

## CALIFORNIA COASTAL COMMISSION

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



Date Filed: Not applicable.  
Applications considered  
pursuant to court order.  
Staff Report: 1/28/97  
Hearing Date: 2/4/97  
Staff: G. Timm/J. Ainsworth/  
R. Richardson/B. Carey  
Commission Action:

# Tu9a

## Staff Report: Regular Calendar

**APPLICATION NOS.:** 5-90-839, 5-90-840, 5-90-841, 5-90-842, 5-91-049,  
5-91-050, 5-91-051, 5-91-058, 5-91-059, 5-91-183,  
5-91-184, 5-91-185, 5-91-186, 5-91-187, 5-91-188,  
5-91-190

**APPLICANT:** Lechuza Villas West

**AGENT:** Sherman Stacey

**PROJECT LOCATION:** Tract 10630, Lots 140 through 155W and Lot A,  
inclusive, including the following addresses: 31728, 31732, 31736, 31744,  
31752, 31760, 31776, 31792, 31800, 31816, 31822, & 31808 Sea Level Drive,  
City of Malibu, Los Angeles County

**PROJECT DESCRIPTION:** Construction of a 1,060 foot long extension of  
Sea Level Drive connecting eastern and western Sea Level Drive, a 1,000 foot  
long rock revetment and twelve two story, 35 foot high single family residences  
with septic systems. Total grading for the proposed project is 15,000 cubic  
yards (14,985 cu. yds. fill, 15 cu. yds. cut).

**LOCAL APPROVALS:** Los Angeles County Approval in Concept, August  
7, 1990 and March 11, 1991; L. A. County Health Services Department  
Preliminary Approval

### **SUBSTANTIVE FILE DOCUMENTS:**

Shown on **Appendix A**, which follows page 116 of the Staff Report.

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## **I. Executive Summary**

### **Project Description and History**

The Commission is considering a set of permit applications which it has previously denied and which have been remanded by the Los Angeles Superior Court for further hearing. The proposed project, which has been consolidated and revised from the previous set of applications, consists of the construction of a 1,060 foot long road extension of Sea Level Drive across an open sandy beach, a 1,000 foot long, 33 ft. wide rock revetment, twelve two-story single-family dwellings and septic systems. Proposed grading consists of 15,000 cubic yards (14,985 cu. yds. fill & 15 cu. yds. cut) to construct the road extension, which will connect east and west Sea Level Drive. The project site consists of 17 lots (141-155E) and three additional lots (Lots 155W, 140, and Lot A). Lot A is a separate lot which is the location of the proposed access road. Lot 140 is owned by the applicant but is deed restricted as a community recreation lot. Lots 140 and 155W, which are located at the eastern and western ends of the proposed project site, were not included in the applicant's original applications for development; however, portions of the proposed revetment extend over these lots. (*Exhibit 2*). The project site is located on the undeveloped western portion of the beach beyond the point where Sea Level Drive presently terminates. Therefore, none of the lots currently have road access. The proposed development will occupy approximately 80,000 sq. ft. and extend as far as 89 ft. seaward from the bluff face on a vacant, sandy beach.

As indicated above, the proposed development has been denied by the Commission in various proposals in 1991 and 1993. These past actions are currently subject to litigation. As a result of the litigation to date, the Court has rejected the Commission's previous finding that the boundary of public tidelands is the mean high tide (MHT). The Court has ordered the Commission to consider the application based on an established fixed boundary line comprised of an average of previous mean high tide surveys. This fixed boundary has been established in conjunction with a permanently fixed 25 ft. wide express easement for access and recreation (landward of this permanent tidelands boundary) possessed by the Malibu-Encinal Home Owners Association (MEHOA) (*Exhibit 2*). The Court also ordered the Commission to "take final action" on Lechuza's permit application by February 14, 1997, thereby, necessitating the scheduling of this consolidated set of applications for the Commission's February hearing in San Diego (See following Staff Note and Permit and Litigation History Section).

### **Staff Recommendation**

Staff recommends that the Commission ***DENY*** the proposed development because it is inconsistent with the policies of Chapter 3 of the Coastal Act concerning public access and recreation, shoreline protective devices, environmentally sensitive habitat areas, hazards and geologic stability, visual resources, and cumulative impacts. Staff further recommends, pursuant to Section 30010 and the Court's directive, that the denial be without prejudice to the submission of an application for construction of up to 3 residences, as long as the development is designed in a manner that would minimize impacts on coastal resources.

The Coastal Act basis for the staff recommendation is summarized below according to areas of issue.

### **Issue Areas**

<b><i>Issue Area 1. Public v. Private Land Ownership and Public Access/Recreation</i></b>
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Regarding the issue of shoreline development relative to the public's right to access the coast, the proposed development must be considered in light of the court established fixed tideland boundary. As indicated above, the location of public trust land has been determined by the Court and the Commission's review of the proposed development is based on this fixed location and the 25 ft. landward access easement possessed by MEHOA. The applicant has revised the project to relocate all proposed development landward of this boundary and the MEHOA easement. Therefore, the Commission is considering the proposed development as if it is being constructed on private property only. This consideration is in contrast to the Commission's previous findings for denial which were based in part on the project's location on publicly owned tidelands. Th issue remains to be resolved by the appellate courts. The Commission must still consider whether the public will continue to be able to access the coast and whether the proposed development will adversely impact that public right of access. Additionally, the Commission must consider whether the project eliminates the public's ability to use Lechuza Beach for recreational activities. The findings below provide evidence that the development will interfere with the public's right of access inconsistent with sections 30210, 30211 and 30220 of the Coastal Act, even under the Court's tideline boundary.

Evidence provided in the findings below document that during much of the year, particularly during and subsequent to severe winter storm conditions, Lechuza Beach will suffer considerable scour and erosion and wave uprush will frequently reach the proposed revetment. The proposed development's individual and cumulative impacts upon the amount and location of sandy beach available to the public are also documented in the findings and strong evidence is provided that public access to publicly owned tidelands will be severely limited or nonexistent much of the time as a direct result of the proposed project. This limitation on public access will additionally reduce or eliminate the availability of existing and future recreational use of the beach (i. e. surfing, exploring tidepools, launching watercraft, etc.). For these reasons, the proposed project cannot be found consistent with sections 30210, 30211 and 30220 of the Coastal Act because it will not protect the public's right to access consistent with the California Constitution and will interfere with the public's right of access to the sea.

#### ***Issue Area 2. Shoreline Protective Devices***

Regarding shoreline protective devices, the proposed development does not conform to the provisions of sections 30235, 30253 and 30250 of the Coastal Act. The applicant contends that the proposed revetment will not cause erosion of the beach and will have no effect on the beach profile or sand transport because of its location on the beach. The applicant also contends that the project will only rarely be impacted by wave uprush. Furthermore, the applicant contends that the proposed development constitutes "infill" similar to that approved by the Commission in numerous other permit decisions in Malibu.

Contrary to the applicant's contention, strong and convincing evidence exists which is documented in the following findings that Lechuza Beach is an eroding beach and that the proposed revetment will be subject to frequent wave uprush which will accelerate beach scour and erosion seaward of the revetment and steepen the beach's profile. Moreover, the proposed revetment will directly occupy approximately 33,000 sq. ft. of sandy beach area, retain potential beach material behind the structure, cause end scour at both ends of the revetment and interrupt the movement of sand to downcoast beach areas. The eventual result of the revetment's construction on the beach will be loss of the entire beach during much of the year and a fixed landward extent of the MHTL at the seaward edge of the revetment.

For all these reasons the proposed development cannot be found consistent with section 30235 of the Coastal Act, which states that such structures shall only be permitted when required to serve coastal dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Additionally, the proposed development cannot be found consistent with section 30253 of the Coastal Act in that it will contribute significantly to beach erosion, impact adjacent properties, and require the construction of a protective device which will substantially alter natural landforms such as the bluff face and beach profile. Furthermore, the proposed revetment and associated development cannot be found consistent with section 30250(a) of the Coastal Act because it will cause, individually and cumulatively, significant adverse effects on coastal resources.

**Issue Area 3. Environmentally Sensitive Habitat Areas**

Relative to the issue of Environmentally Sensitive Habitat Areas (ESHA), the findings conclude that Lechuza Beach is an ESHA as defined by section 30107.5 of the Coastal Act (an area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development). The proposed development will cause adverse impacts to environmentally sensitive habitat areas and marine resources found on or near the project site as concluded in the following findings. Therefore, the proposed development cannot be found consistent with sections 30230, 30231 and 30240 of the Coastal Act which requires the protection of such resources and areas against any significant disruption of habitat values.

The applicant contends that impacts to onshore resources would not occur and that intertidal impacts to shorebirds and other organisms would be less than significant because: the project will be located well out of the surf zone; that the project will have no impacts upon the beach itself; and, that a substantial sandy beach area will remain after project construction. However, the findings conclude that portions of the proposed development will extend well into the mid-intertidal zone of the beach during winter months and that the project will displace and destroy ESHA. Infaunal invertebrates that are the core of the sandy beach food chain resulting in a net loss of shorebird and certain fish populations at Lechuza Beach are going to be displaced, contrary to the applicant's contention, because: 1) the direct physical occupation of 80,000 sq. ft. over an approximately 1,000+ ft. long section of beach; and, 2) the resultant beach erosion that will occur as a result of the proposed revetment's seaward location. In addition, offshore giant kelp beds could be adversely impacted by the proposed development. The following findings conclude that the proposed development will cause the destruction of marine resources, result in the degradation of biological productivity of coastal waters and significantly disrupt the habitat values of the ESHA found on Lechuza Beach inconsistent with the provisions of sections 30230, 30231 and 30240 of the Coastal Act.

**Issue Area 4. Hazards and Geologic Stability**

The proposed development cannot be found consistent with section 30253 of the Coastal Act which requires that new development minimize risks to life and property in high hazard areas, assure stability and structural integrity and neither create nor contribute significantly to erosion or require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. As concluded in the following findings the proposed development does not conform to the provisions of section 30253 in several areas.

The applicant has submitted a wave uprush study that indicates that the shoreline protective device will rarely be impacted by storm waves, and that the rock revetment is structurally designed to protect all of the proposed development including the road, septic systems and leach field from wave uprush and beach scour. The report also indicates that the proposed development will not cause or contribute to erosion and will have no impact upon the beach profile, sand transport or natural bluff at the landward edge of the property.

There is substantial evidence that the proposed development will be impacted by storm waves at far greater frequency and intensity than predicted by the applicant. In particular, the findings document numerous flaws or deficiencies in the design of the revetment and the applicant's analysis of wave uprush and shoreline hazards, bluff stability and fire hazards. The applicant did not calculate wave uprush relative to the revetment's ability to withstand severe winter storm events equivalent to the magnitude of the 1982-83 storms that ravaged the Malibu coastline. Further, evidence indicates that the revetment is not designed to withstand such a significant storm. In addition, the findings conclude that development at the base of the bluff will be subject to damage from erosion and the placement of retaining walls at the base of the bluff will result in substantial alteration of the natural bluff. Furthermore, there is inconclusive evidence that surficial failures of the bluff face would be mitigated. Moreover, the project does not meet current fire safety standards relative to turning radius and width of Sea Level Drive road access off of Broad Beach Road. For these reasons the proposed project is inconsistent with the provisions of section 30253 of the Coastal Act because the project would not minimize risks to life and property relating to geologic, flood and fire hazards, does not assure stability and structural integrity and will create and significantly contribute to erosion and geologic instability of the site. Additionally, the proposed development would require the construction of a protective device which will have documented adverse effects on natural landforms including the beach profile and, in fact, is not adequately designed to protect the proposed development.

**Issue Area 5. Visual Resources**

Section 30251 of the Coastal Act states that permitted development shall be sited and designed to protect the scenic and visual quality of coastal areas. The applicant has not submitted any information or analysis relative to the project's visual impacts or consistency with this policy.

Lechuza Beach is currently an undeveloped, natural, pristine, scenic sandy and rocky beach backed by a 50-55 ft. high coastal bluff. The proposed development will significantly alter the natural beach and bluff landforms as a result of the project's physical occupation of the beach and placement of the road and retaining walls into the bluff face. In addition, the proposed revetment will create or contribute to adverse impacts which will result in significant beach erosion and eventual loss of the sandy beach as well as degradation of environmentally sensitive habitat. For these reasons the proposed development will result in significant adverse visual impacts to Lechuza beach inconsistent with the provisions of section 30251 of the Coastal Act.

**Issue Area 6. Cumulative Impacts**

The Coastal Act requires, in section 30250(a), that new development be located in areas where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. The applicant contends that the proposed project should be considered "infill" development similar to all other beachfront residential development which the Commission has approved in the Malibu area.

The findings below document the numerous adverse environmental impacts which would be caused by construction of the proposed project such as the loss of or frequent limitations on public access, severe beach erosion and the eventual loss of the sandy beach, and significant degradation or loss of environmentally sensitive habitat. Furthermore, the findings conclude that the proposed development cannot be considered as "infill" because the project is located on an undeveloped sandy beach over 800 feet from the nearest residential structure and requires the construction of a road extension to access the proposed residences. In fact, the proposed development is not similar to any other residential projects approved by the Commission in the Malibu area. The project will have significant adverse individual and cumulative impacts on coastal resources inconsistent with section 30250(a) of the Coastal Act.

**Issue Area 7. Local Coastal Program**

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 (LCP) which conforms to the Chapter 3 policies of the Coastal Act. The proposed development does not conform to several Chapter 3 policies as documented in the following findings. In addition, the proposed project is inconsistent with policies contained in the City of Malibu's adopted General Plan regarding the protection of environmentally sensitive habitat and is also inconsistent with numerous policies of the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) which the Commission continues to use as guidance in permit actions in the City of Malibu. These inconsistencies indicate a strong likelihood of the project's inconsistency with future LCP submittals that would likely be similar in content to the City's current General Plan. For these reasons, approval of the proposed project would prejudice the City of Malibu's ability to prepare a LCP consistent with the Chapter 3 policies of the Coastal Act.

### **Conclusion**

As set forth in the issue areas above and as concluded in the findings below, the proposed project is inconsistent with the Chapter 3 policies of the Coastal Act and with CEQA.

### **Constitutional Issues**

The Court has determined that the Commission's previous decisions relating to this project violated the constitutional prohibition on the taking of property. This judgment is on appeal; however, in the interim the Court has directed the Commission to make a final decision on what uses it would permit on the subject property.

Coastal Act section 30010 authorizes the Commission to approve development even where it is inconsistent with the policies of Chapter 3 of the Coastal Act when it is necessary to avoid a taking of property without just compensation. In determining what level of use is necessary to avoid a taking the courts have indicated that government must permit an economically viable use, considering the reasonable investment-backed expectations of the property owner, as well as the important public interests advanced by the regulation.

For the reasons discussed in this summary, the information available to the Commission supports the conclusion that development of the subject property would be inconsistent with the Coastal Act. Therefore, under section 30010, the Commission must determine what use it will allow in order to avoid a taking of this property. The findings below indicate that when the property was purchased in 1990 the applicant was well aware that development of the property would conflict with many of the public access and resource protection policies of the

Coastal Act and that the purchase price reflected the speculative nature of his investment. In correspondence with the then owners of the property the applicant concluded that in view of these conflicts, approval of only two or three residences on the entire parcel would "represent a great victory." In accordance with the applicant's expectation, and the importance of the resources to be protected, the Commission finds that it may permit up to, but no more than, three residences on the property in order to avoid an unconstitutional taking of property.

Project: Construct a 1,060 ft. long extension of Sea level Drive, a 1,000 ft. long rock revetment and twelve 35 ft. high single family residences with septic systems. Total grading for the project is 15,000 cu. yds. (14,985 cy fill & 15 cy cut).

**Issue Area – Public Access and Recreation**

*Facts: The project site occupies 1,065 ft of a 2,700 ft. long stretch of beach. The beach has built up in the summer by as much as 8 acres. The area that will be available for public access will be located seaward of the court established boundary line, which is approximately 104 to 98 seaward from the base of the bluff. Two accessways to the beach exist and have been opened to the public since 1991. The proposed project includes rebuilding the existing staircase at the west end of the beach. L. A. County has given public purchase of this beach and the accessways high priority.*

**Applicant's Assertion of Impacts:**

- The project will not impact public beach use at Lechuza Beach because the beach has been limited to the residents of the Malibu Encinal Tract for "more than 20 years."
- Agreements preventing implied dedication were recorded on 9/2/92.
- The applicant asserts that there is no evidence of implied dedication because the public's use of the beach needs be continuous and uninterrupted which is not the case here.

**Commission Findings Regarding Project Impacts:**

- The beach area available for public use, pursuant to the Court ordered boundary, will be minimal to non-existent during an eroded beach profile.
- The beach area available for public use may be extremely narrow in the summer.
- During portions of the year, the beach area will no longer be available to access for recreational purposes, such as walking, exploring tidepools or launching watercrafts, as a result of the project.
- Beach users walking in front of the 1,000 ft. long revetment could be trapped by incoming tides or unexpected wave sets.

**Bases for Conclusion:**

- The public has historically accessed this beach via the tidelands from three upcoast (within 1,000 ft.) State Beaches and via the two existing accessways.
- Photographic evidence and staff observations demonstrate that the beach has historically been used recreationally (e. g. walking, surfing, kayaking, etc.) by members of the public.
- Evidence by Coastal Frontiers & J. Moore indicates shoreline protective devices will accelerate erosion & slow down accretion, causing loss of beach area defined by the Court.

**Coastal Act Analysis:**

- The proposed project is inconsistent with Coastal Act §30210 in that the project, as revised, will significantly affect the public's ability to access the sea.
- The proposed project is inconsistent with Coastal Act §30211 because the development proposal will interfere with the public's right to access the sea.
- The proposed project will affect the Coastal Commission's ability to carry out the requirements of Section 4 of Article X of the California Constitution.
- Since the proposed project will eliminate the availability of the public beach area during periods of the year, it is inconsistent with Coastal Act §30220 which states that a coastal area, such as Lechuza Beach, suited for water-oriented recreational activities shall be protected.

### **Issue Area – Shoreline Protective Devices (SPD)**

**Facts:** Proposed 1,000 ft. long, 33 ft. wide rock revetment that occupies 33,000 sq. ft. of sandy beach area. The revetment will be constructed on a 1.5:1 slope and, therefore, with the face of the revetment 25 ft. long. The revetment will extend seaward from the base of the coastal bluffs approximately 85 ft. to 60 ft. The applicant has also submitted conceptual plans for a vertical bulkhead. The design specifics necessary to review this alternative proposal (the vertical bulkhead) have not been submitted.

#### **Applicant's Assertion of Impacts:**

- Mr. J. Hale states that the beach is oscillating and not eroding and Mr. J. Merrill concludes beach is retreating 2 inches per year.
- Wave uprush study states that project will be acted on by wave uprush in very unique occurrences
- Wave uprush study indicates that there would be very little change in the energy level of any wave that would hit the seawall.
- The applicant contends that the revetment will not have an effect on the shoreline profile, beach scour or sand transport because of lack of wave action and the location of the SPD.
- Applicant contends project impacts will not be any different than the impacts of other SPDs that were approved by the Commission in conjunction with other beach front development along the Malibu coast.

#### **Commission Findings Regarding Project Impacts:**

- The impacts of the revetment will be exacerbated by the fact that Lechuza Beach is eroding and that the revetment will be located in an area of wave uprush. Specifically the revetment will:
  - Accelerate and increase beach scour seaward of the revetment and steepen the beach's profile and the beach will accrete at slower rate.
  - Reduce the available sandy beach area as a result of offshore sandbar movement further off coast.
  - Produce end scour of up to 700 ft. at both ends of the SPD.
  - Retain potential beach material located behind the SPD and on the bluffs.
  - Create a fixed landward boundary of the beach.
  - Interrupt the movement of sand to downcoast beach areas and to the project site's beach area.

#### **Bases for Conclusion:**

- MHTL field surveys demonstrate frequent movement of MHTL within projected area.
- Coastal expert, Dr. R. Seymour reviewed surveys performed in 1930s and 1990s and concluded that Lechuza is an eroding beach.
- U. S. Army Corps of Engineers Reconnaissance Report re. the Malibu coastline indicates Lechuza Beach is eroding by approximately 1 ft. per year; results confirmed by Peter Gadd.
- Higher wave runup potential refuting the applicant's study determined by coastal engineer, Mr. J. Moore.

#### **Coastal Act Analysis:**

- The proposed project is inconsistent with Coastal Act §30235 in that the SPD would alter natural shoreline processes and the SPD is not proposed to protect a coastal dependent use, an existing structure or a public beach in danger.
- The SPD will adversely impact shoreline processes and sand supply, contrary to the requirements of Coastal Act §30235.
- The proposed project is inconsistent with Coastal Act §30253 in that it will contribute significantly to beach erosion, impact adjacent properties and alter the bluffs and cliffs along Lechuza Beach, causing erosion of public beach defined by court.
- The proposed project is inconsistent with Coastal Act §30250(a) because it will both individually and cumulatively adversely impact coastal resources, i. e. beach sand supply.

