Wildland Corridors in the Santa Monica Mountains, dated November 23, 1988. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (b) Should grading take place during the rainy season (November 1-March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations and maintained through the development process to minimize sediment from run-off waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location.
- (c) Cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native species using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within 90 days and shall be repeated, if necessary, to provide such coverage. This requirement shall apply to all disturbed soils.

3. Structure and Roof Color Restriction

Prior to the issuance of the Coastal Development Permit, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which restricts the color of the subject structure to natural earth tones compatible with the surrounding environment, white tones will not be acceptable. In addition, all windows shall contain non-reflective glass.

4. Assumption of Risk

Prior to issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from fire, flood, and erosion, and applicant assumes the liability from such hazard; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazard. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

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5. Geology Recommendation

Prior to issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, signed plans from the consulting geologist which certify that the revised development as approved by the Commission conforms to the geotechnical recommendations contained in the reports by Gorian and Associates, Inc., dated May 21, 1985, and March 21, 1988.

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.

6. Sewage Disposal

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director: (1) a revised sewage disposal plan prepared by the applicant's consulting engineer which illustrates the location of all septic system components required to service the approved development, and (2) County of Los Angeles or its successor in interest Health Services final approval of said revised sewage disposal plan.

7. Cumulative Impact Mitigation

Prior to issuance of the coastal development permit, the applicant shall submit evidence, subject to the review and approval of the Executive Director, that the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains are adequately mitigated. Prior to issuance of this permit the applicant shall provide evidence to the Executive Director that development rights for residential use have been extinguished on building sites in the Santa Monica Mountains coastal zone. The number of development rights on legally buildable lots to be retired in the Santa Monica Coastal Zone shall be tied to the formula of one lot per each 2,500 sq. ft. of gross living area. Prior to issuance of a coastal development permit the applicant shall submit for the review and approval of the Executive Director the total gross square footage of living area of the 38 condominiums, at which time the number of lots to be retired shall be determined. The method used to extinguish the development rights shall be either:

- (a) one of the five lot retirement or lot purchase programs contained in the Malibu/Santa Monica Mountains Land Use Plan (Policy 272, 2-6),
- (b) a TDC-type transaction, consistent with past Commission actions, and,
- (c) participation along with a public agency or private nonprofit corporation to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites. Retirement of a site that is unable to meet the City's health and safety standards, and therefore unbuildable under the Land Use Plan, shall not satisfy this condition.

8. Archaeological Resources

Prior to issuance of the coastal development permit, the applicant shall submit evidence, subject to the review and approval of the Executive Director, which certifies that a qualified archaeologist shall be present on the subject property during all grading and site preparation activity. Should archaeological resources be discovered during grading or site preparation, all activity which could damage or destroy these resources shall be temporarily suspended and a mitigation plan shall be prepared to address the impacts of the project on archaeological resources. Such mitigation measures shall be reviewed by the State Office of Historic Preservation and the appropriate Native American group designated by the Native American Heritage Commission, and, if said mitigation measures constitute new development as defined in the Coastal Act, shall be submitted to the Coastal Commission as an amendment to the permit or a new permit prior to implementation as determined by the Executive Director.

AFTER YOU HAVE SIGNED AND RETURNED THE DUPLICATE COPY YOU WILL BE RECEIVING THE LEGAL FORMS TO COMPLETE (WITH INSTRUCTIONS) FROM THE SAN FRANCISCO OFFICE. WHEN YOU RECEIVE THE DOCUMENTS IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE LEGAL DEPARTMENT AT (415) 904-5200.

RMR:Ln
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CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA OFFICE
729 FRONT STREET, STE. 300
SANTA CRUZ, CA 95060
(408) 427-6863
HEARING IMPAIRED: (415) 904-5200



February 23, 1994

Alan Block, Esq.
2049 Century Park East
Suite 3100
Los Angeles, CA 90067

Dear Alan:

This letter is in response to your inquiry regarding the "automatic" extension of the Coastal Development Permits for Trancas Town Ltd. (S-91-754) and Preferred Financial Corp. (S-91-755) pursuant to Section 66452.11 of the Subdivision Map Act. As you know, the automatic two year extension is available only to those projects which had an effective tentative map and an effective Coastal Permit as of September 13, 1993. A review of the files for your projects indicate that the coastal permits for both developments were effective on the critical September date.