**Issue Area – Environmentally Sensitive Habitat Area (ESHA)**

**Facts:** The entire development proposal will be located in an ESHA. Lechuza Beach area, the rocky points at the east and west of the beach and the offshore kelp beds are all ESHAs.

**Applicant's Assertion of Impacts:**

- The applicant's consultant assumes that the beach area fluctuates between 100 to 300 ft. in width and based on the assumption that the beach is never less than 100 ft. contends:
  - Impacts to onshore resources would not occur;
  - Intertidal impacts to beach-dependent birds are less than significant.
  - No impacts would occur to sensitive bird species using the surfline and near shore areas;
  - Offshore areas are significantly removed so that project related impacts will not occur; and,
  - Only in cases where project related beach erosion/accretion occurred or where water quality were degraded by septic systems could intertidal and subtidal habitats be impacted.

**Commission Findings Regarding Project Impacts:**

- The project will extend well into the mid-intertidal zone of the beach during winter months.
- The project will displace & destroy portions of valuable ESHAs.
- Beach erosion that will occur as a result of the shoreline protective device's location will directly displace and destroy intertidal habitat for infaunal invertebrates that are the core of the sandy beach food chain on beach, resulting in a net loss of food to shorebirds and certain fishes.
- Offshore kelpbeds are expected to be impacted.
- A stretch of approximately 1,000+ ft. of beach, containing valuable habitat will be displaced due to the development's 80,000 sq. ft. physical occupation of the beach area.
- Erosion of sand and change of beach profile will impact occurrence of grunion runs on the beach.

**Bases for Conclusion:**

- Biologist Dr. S. Holbrook studied Lechuza beach and documented existence of and nature of ESHAs: 1) rocky inter-tidal habitat; 2) sandy intertidal habitat; and, 3) subtidal habitat.
- Dr. R. Ambrose has noted rich marine assemblages in beach's tidepools.
- Studies show that shorebirds actively feed on the beach, using all habitat zones and that the invertebrate community forms a critical component of food chain for shorebirds & several nearshore fishes.
- The subtidal habitat of the beach supports a three hundred ft. wide well developed giant kelp bed.
- State Water Resources Control Board designates Lechuza as an Area of Special Biological Significance.
- The Commission has previously recognized the beach as an ESHA through its certification of the Malibu/Santa Monica Mountains Land Use Plan.

**Coastal Act Analysis:**

- The subject site is an ESHA as defined by Coastal Act §30107.5 in that Lechuza Beach is an area in which plant and animal life and their habitats are especially valuable because of their special role in the ecosystem which would be disturbed by development.
- The proposed project is inconsistent with Coastal Act §30240 because it will significantly disrupt the habitat values of the ESHAs and the development is not a use that is dependent on the site's ESHA resources.
- The proposed project is inconsistent with §30230 of the Coastal Act because marine resources will be destroyed.
- The proposed project is inconsistent with Coastal Act §30231 because its location and impact on shoreline processes will result in the degradation of the biological quality of coastal waters, resulting in populations of marine organisms along Lechuza decreasing.

**Issue Area – Hazards and Geologic Stability**

**Facts:** The project involves construction of a 1,000 ft. long revetment to protect the road and septic systems from wave uprush. The proposed residences are supported on concrete caissons founded in bedrock. The project includes 15,000 cu. yds. of grading (14,985 cu. yds. of fill and 15 cu. yds. of cut). Two retaining walls (320 ft. and 190 ft.) are proposed at the base of the bluff to support the access road and cut into the base of the bluff approximately 20 ft. A third 240 ft. long retaining wall is proposed along the landward side of the revetment (from lots 152 to 155W).

**Applicant's Assertion of Impacts:**

- The proposed revetment design is based on a wave uprush study that indicates that the shoreline protective device will be acted upon only in rare storm events.
- The use of concrete caissons and grade beam foundations will be adequate to support the twelve houses and will be at an adequate elevation to protect the homes from wave action.
- The structural design of the rock revetment will protect the sewage disposal systems and leach fields and Sea Level Drive from wave uprush and beach scour.
- The applicant's consultants have determined the bluff area above the roadway to be grossly stable.
- The applicant's consultants state that erosion of the bluff and sedimentation will cause only temporary blockage of the roadway.
- The applicant's consultant states that the project may be developed in accordance with the L. A. County Building Ordinance.

**Commission Findings Regarding Project Impact:**

- The placement of retaining walls at the base of 575 ft of coastal bluff will result in substantial alteration of the coastal bluff.
- The proposed project is not properly designed to withstand a 1983 storm event.
- There is inconclusive information that surficial failures of the bluff face would be mitigated.
- The proposed project could subject the homes to fire hazard.

**Bases for Conclusion:**

- J. Moore, coastal engineer, has reviewed the project and found problems with the revetment's design and base floor elevations of the homes; and, with applicant's consultants' analysis of shoreline hazards. Specifically the applicant's consultants:
  - Did not adequately measure the base floor elevation reflecting wave, water level and beach profile scour conditions: and,
  - Did not calculate wave uprush based on a severe storm event such as a 1983-storm.
- Past occurrences at Lechuza Beach and in Malibu have shown that development at base of natural slopes & bluffs are subject to damage from erosion.
- The project does not meet current fire code in that the entrance to Sea level Drive off of Broad Beach Rd. does not have sufficient turning radius or width to meet fire codes.

**Coastal Act Analysis:**

- The proposed project is inconsistent with the mandate of Coastal Act §30253 in that the proposed project does not minimize risks to life and property and would create health and safety risks relating to geologic, flood and fire hazard.
- The proposed project is inconsistent with Coastal Act §30253 because the proposed project does not assure stability and structural integrity and the project will create and contribute to erosion, geologic instability and destruction of the site. Additionally, the SPD and retaining walls also substantially alter natural beach and bluff landforms.

## **Issue Area – Visual Resources**

**Facts:** The project will stretch across a 1,000+ ft. long section of the beach and the twelve proposed homes which will be founded on caissons will be as high as 47 ft. above the beach at low sand level. The seaward extend of all development will range from 60 to 89 ft. and will occupy a total area of 80,000 sq. ft. The proposed project includes a rock revetment that will have a 25 ft. high face and be 1,000 ft. long. The project also includes retaining walls along the western 575 ft. section of the bluff face that range in height from 9-12 ft. The project includes 15,000 cu. yds. of grading (14,985 cu. yds. of fill and 15 cu. yds. of cut).

### **Applicant's Assertion of Impacts:**

- The applicant has made no contentions regarding this issue.

### **Commission Findings Regarding Project Impacts:**

- The project will significantly alter the natural beach and bluff landforms as a result of the project's physical occupation of the beach area and cutting into the bluff face to build a 1,060 ft. long road and retaining walls.
- The project is incompatible with the character of this section of the Malibu coast.

#### **Bases for Conclusion:**

- Lechuza Beach is characterized as a undeveloped, pristine, scenic sandy and rocky beach backed by a 50-55 ft. coastal bluff.
- Empirical evidence of the visual resource degradation of developed beaches located along eastern Malibu illustrate the proposed project's potential adverse impacts.

**Cumulative Impacts of Development Issue Area located on page 18**

### **Coastal Act Analysis:**

- The proposed project is inconsistent with the provisions of Coastal Act §30251 in that the project will adversely impact the visual resources of this coastline and is not consistent with the character of the surrounding area.
- The proposed project is also inconsistent with Coastal Act §30251 because the project requires significant alteration of the natural beach and landforms.

**Issue Area – Cumulative Impacts of Development**

**Facts:** The applicant is proposing a project that consists of 12 single family homes with septic systems, one 1,000 ft. long shoreline protective device and one 1,065 ft. long road.

**Applicant's Assertion of Impacts:**

•The applicant contends that the proposed project should be considered "infill development" similar to prior determinations regarding the development of one or two vacant parcels located between existing homes.

**Commission Findings Regarding Project Impacts:**

- The cumulative effect of build-out of all 17 lots that would benefit from the construction of the infrastructure improvements, such as road and shoreline protective devices would intensify the significant adverse environmental impacts documented in above issue areas.
- The loss of a large sandy beach area and rocky intertidal habitat areas would have a significant adverse impact on the marine ecosystem.
- The project's seaward extent will effectively minimize or eliminate the public beach area during several months of the year.

**Coastal Act Analysis:**

•The proposed project is inconsistent with Coastal Act §30250(a) because it has the cumulative effect of significantly impacting coastal resources and public access.

**Local Coastal Program Issue Area located on page 19**

**Issue Area – Local Coastal Program (LCP)**

*Facts: On December 11, 1986, the Coastal Commission certified the Land Use Plan portion of the Malibu/Santa Monica Mountains Local Coastal program prepared by the County of Los Angeles. The City of Malibu incorporated in March, 1991. The City of Malibu adopted a General Plan in November of 1995 and anticipates submitting its LCP to the Commission for review in August 1998.*

**Applicant's Assertion of Impacts:**

•The applicant has submitted evidence that the proposed project received local government approval-in-concept for the previously designed projects\* prior to submitting the applications to the Coastal Commission for review.

\* The applicant submitted a revised plan on January 15, 1997 showing revisions to the road, revetments and houses. This submittal was reviewed by neither the County of L. A. or the City of Malibu Planning Department.

**Commission Findings Regarding Project Impact:**

•The project would prejudice the City's ability to prepare a LCP consistent with the Chapter 3 policies of the Coastal Act.

**Bases for Conclusion:**

- The proposed project is inconsistent with the City of Malibu's General Plan that was adopted on November, 1995. Specifically, the project is inconsistent with the ESHA and hazards policies.
- The proposed project is inconsistent with the a number of policies contained in the certified Malibu/Santa Monica Mountains Land Use Plan. •Specifically, the project is inconsistent with the hazards, landform alteration, visual resource, public access and ESHA policies and the Resource and Public Beach Access maps.

**Coastal Act Analysis:**

•The proposed project is inconsistent with Coastal Act §30604 in that it will prejudice the City of Malibu's ability to prepare a Local Coastal Plan that is consistent with the Chapter 3 policies of the Coastal Act.

### **III. STAFF NOTE**

The Honorable Ernest Hiroshige of the Los Angeles Superior Court remanded both set of permit applications to the Commission for further hearing. The Court has ordered that the Commission take "final action" on these applications no later than February 14, 1997. Lechuza has now withdrawn its cul-de-sac design proposal, and the Commission need consider only Lechuza's original project designproposal.

In preparing the staff report, an issue has arisen regarding whether the Court's writ of mandate allows the Commission to consider evidence that did not exist at the time of its last permit hearing in January 1993 or whether it strictly confines the Commission to consider the administrative record as it existed in January 1993. The Attorney General's office has advised the Commission and informed the applicant that the Court's order should be interpreted to allow the Commission the discretion to consider "new" evidence in acting on the remanded applications.

The Attorney General's office explained this in a letter to the applicant's attorney:

"The Commission disagrees with Lechuza's position that the Commission is limited to the record as it existed in January 1993 and to the subsequent "relevant rulings of the Court." You may recall that, at the time of the motion to remand, the Commission objected to Lechuza's argument that the Commission should be confined to the record as it existed in January 1993 because such a restriction would improperly limit the Commission's discretion. To support this argument, the Commission cited Code of Civil Procedure section 1094.5(f) in two separate pleadings. (See Memorandum of Points and Authorities of California Coastal Commission in Opposition to Motion to Remand at p. 3, fn. 15; Objections of California Coastal Commission to Proposed Judgment and Peremptory Writ of Mandate, p. 3.) Although the Court issued the writ, it amended Lechuza's proposed form of writ by adding the language that "Nothing in the writ shall be construed to limit or control in any way the discretion legally vested in the Commission pursuant to CCP § 1094.5(f)." From this it should be concluded that the Court accepted the Commission's argument that the Court did not intend to limit the Commission's discretion to determine the scope of the record on remand.

"There are a number of reasons why the trial court would not have intended to limit the Commission's discretion to consider new evidence. First, four years have passed since the last permit hearing. The

Commission should not be expected to make a decision based on outdated information, if new and better information exists.

"Second, because the purpose of Lechuza's motion to remand was based on the need to reconsider its applications in light of new evidence that could not have been produced at the time of the hearing, it would be paradoxical to exclude other new evidence, especially when much of the new evidence (i.e., the survey evidence) formed the basis of the Court's boundary ruling.

"Third, the Commission has never evaluated the impacts of the project in light of the Court's boundary determination, and the Commission in its discretion must be allowed to consider probative evidence on the specific effect of the project on public lands as the Court has defined them.

"Fourth, Lechuza itself has submitted new evidence regarding changes that it has proposed in the design of the project. Having itself provided new evidence, Lechuza effectively concedes that the Court's order contains no absolute restriction on the consideration of new evidence for which Lechuza now argues. Moreover, it would be unfair to allow Lechuza alone to submit new evidence, but restrict the Commission or the public from exercising the same right. If accepted, Lechuza's approach would deprive the public and adjacent landowners of their due process right to participate in land use decision making. Such a restrictive interpretation likely would lead to even more litigation.

"Fifth, much of the information submitted at the previous hearing is obsolete in light of the considerable study of the beach that has been performed in the interim. In particular, the reports submitted by Lechuza at the previous hearings contain considerable information about the behavior of the beach that we now know is incorrect because of the "new" information collected during the last few years. There is no reason to believe that the Court intended to force the Commission to evaluate the project based on information that is incorrect.

"Finally, Lechuza's objection to the consideration of new information appears to be premised on the assumption that the consideration of the remanded applications is a mere formality, and that nothing is to be gained by taking reconsideration seriously. This premise is unfounded. You may recall that most of the current commissioners were not present at the time of the earlier hearings. You should assume that the Commission and its staff will endeavor to give the project, as

modified, a fresh look. To make the best possible decision, the Commission needs the best possible information."

The staff recommends that the Commission exercise its discretion to consider new relevant information about the compliance of the applications with the policies of the Coastal Act.

#### **IV. Resolution**

Staff recommends that the Commission adopt the following resolution:

##### **Denial**

The Commission hereby **denies** the permit for the proposed development, which is located between the sea and the first public road nearest the shoreline, on the grounds that it would not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, including the public access and public recreation policies; would not be in conformity with the provisions of the California Environmental Quality Act; and would prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of the Coastal Act. Pursuant to Section 30010 and the Court's directive, this denial is without prejudice to the submission of an application for construction of up to 3 residences, as long as the development is designed in a manner that would minimize impacts on coastal resources.

#### **V. Findings**

The Commission hereby finds and declares:

##### **A. Project Description and Background**

###### **1. Detailed Description.**

The applicant is proposing the construction of a 1,060 foot long extension of Sea Level Drive connecting eastern and western Sea Level Drive, a 1,000 foot long rock revetment and twelve two story, 35 foot high, single family residences with septic systems (*Exhibits 2, 4 & 5*). The applicant is proposing 15,000 cubic yards of grading (14,985 cu. yds fill, 15 cu. yds cut) for the construction of the Sea Level Drive extension. The proposed project site comprises 17 lots (Lots 141-155E) and three additional lots ( Lot 140, 155 W and Lot A). The project site is shown on *Exhibit 2*. Lot A is a separate lot which is the access road lot. Lot

140 is owned by the applicant but is deed restricted as a community recreation lot.<sup>1</sup> Therefore, neither Lot A nor Lot 140 is available for development of a home because of these restrictions. Additionally, the applicant's original applications for development did not include development on Lot 140. While Lot 155W is not restricted in a similar way, the applicant did not include development on this lot in the original permit applications either. This leaves 17 beachfront lots that the applicant considers available for residential development. The applicant here proposes 12 single family residences on 12 of these 17 lots. Additionally, Lots 140 through 155W would be occupied by the proposed revetment. Therefore, when considered as a whole, the proposed project would occupy 19 beachfront lots and Lot A.

There are 16 permit applications for 12 residences because the applicant has modified the design of its proposal. Under the original permit application submittals, the applicant requested that the Commission consider two rock revetment designs; 1) a single 985 ft. long revetment, protecting six homes<sup>2</sup>; and 2) two rock revetments -- one 148 ft. in length along the western extension of Sea Level Drive and one 349 ft. in length along the eastern extension of Sea Level Drive to protect eight homes. Since the applicant has submitted two alternative development proposals for four of the lots, there are 16 applications while there are only 12 houses proposed. The applicant now has withdrawn the second revetment design.

*Table 1*, on page 24, shows the lot size of Lots 141 through 155E, based on the Court established boundary line between the public and private land as described in the Court's June 11, 1996 judgment. These figures were provided by the applicant. Also shown is the net area available for construction, as provided by the applicant. The applicant indicates that this is the area left on each lot considering the following: the Court's boundary line, the MEHOA easement (described below), and the required building setback areas. *Table 1* also indicates the lots for which the applicant proposes the construction of a single family residence as well as the applicable permit application number. Finally, as discussed below, the applicant has submitted four different sets of applications for different development scenarios. The table shows which lots were part of the applicant's first submittal of permit applications, which were part of its second submittal, and so on. Finally, the chart indicates which design scenario of which each lot was part: 1) the two cul-de-sac designs; or 2) the single revetment or shoreline protective (SPD) design (these designs are discussed in depth below).

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<sup>1</sup> An issue remains regarding whether the applicant has authority to develop a revetment on Lot 140 without approval of MEHOA.

<sup>2</sup> The applicant had requested two different home designs on two lots and therefore eight permit applications had the net effect of only six homes.

LOT #	LOT SIZE*	NET AREA	HOUSE	PERMIT #	SUBMITTAL/ DESIGN
141	4,934 sq. ft.	2,379 sq. ft.	yes	5-91-183	3rd - cul-de-sac
142	4,950 sq. ft.	2,375 sq. ft.	yes	5-91-049	2nd - cul-de-sac
143	4,941 sq. ft.	2,368 sq. ft.	yes	5-91-058	2nd - cul-de-sac
144	4,963 sq. ft.	2,386 sq. ft.	yes	5-90-839 5-91-051	1st - one SPD 2nd - cul-de-sac
145	5,131 sq. ft.	2,526 sq. ft.	yes	5-91-190	3rd - cul-de-sac
146	5,441 sq. ft.	2,785 sq. ft.	yes	5-91-184	4th - one SPD
147	5,666 sq. ft.	2,972 sq. ft.	no	N/A	N/A
148 East 1/2	2,885 sq. ft.	1,468 sq. ft.	yes	5-90-840 5-91-185	1st - one SPD 4th - one SPD
148 West 1/2	2,923 sq. ft.	1,686 sq. ft.	no	N/A	N/A
149 East 1/2	2,974 sq. ft.	1,731 sq. ft.	no	N/A	N/A
149 West 1/2	3,012 sq. ft.	1,569 sq. ft.	no	N/A	N/A
150	6,123 sq. ft.	3,002 sq. ft.	yes	5-91-186	4th - one SPD
151	6,149 sq. ft.	3,024 sq. ft.	yes	5-90-841 5-91-187	1st - one SPD 4th - one SPD
152	6,120 sq. ft.	3,000 sq. ft.	yes	5-91-188	3rd - cul-de-sac
153	6,084 sq. ft.	2,970 sq. ft.	yes	5-91-059	2nd - cul-de-sac
154	6,039 sq. ft.	2,932 sq. ft.	yes	5-90-842 5-91-050	1st - one SPD 4th - one SPD
155 East 1/2	3,033 sq. ft.	1,418 sq. ft.	no	N/A	N/A

**Table A-1**

\*The lot size is based on the Court established boundary line between public and private land as described in the Court's June 11, 1996 judgment.

The proposed permit applications are being considered as one large integrated development for several reasons. First, all of the permit applications for the twelve single family residences are integrally related to the proposed infrastructure improvements. For example, if the Commission denies any of the sixteen permit applications, the other projects could not be developed since the road and revetment would require a new design. Second, the underlying premise of constructing infrastructure improvements to this stretch of beach is so that the five lots not included under these permit applications can be developed in the future. Third, the California Code of Regulations direct the Commission to consider functionally related development as one project. Section 13053.4(a) of the California Code of Regulations, Title 14, Division 5.5 states in part that, "To the maximum extent feasible, functionally related developments to be performed by the same applicant shall be subject of a single permit application..." In addition, section 13058 of the California Code of Regulations, Title 14, Division 5.5 states in part that, "The executive director may consolidate two or more applications which are legally or factually related for purposes of the staff documents and/or public hearing...."

Although the applicant has submitted sixteen separate permit applications for residences on twelve lots, the proposed development includes a rock revetment, road and infrastructure improvements extending across 17 lots all of which are represented to be under single ownership. Therefore, the Commission is considering these permit applications and the proposed development to be one functionally related project.

The proposed project is located on Lechuza Beach south of Sea Level Drive next to a private locked gate community in the City of Malibu.<sup>3</sup> The proposed road extension (Lot A) and seawall will extend across Lots 140 through 155E and will occupy approximately 80,000 sq. ft. of open sandy beach. Under this proposal, the residences are sited over the revetment and will extend as far as 89 feet from the coastal bluff face onto sandy beach. The proposed septic systems will be constructed in the road right-of-way and the leach fields will be constructed under the asphalt pavement.

The proposed building sites are lots created in the early 1920's and are designated as residential IIIB (4-6 du/acre) in the Certified Malibu/Santa Monica Mountains Land Use Plan, which the Commission considers as guidance.<sup>4</sup> The site is located adjacent to an existing developed private community west of Broad Beach and Lechuza Point. The beach lots in this community, however, are largely undeveloped. The eastern 22 of the 35 lots located on the sand below and adjacent to Sea Level Drive have been deed restricted for the private recreational use of residents of the locked gate community. While the community gates do exclude vehicular access to the general public, open pedestrian gates are provided to allow the public pedestrian access to the beach.

None of the lots that is the subject of these permit applications currently has road access. A road and one structure did exist on this beach in the 1930's but were washed away in heavy storms in the late 1930's. The proposed project is located on the undeveloped western portion of the beach beyond the point where Sea Level Drive presently terminates. Four structures were built on the sand on the far eastern portion of the beach prior to the creation of the Coastal Commission and the Commission approved three infill houses in this eastern area, 5-89-012 (Lieberman), 5-90-302 (Gershonoff) and 5-90-807 (Boeckman) where Sea Level Drive currently exists.

Regarding Lechuza Beach, the Certified LUP, Policy 56-4 states that "public purchase of beach and accessway properties is an objective in this area." This

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<sup>3</sup> The City of Malibu incorporated on March 30, 1991.

<sup>4</sup> As discussed in Section VJ, Local Coastal Program, Lechuza Beach is an area that is now within the new City of Malibu, which has a general plan in place, but is still in the process of completing its Local Coastal Program.

beach is easily accessed from the public beach to the west (El Matador State Beach). Public access is also provided by two unlocked gates through the private residential community. In addition, the Environmentally Sensitive Resources Map of the Malibu/Santa Monica Mountains LUP designates this beach, the rocky shore area, bluff area and the off-shore kelp beds as Environmentally Sensitive Habitat Area (ESHA).

## **2. Project Background and Litigation History.**

On January 10, 1991 the Commission denied a set of four applications for residential development on this beach; 5-90-839, 5-90-840, 5-90-841 and 5-90-842 (Lechuza Villas West). This project involved the construction of a 1,200 foot long road extension connecting eastern and western Sea Level Drive, construction of a 985 foot long rock revetment and construction of four single family residences. The revetment stretched across the entire beach and covered 18 vacant lots (Lots 140 - 155). The configuration of the road and revetment are similar to the current proposed project. This first set of applications proposed the construction of homes on lots 144, 148, 151 and 154.

On April 11, 1991 the Commission denied another five permit applications for residential development on this beach; 5-91-049, 5-91-050, 5-91-051, 5-91-058, and 5-91-059. In these applications the applicant proposed construction of eastern and western extensions of Sea Level Drive ending in cul-de-sacs protected by a rock revetment. Under this proposal lots 146 - 152 would not be developed leaving the central portion of the beach undeveloped. Five single family residences were proposed on lots 142, 143, 144, 153 and 154.

On February 26, 1991 the applicant submitted three permit applications 5-91-183, 5-91-188, and 5-91-190 along with five other permit applications [5-91-184, 5-91-185, 5-91-186, 5-91-187 and 5-91-189 (Lechuza Villas West)] for single family residences on the subject beach. The applicant proposed a road and revetment design identical to the project denied on April 11, 1991 (cul-de-sac design) with the exception of two 60 foot long driveway extensions supported on caissons to two single family residences on lots 145 and 152. Four of the five permit applications proposed to place houses on lots 146, 148, 150, and 152 which were located between the terminus of the proposed eastern and western extension of Sea Level Drive and the proposed revetments. This would place residential development on lots with no road access or revetment protection under the cul-de-sac design proposal. To access these lots, Sea Level Drive and the rock revetment would have to be extended across the entire beach, which was identical to the road and revetment design proposal denied by the Commission on January 10, 1991, described above. The applicant requested that staff not agendize these five applications and the applicant's agent led staff to believe that these projects would be withdrawn. Therefore, staff went forward

with only three of the eight projects submitted. However, the applicant's agent never submitted a written withdrawal request and later the applicant indicated that it wished to go forward with all eight of the proposed projects under two separate development scenarios. The two scenarios were: 1) a road and revetment design ending in cul-de-sacs involving lots 140 - 145 and lots 153 - 155 and 2) a road and revetment design across the entire beach involving lots 140 - 155. Because the Commission opened and continued the hearing on the three permit applications, the five other permit applications (5-91-184, 185, 186, 187 and 189) had to be heard, acted on separately and presented under separate staff reports. On December 10, 1991 the Commission denied the permit applications for the two separate design proposals under permit applications 5-91-183 through 188 and 190. The applicant withdrew application 5-91-189 just prior to the hearing.

The applicant then requested the Commission to reconsider its decision on these permit applications. On July 9, 1992 the Commission granted the applicant's request to reconsider the permit applications denied in December 1991 in light of the United States Supreme Court decision in Lucas v. South Carolina Coastal Council (1992) 505 U.S. 1003, 112 S.Ct. 2886. On August 13, 1992 the Commission opened and continued the hearing on these permit applications to allow Commission staff adequate time to obtain additional information, to review and conduct site specific studies and address in more detail the environmental impacts of the proposed projects; and, to seek information regarding the nature of the applicant's ownership interest in the property, the purchase price and terms of purchase, and the details of offers to purchase the property by private and other interests. In particular, staff sought information regarding the extent of the applicant's property interest and whether any public rights existed in the property with which the projects would unlawfully interfere. Staff indicated to the Commission that it would take approximately two months to gather this new information. Staff anticipated that the permit applications would be scheduled for a hearing at the November 1992 Commission meeting. The applicant sued the Commission before these applications could be brought to a Commission hearing.

In November 1992, by agreement of the parties, the Los Angeles County Superior Court remanded all of the permit applications previously denied on these subject properties (5-90-839, 5-90-840, 5-90-841, 5-90-842, 5-91-049, 5-91-050, 5-91-051, 5-91-058, 5-91-059, 5-91-183; 5-91-184, 5-91-185, 5-91-186, 5-91-187, 5-91-188, 5-91-190) for Commission action. These applications included both of the development schemes described above. On January 14, 1993 the Commission denied the consolidated permit applications. First, the Commission found that the applicant had failed to meet its burden of showing that it had a sufficient ownership interest in the property that it wished to develop. In particular, the applicant failed to show that the proposed residences

and seawalls would not encroach on publicly-owned tidelands that exist seaward of the mean high tide line. The Commission relied in part on the photographic analysis of Francois Uzes, a surveyor employed by the Attorney General on behalf of the Commission, which indicated that the mean high tide line was landward of the building "stringline" proposed by the applicant in at least seven of the 29 aerial photographs that Uzes analyzed. The Commission also relied on information submitted by the applicant that showed that the mean high tide line might encroach within the building "stringline".

Second, the Commission found that the project as proposed would be inconsistent with several of the resource protection policies of the Coastal Act. These policies involved the siting of seawalls under Sections 30235 and 30253, the protection of the public and landowners from risks to health and safety such as geologic hazards and inadequate fire roads, and the protection of visual resources under section 30251 and environmentally sensitive habitat under section 30240. Third, the Commission found that under Coastal Act section 30604 the project, as proposed, would prejudice the preparation of the newly-incorporated City of Malibu's Local Coastal Program because the City had not had the opportunity to determine what level of residential or other use it preferred for the area. Finally, the Commission found that the applicant had failed to demonstrate under section 30010 that no economic use remained in the property, given the many alternative uses that had not yet been pursued.

On February 16, 1993 the applicant requested that the Commission reconsider its January 14, 1993 denial of the consolidated permit applications. On April 14, 1993 the Commission denied the applicant's request for reconsideration.

The applicant filed another petition for a writ of mandate and a complaint alleging that the Commission's denial of the consolidated permit applications in January 1993 violated the Coastal Act and effected a taking of property. In the mandate phase of the subsequent litigation, the Honorable Robert O'Brien of the Los Angeles Superior Court denied the applicant's petition for a writ of mandate. Judge O'Brien determined that substantial evidence supported the Commission's decision that the applicant failed to meet its burden of establishing ownership of the property that it wished to develop. A copy of the Judge's decision is attached as *Exhibit 14*. In this litigation the applicant argued that the boundary was not the moving mean high tide line, but an "average" mean high tide line that had a fixed location. Judge O'Brien specifically rejected this theory: "This Court rejects petitioner's contention that *People v. Wm. Kent Estate Co.* (1966) 242 Cal.App.2d 156 holds that tidal boundaries are to be set by a fixed line." Judge O'Brien also stated that the Commission had not ignored the Kent Estate decision, finding "There is no evidence that respondent, in the past or now, 'chose to ignore' this case." The Judge concluded that the applicant needed to establish its boundary line in a quiet title action and thereafter apply to the

Commission for development based on this line. If this development were denied, the denial could be challenged by a new petition for writ of mandate.

In December 1994 Judge O'Brien issued a statement of decision incorporating his ruling, but withheld entry of judgment because of a rule requiring that litigation be resolved by one final judgment (*Exhibit 15*). In the Judge's view, no final judgment could be issued until the applicant's takings claim was resolved. The applicant filed both an appeal and a petition for a writ of mandate with the Court of Appeal seeking expedited review of Judge O'Brien's decision. The Court of Appeal denied the petition.

In 1990, the Malibu-Encinal Home Owners Association (MEHOA) had filed an action against the Adamson Company, the previous owner of the Lechuza Beach property in which MEHOA sought to establish private prescriptive rights in the subject property on behalf of itself and its members. This litigation was later amended to name the applicant as a party. Because the location of the public's tidelands boundary was relevant to MEHOA's action as well as the applicant's pending action against the Coastal Commission, the parties (Lechuza, MEHOA, the Coastal Commission and the State Lands Commission) stipulated to coordinate the remaining litigation. Under this stipulation, the applicant amended its complaint to include a quiet title claim against the State Lands Commission. The State Lands Commission, acting on behalf of the State, filed a cross-complaint to quiet title against Lechuza. MEHOA, which under its codes, covenants and restrictions possessed a 25 foot-wide easement for access and recreation on the sandy beach, joined the action to determine the location of this express easement. The parties further agreed that in the first phase of the subsequent litigation, the quiet title issues would be adjudicated. When this first phase was completed, MEHOA and the applicant would try MEHOA's prescriptive rights claims. The applicant and the Coastal Commission agreed to try the applicant's takings claims upon completion of this second phase.

Trial on the quiet title claims commenced on October 18, 1995, only three months after the filing of the applicant's amended complaint. The Lands Commission contended that the boundary of public tidelands was the "mean high tide line," an ambulatory line that moved in response to changes in the shore profile. The applicant pursued multiple boundary theories, including arguments that the boundary was fixed in its location by a 1932 mean high tide line survey for the tract map; that the boundary was fixed in its 1932 location under an "agreed boundary" theory; that the State was "estopped" to deny the location of the 1932 boundary; and that, under the Kent Estate decision, the boundary was to be permanently fixed in an average location.

At trial numerous mean high tide line surveys of the subject property were admitted into evidence, as well as considerable expert testimony about the

physical characteristics of the beach. This evidence demonstrated that the mean high tide line fluctuated over a range of about 100 feet, that there were numerous occasions on which the proposed project would encroach on land below the mean high tide line, and that there was a strong erosional trend at the beach in recent years which meant that the project's encroachment on land below mean high tide line would continue.

The Honorable Ernest Hiroshige, who presided over the quiet title trial, came to a different legal conclusion than Judge O'Brien and rejected the argument that the boundary of public tidelands is the mean high tide line. A copy of Judge Hiroshige's decision and judgment are attached as *Exhibits 16 and 17*. In contrast to Judge O'Brien's decision, Judge Hiroshige determined that Kent Estate was controlling and required the establishment of a permanently-fixed average line. Judge Hiroshige therefore held that the seaward boundary of the applicant's property should be permanently fixed in the location of a mathematical average of all 37 surveys that had been performed at the site prior to the close of the trial. He also stated that in the future the boundary of all other sandy beach property along California's coastline should be determined by an average of eight surveys, taken by the landowner once a season over a two-year period.

With regard to the location of MEHOA's easement, however, Judge Hiroshige rejected Lechuza's argument that MEHOA's easement should be located 25 feet landward of the 1932 survey line. Judge Hiroshige instead determined that MEHOA's express easement extended 25 feet landward from the average mean high tide line that he had established as the permanent tidelands boundary. As a result, the applicant's proposed project encroached upon MEHOA's easement as established by the Court, and therefore the project legally could be built as originally proposed.

Because the determination of the quiet title issues concluded all remaining issues between the applicant and MEHOA and the Lands Commission, Judge Hiroshige entered judgment on the quiet title issues on June 11, 1996. The Lands Commission moved for a new trial on the grounds that the boundary decision was erroneous as a matter of law and on the basis of additional surveys that were performed after the conclusion of trial. The Lands Commission argued that, when these four new surveys were added to the 37 surveys used by the trial court, it moved the "average" line by nearly three feet, thus calling into question the boundary line methodology used by the Court. The Court denied the motion. On August 14, 1996, the Lands Commission filed a notice of appeal of the quiet title judgment and the denial of its motion for a new trial. The applicant also filed an appeal.

Following the Court's June 11, 1996, judgment, the Coastal Commission moved for summary judgment on the grounds that the applicant's takings claims were not ripe for review because (1) the applicant would have to redesign its project to avoid encroachment into MEHOA's express easement and (2) consistent with Judge O'Brien's decision, the Commission could not render a final decision until the applicant reapplied for a coastal permit based on this new boundary information. Concurrently, the Commission moved for judgment on the pleadings on the ground that the applicant's suit failed to meet the requirements of the ripeness doctrine because it failed to plead that it made any effort to pursue alternative, less intensive development plans following the denial of its permit applications. In short, the Commission argued that the applicant's taking claims were not ripe for a hearing because the Commission had never issued a final and authoritative decision about what use could be made of the property.

The applicant filed its own motion for summary adjudication, arguing that as a matter of law the Commission's denial of its permit applications effected a taking of its property. The applicant included a statement of 95 undisputed material facts in support of its motion. The Commission filed a lengthy opposition to the motion, including six evidentiary declarations and a request for judicial notice. Referring in each case to supporting evidence, the Commission disputed most of the applicant's purportedly undisputed material facts.

Judge Hiroshige, however, granted the applicant's motion for summary adjudication. Apparently determining that the Commission's 1993 permit decision was in error because it was based on an incorrect view of the boundary line, Judge Hiroshige found that the Commission's denial of the applicant's permit applications constituted a temporary regulatory taking of property. Among other arguments, Judge Hiroshige rejected the Commission's argument that the property had significant economic value even after the Commission's permit denials, and indicated that the impact of regulation on property's value is relevant only to damages and not to the issue of whether a taking occurred. Judge Hiroshige also rejected the Commission's argument that he was improperly overruling Judge O'Brien's previous determination that the Commission had acted properly in denying the applicant's permit applications. Trial on the issue of damages was set for a later time.

Despite finding that the Commission's permit denial constituted a temporary regulatory taking, Judge Hiroshige granted the Commission's motion for summary adjudication on the ground that the applicant's fifth cause of action for a permanent takings claim was not ripe for adjudication because Lechuza's project as proposed encroached on MEHOA's 25-foot easement as defined in the Court's quiet title decree. The Court indicated that the Commission's permit decisions were to prevent encroachment on the property rights of third parties.

On October 23, 1996, the applicant moved the Court for a peremptory writ of mandate to remand the old permit applications to the Commission on the ground that the Court's rulings with regard to the boundary and to the summary adjudication constituted new evidence. Prior to the hearing on the motion, the Commission sent the applicant a letter setting forth a proposal by which the applicant voluntarily could reapply to the Commission in a manner that would minimize time and expense to the applicant. This proposal included an offer to waive new permit filing fees and the requirement that the applicant first obtain approvals from local government before obtaining review by the Coastal Commission. The applicant has never responded to this proposal.

The Commission objected to the applicant's motion to issue a writ remanding this matter to the Commission for an additional hearing on numerous grounds, including the argument that the applicant's motion to remand was an improper attempt to circumvent and overrule the decision of Judge O'Brien denying the writ, and that one superior court judge has no jurisdiction to overrule that of another. The Commission also objected to the issuance of a judgment granting a peremptory writ of mandate under California's one final judgment rule because the judgment would not conclude all remaining issues between the applicant and the Coastal Commission. Specifically, the Court has yet to determine what, if any, damages are appropriate in this case given the Court's liability finding. The one final judgment rule was the reason given by Judge O'Brien in 1994 for not issuing a judgment denying the applicant's petition for a writ of mandate. Rejecting the Commission's arguments, the Court on November 26, 1996 issued a "partial judgment" granting a peremptory writ of mandate and commanded the Commission hold a hearing and make a final decision on the project within 60 days of the judgment (*Exhibits 19 and 20*). The writ requires that the Commission consider the "relevant rulings of the Court" in making its final decision.

In December 1996 the Commission conducted a closed litigation session to consider the Court's ruling. At the end of the closed session it was announced in public session that the Commission had authorized the Attorney General to file an appeal of the partial judgment on its behalf. On December 19, 1996 the applicant responded by filing an ex parte application under Code of Civil Procedure 1110b for an order holding that the Commission's appeal not operate as an automatic stay of the partial judgment granting the writ of mandate, thereby requiring the Commission to reconsider the permit applications at its January 1997 meeting. The applicant alleged that it would suffer irreparable harm on the ground that it was threatened with "imminent foreclosure" because a note on the property had become due. It also argued that remand of the applications would force the Commission to make a final administrative decision on what use could be made of the applicant's property.

The Commission opposed the application on numerous grounds, including the arguments that the applicant has long been free to voluntarily reapply for a permit for development on the property, but had refused to do so despite the Commission's willingness to relax its application requirements; and the public interest would not be served if the Commission were forced to render a final decision without proper staff analysis and deliberation because this was the largest development of beachfront property proposed in Malibu since at least 1984 and only one of the current Commissioners had sat during the previous permit deliberations.

On December 30, 1996, the Court granted the applicant's application to stay the effect of the Commission's appeal, accepting the applicant's argument that it was in imminent financial distress, and found that lifting of the automatic stay would be in the public interest. After oral argument, however, the Court extended the Commission's time to "take final action" on the applicant's consolidated permit applications until noon on February 14, 1997 and added that "[t]here is to be no further postponement or continuance of such hearing or action." The Judge's order also provides that subsequently the Commission's decision will be used by the Court to determine the appropriate amount of damages for a taking. Trial on the damages phase was continued until March 5, 1997 to allow an opportunity to assess the impact of the Commission's decision on the claim for damages. A copy of a notice of ruling of the Court's decision is attached as *Exhibit 21*.

## **B. Shoreline Development --Public v. Private Land Ownership**

Sections 30210 and 30211 protect the public's right to access consistent with the California Constitution, and provide that development shall not interfere with the public's right of access to the sea:

### **Section 30210:**

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

### **Section 30211:**

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.

In addition, under Section 30601.5 an applicant has the burden of demonstrating that it has an ownership interest, or other legal right, interest or entitlement to use the property for the proposed development.

**1. The Commission's 1993 Permit Findings Regarding Boundary Issues**

Section 30601.5, combined with the issues raised by the Lucas case, prompted staff to request additional information prior to the Commission's consideration of the permit applications in January 1993 in order to assess whether the project would encroach on publicly-owned tidelands. After a review of this information, the Commission adopted findings in January 1993 that addressed whether the applicant's proposed project would encroach on lands or other property interests belonging to the public. The Commission's findings included the following discussion of its understanding of the applicable law:

"The California Supreme Court has defined the ordinary high water mark in tidal areas as the mean high tide line (MHTL).