I have also reviewed the two trial court Judgements relevant to these projects (County of Los Angeles, Case No. BCO66726 and BSO22390) which indicate that the validity of both tentative maps was upheld by the court and therefore, both were effective as of September 13, 1993. Based on the trial court action and the information in our permit files it would appear that both the Coastal Permit and tentative maps were effective as of September 13 and would be automatically extended for two years beyond their individual expiration dates. In the case of the coastal permits, they would be extended to March 12, 1996. The expiration dates of the tentative maps will differ from the expiration date of your Coastal Development Permits. You may wish to confirm these dates with the appropriate local agency.

I note, however, that based on discussions with you and representatives of the City of Malibu, that both trial court judgements have been appealed. If, on appeal, the judgements are reversed, resulting in a decision that the tentative maps were not valid, as contended by the City, then the "automatic" extension would not apply to your projects because the maps would not have been effective on September 13, 1993. Should this possibility be of concern, you may wish to apply for the normal extension of the Coastal Permits as provided in our regulations prior to the March expiration date of the permits (California Code of Administrative Regulations, Title 14, Section 13169).

Very truly yours,

Diane S. Landry
Legal Counsel

DSL/cm

cc: Christi Hogan, Esq.
Richards, Watson, Gershon
Bob Benard

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CALIFORNIA COASTAL COMMISSION
South Coast Area
245 West Broadway, Ste 380
Long Beach, CA 90802-4416
(310) 590-5071

TU 6 W

Filed: 11-07-91
49th Day: 12-26-91
180th Day: 05-06-92
Staff: RMR/LB
Staff Report:
Hearing Date: Dec. 10, 1991
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-91-755

APPLICANT: Preferred Financial AGENT: Alan Block

PROJECT LOCATION: Northeast corner of Lunita Rd. & Bailard Rd.
City of Malibu, County of Los Angeles

PROJECT DESCRIPTION: Construction of 38 attached condominium units with 57 covered and 59 uncovered parking spaces, septic system, pool, spa, tennis court, and extension of Bailard Rd. Grading consists of 18,049 c.y. of cut and 15,392 cy of fill.

Lot area:	6.54 acres
Building coverage:	40,960 sq. ft.
Pavement coverage:	86,700 sq. ft.
Landscape coverage:	157,222 sq. ft.
Parking spaces:	116
Zoning:	R-3
Plan designation:	Res. I, II, IVA
Project density:	5.8 dua
Ht abv fin grade:	42 feet

LOCAL APPROVALS RECEIVED: Los Angeles County Department of Regional Planning Vesting Tentative Tract Map No. 42687.

SUBSTANTIVE FILE DOCUMENTS: Malibu/Santa Monica Mountains Land Use Plan, Coastal Development Permits 5-88-300 (Preferred Financial), 5-88-600 (Trancas Town)

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed development with special conditions regarding revised Tentative Tract Map, revised grading, drainage, and erosion control plan, revised unit plan, landscape plan, natural hazards, sewage disposal, cumulative impact mitigation, and archaeological resources.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

Exhibit 3: Staff Report for
5-91-755E 5-91-755

I. Approval with Conditions

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

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. 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 in the application for permit, subject to any special conditions 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 project during its development, 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 Tentative Tract Map

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a revised Los Angeles County-approved Tentative Tract Map and project site plan which conforms to the development plan submitted to the South Coast District Office on January 10, 1989 (exhibit 3 in the 1989 staff report).

2. Grading, Drainage, and Erosion Control Plan

Prior to issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a revised grading, drainage and erosion control plan approved by the County of Los Angeles that conforms to the development site plan and grading plan submitted to the South Coast District Office on January 10, 1989.

3. Revised Residential Unit Floor Plans and Elevations

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised floor plans (including total gross floor area) and elevations (including surveyed and scaled existing grade) for each of the 38 condominium units in this development. Each said plan and elevation shall illustrate conformance to the Malibu/Santa Monica Mountains Land Use Plan height limit of 35 feet above existing grade (Policy 138b).