"The MHTL consists of a vertical and a horizontal element. [Footnote omitted.] The vertical element is the mean elevation of all high tides at the location in question over an 18.6 year period. The horizontal element is the topography of the shoreline. The MHTL is defined by the intersection of the plane of mean high tide with the shoreline profile. Where the shore is made of rock or is not subject to wind and wave action, the elevation of mean high tide will consistently intersect the shore at the same place. However, where the shore is composed of sand, the shoreline profile constantly changes as the sand either builds up or erodes under the action of the waves. In addition, the beach profile can change considerably from summer to winter along a sandy beach. During the winter, the beach sand often is eroded due to high strong surf conditions and moved to offshore bars resulting in a landward migration of the MHTL. In the summer months, the sand returns to the beach due to the more gentle summer wave regime and the MHTL moves seaward. With each change in slope or elevation of the beach the MHTL also changes. (A simplified illustration of this process is contained in *Exhibit 8*.) The result is a continually changing MHTL.

"Notwithstanding Civil Code section 830 and case law which calls for the public-private boundary to be wherever the MHTL is, the applicant proposes a boundary line fixed at some form of average or mean between the most landward and seaward MHTL locations. This approach is inconsistent with the Civil Code and case law. Also, for purposes of seeking an average, there is no reasonable or scientific basis for selecting among the infinite number of transient locations of the MHTL on the shifting topography of a sandy beach. Nor is there a scientifically-recognized time period over which to collect this given number of MHTL locations. The changes are random, unpredictable, and not subject to calculation of a dependable average. This is in contrast to the astronomical variants that determine tide height, which are fully played out over a tidal epoch

of 18.6 years, and therefore permit the calculation of a reliable average for tide height.

"Section 830 states that 'the owner of the upland, when it borders on tidewater, takes to ordinary high-water mark' and City of Oakland v. Buteau (1919) 180 Cal. 83, 87, holds that 'a boundary marked by a water line is a shifting boundary, going landward with erosion and waterward with accretion.' Thus, any attempt at fixing an 'average' line would create a different boundary between public and private lands than that called for by the Civil Code and case law. For example, when the MHTL moved landward of this 'average' MHTL the public would be deprived of its ownership of tidelands, which are owned under a common law trust for the public's benefit (see City of Berkeley v. Superior Court (1980) 26 Cal.3d 515), and which are accorded special additional protection under article X, sections 3 and 4, of the California Constitution. On the other hand, when the MHTL moved seaward of this 'average' MHTL, the private owner would be deprived of property rights granted by the Code, including access to the water."

Having described its understanding of the law, the Commission then considered existing evidence regarding the location of the mean high tide line. In particular, the Commission considered the analysis of historic aerial photography by Francois Uzes. Mr. Uzes' photographic analysis indicated that the mean high tide line was landward of the proposed building "stringline" in at least seven of the twenty-nine aerial photographs that Uzes analyzed. The Commission also relied on information supplied by the applicant's engineer David Weiss. Although Weiss' study concluded that the mean high tide line on the large majority of occasions would be seaward of the project area, even Weiss' study indicated that there would be situations where the mean high tide line would be landward of the project. Because of this evidence that the mean high tide line has been landward of portions of the project area, the Commission found that the applicant had failed to demonstrate that it had sufficient ownership interest in the property as required by Coastal Act Section 30601.5 and had failed to meet its burden of demonstrating its project would be consistent with Coastal Act Sections 30211, 30221 and Article X, section 4 of the California Constitution by not interfering with public access to the sea.

In addition, the Commission found that, even if the State did not have title to the area in which the applicant proposed to build its project it had still failed to meet its burden of proving consistency with Article X, section 4 and sections 30211 and 30221 because the project was located in an area periodically covered by ocean waters and used by the public for recreational purposes and would conflict with the public's navigational easement over the area covered by the waters of the Pacific Ocean. The Commission also found that there was substantial evidence of public prescriptive rights, although it did not rely on this

as a ground for denial of the project because of the many other reasons which supported denial.

## **2. Litigation Concerning Boundary Issues**

Following the Commission's January 1993 decision, the applicant pursued its litigation remedy against the Commission. As previously discussed, Judge O'Brien of Los Angeles Superior Court upheld the Commission's decision. Judge O'Brien found that substantial evidence supported the Commission's decision that the applicant had failed to meet its burden of establishing ownership of the property that it wished to develop, because there was evidence that the project would encroach on tidelands during portions of the year. Judge O'Brien specifically rejected application of the Kent Estate decision and any requirement that the tidelands boundary be determined by an average, fixed line. Judge O'Brien concluded that the applicant should establish its boundary in a quiet title action and then submit a new development application to the Commission.

In response to Judge O'Brien's decision, the applicant eventually amended its petition and complaint against the Commission to quiet title to the property that it wished to develop. The Lands Commission and the applicant proceeded to trial in late 1995 to determine the boundary. As previously discussed, Judge Hiroshige came to a different legal conclusion than Judge O'Brien, and determined that the Kent Estate decision required that a permanently fixed average line be established at the subject property. Although considerably landward of the average line proposed by the applicant during the earlier proceedings before the Commission, the fixed average line established by Judge Hiroshige is approximately twelve to twenty feet seaward of the area that the applicant proposed for development. Both the Lands Commission and the applicant appealed Judge Hiroshige's decision, and those appeals are now pending.

In the November 26, 1996 Judgment and peremptory writ remanding the applicant's permit applications to the Commission, Judge Hiroshige directed the Commission to reconsider the applications in light of "the relevant rulings of the Court." Therefore, for the purpose of determining the consistency of the project with the policies of the Coastal Act, the Commission is required by the Court to assume that the tidelands boundary is that established by Judge Hiroshige in the June 11, 1996 judgment, and that there are no public prescriptive rights or public navigational easement rights in the subject property (*Exhibit 17*). The Commission must also assume, pursuant to the June 11, 1996 judgment, that MEHOA possesses a 25-foot easement immediately landward of the fixed boundary line. It must further assume, pursuant to the Court's October 12, 1996 order, that its permit decision must protect MEHOA'S property interests.

### **3. Remaining Uncertainty Regarding Boundary Issues.**

Although the Commission must assume that the boundary described in the Court's June 11, 1996 judgment is the applicable boundary for the purposes of analyzing the applicant's permit applications, the Commission is aware that the June 11, 1996 judgment has been appealed and may be changed by the reviewing courts. Were the Commission to unconditionally allow the development of the applicant's property in reliance on the June 11, 1996 judgment, the rights of the public and of MEHOA could be irreparably harmed were an appellate court later to determine that the June 11, 1996 judgment was incorrect and that the public or MEHOA have property rights within the area that the applicant proposes for development.

The Commission finds that there is considerable uncertainty whether the June 11, 1996 judgment will be sustained on appeal. It further finds that, if the Commission voted to approve development on the project within the area subject to public tidelands claims, no such development could commence until the appeals to determine the location of the appropriate boundary line are decided. The State Lands Commission has provided considerable judicial and statutory authority supporting the view that the mean high tide line is the boundary of coastal property, including sandy beach front property, and that this boundary is subject to change in response to changes in the position of the mean high tide line. The State Lands Commission has also advanced substantial arguments that the Kent Estate decision is not controlling law, that it conflicts with the weight of authority, that its "averaging" approach to coastal boundaries has never been adopted as the rule in any other reported decision in this country, and that it is inapplicable in the facts of this case. The State Lands Commission's arguments will be reviewed on appeal, and no useful purpose would be served in repeating them here. It is sufficient to observe that the State Lands Commission's arguments demonstrate that there is considerable uncertainty regarding the outcome of the quiet title appeal.

The Commission, however, is compelled to respond to the trial court's concern that the State agencies may have acted in "bad faith" by employing the mean high tide line boundary rule and by finding in January 1993 that the applicant's project would encroach on State tidelands. There are a number of reasons why the Commission respectfully disagrees with this characterization.

**a.** As previously recited, there is considerable support for the State's position that the boundary of coastal property, including sandy beach, is the ambulatory mean high tide line. There is also considerable support for the State agencies' position that the Kent Estate decision, which remains the only reported decision in the United States to suggest the use of a fixed average line as a coastal

boundary, conflicts with existing California law and, on its own terms, is inapplicable in the facts of this case. That Judge O'Brien agreed with these views and that the applicant itself has appealed Judge Hiroshige's application of Kent Estate, supports the conclusion that neither the Commission nor the State Lands Commission acted in bad faith by declining to follow the Kent Estate decision.

**b.** The applicant's contention that the Coastal Commission invented or concocted the idea that the mean high tide line is the coastal boundary as a pretext to deny its project following the Lucas decision is contradicted by the administrative record. In numerous permit applications decided before the Lucas decision, the Commission treated the mean high tide line as the boundary of tidelands, just as it did in the applicant's case.

**c.** Similarly, the applicant's contention that the State Lands Commission invented the idea that the tidelands boundary is the ambulatory mean high tide line for the purpose of preventing this proposed development is insupportable. The Lands Commission has long taken the position that the boundary of public tidelands is the mean high tide line as it exists from time to time. For example, in a 1981 letter responding to a question about the boundary line at Lechuza Beach, the Lands Commission's Executive Officer stated:

The courts have held that under natural conditions, the location of the ordinary high-water mark is an ambulatory line, changing from day to day depending upon the available sand supply and other factors. (See Declaration of Jane Sekelsky at pp. 3-4, ¶¶ 5-9, Ex. D, p. 1.)

As a further example, in 1976 the Lands Commission's Assistant Manager for Land Owner Operations responded to a question about the boundary on the open coast by stating:

It is the policy of this office to consider the shoreline property boundary to be the present location of the line of mean high-water as it exists from day to day. (Id., Ex. E, at p. 1.)

The State Lands Commission has supplied a number of other similar letters demonstrating that it has long advocated the position that the boundary is the ambulatory mean high tide line, which is precisely the same position that it has taken throughout these proceedings.

**d.** Although the applicant has suggested that the Commission relied on questionable evidence that the project encroached on State lands, Judge O'Brien found that the Commission's reliance on the Uzes photographic analysis constituted substantial evidence in support of its findings that the project would

encroach upon the mean high tide line. Moreover, numerous mean high tide line surveys of the applicant's property were introduced into evidence at the quiet title trial, and those surveys corroborated the analysis of Mr. Uzes that the project proposed by the applicant would frequently encroach on land below the mean high tide line. Mr. Uzes concluded that only seven of the twenty-nine aerial photographs that he examined demonstrated that the project would encroach on lands below mean high tide line. Since Mr. Uzes' report was completed in October 1992, however, 23 of the 34 field mean high tide line surveys of Lechuza Beach have been landward of the applicant's original building stringline. In other words, although 24 percent of the photographs that Mr. Uzes analyzed showed the mean high tide line landward of the proposed "stringline", fully 70 percent of the actual field surveys showed the mean high tide line landward of the proposed "stringline". Although the applicant in the past has attempted to portray any encroachment of the project below the mean high tide line as an aberration, the mean high tide line surveys that have been conducted since the 1993 permit hearing demonstrate that in 1993, 1994, 1995 and 1996 the proposed project area frequently encroached on tidelands below the mean high tide line. Thus, this compelling new evidence completely supports the factual basis of the Commission's 1993 decision.

e. The applicant's claim that the Commission did not consider boundary issues until the January 4, 1993 permit findings is also contradicted by the administrative record. In each of the Commission's three sets of permit findings in 1991, the Commission referred to its concern about the project's impact on public access to public tidelands, making specific reference to the tidelands boundary. The Commission did not need to deny the project on the basis of the project's encroachment on public lands in 1991, because there were many other bases for denial and because the State Lands Commission did not have recent survey evidence on possible encroachment at the time of the 1991 permit decisions. There is now abundant evidence of the project's encroachment below the mean high tide line and both this Commission and the State Lands Commission would have violated their statutory obligations to protect the public's tidelands if they had chosen to ignore this evidence.

Therefore, both the Commission and the State Lands Commission recognized the mean high tide line as the boundary of public tidelands long before the Lucas decision and before the 1993 permit hearings. Once made aware of probative evidence that the project would encroach below mean high tide line, both Commissions performed their statutory duties and analyzed project impacts in light of this evidence. Judge O'Brien's decision supports the conclusion that the agencies' decisions to analyze the impacts of the project on public tidelands were made in good faith. The Commission thus, must respectfully disagree with the suggestion that it acted in bad faith by denying the project because it encroached on public property.

In summary, the Commission finds that there remains considerable uncertainty whether the boundary line in the June 11, 1996 quiet title judgment will be sustained by the California appellate courts. Therefore, although the Commission must treat the boundary described in the June 11, 1996 judgment as the boundary for the purposes of evaluating the impacts of this project, as directed by the Court, the Commission finds that if it votes to approve development within the area subject to public tidelands claims, no such development could commence until the appellate courts finally have resolved the boundary issues.

### **C. Shoreline Protective Devices**

As stated previously, the project involves the construction of a 1,000 ft. long, approximately 33 ft. wide rock revetment (described in more detail below). The seaward extent of the revetment will range from approximately from 60 to 85 feet seaward from the base of the coastal bluff (west to east) out into the sandy beach and intertidal zone. The revetment is necessary to protect the proposed 1,060 ft. long road that, as designed, will connect western and eastern Sea Level Drive. The revetment is also necessary to protect the proposed septic systems. As designed by the applicant, the project's leach fields will be located under the road and the septic tanks will be located in the road right-of-way which is an approximate 20 ft. wide area between the road and the twelve proposed residences.

The applicant today asserts that two seawall designs have been proposed: a rock revetment and a concrete soldier pile/caisson vertical bulkhead (referred to as vertical bulkhead).<sup>5</sup> This assertion requires some scrutiny. The applicant originally proposed a rock revetment seawall design as part of its initial permit applications. On November 4, 1992 the applicant submitted conceptual plans illustrating the vertical bulkhead design. As described in the preceding section, V.A., and as described in the October 23, 1992 staff report, the applicant never formally revised the project to include the vertical bulkhead design, and has never submitted engineered plans with representative cross sections and relevant technical reports in support of the design. The 1992 conceptual drawings of the vertical bulkhead represented a significantly different project than what was previously submitted by the applicant. Therefore, the following discussion is focused on the project before the Commission--a 1,000 foot long rock revetment as proposed in the permit application. Given the Court's directive to make a final decision and given the parallel between the two designs, however, the Commission's findings regarding the impact of the rock

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<sup>5</sup> Letter to Jack Ainsworth from Sherman Stacey, dated January 14, 1997, pg. 4.

revetment should be considered applicable to the vertical bulkhead design as well.

After identifying the applicable Coastal Act sections and LUP policies, the Commission's discussion of the impacts of the shoreline protective device will proceed in the following manner. First, the Commission describes the physical characteristics of the Lechuza shoreline (*Section V.C.1*). Second, the Commission analyzes the dynamics of the Lechuza shoreline and concludes that it is an eroding beach (*Section V.C.2*). Third, the Commission analyzes the location of the proposed shoreline protective device in relation to wave action and concludes that the shoreline protective device will frequently be subject to wave runup and wave energy (*Section V.C.3*). Finally, the Commission analyzes and concludes that the proposed shoreline protective device will adversely impact the public beach and private lateral easement of MEHOA as defined by the Court because it contributes to erosion of the shoreline through increased beach scour, end effects and retention of shore material (*Section V.C.4*).

As evidenced in the discussion below, there is substantial evidence that any development along this stretch of Lechuza Beach will require a shoreline protective device and that such development will adversely impact the natural shoreline processes. Therefore, it is necessary to review the proposed project for its consistency with Sections 30235, 30250(a) and 30253 of the Coastal Act.

**Section 30235** of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

**Section 30253** of the Coastal Act states:

New development shall:

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

Section 30250(a) of the Coastal Act states, in part:

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.

This project does not fall into any of the three categories where a shoreline protective device<sup>6</sup> may be permitted by the Commission. The proposed project includes the construction of residential structures which do not constitute a coastal-dependent use, as defined in section 30101 of the Coastal Act.<sup>7</sup> Further, the proposed project site is undeveloped so the proposed revetment will not protect existing structures. Finally, the proposed revetment would not protect a public beach. The applicant has not specifically contended that the project falls into any of these three categories. Nor has the applicant addressed the project's impacts on local shoreline sand supply in order to ascertain whether the seawall is designed to eliminate adverse impacts to it. Independently, staff has undertaken this review.

To assist in the determination of whether a project is consistent with sections 30235, 30253 and 30250(a) of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. As noted in the project description, the LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast. For example, policies 166 and 167 provide, in concert with Coastal Act section 30235, state that revetments, seawalls, cliff retaining walls and other shoreline protective devices be permitted only when required to serve coastal-dependent uses, to protect existing structures or new structures which constitute infill development<sup>8</sup> and only when such structures are designed and engineered to eliminate or mitigate the adverse impacts on the shoreline and sand supply. In addition, Policy 153 indicates that development of sites that are exposed to potentially heavy tidal and wave action shall require that development be set back a minimum of 10 ft. landward from the mean high tide line.

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<sup>6</sup> Shoreline Protective Device is also referred to in the findings as seawall or revetment.

<sup>7</sup> "Coastal-dependent development or use" means any development or use which requires a site on, or adjacent to, the sea to be able to function at all. (Coastal Act Section 30101)

<sup>8</sup> The term "infill development" will be discussed in greater detail in section V.C5., Past Coastal Commission Action.

## **1. Proposed Project and Site Shoreline**

The City of Malibu contains a 27 mile long narrow strip of coast that is backed by the steep Santa Monica Mountains. Unlike most of the California coast, the shoreline in Malibu runs from east to west and forms south-facing beaches. Lechuza Beach is located on the western end of Malibu and is backed by small coastal bluffs (*Exhibit 1*). Lechuza Point to the east and a natural drainage course, Lechuza Creek, to the west comprise the boundaries of the approximate 2,700 ft. long beach known as Lechuza. The natural low rocky points at the eastern and western ends of the narrow beach function somewhat as a groin field where some sand accumulates on the downcoast section of the beach (eastern end).

Lechuza Beach is located within the Zuma Littoral Cell, which geographically extends from approximately the Ventura/Los Angeles County line to Point Dume. In contrast to the eastern end (Point Dume to Topanga) of Malibu where most of the sediment is derived from local streams, 60% of the Zuma Cell's net total sediment is derived from beach/bluff erosion and only 40% is derived from the local streams.<sup>9</sup>

The western section of Lechuza Beach (approximately 1,350 feet) is backed by coastal bluffs which range in height from 50 to 55 feet. Lechuza Beach is considered a narrow beach where the sandy beach area in normal seasonal conditions ranges from 50 ft. in width (winter profile) to 140 ft. in width (summer profile) (*Exhibit 9*).<sup>10</sup> The landward extent of the beach is determined by the base of the bluff. As such, Lechuza Beach is best characterized as a narrow, bluff backed beach.

The sources of sediment for bluff backed beaches are the bluffs themselves, as well as the material that has eroded from inland sources and is carried to the beach by small coastal streams. While beaches seaward of coastal bluffs follow similar seasonal and semiannual changes as other sandy beaches, they differ from a wide beach in that a narrow, bluff backed beach does not have enough material to maintain a dry sandy beach area during periods of high wave energy. Thus, unlike a wide sandy beach, a narrow, bluff backed beach may be scoured down to bedrock during the winter months. In general, and under natural conditions, beaches such as Lechuza will expose the back of the bluff to more frequent wave attack as the beach erodes. This wave attack will lead to eventual erosion and retreat of the lower portions of the bluff. The dynamic of bluff erosion and retreat results in landward movement of the beach's location and, in turn, establishment of a new beach area.

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<sup>9</sup> Army Corps of Engineers, Los Angeles District, Reconnaissance Study of the Malibu Coast. 1994.

<sup>10</sup> Lechuza Beach Report, Coastal Frontiers Corporation, January 12, 1997, Figure 3.

## 2. Lechuza Beach Is an Eroding Beach

Having defined Lechuza as a narrow, bluff-backed beach, the next step is to determine the overall erosion pattern of the beach. Determination of the overall beach erosion pattern is one of the key factors in determining the impact of the seawall on the shoreline. In general, beaches fit into one of three categories: 1) eroding; 2) equilibrium; or 3) accreting. The persistent analytical problem in dealing with shore processes in California is distinguishing long-term trends in shoreline change from the normal, seasonal variation. In the past, there has been much debate between the applicant and the Commission staff as to what the overall erosion pattern of Lechuza Beach is. In preparation for the quiet title trial, however, the parties developed information about the behavior of Lechuza beach. This newly-developed information compels the conclusion that Lechuza Beach is an eroding beach.