4. Landscape Plan

Prior to issuance of the coastal development permit, the applicant shall submit landscaping and fuel modification plans prepared by a licensed landscape architect for review and approval by the Executive Director. The plans shall incorporate the following criteria:

- (a) All graded areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. To minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist primarily of native drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended Native Plant Species for Landscaping Wildland Corridors in the Santa Monica Mountains, dated November 23, 1988. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (b) Should grading take place during the rainy season (November 1-March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations and maintained through the development process to minimize sediment from run-off waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location.
- (c) Cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native species using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within 90 days and shall be repeated, if necessary, to provide such coverage. This requirement shall apply to all disturbed soils.
- (d) Vegetation within 50 feet of the proposed house may be removed to mineral earth, vegetation within a 100-150' radius of the main

structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed and how often thinning is to occur. Plants selected should be riparian and oak woodland associated assemblages.

5. Assumption of Risk

Prior to issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from flood erosion, and applicant assumes the liability from such hazard; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazard. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and encumbrances which the Executive Director determines may affect the interest being conveyed.

6. Geology Recommendation

Prior to issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, signed plans from the consulting geologist which certify that the revised development as approved by the Commission conforms to the geotechnical recommendations contained in the reports by Gorian and Associates, Inc., dated May 21, 1985, and March 21, 1988.

7. Sewage Disposal

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director: (1) a revised sewage disposal plan prepared by the applicant's consulting engineer which illustrates the location of all septic system components required to service the approved development; and (2) County of Los Angeles or its successor in interest Health Services approval of said revised sewage disposal plan.

8. Cumulative Impact Mitigation

Prior to issuance of the coastal development permit, the applicant shall submit evidence, subject to the review and approval of the Executive Director, that the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains are adequately mitigated. Prior to issuance of this permit the applicant shall provide evidence to the Executive Director that development rights for residential use have been extinguished on 26.9 building sites in the Santa Monica Mountains coastal zone. The method used to extinguish the development rights shall be either:

- (a) one of the five lot retirement or lot purchase programs contained in the Malibu/Santa Monica Mountains Land Use Plan (Policy 272, 2-6),

- (b) a TDC-type transaction, consistent with past Commission actions, and,
- (c) participation along with a public agency or private nonprofit corporation to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites. Retirement of a site that is unable to meet the City's health and safety standards, and therefore unbuildable under the Land Use Plan, shall not satisfy this condition.

9. Archaeological Resources

Prior to issuance of the coastal development permit, the applicant shall submit evidence, subject to the review and approval of the Executive Director, which certifies that a qualified archaeologist shall be present on the subject property during all grading and site preparation activity. Should archaeological resources be discovered during grading or site preparation, all activity which could damage or destroy these resources shall be temporarily suspended and a mitigation plan shall be prepared to address the impacts of the project on archaeological resources. Such mitigation measures shall be reviewed by the State Office of Historic Preservation and the appropriate Native American group designated by the Native American Heritage Commission, and, if said mitigation measures constitute new development as defined in the Coastal Act, shall be submitted to the Coastal Commission as an amendment to the permit or a new permit prior to implementation as determined by the Executive Director.

Staff Note: Staff consulted with agent for the applicant, Alan Block, concerning special conditions 1, 2, and 7. Mr. Block stated that the applicant had obtained approval of a revised tentative tract map from the County of Los Angeles on March 20, 1991. He indicated that he had evidence of this approval and that the approved revised map included grading and drainage. However, staff does not have the approved revised map nor any evidence of it, and therefore, the Commission has no choice but condition that the evidence be produced. In addition, because staff is including the findings of the prior staff report by reference (5-88-300), the conditions must stand as is or require the findings to be changed. The same reasoning applies to the revised septic system, because there are findings in the incorporated staff report supporting the condition, the condition must stand.

IV. Findings and Declarations

A. Project History

This project was originally heard on 3/9/89 and postponed. It was subsequently heard on 5/11/89 and was approved by the Commission by a vote of 9-2, subject to a number of special conditions. The conditions on the application (5-88-300) approved by the Commission in 1989 are essentially the same as the ones included in this staff report, except that County of Los Angeles approvals have been changed to City of Malibu approvals.

In April of 1990, an amendment request to amend special condition 8 was received and subsequently withdrawn. The amendment would have allowed issuance of the permit prior to fulfilling the cumulative impact mitigation condition and prior to development of the site. On 4/26/91 an application was received for a permit extension. The permit was due to expire on 5/11/91. Staff

processed the extension request as an immaterial extension. An objection was received and the extension request was scheduled for full hearing as a material extension in September of 1991. At the September hearing Commissioners raised the issue of changed circumstances due to Malibu becoming a city. After a public hearing and discussion on the project the Chairman asked if there were three Commissioners who objected to the extension of permits 5-88-600E and 5-88-300E. Four Commissioners voted to deny the extensions. There was a subsequent debate on and a motion called for requiring City of Malibu approval in concept if the extensions were denied (the discussion also included Coastal Development Permit 5-88-600E). The motion was defeated. On September 19, 1991 a notice of Denial of the Permit Extension was sent to the applicants.

On 10/25/91 new applications (5-91-754 and -755) were received at the Coastal Commission's Long Beach offices. At the November Commission hearing, agent for the applicant requested to speak at the public comments section. At this time agent for the applicant stated that they felt one of the permits (5-88-600) had been activated because of archaeological expenses, and that amendments to the permit had included the standard condition 2, which states:

If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. 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.

There was an ensuing discussion on Commission policy vis a vis denial of extension requests and whether the Commission required that following denial a new application must be submitted and considered de novo, or whether denial of an extension by 3 or more Commissioners meant that the issue of denial had to be decided in a full hearing by majority rule vote. The Commission approved a motion requiring that this question and also the question of fees was left for staff counsel and staff to report back to the Commission. In addition, the items were agendaized for the December hearing.

Staff has been informed by the Executive Director and Commission Counsel that a report on the extension denial issue and fees will not be completed by the December hearing. In the absence of that report staff will not discuss the issue, but is still directed to present a staff report on the projects.

D. Changed Circumstances

The Commission's regulations provide that permit extension requests shall be reported to the Commission if:

- 1) The Executive Director determines that due to changed circumstances the proposed development may not be consistent with the Coastal Act, or
- 2) Objection is made to the Executive Director's determination of consistency with the Coastal Act.

If three (3) Commissioners object to an extension request on the grounds that the proposed development may not be consistent with the Coastal Act, the application shall be set for a full hearing as though it were a new application. If three objections are not received, the permit will be

extended for an additional one-year period.

Staff initially recommended that there were no changed circumstances. Four Commissioners voted to deny the staff recommendation to approve the extension request.

Section 13169 of Title 14 of the Coastal Commission administrative regulations concerning extensions states:

If three (3) commissioners object to an extension on the grounds that the proposed development may not be consistent with the California Coastal Act of 1976, the application shall be set for a full hearing of the commission as though it were a new application.

The basis for the commissioners denying the extension was that they felt the emergent city of Malibu constituted changed circumstances.

Section 30604 of the Coastal Act states:

- (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 coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a coastal development permit on grounds it would prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusions.

It has not been demonstrated to staff how approval of these projects would prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3. As a matter of fact, the same projects have already been found by the Commission to be in conformity with both the provisions of Chapter 3 of the Coastal Act and the Malibu/Santa Monica Mountains LUP. In addition, even though the City of Malibu is a new entity, staff has and is using findings to the effect that the Malibu/Santa Monica Mountains LUP is still the guiding document for the Malibu area.

The five issues that were raised at the initial hearings involved: alteration of natural land forms and grading, means of sewage disposal, mitigation of cumulative impacts, visual quality issues and archaeological issues. Opponents have raised the issues of the age of the EIR, traffic questions, and some of the above mentioned issues. The five issues were addressed comprehensively in the staff report and special conditions. The issues of the age of the EIR, density, and traffic were also addressed at the public hearings by the Commissioners. Staff reviewed the files for 5-88-300, including the transcripts of the March and May of 1989 hearings.