First, a U.S. Army Corps of Engineers 1994 Reconnaissance Report regarding the Malibu/Los Angeles County coastline concludes that Lechuza Beach is suffering from long-term shoreline retreat which averages 1 foot per year.<sup>11</sup>

Next, Peter Gadd, a highly-experienced coastal engineer, has evaluated considerable information that bears on the behavior of Lechuza Beach, including wave data records that were compiled at the National Oceanic Atmospheric Administration buoy located off the Malibu coast from 1980 to 1995, mean high tide line surveys of the beach, and profiles showing the amount of sand depth at locations perpendicular to the beach. Mr. Gadd is a principal in Coastal Frontiers, Inc., a coastal engineering firm on whose behalf Mr. Gadd has analyzed shoreline processes throughout the entire southern California coastline. Mr. Gadd found that the fluctuations of the Lechuza Beach shoreline are highly irregular and unpredictable. His 1996 Report states:

A simplified coastal engineering evaluation would expect that a sandy beach will erode during the stormy winter months, and accrete during the calm summer period. As shown in Figure 3 (*Exhibit 9 of this report*), this seasonal fluctuation is noted at Lechuza Beach during some years, and not during others. For example, summertime beach growth is noted in 1992, 1993 and 1996. No such seaward growth is seen in 1994 and through September of 1995. There is no reasonable expectation that sand loss from the winter time erosion will be completely replaced by summertime accretion.

Mr. Gadd has concluded, from his review of this evidence, that the fact that Lechuza Beach does not always fully recover from previous winter storm erosion is strong evidence which negates the conclusion that Lechuza is an equilibrium

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<sup>11</sup>This is based on estimated average vertical and horizontal scour prepared with the assistance of the numerical computer program model "SBEACH".

beach. Furthermore, his review of the fluctuations of mean high tide lines spanning a 68-year period from 1928 to October 1996 led him to conclude that there is a distinct erosional trend that confirms the findings of the Corps of Engineers (*Exhibit 9*).

In addition, Dr. Richard Seymour, a world-renowned expert in coastal processes, reviewed and analyzed surveys from the early 1930s and surveys from 1990 through 1995 and testified that Lechuza Beach is an eroding beach with an ongoing erosional trend. He further concludes that the irreversible development trends along the coast will only exacerbate the erosion patterns found at Lechuza Beach and that the present erosional trend of this beach will continue into the future.<sup>12</sup>

The reports produced by the applicant's consultants with regard to the nature of Lechuza Beach were not persuasive when first presented to the Commission and have since been further undermined by the newly-developed evidence regarding the behavior of the beach.<sup>13</sup> Although the applicant's consultants conclusorily stated that this was not an eroding beach, they provided no significant analysis or study in support of this conclusion. The applicant's consultants, for instance, failed to reference past studies regarding the erosional characteristics of Southern California beaches. A number of the mean high tide line surveys that the applicant's consultants relied on in support of their conclusions turned out, upon later examination, to have been "extrapolations" of surveys performed at other beaches, and the consultants later conceded that they were unable to locate the surveys on which these extrapolations were based. Thus, the consultants' belief that the mean high tide line would not retreat within the project area was based on limited or erroneous survey information and, even more importantly, has been flatly contradicted by numerous surveys conducted since the Commission's last permit hearings.<sup>14</sup> Finally, the Commission notes that, even if the applicant's view were correct, many studies performed on both equilibrium and eroding beaches evidence that loss of beach occurs on both types of beaches where a shoreline protective device exists, as discussed at length in the Commission's January 14, 1993 findings.

Consequently, based on the relevant new information about the behavior of Lechuza Beach and the analysis of two highly qualified experts (Gadd and Seymour), the Commission finds that Lechuza Beach is an eroding beach, not an equilibrium beach.

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<sup>12</sup> Testimony of Dr. Richard Seymour, December 11, 1995.

<sup>13</sup> The statement of qualifications of Mr. Weiss, Mr. Hale, and Mr. Merrill, the applicant's consultants, as well as those of Mr. Gadd, Mr. Moore and Dr. Seymour, are included in the administrative record.

<sup>14</sup> Yet, even the applicant's geologist, Mr. Merrill notes that the rocky part of the shoreline is susceptible to wave attack and scour, where the rate of retreat of the shoreward slope is on the rate of 2 inches per year. Engineering Geologic Report, Project 08766, by Geoplan Inc., August 27, 1990, pg. 6.

### 3. Location of the Proposed Shoreline Protective Device in Relation to Wave Action

The other key factor in determining the impact of the seawall on the shoreline is the location of the proposed protective device in relationship to the expected wave runup. The 1,000 ft. long rock revetment will extend seaward from the base of the bluff approximately 60 ft. along the west end and approximately 85 ft. along the east end (*Exhibit 2*). The majority of the revetment is approximately 33 ft. in width and 15 ft. in height (*Exhibit 4*). The revetment will be constructed on a 1.5:1 slope (horizontal to vertical) and will occupy an approximate 33,000 sq. ft. sandy beach area. When considered with the total site development, the area of sandy beach occupied will be approximately 80,000 sq. ft. Survey data presented in the beach scour section of this report will show fluctuations of the beach profiles within the project site during the 1951-1996 time period. The profile data show that the position of the proposed revetment and support piles intrude on the historical areas of wave run-up and beach sediment transport. It will further show that the revetment is located near documented positions of the MHTL, and that inundation of the beach fronting the seawall will occur frequently during high tide and low beach profile conditions (*Exhibit 6*).

It is important to accurately calculate the potential of wave runup and wave energy to which the seawall will be subject. Dr. Douglas Inman, renowned authority on Southern California beaches concludes that, "The likely detrimental effect of the seawall on the beach can usually be determined in advance by competent analysis." Dr. Inman further explains the importance of the seawall's design and location as it relates to predicting the degree of erosion that will be caused by the seawall. He states:

While natural sand beaches respond to wave forcing by changing their configuration into a form that dissipates the energy of the waves forming them, seawalls are rigid and fixed, and at best can only be designed for a single wave condition. Thus, seawalls introduce a disequilibrium that usually results in the reflection of wave energy and increased erosion seaward of the wall. The degree of erosion caused by the seawall is mostly a function of its reflectivity, which depends upon its design and location.<sup>15</sup>

Prior to the 1993 hearing, the applicant submitted a "Wave Uprush Report" prepared by David Weiss (Coastal Engineer) which discussed the project's location relative to the wave uprush onto the beach area. The report generally indicated that the revetment would be acted upon during the most extreme high tide wave conditions. The study indicates that the wave runup would extend

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<sup>15</sup> Letter dated 25 February 1991 to Coastal Commission staff member and engineer Lesley Ewing from Dr. Douglas Inman.

approximately 37 feet landward of the Sea Level Drive right-of-way which is at the base of the coastal bluff. The report further states that:

In the case of the proposed revetment or possibly vertical seawall, the structures will be acted upon only very rarely under storm events of design magnitude. The few times that the revetment would be subject to wave action would cause very little change in the energy level of the waves, since the revetment is located so far back on the backshore of the beach that most energy of the wave is lost due to uprush by the time it reaches the exposed face of the revetment.

In addition, the applicant's consulting geologist, John Merrill indicated that the proposed revetment will be placed in a location that will realize all but rare impact of wave runup and, therefore, the revetment is not likely to significantly affect the beach. The report states:

The revetment will be located inland 50 feet from the foreshore where it will be virtually untouched by wave runup. It is anticipated that the rare combination of high storm waves superposed on high tide may result in wave uprush impacting the revetment.

As noted throughout the Commission's findings, however, the applicant's studies were based on a serious misapprehension of the extent to which the beach has been subject to wave run up and wave energy. The recent survey and profile evidence demonstrates empirically that the proposed revetment would routinely be within an area of wave runup, and that the applicant's consultants were simply wrong in concluding otherwise.

First, as illustrated in *Exhibit 7A. and 7B.*, wave run-up has extended to the base of the bluff in 1993, 1994 and 1995, in addition to 1983 and 1988. The proposed revetment is 60-85 feet seaward of the base of the bluff, and therefore is easily subject to wave attack.

Second, over the last 13 years this beach has been completely denuded of sediment twice at minimum, in the winters of 1983 and 1988.<sup>16</sup> This is strong evidence of repeated runup to the base of the bluff with sufficient energy to transport all beach material offshore.

Third, photographic evidence over a number of years and repeated observations by Commission staff over the last five years indicate that this beach is severely depleted of sand in the winter months. Furthermore, the depletion is not a transient event but appears to persist for days, weeks or even months at a time.

Fourth, the nine profiles taken at two locations on the beach from 1951 to 1996 show that the proposed revetment has been proposed in an area where major changes in the shore profile have occurred, confirming that the revetment would routinely be subject to wave action and wave energy. (*Exhibits 10A and 10B*).

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<sup>16</sup> Letter to Commission staff member John Ainsworth from Ian Collins of Arctec Offshore Corporation, Oct. 12, 1992

Fifth, the actual locations of the mean high tide line have been far more landward than those considered by the applicant in the design of the proposed revetment. Of the 34 mean high tide line field surveys performed at Lechuza Beach since the Uzes photographic study, 23 (nearly 70%) showed that the mean high tide line was landward of the project area as proposed by the applicant in its 1991 permit applications (*Exhibit 6*). The encroachment ranged from 1 foot to 33 feet. As explained in the preceding section V.B, Shoreline Development, the applicant revised its project in response to the court-imposed easement line. When evaluating the location of the latest 34 surveyed mean high tide lines as compared to the project's new proposed location, 14 of the surveyed lines were landward of the new project area as defined by the MEHOA easement line. The encroachment of the proposed development beyond the mean high tide line ranged from 1 foot to 20 feet and in over half of the 14 surveys, the project was seaward of the line by 8 feet or more. This information casts substantial doubt on the conclusions of the applicant's studies as those studies which were premised on the highly erroneous assumption that the mean high tide line rarely, if at all, would move within the original project area.

Sixth, as Mr. Gadd points out, there have been substantial landward movements of the mean high tide line even during years like 1996 where there were no unusual storm events, such as those experienced in the 1982-83 period. Additionally, Mr. Gadd documented that after the erosion which occurred as a result of the 1995 winter condition, the beach did not recover to a great extent prior to September 1995, which suggests that there was no sand supply in the nearshore zone to nourish the beach environment. If the beach does not rebuild itself in the summer (after a winter where the beach eroded), there is a much greater probability that wave runup onto the protective device will occur the following winter season at a more rapid rate and for a longer period.

Seventh, the applicant's wave uprush analysis was reviewed by Jon Moore, a civil engineer with a specialty in coastal processes, who found that the site will experience higher wave runup than calculated by the uprush analysis performed by the applicant's consultant. Mr. Moore states:

My calculations suggest higher runup potential on the revetment. In my opinion, the applicant has not used a severe enough scour depth and stillwater level commensurate with a 1983-type storm scenario. Only two wave period/deep water wave height conditions were considered which do not necessarily yield the most critical runup conditions that might occur over the life of the project.

Therefore, the most current measurements of wave runup strongly evidence that the proposed seawall will be subject to wave action during a typical storm event and possibly on a routine basis when there is an eroded "winter" beach. Given that there is strong evidence that Lechuza is subject to long-term erosional trends, the frequency of wave exposure will increase as the beach width decreases with time.

Therefore, the proposed revetment at Lechuza Beach is ill conceived in that it contradicts two basic premises of siting coastal structures on sandy beaches:

1) The most important factor affecting the potential impact of a seawall on the beach is whether there is long-term shoreline retreat. (Note: The U.S. Army Corps of Engineers, Los Angeles District 1994 Reconnaissance Study of the Malibu Coast and site specific survey data spanning the 1928-1996 time frame indicates that Lechuza Beach is suffering long-term shoreline retreat which averages 1 foot per year). Such retreat is a function of sediment supply and/or relative sea level change. Where long-term retreat is taking place...and this process cannot be mitigated, then the beaches in front of seawalls in these locations will eventually disappear.<sup>17</sup>

2) One of the most critical factors controlling the impact of a seawall on the beach is its position on the beach profile relative to the surf zone. All other things being equal, the further seaward the wall is, the more often and more energetically it can interact with the waves. The best place for a seawall, if one is necessary, is at the back of the beach where it provides protection against the largest of storms. By contrast, a seawall built out to the mean high water line may constantly create problems related to frontal and end scour, as well as upcoast sand impoundment.

Based on the above discussion, the Commission finds that the proposed rock revetment will encroach into an area of the beach that will be frequently subject to wave run up. Furthermore, the Commission finds that Lechuza Beach is a narrow, irregularly fluctuating beach subject to an erosional trend. Therefore, the following discussion is intended to evaluate the impacts of the proposed seawall on the beach based on the above information which identified the specific structure design, the location of the structure and the shoreline geomorphology.

#### **4. Effects of the Shoreline Protective Device on the Beach**

The proposed 1,000 ft. long rock revetment will be constructed at a 1.5:1 slope (horizontal to vertical) and will occupy a fairly large area of the beach -- approximately 33,000 sq. ft. An engineered revetment typically has an outer layer of rock or stone large enough to withstand anticipated wave forces, a support layer of smaller material and often, an underlayer of fine gravel or geotextile material which keeps material from the supporting embankment from being removed by waves or water flows. Rock revetments operate on the principle that much of the wave's energy will be absorbed by the rocks and

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<sup>17</sup> Tait, J.F. and G.B. Griggs, "Beach Response to the Presence of a Seawall: A Comparison of Field Observations," Shore and Beach, 1990, Vol. 58, No. 2, pp 11-28.

dissipated within the voids of the wall, thereby protecting the landward area from erosion and direct wave attack. When a revetment is backed by a geofabric layer, as is the proposed revetment, the geofabric often functions like a solid barrier and reflects all wave energy which penetrates through the revetment rock layer.

The proposed project involves a shoreline structure that will affect the configuration of the shoreline and the beach profile and that will have an adverse impact on the shoreline. Even though the precise impact of shoreline structure on the beach is a persistent subject of debate within the discipline of coastal engineering, and particularly between coastal engineers and marine geologists, it is generally agreed that the shoreline protective device will affect the configuration of the shoreline and beach profile. The main difference between a vertical bulkhead and rock revetment seawall is their physical encroachment onto the beach. However, it has been well documented by coastal engineers and coastal geologists that shoreline protective devices or shoreline structures in the form of either a rock revetment or vertical bulkhead, will adversely impact the shoreline as a result of beach scour, end scour (the beach areas at the end of the seawall), the retention of potential beach material, the fixing of the back beach and the interruption of longshore processes. In order to evaluate these impacts relative to the proposed structure and its location on Lechuza Beach, each of the identified effects will be evaluated below.

**a. Beach Scour**

Scour is the removal of beach material from the base of a cliff, seawall or revetment due to wave action. The scouring of beaches caused by seawalls is a frequently-observed occurrence. When waves impact on a hard surface such as a coastal bluff, rock revetment or vertical bulkhead, some of the energy from the wave will be absorbed, but much of it will be reflected back seaward. This reflected wave energy in combination with the incoming wave energy, will disturb the material at the base of the seawall and cause erosion to occur in front and down coast of the hard structure. This phenomenon has been recognized for many years and the literature acknowledges that seawalls have some effect on the supply of sand. The following quotation summarizes a generally accepted opinion within the discipline of coastal engineering that, "Seawalls usually cause accelerated erosion of the beaches fronting them and an increase in the transport rate of sand along them."

Ninety-four experts in the field of coastal geology, who view beach processes from the perspective of geologic time, signed the following succinct statement of the adverse effects of seawalls:

These structures are fixed in space and represent considerable effort and expense to construct and maintain. They are designed for as long a life as possible and hence are not easily moved or replaced. They become permanent fixtures in our coastal scenery but their performance is poor in protecting community and municipalities from beach retreat and destruction. Even more damaging is the fact that these shoreline defense structures frequently enhance erosion by reducing beach width, steepening offshore gradients, and increasing wave heights. As a result, they seriously degrade the environment and eventually help to destroy the areas they were designed to protect.<sup>18</sup>

The above 1981 statement signed by 94 respected coastal geologists indicates that sandy beach areas available for public use can be harmed through the introduction of seawalls. Thus, in evaluating an individual project, the Commission assumes that the principles reflected in that statement are applicable. To do otherwise would be inconsistent with the Commission's responsibilities under the Coastal Act to protect the public's interest in shoreline resources.

The impact of seawalls as they are related to sand removal on the sandy beaches is further documented by the State Department of Boating and Waterways:

While seawalls may protect the upland, they do not hold or protect the beach which is the greatest asset of shorefront property. In some cases, the seawall may be detrimental to the beach in that the downward forces of water, created by the waves striking the wall rapidly remove sand from the beach.<sup>19</sup>

Finally this observation was underscored more recently in 1987 by Robert G. Dean in "Coastal Sediment Processes: Toward Engineering Solutions":

Armoring can cause localized additional storm scour, both in front of and at the ends of the armoring...Under normal wave and tide conditions, armoring can contribute to the downdrift deficit of sediment through decreasing the supply on an eroding coast and interruption of supply if the armoring projects into the active littoral zone.<sup>20</sup>

It is generally agreed that where a beach is eroding, the erection of a seawall will eventually define the boundary between the sea and the upland. This result can be explained as follows: on an eroding shoreline fronted by a beach, a beach will be present as long as some sand is supplied to the shoreline. As erosion proceeds, the entire profile of the beach also retreats. This process

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18 Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981, Skidaway Institute of Oceanography), pg. 4.

19 State Department of Boating and Waterways (formerly called Navigation and Ocean Development), Shore Protection in California (1976), page 30.

20 Coastal Sediments '87.

stops, however, when the retreating shoreline comes to a seawall. While the shoreline on either end of the seawall continues to retreat, shoreline retreat in front of the seawall stops. Eventually, the shoreline fronting the seawall protrudes into the water, with the winter MHT fixed at the base of the structure. In the case of an eroding shoreline, this represents the loss of a beach as a direct result of the seawall.

Dr. Craig Everts found that on narrow beaches where the shoreline is not armored, the most important element of sustaining the beach width over a long period of time is the retreat of the back beach and the beach itself. He concludes that:

Seawalls inhibit erosion that naturally occurs and sustains the beach. The two most important aspects of beach behavior are changes in width and changes in the position of the beach. On narrow, natural beaches, the retreat of the back beach, and hence the beach itself, is the most important element in sustaining the width of the beach over a long time period. Narrow beaches, typical of most of the California coast, do not provide enough sacrificial sand during storms to provide protection against scour caused by breaking waves at the back beach line. This is the reason the back boundary of our beaches retreats during storms.<sup>21</sup>

Dr. Everts further concludes that armoring in the form of a seawall interrupts the natural process of beach retreat during a storm event and that, "A beach with a fixed landward boundary is not maintained on a recessional coast because the beach can no longer retreat."

The Commission has observed this phenomenon up and down California's coast, where a seawall has successfully halted the retreat of the shoreline, but only at the cost of usurping the beach. For example, at La Conchita Beach in Ventura County, placement of a rock revetment to protect an existing roadway has caused narrowing of the existing beach. Likewise, at City of Encinitas beaches in San Diego County, construction of vertical seawalls along the bluffs to protect existing residential development above, has resulted in preventing the bluffs' contribution of sand to the beaches, resulting in narrowing. Although this may occur only slowly, the Commission concludes that it is the inevitable effect of constructing a seawall on an eroding shoreline. In such areas, even as erosion proceeds, a beach would be present in the absence of a seawall. As set forth in earlier discussion, Lechuza Beach is eroding and, therefore, the effects of the proposed seawall on the shoreline will become increasingly severe as the beach erodes further landward and as the protective device becomes a dominant component of the shoreline system.

These studies thus confirm that beach scour is a likely result of the placement of seawalls in an area subject to wave runup. In this case, the evidence has

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<sup>21</sup> Letter Report dated March 14, 1994 to Coastal Commission staff member and engineer Lesley Ewing from Dr. Craig Everts, Moffat and Nichols Engineers.

already demonstrated that Lechuza is an eroding beach and that the proposed revetment is likely to be routinely subject to wave action. Based on his analysis, Mr. Gadd concluded that the proposed revetment will significantly contribute to the scouring of Lechuza Beach and that the typical eroded beach condition will occur with greater frequency and accrete at a slower rate that would occur without the placement of the proposed revetment. Given all these studies and this site-specific evidence, the Commission agrees with this conclusion.

This conclusion that the revetment will cause greater erosion than under natural conditions and less rapid beach recovery through accretion means that the proposed revetment would cause erosion of the public beach as defined by the Court. It would also mean that the revetment would cause erosion of the area of MEHOA's lateral access easement as defined by the Court, and the Court has directed the Commission to consider the impacts of the proposed development on MEHOA's private property interests. It is evident that beach use by the public during eroded beach profiles would be minimal to non-existent (Exhibit 10A and 10B) As graphically depicted in these exhibits, if the proposed development on lots 146 (eastern end) and 153 (western end) were allowed, the beach area in front of the houses during an eroded profile would be available for use during times of low tide only. During other tidal conditions such as periods of mean high tide (which is exceeded 13% of the time), the area available for public use as defined by the Court would be submerged in four feet of water. Thus, the ability to walk along Lechuza Beach if the site were developed as proposed by the applicant, will be often unavailable and will be limited to those who are willing and able to either wade or swim along the coast. Moreover, due to the close proximity of the revetment to wave run-up, the water here may be more turbulent than it would along an unarmored beach area.

The Commission, therefore, concludes that the proposed revetment will have adverse impacts on the shoreline by further contributing to the erosion of the beach and by increasing the time by which the beach might recover from those impacts. These impacts will impair the public beach and the MEHOA lateral easement as defined by the Court's decision.

**b. End Effects**

End effects involve the changes to the beach adjacent to the revetment or seawall at either end. One of the more common end effects comes from the reflection of waves off of the revetment in such a way that they add to the wave energy which is impacting the unprotected coastal areas. In the case of a revetment, the many angles and small surfaces of the revetment material reflect wave energy in a number of directions, effectively absorbing much of the incoming wave rather than reflecting it. Because of the way revetments modify

incoming wave energy, there is often less problem with end effects or overtopping than that which occurs with a vertical bulkhead.

The literature on coastal engineering repeatedly warns that unprotected properties adjacent to the seawall may experience increased erosion. A rock wall very often protrudes seaward from development and exacerbates this situation. Field observations have verified this concern.<sup>22</sup>

An extensive literature search on the interaction of seawalls and beaches was performed by Nicholas Kraus in which he found that, while seawalls will have little if any effect on a beach with a large supply of sand, there will be effects to narrow beaches or beaches eroded by storm activity, such as Lechuza. His research indicated that the form of the erosional response to storms that occurs on beaches without seawalls is manifested as more localized toe scour and end effects of flanking and impoundment at the seawall.<sup>23</sup> Dr. Kraus' key conclusions were that seawalls could be accountable for retention of sediment, increased local erosion and increased end erosion. Kraus states:

At the present time, three mechanisms can be firmly identified by which seawalls may contribute to erosion at the coast. The most obvious is retention of sediment behind the wall which would otherwise be released to the littoral system. The second mechanism, which could increase local erosion on downdrift beaches, is for the updrift side of the wall to act as a groin and impound sand. This effect appears to be primarily theoretical rather than actualized in the field, as a wall would probably fail if isolated in the surf zone. The third mechanism is flanking i.e. increased local erosion at the ends of walls.

Although it is difficult to quantify the exact loss of material due to end effects, in a paper written by Gerald G. Kuhn of the Scripps Institution of Oceanography, he concludes that erosion on properties adjacent to rock seawall is intensified when wave runup is high. In addition, preliminary results of researchers investigating the length of shoreline affected by heightened erosion adjacent to seawalls concluded that:

Results to date indicate that erosion at the ends of seawalls increases as the structure length increases. It was observed in both the experimental results and the field data of Walton and Sensabaugh (1978) that the depth of excess erosion is approximately 10% of the seawall length. The laboratory data also revealed that the along-coast length of excess

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22 Paper by Gerald G. Kuhn of the Scripps Institution of Oceanography entitled "Coastal Erosion along Oceanside Littoral Cell, San Diego County, California" (1981).

23 "Effects of Seawalls on the Beach", published in the Journal of Coastal Research, Special Issue #4, 1988.

erosion at each end of the structure is approximately 70% of the structure length.<sup>24</sup>

A more comprehensive study was performed over several years by Gary Griggs which concluded that beach profiles at the end of a seawall are further landward than natural profiles.<sup>25</sup> This effect appears to extend for a distance of about 6/10 the length of the seawall and represents both a spatial and temporal loss of beach width directly attributable to seawall construction. In the case of this project the scour effects could be as great as 600 ft. to 700 ft. (6/10 of 1,000 ft. = 600 ft. or 70% of 1,000 ft. = 700 ft.). These end effects would be expected only when the seawall was exposed to wave attack and, under equilibrium or accreting beach conditions, this scour would disappear eventually during post-storm recovery. However, such cases of renourishment of end areas are rare for erosional beaches. In the case of Lechuza Beach, which as stated previously is an eroding beach, there is no evidence which would indicate that the end areas affected would be renourished. The Commission notes that the applicant has submitted no evidence refuting this conclusion relative to beach scour. Furthermore, Griggs' study found that similar downdrift scour could be expected from seawalls elsewhere along the California coast.

As represented in the above quotations, end effects have significant impacts to neighboring coast properties. In the case of Lechuza Beach, assuming the least amount of end erosion as indicated by the above studies, end effects under the more conservative scenario (150 meters) as a result of the seawall's construction would result in scouring sand at the base of the public staircase, and the small bluff to the west of the project and the private beach area to the east of the project (*Exhibit 3*). However, if the maximum estimated erosion occurred, the potential scour at the ends could equal as much as 700 ft. and resultant scour areas to the west would also include Lechuza Creek.

### **c. Retention of Potential Beach Material**

A seawall's retention of potential beach material inherently impacts shoreline processes. One of the main functions of a revetment is upland stabilization -- to keep the upland sediments from being carried to the beach by wave action and bluff retreat. In the case of Lechuza Beach, which is located in the Zuma Littoral Cell, the back of the beach and bluff area contribute to the sediment load that is moved through the cell. Coastal bluffs, like those found at Lechuza Beach, are topped by or formed from ancient deposits and contain beach quality material. Thus, the absence of a revetment allows the back beach and bluff area to

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24 "Laboratory and Field Investigations of the Impact of Shoreline Stabilization Structures on Adjacent Properties" by W.G. McDougal, M.A. Sturtevant, and P.D. Komar in *Coastal Sediments '87*.

25 "The Interaction of Seawalls and Beaches: Seven Years of Field Monitoring, Monterey Bay, California" by G. Griggs, J. Tait, and W. Corona, in *Shore and Beach*, Vol. 62, No. 3, July 1994.

contribute to the source of sediment. In addition, when the beach in front of the structure disappears, over time the natural shoreward migration of the beach is blocked by the structure. The National Academy of Sciences found that retention of material behind a revetment may be linked to increased loss of material in front of the wall. The net effect is documented in "Responding to Changes in Sea Level, Engineering Implications" which provides :

A common result of sea wall and bulkhead placement along the open coastline is the loss of the beach fronting the structure. This phenomenon, however, is not well understood. It appears that during a storm the volume of sand eroded at the base of a sea wall is nearly equivalent to the volume of upland erosion prevented by the sea wall. Thus, the offshore profile has a certain "demand" for sand and this is "satisfied" by erosion of the upland on a natural beach or as close as possible to the natural area of erosion on an armored shoreline...<sup>26</sup>

As explained, the revetment will protect the upland property from continued loss of sediment. However, the result of this protection, particularly on a narrow, eroding beach, is a loss of sediment on the sandy beach area that fronts the seawall. Furthermore, as explained previously, this loss of sediment from the active beach leads to a lower beach profile, seaward of the protective device, where the revetment will have greater exposure to wave attack.

#### **d. Interruption of Onshore and Longshore Processes**

If a revetment (seawall) is built on an eroding beach and the device eventually becomes a headland jutting into the ocean, the revetment can function like a groin. Thus, the revetment may modify or interrupt longshore transport and may cause the upcoast fillet of deposition and downcoast indenture of erosion which is typical of sand impoundment structures.

The proposed project is located on the western half of Lechuza Beach, and, as proposed, the seaward extent of the revetment location would range from approximately 60 ft. to 85 ft. from the base of the bluff. As discussed above, there is substantial evidence that indicates that the seawall will be subject to wave action due to its physical location on the beach and due to the beach's erosional trend. Thus, the proposed project appears to have the potential to greatly interrupt the longshore process. However, the natural, geomorphologic features of the beach must also be considered. For example, the western (upcoast) end of the beach is a rocky outcrop point that bounds Lechuza Beach to the west. This rocky area protrudes further seaward than the proposed revetment at a distance of approximately 40 ft. from the base of the bluff.

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26 National Academy of Sciences, Responding to Changes in Sea Level: Engineering Implications, National Academy Press, Washington D.C., 1987, page 74.

Furthermore, the western extent of the proposed seawall is located approximately 350 ft. downcoast (east) of the outlet of Lechuza Creek and the rocky outcrop area. Given the geomorphology of the beach and given the upcoast location of the revetment on the stretch of beach that defines Lechuza, the empirical evidence suggests that a small buildout of beach area could occur if sand were impounded. Thus, the built-out area would be on the 350 ft. stretch of shore upcoast of the project. As a result, the Commission finds that the proposed revetment would impact the sediment supply of the undeveloped beach area downcoast and, as such, would decrease the size of the downcoast sandy beach area.

In addition to the proposed revetment's potential to interrupt longshore transport, the seawall's physical occupation on the beach precludes the build-up of sand at the base of the bluff which would occur as a result of onshore seabreeze. Civil Engineer, Dr. Ian Collins, who is a consultant to a project opponent, Save Lechuza Beach, points out that, "An additional factor which is often neglected by coastal engineers is the impact of wind on beach processes." Dr. Collins concludes that:

The explanation as to how a beach can rebuild to an elevation of +9 to +12 feet in times of low waves which do not run-up this high is often overlooked. The prevailing onshore seabreeze at this location and others along the California Coast is an important mechanism for the transport of sand towards the bluffs. In essence, small dunes are being continually built by the onshore winds as sand is blown shoreward. This is a slow but not unimportant factor in the storage of beach sand against the bluffs. This stored sand will subsequently act as a reservoir for future storms.

Therefore, for all the reasons explained above, the Commission finds that the proposed project will adversely impact the natural onshore process of beach replenishment.

**e. Conclusion**

In conclusion, the Commission finds that the proposed 1,000 ft. long rock revetment seawall will have adverse impacts on the shoreline processes. There is substantial evidence indicating that the proposed shoreline protective device on Lechuza Beach will: 1) cause beach scour along the seaward area of the revetment which will change the profile of the beach which is already subject to erosional trends; 2) cause a reduction of the available sandy beach area; 3) cause end scour at both ends of the seawall at distances as great as 700 ft. down and upcoast; 4) retain potential beach material which would otherwise contribute to the area's sand supply; 5) cause a landward retreat of the physical boundary of the beach, further exacerbating the already present narrow beach conditions; 6) interrupt the longshore and onshore sand process which will result in loss of sand to downcoast beach areas; and 7) impair the potential for onshore transport of sediment that would serve to build up the beach. Based on

all the evidence as summarized, the Commission finds that the proposed project will adversely impact the shoreline and contribute to the loss of the beach that the Court has determined belongs to the public or is subject to MEHOA's easement.

### **5. Past Commission Actions on Residential Shoreline Development**

Many portions of the Malibu coastline are intensely developed with single family residences. The eastern portion of the Malibu coastline including Las Tunas, Big Rock, La Costa and Carbon beaches, form an almost solid wall of residential development along a five mile stretch of the shoreline. This residential development extends over the sandy and rocky beach in many areas and most of the residences have shoreline protective devices such as rock revetments and concrete or timber seawalls. This residential development and their associated protective devices prevent access to the coast, obscure the views to the beach and water from Pacific Coast Highway, interrupt shoreline processes and impact the fragile biological resources in these areas.

Just west of Malibu Lagoon there is another stretch of residential development extending approximately three miles along the coastline including the Malibu Colony area and the residential development along Malibu Road. Here again, residential development forms an almost continuous wall of houses along the shoreline protected by seawalls. From Corral Beach west there is less development on the shoreline due to high bluffs and public beach areas. However, there are two pockets of residential development in western Malibu that extend over the sandy beach and also have shoreline protective devices: the Malibu Cove Colony and Escondido beach road area just east of Point Dume and the mile long stretch of homes on Broad Beach<sup>27</sup> just west of Zuma Beach.

Given Malibu's close proximity to the Los Angeles metropolitan area it is understandable why the Malibu coastline has experienced such intensive development of its coastline over the past 50 years. The vast majority of this development took place prior to the passage of Proposition 20 which established the Coastal Commission and the 1976 Coastal Act. As previously stated, section 30235 of the Coastal Act allows for the construction of protective devices only if the device serves to protect coastal dependent uses, or to protect existing structures or public beaches in danger from erosion. The construction of protective devices to protect new residential development is generally not allowed under this Coastal Act section. The majority of the residential development described above required some type of shoreline protective device in order to be developed. Therefore, it is safe to assume under this policy and

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<sup>27</sup> Staff notes that homes located along the eastern end of Broad Beach are protected by natural, existing coastal dune fields rather shoreline protective devices.

the other resource protection policies of the Coastal Act that this type of development along Malibu's coastline would either not have been approved or would be developed in a much different configuration or design than it is today.

The Commission has previously permitted a number of residential developments with protective devices on the Malibu coast, but only when that development was considered "infill" development. The developed portions of the Malibu coastline include a number of vacant parcels between existing structures. Typically, there are no more than one to two vacant lots between existing structures. Faced with the prospect of denying beach front residential development with protective devices due to inconsistency with section 30235 of the Coastal Act, the Commission established the "infill" policy through permit actions on beach front development in Malibu. Infill development can be characterized as the placement of one to two residential structures on one to two lots with protective structures provided those protective structures tie into adjacent protective structures.

The Commission recognized that the infilling of residential development between existing structures would not result in significant adverse impacts to coastal resources within these existing developed shoreline areas. The Commission also acknowledged that the gaps these vacant parcels created between protective devices focused wave energy between these structures resulting in erosion of the vacant property between the structures and potentially endangering infrastructure along Pacific Coast Highway or adjacent frontage roads and endangering adjacent structures. The Commission found that infilling these gaps would prevent this type of focused shoreline erosion and would not significantly further impact shoreline processes or adversely impact other coastal resources given the prevailing development pattern along these sections of the Malibu coast.

In 1981 the Commission adopted the "District Interpretive Guidelines" for Malibu/Santa Monica Mountains area of the coastal zone. These guidelines established specific standards and criteria for shoreline development along the Malibu Coast. The guidelines included the "stringline" policy for the siting of infill development:

In a developed area where new construction is generally infilling and is otherwise consistent with Coastal Act policies, no part of a proposed new structure, including decks and bulkheads, should be built further onto a beach than a line drawn between the nearest adjacent corner of the adjacent structures. Enclosed living space in the new unit should not extend farther seaward than a second line drawn between the most seaward portions of the nearest corner of the enclosed living space of the adjacent structure.

In 1986 the Commission certified the Los Angeles County Malibu/Santa Monica Mountains Land Use Plan which also contains specific policies addressing infill shoreline development:

Policy 153 ...In a developed area where new construction is generally considered infilling and is otherwise consistent with LCP policies the proposed new structure may extend to the stringline of the existing structures on each side.

Policy 166 ...Revetments and seawalls shall be permitted when required to serve coastal dependent uses or to protect existing structures or new structures which constitute infill development.

The intent of the stringline policies was to limit infill development to only existing developed shoreline areas and limit the encroachment of new structures out onto the beach. In past permit actions in Malibu the Commission has typically limited infill development to the construction of one to two structures on one to two vacant parcels between existing structures. Staff investigation has not disclosed a single case where the Commission has permitted the construction of more than three structures as infill on a sandy beach. The more typical infill project the Commission has permitted involves the construction of one or two homes on one or two lots between existing structures. Even where the Commission has permitted shoreline protective devices for infill, the Commission has required engineered devices that minimize their harmful impacts. In many cases of permit approval of shoreline protective devices for infill development, the Commission has also required the provision of lateral public access easements as further mitigation.

On Lechuza Beach there is approximately 1,800 feet of sandy beach between the last residence on the eastern portion of the beach and the existing residence on top of the bluff on the western end of the beach. The area between these developments can only be characterized as an undeveloped pristine sandy beach. The proposed development of twelve homes, a 1,000 foot rock revetment, access road and infrastructure clearly cannot be considered an infill development within an existing developed area.

As previously mentioned , four structures were constructed on the eastern portion of Lechuza beach prior to Proposition 20 and the Coastal Act. The Commission approved three infill houses on this eastern portion of the beach adjacent to or between the existing residences; 5-89-012 (Lieberman), 5-90-302 (Gershonoff) and 5-90-807 (Boeckman). These residences are either currently under construction or have been constructed. The Commission found in a previous denial of permit 5-87-1028 (Lieberman) for a single family residence and

later in the approval of permit 5-90-012 (Lieberman) for a residence on this same lot that:

The Commission would not consider the vacant parcels in the deed restricted lots to the west of the last developed parcels or those lots further west in the roadless section along the beach to be infill or located in an existing developed area.

In addition, the Commission found in the approval of Coastal Development Permit 5-90-807 (Boeckman) and confirmed in the later extension of the permit that, "the proposed residence was located on the last two developable beachfronting lots on Sea Level Drive."

The applicant has argued in the past that the development it is proposing is no different than the residential development the Commission has approved on the eastern portion of Lechuza beach or any other beach front development the Commission has approved in Malibu. However, the Commission finds that there are clear and distinct differences between the proposed development and residential development the Commission has permitted on the eastern portion of this beach and other residential beachfront development in Malibu. As stated above, the proposed development clearly cannot be considered as an "infill development" because it is not located on an existing developed beach and there is approximately 1,800 feet of undeveloped beach between development on the western and eastern portions of the beach. Furthermore, staff has not been able to find a single case in the Malibu area or statewide where the Commission has permitted a development similar in magnitude to the proposed project on a similar undeveloped beach.

The residential development approved by the Commission on the eastern portion of Lechuza Beach was found to be infill development which is consistent with past Commission permit actions in Malibu and, unlike the applicant's proposal, consistent with LUP Policies 153 and 166. In addition, the development on the eastern portion of the beach did not require the construction of a new road, infrastructure or a rock revetment built out over undisturbed sandy beach. Furthermore, as discussed above, recent survey data on this portion of the beach indicates that the eastern portion of Lechuza Beach, where the approved residences are located, is at a slightly higher elevation and does not appear to scour as deeply or as frequently as the western portion of the beach. The evidence cited in the preceding discussion indicates that this can be attributed to Lechuza Point acting as a groin which traps sand in this location resulting in a higher beach profile on this eastern portion of the beach. The residences on the eastern portion of the beach did require vertical seawalls located adjacent to the road shoulder under the structures to protect the road fill, where the septic system for the houses are located, from extreme high tide and

storm wave damage. The wave uprush studies done for these residences and survey data collected to date indicate these walls will not be impacted by wave action nearly as frequently as the rock revetment the applicant proposes on the western portion of the beach. Therefore, the impact of the protective devices on the eastern beach profile and processes will be much less than that of the large rock revetment the applicant is proposing on the western portion of the beach. Furthermore, the newer seawalls tie into each other which will fill in the gaps between existing (pre-1972) protective devices thereby preventing erosion and damage of the existing roadway.

Eastern Sea Level Drive was damaged by high tide and storm wave conditions in the winter of 1983. The Executive Director approved an emergency permit for the placement of a rock revetment to protect the existing roadway. The Commission later approved the revetment finding that the revetment was necessary to protect the existing roadway consistent with Section 30235 of the Coastal Act. The seawall proposed in this application would tie into this existing rock revetment.

The applicant and its agents have pointed to three developments the Commission has approved in the Malibu area which it claims are similar to the proposed project. The first is a nine lot subdivision and construction of one home the Commission permitted under Coastal Development Permit 5-85-635 (Broad Beach Associates). The project involved the subdivision of three lots into nine lots on a degraded bluff face located on Broad Beach Road between existing single family residential development. The Commission finds that the proposed project is significantly dissimilar, however. The Broad Beach project is located off of an existing road way with existing infrastructure. The proposed building sites and septic systems were located entirely on the degraded bluff face and not on the active sandy beach area. In addition, the development did not require the construction of a shoreline protective device.

The second project the applicant cites as similar to his proposal is Coastal Development Permit 5-85-299 (Young and Golling) for the construction of five detached condominium units located on the seaward side of Latigo Shores Drive in Malibu. This project involved the construction of five condominium units off an existing roadway with existing infrastructure. The project is located on a coastal bluff and the structures overhang the sandy beach in several locations due to undulations in the bluff. Several of the caissons supporting the structures were located on sandy beach. The overhang of the structures over sandy beach is quite minimal, ranging from approximately 0 to 20 feet. The proposed project did not require a shoreline protective device and the septic systems were located adjacent to the roadway at the top of the bluff. The Commission finds that this project, too, is dissimilar to that proposed here.

The third development the applicant cites as an example of a development that the Commission has permitted which is similar to its proposal is a subdivision of a 1.44 acre beach and bluff top parcel resulting in three beachfront lots and one bluff top parcel off Escondido Beach Road. The proposal also included the construction of three beach front residences with a vertical seawall protective device at the end of a row of residential development on Escondido Beach Road. The project also included the removal of an existing eleven unit non-conforming apartment building in the location of the proposed three beachfronting residences. The Commission found in the approval of this project that there were unique circumstances in this case and that the removal of the 11 unit apartment building and replacement with three single family residences would result in the net reduction of residential density along this section of Escondido Beach. The Commission also noted that the project was located in an existing developed beach area.