In the May hearings (page 46) the deputy director stated that projects 5-88-300 in conjunction with 5-88-600 were going to significantly alter the

character of this area of Malibu, and that the Commission had the choice of being guided by the Land Use Plan and its allowable densities or make a decision solely based upon the Chapter 3 policies of the Coastal Act. At that time staff also brought up the issue of the EIR being old. There was some discussion about traffic impacts. Staff basically felt that this issue was taken care of by the TDC requirements and by County approvals of the EIR. Legal counsel advised that if the Commission wanted to pursue the traffic issue, the item should be continued and brought back pending submittal of additional information. However, no further information was requested by motion and the project was approved by a vote of nine to two.

Therefore, staff feels that the questions raised by opponents and by Commissioners were addressed by the Commission at the time of the hearing. In deciding the staff recommendation for approval, again, staff felt there was no concrete evidence presented that the City is engaged in a comprehensive re-examination of the land use densities for this specific area of Malibu which would cause staff to change its recommendation. Therefore there is no data or new information before the staff upon which the Commission can formulate specific findings supporting a conclusion of denial as per Section 30604(a) of the Coastal Act. In the absence of any new specific policies or plans from the City of Malibu, the Commission finds that the project conforms with Chapter 3 policies of the Coastal Act and will not prejudice preparation of an LCP for the City of Malibu which conforms with Chapter 3 of the Coastal Act. The Commission hereby incorporates by reference the findings previously adopted for application 5-88-300, and the addendum reports to these findings, which are attached as exhibits to this report.

2915E



**MALIBU
WEST SWIMMING
CLUB**

30756 W. PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265

April 3, 1996

California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, CA 93001

Sent Via Fax No. 805-641-1732
4/3/96

Attention: Jack Ainsworth
Susan Friend

Dear Jack and Susan:

The Malibu West Homeowners Association objects to the one year extension of Coastal Development Permit Number 5-91-755 (E) requested by Lunita Pacifica on the basis of changed circumstances.

Since the initial permit was issued, Malibu has enacted its General Plan. This development project is contrary to the General Plan and without a doubt prejudices the City of Malibu's ability to prepare its Local Coastal Program.

This matter is of utmost importance to the Malibu Community and we therefore respectfully request that this matter be set for hearing in Los Angeles.

Sincerely,

Patt Healy, Member of the Board of Directors
on behalf of the
Malibu West Homeowners Association

RECEIVED

APR - 4 1996

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Exhibit 4: Letter of Objection
5-91-755E

BAILARD ROAD PRIVATE HOMEOWNERS
P.O. Box 6023
Malibu, CA 90264-6023

April 10, 1996

California Coastal Commission
South Central Coast Area
89 South California Street, Suite 200
Ventura, CA 93001

Attention: Susan Friend

RE: Permit 5-91-755(E)
Lunita Pacific (Preferred Financial)

RECEIVED

APR 12 1996

SENT VIA FAX
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT
805-641-1732

Dear Ms. Friend:

I received your Notification, postmarked April 2, 1996 and received on April 3, 1996 indicating that Lunita Pacific (Preferred Financial) had applied for a one year extension of the California Coastal Commission Permit No. 5-91-755E (granted March 12, 1992).

The Bailard Road Private Homeowners wish to object to the one year extension of the Coastal Permit on the basis of changed circumstances. Due to the importance of this matter to the Malibu Community, we respectfully request that the matter be set for hearing in Los Angeles.

The changed circumstances are:

1. Malibu Cityhood was implemented and the Malibu General Plan was enacted since the permit was issued. The development project does not meet approval criteria under the Malibu General Plan and we believe it would prejudice the City of Malibu's ability to enact it's Local Coastal Plan.
2. There is newly evidenced geological faulting conditions on the property, which would be negatively impacted by this extensive development.
3. Mark Nathanson, prior Coastal Commissioner, has been removed from the commission for malfeasance with respect to approval of projects. Mr. Nathanson was instrumental in the Coastal Commission approval of this project.

Sincerely,

Debra DeCray
Debra DeCray, President

cc: Jack Ainsworth
Gary Tim

Exhibit 5: Letter of Objection
5-91-755E