The locations, designs and circumstances relating to these projects approved by the Commission do not support the applicant's claim that these developments are similar to its proposal. The applicant's proposal to construct a 1,000 foot long rock revetment, access road, infrastructure, twelve single family residences, with the potential of the ultimate buildout of 17 homes on an open, undeveloped, sandy, eroding beach is clearly not comparable to the residential projects cited above or to any residential project the Commission has approved in Malibu or along the entire coastline of California. Again, commission staff investigation has not disclosed a single case which is comparable to the proposed project in the Malibu area or statewide.

## **6. Conclusion**

Coastal Act sections 30235, 30253 and 30250(a) set forth the Commission's mandate relative to permitting shoreline protective devices. In order for the Commission to permit the proposed project, which includes a 1,000 ft. long rock revetment, it must find the project consistent with the Chapter 3 policies of the Coastal Act. Therefore, the proposed project must be evaluated against each of these applicable Coastal Act sections.

Coastal Act section 30235, which is cited above, states that shoreline protective devices, such as revetments and other construction that would alter natural shoreline processes, shall be permitted when those structures are necessary to serve coastal-dependent uses or to protect existing structures or to protect public beaches in danger from erosion and when they are designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The proposed development involves the buildout of an undeveloped stretch of beach. Integral to the project is the proposed 1,000 ft. long seawall, that would be required to enable this narrow beach to be developed. The intent of the statute is to permit

the construction of shoreline protective devices only in specified limited instances. In the three instances where such shoreline protective devices are permitted, Section 30235 states that these devices shall be designed to eliminate or mitigate adverse impacts on local shoreline sand supply. As presented above, in addition to the fact that the proposed revetment is not coastal dependent or intended to protect existing structures or a public beach, there is substantial evidence that the proposed shoreline protective device will alter the natural shoreline processes at Lechuza Beach and will adversely impact the local shoreline sand supply. This will cause loss of the public beach as defined by the Court's boundary line determination.

A comprehensive analysis of the proposed project has shown that the proposed seawall will specifically: 1) cause beach scour along the seaward area of the revetment which will change the profile of the beach which is already subject to erosional trends; 2) cause a reduction of the available sandy beach area; 3) cause end scour at the ends of the seawall at distances as great as 700 ft. down and upcoast; 4) retain potential beach material which would otherwise contribute to the area's sand supply; 5) cause a landward retreat of the physical boundary of the beach, further exacerbating the already present narrow beach conditions; 6) interrupt the longshore and onshore sand process which will result in loss of sand to downcoast beach areas; and 7) impair the potential for onshore transport of sediment that would serve to build up the beach. The Commission finds, therefore, that the shoreline protective device proposed here is not supportable for any of the three designated reasons enumerated in Coastal Act section 30235. Furthermore, because it will clearly have adverse impacts on shoreline processes, the Commission concludes that the proposed project is inconsistent with section 30235 of the Coastal Act.

Coastal Act section 30253, (also cited above) mandates that new development shall neither create nor contribute significantly to erosion, or contribute to 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 statute further specifies that new development shall minimize risks to property in areas of hazard. As itemized in the preceding paragraph the proposed revetment will unequivocally contribute significantly to beach erosion, will impact adjacent properties and will alter the landforms along the bluffs and cliffs at Lechuza Beach. Based on the proposed project's potential for tremendous adverse impacts, as set forth in the preceding text, the Commission finds that it is inconsistent with section 30253 of the Coastal Act.

Section 30250(a) of the Coastal Act states, in part, that new development not adversely affect, either individually or cumulatively, coastal resources. The project will result in the development of a 1,000+ ft. long stretch of pristine, narrow sandy beach that is backed by coastal bluffs. Development of any

portion of this beach area will adversely impact coastal resources, including the public beach defined by the Court's boundary decision. Furthermore, for all the reasons cited above, the proposed development will have both adverse individual and cumulative effects. Moreover, the Commission's extensive review of residential beachfront development involving shoreline protective devices has not disclosed a single project comparable to that proposed by the applicant. This review has underscored the Commission's adherence to the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that the proposed project is inconsistent with section 30250 of the Coastal Act.

#### **D. Hazards and Geologic Stability**

Coastal Act Section **30253** states in part:

New development shall:

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

Section 30253 of the Coastal Act mandates that new development provide for geologic stability and integrity and minimize risks to life and property in areas of high geologic, flood, and fire hazard. In addition to section 30253 of the Coastal Act, the certified Malibu/Santa Monica Mountains LUP contains several policies and standards regarding hazards and geologic stability. 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 30253 of the Coastal Act. For example, Policy 147 suggests that development be evaluated for impacts on and from geologic hazards. Policy 165 suggests that no permanent structures be permitted on bluff faces.

##### **1. Storm, Wave and Flood Hazard**

The Malibu coast has been subject to substantial damage as a result of storm and flood occurrences, geological failures and firestorms. Therefore, it is necessary to review the proposed project and project site against the area's known hazards. The proposed project involves the development of an approximate 1,000+ ft. long undeveloped stretch of Lechuza Beach.

As stated previously, the project involves the development of the western half of Lechuza Beach (1,000+ ft.) (*Exhibit 3*). In order to realize the future build out of this stretch of beach, the applicant is proposing to construct the infrastructure for the potential development of all 17 lots. Given the location of this development on the sandy beach and intertidal area, the applicant is proposing to construct a 1,000 ft. long, approximately 33 ft. wide rock revetment. Specifically, the majority of the revetment is approximately 33 ft. wide and 15 ft. high, with a 25 foot long face at a 1.5:1 angle (*Exhibit 5*). The seaward extent of the revetment will extend approximately 60 to 85 feet from the base of the coastal bluff (from west to east) out into the sandy beach and intertidal zone. The revetment is necessary to protect the proposed 1,060 ft. long road that, as designed, will connect western and eastern Sea Level Drive and to protect the proposed septic systems. The road will be constructed at the base of the coastal bluff.

The applicant has stated that the proposed project involves 15,000 cu. yds. of grading (14,985 cu. yds. of fill and 15 cu. yds. of cut). However, on January 15, 1997, the applicant submitted revised plans which show three retaining walls versus only one that was originally proposed. Additionally, the 1997 plans differ from those submitted with the consolidated permit applications in that the 1997 plans show the retaining wall located landward, by as much as 20 ft. from the base of the bluff. The applicant has not submitted revised grading plans. However, it appears from the plans that the revised proposal will require additional "cut" grading into the base of the bluff and staff estimates that the most current project design involves substantially more than 15 cu. yds. of cut. Two of the proposed retaining walls are located at the base of the bluff along the western 575 ft. of the road and are 320 ft. and 190 ft. long (with a 65 ft. wide gap). The walls will vary in height from two to ten feet. (*Exhibit 2*). A third 240 ft. long retaining wall will be located on the landward side of revetment and will extend from lots 152 through 155W. As designed by the applicant, the project's septic leachfields will be located under the road and the septic tanks will be located in the project's road right-of-way which is an approximately 20 ft. wide area between the road and the twelve proposed residences.

As indicated above, the project also includes the construction of twelve single family homes. The location of the homes has also been revised somewhat in response to the Court ordered boundary line. Under the current proposal the homes are sited landward from where they were originally located. The homes will extend 73 to 89 feet (west to east) seaward from the base of the bluff. Along the western end (i. e. Lot 153) of the development, the homes will extend seaward of the revetment by 20 ft. and along the eastern end (i. e. Lot 142) the homes will extend seaward of the revetment by approximately one (1) ft. (*Exhibits 2 & 5*).

The site is susceptible to flooding and/or wave damage from storm waves and storm surge conditions. Past occurrences have resulted in public costs (through low-interest loans) in the millions of dollars in the Malibu area alone. Information available to the Commission staff indicates that storm damage on Lechuza Beach dates as far back as 1938. In 1933 a single family house and a road were built on the beach (*Exhibit 11*). Both the road and the house washed away during a severe storm event in the 1930's.

Along the Malibu coast, significant damage has also occurred to coastal areas from high waves, storm surge and high tides. In the winter of 1977-78, storms triggered numerous mudslides and landslides and caused significant damage along the coast.

The southerly and southwesterly facing beaches in the Malibu area were especially hard hit by waves passing through the open windows between offshore islands during the 1978 and 1980 storms. These waves broke against beaches, seawalls, and other structures, causing damages of between \$2.8 and \$4.75 million to private property alone. The amount of erosion resulting from a storm depends on the overall climatic conditions and varies widely from storm to storm. Protection from this erosion depends largely on the funds available to construct various protective structures that can withstand high-energy waves.<sup>28</sup>

The "El Nino" storms in 1982-83 caused additional damage to the Malibu coast, when high tides of over 7 feet were combined with surf between 6 and 15 feet. These storms caused over \$12.8 million in damage to structures in Los Angeles county, many located in Malibu. Due to the severity of the 1982-83 storm events, they have often been cited as an illustrative example of an extreme storm event and used as design criteria for shoreline protective structures. Damage to the Malibu coastline was documented in an article in California Geology. This article states that:

In general, the storms greatly affected the character of the Malibu coastline. Once quiet, wide, sandy beaches were stripped of their sand and high surf pounded residential developments .... The severe scour, between 8 to 12 feet, was greater than past scour as reported by "old timers" in the area. Sewage disposal systems which rely on the sand cover for effluent filtration were damaged or destroyed creating a health hazard along the coast. Flotsam, including pilings and timbers from damaged piers and homes, battered coastal improvements increasing the destruction. Bulkhead failures occurred when sand backfill was lost due to scour exceeding the depth of the bulkhead sheeting, or scour extending

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<sup>28</sup> "Coastal Winter Storm Damage, Malibu, Los Angeles County, Winter 1977-78", part of the National Research Council proceedings, George Armstrong.

beyond the return walls (side walls of the bulkhead which are extended toward the shore from the front wall of the bulkhead).<sup>29</sup>

Other observations that were noted included the fact that the storm's damage patterns were often inconsistent. Adjacent properties suffered different degrees of damage sometimes unrelated to the method or age of construction. The degree of damage was often related to past damage history and the nature of past emergency repairs. Less than a mile downcoast (east), walls at Zuma Beach and the parking lots were damaged by wave uprush and scour. Debris was deposited onto the margin of Pacific Coast Highway (*Exhibit 1*). Immediately adjacent to Lechuza Beach, approximately 2,000 ft. downcoast is Broad Beach (also known as Trancas Beach). Homes along the eastern portion of Broad Beach Road had been constructed in the back shore area and were built below the grade of the street and active beach. Flooding occurred when the vegetated coastal dune was breached. The dune deposits along the toe of the bluff near the western end of Broad Beach Road were eroded exposing the toe of the bluff to wave attack. Areas underlain by colluvium, fill, and slopewash were particularly susceptible to erosion which resulted in instability of portions of the bluff.

The existing structures on the eastern portion of Lechuza Beach did experience some damage in the 1983 storms. According to Donald Kowalewsky, former Geologist for the City of Malibu, a property approximately 1/4 mile from Sea Level Drive, near El Matador Beach, lost approximately 20 feet of cliff and talus material during the March 1983 storm. While performing a site inspection, Mr. Kowalewsky visited Sea Level Drive and observed that 10 to 20 feet of cliff and talus material had been removed from the base of the cliffs at Sea Level Drive. Furthermore, he observed that stairways which had led to the beach from Upper Sea Level Drive had been washed out or torn from the bluff.

Storms in 1987-88 and 1991-92 did not cause the far-reaching devastation of the 1982-83 storms, however, they too were very damaging in localized areas and could have been significantly worse except that the peak storm surge coincided with a low tide rather than a high tide.

As proposed, the residences would be elevated structures, built on caissons to protect the structures from storm waves and storm surge (*Exhibit 5*). The access roads and leach fields for the properties are intended to be protected from storm events by the proposed revetment. Experience from historic storm events in Malibu indicates that this protection is essential to the long-term viability of both the road and leach field.

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<sup>29</sup> "Assessment of 1982-83 Winter Storms Damage Malibu Coastline", by Frank Denison and Hugh Robertson, in California Geology, September 1985.

The applicant's submittal includes a Wave Uprush study prepared by David Weiss (Coastal Engineer). The uprush study concludes that the wave uprush would extend approximately 37 feet seaward of the Sea Level Drive right-of-way which is at the base of the coastal bluff. Other evidence contradicts this conclusion. As stated in the preceding section, Shoreline Protective Devices, and as illustrated in *Exhibits 7A. and 7B.*, wave run-up has extended to the base of the bluff in 1988, 1993, 1994 and 1995. Moreover, Mr. Jon Moore, a coastal engineer, of Noble Consultants, Inc., has reviewed the applicant's wave uprush analysis and indicated that there is a higher runup potential on the revetment than that concluded by the applicant. He states:

In my opinion, the applicant has not used a severe enough scour depth and stillwater level commensurate with a 1983-type storm scenario. Only two wave period/deep water wave height combinations were considered which do not yield the most critical runup conditions that might occur over the life of the project.

Mr. Moore concludes by stating that the analysis contained within the wave uprush report submitted by the applicant is:

The complete reverse of the standard practice procedure to calculate wave runup whereby one determines the greatest water depth at the toe of the structure of interest (in this case the revetment toe) and calculates the corresponding maximum supportable or depth limited wave heights as well as the full range of wave period/height combinations that can break on or in front of the structure.

With regard to the project design, the applicant's consultants recommend the proposed residences be supported on concrete caissons and grade beam foundations. In addition, they recommend a bulkhead and revetment to protect any sewage disposal systems and leach field, as well as the future Sea Level Drive from wave uprush and beach scour. Here again, Mr. Moore has reviewed the specific project design and found problems with the revetment's structural design and with the consultant's analysis. For example, Mr. Moore has informed staff that the base floor determination does not reflect wave, water level, and beach profile scour conditions that might occur during a 1983-type storm. The base floor elevations of the residences are not at an adequate height above the beach to ensure that the residences will not be damaged in a 1983-type storm sequence scenario. In addition Mr. Moore refutes the consultant's statement that the revetment will be maintenance free and able to withstand a one-hundred year storm event. Given the location of the revetment in an area that is frequently impacted by high tide and wave wash, Mr. Moore has stated that there will be stone dislodgement and revetment damage over the project life. Because of the location of the proposed twelve houses, which extend over the revetment,

maintenance of the rock revetment will be difficult, if not impossible. Furthermore, Mr. Moore notes that no rock revetment is maintenance free.

The preceding accounts of recurring storm damage to coastal structures along the Malibu coast are a clear indication of the potential hazards to development located in or near the surf zone, or on the beach. Recent storm records indicate that extreme events have occurred with regularity, causing rapid transformations of wide sand beaches, and endangering the structures protected by these beaches. As stated by Armstrong, "protection from this erosion depends largely on the funds available to construct various protective structures that can withstand high-energy waves"<sup>30</sup>. The existence of a protective device alone, cannot be viewed as adequate protection for shoreline development, without detailed evidence of the persistence of such protection through the recent storm events. Mr. Kowalewsky's observations of the Sea Level Drive cliffs following the March 1983 storms provide evidence that the beach at the proposed project site would not provide such protection. Additionally, there is conclusive information that indicates that the project was not designed to withstand a severe storm event. As specified above, the proposed design of the homes and the rock revetment will not insure structural stability and integrity. The proposed development does not minimize the risk of life and property in an area of known flood and wave hazard.

## **2. Site Geologic Stability**

Beachfront development and development at the base of a coastal bluff raise issues relative to a site's geologic stability. Malibu has experienced coastal damage regularly from geologic instability induced by winter rains and heavy surf conditions. For instance, in *Living with the California Coast*, Griggs and Savoy discuss development at the seaward base of a cliff on the Malibu coastline and note that:

"As the amount of land along the immediate shoreline was consumed by subsequent housing, however, more and more structures were built on pilings in potentially dangerous locations at the base of crumbling bluffs ... Over the past 60 years, therefore, the pattern of beach erosion has grown in significance until many houses formerly built at the rear of broad backshores now find themselves stranded high above eroding foreshores, the waves periodically pummeling the underlying bluffs that connect the houses to the highway. The management problems facing this coast can only increase with time, as society as a whole has to pay the penalty for unwise, uncoordinated, and irrational developments of the past."  
(emphasis added)<sup>31</sup>

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<sup>30</sup> Op. Cit., page 16.

<sup>31</sup> Living with the California Coast, Griggs and Savoy

These problems associated with geologic instability are particularly serious in older subdivisions. Developments at the base of natural slopes within older subdivisions suffered severe damage in the 1977-78 winter storms, where a series of intense rainstorms triggered numerous mudslides and landslides. Within the City of Los Angeles alone, losses to public and private property were estimated to be \$100 million. Slosson and Krohn stated that:

"Damage from debris flows and mudflows appears to be increasing in magnitude and is caused, in part, by the increased construction of homes at the base of natural slopes or partial natural slopes associated with older subdivisions. Most severely hit appear to be those sites or lots that were a part of pre-1963 or even pre-1952 subdivisions but were not built upon until recent years. ... The potential for mudflow and debris flow hazard is easily recognized, but few consultants will acknowledge evidence unless required by code."<sup>32</sup>

These general observations on the hazards of placing development near coastal bluffs are relevant to development at Lechuza Beach. As discussed above, the western end of Lechuza Beach is backed by coastal bluffs. These bluffs back approximately 1,350 ft. of beach, as measured from the middle of Lot 140 up to Lechuza Creek, and range in height from 50 to 55 ft. Coastal bluffs, like those found at Lechuza Beach, are topped by or formed from ancient deposits and contain erodible beach quality material.

The Lechuza community was subdivided in the 1920's and the homes and their associated infrastructure were built in a piecemeal fashion. The subdivision was not designed in such a way that the geologic and topographic constraints were considered. Consequently, development has experienced problems related to geologic instability. The design of the development in this community requires structural mitigation to address a number of geotechnical constraints:

- 1) The community does not have an area drainage network that could manage and direct run-off over the 1,350 ft. long bluff face at Lechuza Beach in a controlled manner;
- 2) The lots created were too small to allow for development to be properly sited away from geologic hazards;
- 3) The subdivision did not consider how the more remote sites would be accessed;

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32 "Southern California Landslides of 1978 and 1980" by James Slosson and James Krohn, in Storms, Floods and Debris Flows in Southern California and Arizona 1978 and 1980, Proceedings of a Symposium by the National Research Council.

- 4) The subdivision layout did not take into account the required necessity for protective devices on beach front lots; and,
- 5) The lots created under the subdivision did not consider the adverse risk that development at the base of a coastal bluff would have.

In order to address these potential problems, the applicant retained geologic consultants to review the project site. These geologic consultants have determined the bluff area at Lechuza to be grossly stable, however, they did not address the surficial stability of the bluff. Neighboring residents report that sloughing of surface material and small debris flows occur frequently along the bluff. If a vertical seawall were constructed as part of the proposed action, it would require the drilling of approximately 250 caissons (based on 3 foot diameter caissons along 740 feet of wall). This activity could trigger extensive surficial failures during construction. If drilling is not possible for the entire wall, some blasting might be necessary which could trigger further surficial failures.

In addition to construction-related failures, this bluff can be expected to continue to erode as it has done historically, depositing material onto the proposed roadway below and possibly, in the case of a large movement, into the residential structures. The applicant's geologists, Geoplan Inc., in their report of November 9, 1990 state that, "Erosion of the bluff and sedimentation on the roadway are expectable..." However, the applicant's geologists do not consider that mudslide type occurrences may be instantaneous during a storm without any warning for the public and they state that these types of failures do not constitute a health and safety hazard. Additionally, the geotechnical report states that while the sloughing of the bluff could cause temporary road blockage, it too does not appear to present a significant health and safety hazard any greater than that presented by other secondary roads in the area.

The applicant's submittal also included a Geology Report prepared by John Merrill (Engineering Geologist). The applicant's geology report states:

"[The lots] may be developed residentially in accordance with applicable elements of the County Building Ordinance, and the recommendations of project consultants, who should review plans to verify that their recommendations have been met."

Despite these conclusions by the applicant's own consultants, the applicant has vacillated on how to best ensure the integrity of the bluff face. As noted above, as recently as January 15, 1997, the applicant has modified its proposal to include two retaining walls at the base of the bluff. The retaining walls are intended to stabilize the bluff. As designed, there is a 65 ft. wide gap between

the two walls which appears to be necessary to maintain the homeowner's access to the beach. Since the applicant has not submitted revised grading plans, it is unclear what impacts the design of the retaining walls will have on the coastal bluff. Because of this lack of information and, in view of the serious problems associated with development near coastal bluffs in the Malibu area, the Commission cannot approve this modified plan as being consistent with Coastal Act policies requiring that new development assure the structural integrity of the site and surrounding area.

The Commission also observes that at a minimum, it appears that the applicant's new plans may require more extensive cut and fill in the area of the bluff and may conflict with the policies of the Coastal Act prohibiting the construction of protective devices that would substantially alter natural landforms. Finally, it also is unclear why the applicant has chosen this new plan in preference to other bluff remediation measures, including the construction of any one or combination of the following: covering the slope with impermeable surfaces (such as gunite or shotcrete); remedial reconstructive grading; and, diversion of drainage.

### **3. Liquefaction**

During the Commission's 1997 review of the proposed development, project opponent MEHOA raised issues regarding the project's stability under seismic hazards. The applicant's geotechnical consultants prepared an analysis of the site's potential for liquefaction during seismic events. Based on a detailed study, the applicant's soils engineer found that the proposed development would be free from the hazards of settlement, slippage and liquefaction. Coastal Engineer Jon Moore, consultant to the Commission, found the applicant's analysis accurate and concurred that the proposed project would not be adversely impacted by liquefaction. Therefore, the Commission concludes that instability due to liquefaction of the proposed project site is not at issue.

### **4. Fire**

The Coastal Act requires that new development shall minimize risks to life and property in areas of high fire hazards. In the Malibu/Santa Monica Mountains area, fire is an inherent threat. Brush fires in the past have burned from the mountains all the way to the beach. The bluff face at the proposed project site, or portions of it, also burned in the 1978 Malibu fire, according to documents filed in the private prescriptive rights lawsuit. In 1993, the Malibu/Topanga area experienced significant damage as a result of the three day firestorms. In total over three hundred homes were destroyed. Although the fire predominantly destroyed homes that were located on the hillsides of the Santa Monica Mountains, several homes that were located on Las Flores Beach were destroyed. This fire served as a grave reminder of the vulnerability of the Santa

Monica Mountains area, including beachfront areas, to massive wildland fires. Therefore, it is essential to ensure new development meets the current county fire code to minimize the risk from fire.

The project as proposed in the 1997 plans, does not meet the current county fire code. The code calls for private access roads to be 25 feet. The code also requires "suitable" turnouts along the roads. The project plans, as modified in 1997, show one turnout on the proposed road. However, the western entrance of Sea Level Drive off of Broad Beach Road clearly does not meet the turning radius or width requirements of the fire code. In 1992, staff met with Fire Chiefs Jerry Pesket and Horst Zimmerman on the site and they indicated this entrance would require improvements to meet the fire code. The applicant at the time of the writing of this report has not submitted revised project plans for the improvement of this entrance.

#### **5. Structural Integrity Of Other Lots**

In order to construct the proposed revetment numerous truck loads of rocks would have to be moved over the very narrow residential streets of the subdivision. The applicant has not indicated how these rocks will be transported on the beach, what impact the truck traffic will have on the streets in the area, where temporary staging areas will be located, or any other temporary structures or facilities such as ramps to the beach, turn around areas, etc. It is evident that moving such a large amount of rock through a residential neighborhood with narrow winding streets will at a minimum create a significant nuisance for the neighboring residents. For instance, the homeowners assert that there may be potential safety problems or nuisances associated with the movement of this large amount of rock, such as vibrations from heavy equipment operating in close proximity to and in some cases crossing over septic systems located in the street, and traffic disruption through the area for many days and possible months which could interfere with emergency vehicles through the area. In addition, there is a concern that such traffic also could damage existing road surfaces and lead to the need for major road repairs or resurfacing.

The potential for these impacts might be reduced through the adoption of appropriate mitigation measures. Without specific information regarding how the project will be constructed, however, the Commission cannot adequately develop such measures or address the environmental impacts associated with such construction techniques and their consistency with Chapter 3 policies of the Coastal Act.

## **6. Conclusion**

Development of the site will require construction of a protective device which will substantially cause erosion and scour of the sandy beach resulting in a significantly altered beach profile and eventually, total loss of the beach. Furthermore, due to the frequency and nature of storms along the Malibu coastline, and the inadequacy of the design of the protective device, the site will be subject to severe damage from flooding, high waves, and storm surge. There also is insufficient information to demonstrate that the project will be adequately protected from bluff surficial failure and provide adequate road access for fire protection. Therefore, the Commission finds that based on the reasons cited above the proposed project does not minimize risks to life and property and would create health and safety risks relating to geologic, flood, and fire hazards, inconsistent with section 30253 of the Coastal Act.

## **E. Public Access and Recreation**

One of the basic mandates of the Coastal Act is to maximize public access and recreational opportunities along the coast. The Coastal Act has several policies which address the issues of public access and recreation along the coast.

Section **30210** of the Coastal Act states:

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

Section **30211** of the Coastal Act states:

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

Section **30212** of the Coastal Act states (in part):

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

....

(2) adequate access exists nearby...

Section **30220** of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that public access to the sea be provided adequate to allow use of dry sand and rocky coastal beaches. Section 30220 of the Coastal Act requires coastal areas suited for coastal recreational activities, that cannot be provided at inland water areas, be protected.

To assist in the determination of whether a project is consistent with the above cited Coastal Act public access and recreation sections, the Commission has, in past coastal development permit actions located in the Malibu area, looked to the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. Specific standards relative to public access at Lechuza Beach have been found to be consistent with the Coastal Act. The LUP, under Beach Access Program Objectives has prioritized vertical public access improvements. Public Access improvements at Lechuza Beach were given a high priority. Policy 56-4 states that, "Public purchase of beach and accessway properties is an objective in this area." As described below, because Lechuza Beach has been subject to historic public use, the Commission has evaluated the proposed development against the above cited public access and recreation sections of the Coastal Act.

### **1. Historic Public Use**

Since the early 1900's, the beaches of Malibu have been extensively used by visitors of both local and regional origin and most planning studies indicate that attendance at recreational sites will continue to significantly increase over the coming years. As discussed below, it appears that Lechuza Beach is no exception.

The subject property is contained within a sandy cove, about 2,700 feet in length. During the summer, a beach runs the length of the cove and can be as much as 8 acres. Residential development on the cliffs above the sandy beach began in the early 1930's and over time two bluff-face stairways (date unknown) were built to the sandy beach, one off of Broad Beach Road and the other at the end of West Sea Level Drive. According to MEH0A, a license was given to the inland homeowners to use these stairways and roadways through the tract (east and West Sea Level Drive) to the beach. However, as the entrance to the private access roads and stairs to the beach are located off Broad Beach Road, a public road that was formerly Pacific Coast Highway, the public historically

parked on the wide shoulder of Broad Beach Road and then utilized the roadway and stairways to reach Lechuza Beach. Residents of the area state that due to the extensive public use of the roadways (primarily by cars) and stairways, in 1978 the homeowners installed gates at the entrance of the access roads and stairway off of Broad Beach road to prevent the public from using them. Almost five years ago (1991), MEHOA opened the pedestrian gates and removed the no trespassing signs from the access roads to once again allow pedestrian access down the two access roads which lead to the beach.<sup>33</sup>

Lechuza Beach can also be accessed laterally. Downcoast (east) from Broad Beach, at low tides, adventurous people can traverse the rocky shoreline at Lechuza Point and then gain access to Lechuza Beach. A home was approved in this area by the Commission, under CDP P-78-2824 (Beyer), subject to a condition requiring a lateral access easement over the portion of the point 10 feet seaward of the residence.

By far the majority of beach users gaining access to Lechuza via the tidelands come from El Matador State Beach, located about 1,000 feet west (upcoast) of Lechuza. El Matador is a unit of the Robert H. Meyer Memorial State Beaches (The other two units, La Piedra State Beach and El Pescador State Beach are located upcoast of El Matador). These three units of the State Beach front directly on Pacific Coast Highway, contain bluff top parking lots, restroom facilities, and bluff face stairways which terminate at large sandy coves. Private property, including beach frontage, separates these three units. State lifeguards patrol both the state beach areas and parking lots in the summer months. All units are well signed from Pacific Coast Highway and are heavily used. According to State Parks, use of these three state beaches has been as follows:

Table E-1 Public Beach Use

FISCAL YEAR	TOTAL NUMBER OF VISITORS AT ROBERT H. MEYER STATE BEACHES <sup>34</sup>
1988/89	209,811
1989/90	131,032
1990/91	44,389
1991/92	147,520
1992/93	92,824
1993/94	56,303
1994/95	157,625
1995/96	241,437

<sup>33</sup> Letter written to California Coastal Commission from President of Malibu Encinal Home Owner's Association, dated January 15, 1997.

<sup>34</sup> Robert H. Meyer State Beach consists of La Piedra, El Pescador and El Matador

As shown in *Table E-1*, even though beach use at the upcoast state beaches has fluctuated, there has been a gradual increase in the total number of beach users. The numbers of visitors who go to the upcoast state beaches is important in considering development on Lechuza because many of the public beach users have been seen by Commission staff walking downcoast to Lechuza Beach, where the beach is used for such recreational pursuits as swimming and walking.<sup>35</sup>

In order to determine whether public prescriptive rights might exist on Lechuza Beach itself, staff conducted a survey of beach users for several summer days in 1992. During that time, staff observed hundreds of people walking along Lechuza Beach and many groups were picnicking up on dry sand. Forty-six public use questionnaires were completed and the earliest public use noted began in 1970. Many of the respondents used the beach as if it were public land, at a frequency of about one time a month for various activities such as sunbathing and swimming. Users were evenly split between Malibu residents and those outside Malibu. Although some respondents reported that they had permission to use the beach, most respondents indicated that they did not. In addition, MEHOA has submitted a petition signed by 495 people who used Lechuza Beach between June 30 and September 8, 1991.<sup>36</sup> These are persons who do not reside in the Malibu Encinal Tract and are not members of the homeowners association.

The MEHOA retained a marketing firm, TMW Marketing, to conduct a survey of public use of Lechuza Beach. The source of names for the survey was the set of petitions noted above. According to the summary prepared by TMW, 67 individuals responded fully or partially completed the survey. Of these responses, 19 individuals from outside the Malibu Encinal Tract indicated they had used the entire beach for greater than five years without asking for or receiving permission. They also indicated they got to the beach by a variety of methods including, access from the neighboring beach (4) and access from the "staircase" (8) or road/pathway(s).<sup>37</sup> An additional 9 persons indicated they had used the entire beach without permission for 3 to 5 years, and 2 more indicated vertical access for use of the wet sand or water area for greater than 5 years.

In contradistinction to this evidence of public use, the applicant's representative, Sherman Stacey, submitted a memorandum arguing that the use of the beach area has been limited to that of the residents of the Malibu Encinal Tracts for

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<sup>35</sup> Coastal Commission staff observation.

<sup>36</sup> The homeowners association has previously submitted a petition of 796 signatures indicating persons who have used the beach and are in opposition to the proposed development.

<sup>37</sup> The evidence from these responses regarding vertical access is not specific as to which staircase or pathway was used.

"more than 20 years." Mr. Stacey further argued that agreements, pursuant to Civil Code Section 813 and 1009, which would have prevented any implied dedication were recorded on September 2, 1992. Finally, Mr. Stacey asserted that in order for prescriptive rights to arise, the law requires that the use be "continuous and uninterrupted" and that "the public, whether through local government or civic associations, have contributed to the maintenance and patrolling of such beaches."

Based on all the evidence discussed above, the Commission finds that the subject site has been used recreationally by members of the public although the level of public use may not have reached the level necessary to establish public rights through prescriptive use to privately owned portions of the beach. Passive recreation uses include, walking, running and picnicking. In addition, the site has been used to access the tidepools that are located on both ends of Lechuza Beach and to access the ocean. Other recreation activities carried on at the beach include swimming, snorkeling, diving, surfing and body surfing. The Commission staff also has evidence in the form of photographs that indicates that catamarans, kayaks and other watercraft have landed on and been launched directly over the project site at high tide.

Under the boundary line decision issued by Judge Hiroshige, the public will have the right to continue to use the portions of the beach subject to State ownership for recreational purposes. Therefore, it is necessary to consider the project's potential impact on public access in light of the Court's decision.

## **2. Proposed Development's Impact On Public Access**

The details of the project are discussed extensively in other portions of these findings. As described by the applicant, the proposed 33 ft. wide rock revetment and residential development will not encroach into the portions of the beach identified as being in public ownership by the Court. As also discussed above, however, Lechuza Beach is a long, narrow eroding beach backed by coastal bluffs (*Exhibit 3*). The issue posed by this development proposal is how the construction of the revetment will affect the portions of this beach available for public use.

As stated previously, in the shoreline protective devices section, Coastal Frontiers evaluated wave data records which evaluated the seasonal profile of the beach. The evaluation performed by Peter Gadd found the beach profiles to be highly irregular (i.e. eroding in the winter months and not always accreting during the summer months) (*Exhibit 9*). Mr. Gadd states that:

...seasonal fluctuation is noted at Lechuza Beach during some years, and not during others. For example, summertime beach growth is noted in

1992, 1993 and 1996. No such seaward growth is seen in 1994 and through September of 1995. There is no reasonable expectation that sand loss from the winter time erosion will be completely replaced by summertime accretion.<sup>38</sup>

Therefore, the area designated for public use may be narrow even in the summer months. Further, as described in the section regarding shoreline protective devices, it is evident that the proposed project will result in the erosion of the beach seaward of the revetment, particularly during the winter season. This change in the beach profile will mean that water will more frequently inundate the beach area that the court has determined is owned by the public. In sum, the construction of the revetment will lead to a narrowing of this beach which will, in turn, prevent or impede public access along this section of Lechuza Beach.

This result is graphically depicted in two exhibits (*Exhibits 10A. and 10B*). These exhibits demonstrate what will happen if the proposed development on lots 146 (eastern end) and 153 (western end) are allowed. Specifically, the beach area in front of the houses during an eroded profile would be available for use during times of low tide only. Conversely, during other tidal conditions such as periods of mean high tide (which is exceeded 13% of the time), the area available for public use would be submerged in four feet of water. Thus, if the applicant's development is approved, the ability to walk along Lechuza Beach often will be limited to those who are willing and able to either wade or swim along the coast. Given the long length and height of the proposed revetment, persons walking in front of the revetment could be trapped by incoming tides or unexpected wave sets. Large waves could conceivably throw a person into the revetment or into the caissons supporting the homes resulting in serious bodily injury.

In conclusion, the Commission finds that there is substantial information that demonstrates the public's use of this beach. The Commission finds that the public beach area that will be available pursuant to the Court ordered boundary will be significantly reduced by the proposed project, because the project will contribute to the sustained erosion of the public beach during the winter season and will impair the ability of the public beach to rebuild through accretion during the summer season. This project will exacerbate this problem by increasing erosion of the beach and by increasing the amount of time that these public areas will be covered by ocean waters. Thus, the construction of the project would further restrict the limited area for public use that will exist as a result of the court imposed boundary line. Therefore, the commission finds that the proposed project is inconsistent with Sections 30210, 30211, 30212, and 30220 of the Coastal Act.

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<sup>38</sup> Coastal Frontiers Corporation. Lechuza Beach Report. 1997.

## **F. Environmentally Sensitive Habitat Areas**

Section 30230 of the Coastal Act states:

Marine Resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity of 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.

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

The Coastal Act defines Environmentally Sensitive Habitat Areas<sup>39</sup> as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development.

In addition to the Coastal Act policies cited above, the certified Malibu/Santa Monica Mountains LUP contains several policies and standards regarding ESHAs, and protection of sensitive marine resources. These policies have been certified as consistent with the Coastal Act and have been used as guidance by the Commission in numerous past permit actions in evaluating a project's consistency with sections 30230, 30231 and 30240 of the Coastal Act. The

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<sup>39</sup> Coastal Act Section 30107.5

Sensitive Environmental Resources Map in the certified Malibu/Santa Monica Mountains Land Use Plan designates the Lechuza beach area, rocky point areas, bluff and offshore kelp beds as Environmentally Sensitive Habitat Area. Policy 68 requires that ESHAs shall be protected against significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas. This policy also specifies that residential use shall not be considered a resource dependent use. Policy 99 indicates that development in areas adjacent to sensitive marine and beach habitats shall be designed to prevent impacts that could significantly degrade the environmentally sensitive habitats. Policy 120 requires that shoreline structures including...seawalls,... shall be sited... to avoid sensitive rocky points and intertidal areas. Policy 108 identifies the beach between Nicholas Canyon and Lechuza Point, which includes the subject site, as a marine area of biological and educational interest. The above referenced policies clearly mandate that environmentally sensitive habitat areas, like Lechuza Beach, shall be protected and that development within them shall be limited to resource dependent uses.

The City of Malibu incorporated in 1991. While it have not, to date, completed a Local Coastal Program, the City did adopt a General Plan for the city in 1995. This General Plan also designates Lechuza Beach as an Environmentally Sensitive Habitat Area.

In 1979, the California State Water Resources Control Board designated the intertidal and offshore areas from Mugu Lagoon to Latigo Point in Malibu, which includes the proposed project site, as an Area of Special Biological Significance (ASBS). This designation is given to areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable.

Lechuza Beach can be characterized as a sandy "pocket" type beach between two rocky points with emergent rocky outcrops. In addition to designation by the Malibu/Santa Monica Mountains LUP, the City of Malibu General Plan, and the Water Resources Control Board, two site-specific studies of Lechuza Beach, discussed below, have demonstrated the habitat values of Lechuza Beach which lead the Commission to conclude that it must be characterized as an environmentally sensitive habitat area subject to the provisions of section 30240 of the Coastal Act.

The Commission retained a consulting biologist, Sally Holbrook, Ph.D., to study this beach during a winter period in order to document the main habitat elements and describe and assess the type and distribution of marine organisms which occur within the project area. Additionally, Dr. Holbrook identifies the impacts the proposed project would have on these organisms. Dr. Holbrook conducted a literature search and also ran four representative transects across the beach

from the bluff face and documented the organisms found. Her report identifies three environmentally sensitive habitat areas as occurring at Lechuza Beach: 1) rocky intertidal habitat; 2) sandy intertidal habitat; and 3) subtidal habitat.

With regard to the rocky intertidal habitat, the Holbrook study<sup>40</sup> states that:

...the low intertidal zone throughout the beach is rocky with boulders and bedrock (not cobble). These rocky areas at Lechuza Beach have a well developed flora and fauna on them typical of Southern California Beaches (Ambrose 1996, CSWRCB 1979, Wells et.al. 1992). Plant and animal life is especially richly developed on rocks in the middle and lower intertidal zones. As pointed out by Ambrose (1996) Lechuza Beach is a spot known for the rich marine assemblages in its tidepools and thus opportunities for tidepooling; Tway's 1991 guide to tidepooling lists Lechuza Point as a tidepooling destination in Malibu. Tidepools and emergent rocks are easily accessible throughout the beach zone at Lechuza.

*Phyllospadix torreyi* (surfgrass) is abundant on the rocks of the lowest portion of the intertidal and extends into the shallow subtidal zone at Lechuza. This plant species requires hard, stable substrates for attachment and growth... Surfgrass beds tend to occur inshore of giant kelp beds. Surfgrass provides critical nursery habitat for a number of fishes and other harvested species such as spiny lobster (Odemer, et. al. 1975, Engle, 1979) and it harbors rich assemblages of invertebrates that are food sources for fishes and invertebrates

Sea lions have also been known to haul out on the beach and rocky points in the Lechuza Beach area (U.S. Army Corps of Engineers, 1994) (*Exhibit 12*).

In addition to the rocky intertidal habitat found at Lechuza Beach, sandy intertidal habitat areas also occur. Dr. Holbrook sampled the sandy beach infauna at Lechuza to establish general patterns of distribution of major groups of organisms like beachhoppers, polychaetes, isopods, and sand crabs along the beach profile. Her report states that:

Most of the biological productivity of sandy beaches is associated with invertebrate organisms (worms, crustaceans, mollusks, etc.) that lie hidden in the sediments. These burrowing organisms tend to occur in specific zones in the intertidal, often in great numbers and they form part of a food chain involving many invertebrates, shorebirds, and fishes. These foragers either remove the food items from the sand by digging or probing, or they

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<sup>40</sup> Report on Marine Resources at Lechuza Beach, Sally J. Holbrook, January 24, 1997, page 3.

feed on items at or near the surface of the sand. The importance of this food source to the intertidal food source cannot be overstated.<sup>41</sup>

Several groups of sandy beach organisms were found in the sieved samples taken by Dr. Holbrook. The report states that:

In all four transects, beach hoppers (the amphipod *Orchestoidea*) were found at the highest levels on the beach, even in the dry sand area. Their lowest occurrence was 50 feet from the bluff face. These organisms are typical of the high intertidal zone (Straughan 1980) as they often feed on kelp and other detritus stranded on the high tide line. Isopods (most likely *Excirolana chiltoni*) were found in wet sand at distances of 50 to 80 feet from the bluff face... Only a few polychaete worms occurred in the samples, all in the same zone as isopods. Sand crabs (*Emerita analoga*) are found in the lower two thirds of the intertidal in Southern California, and they occurred at Lechuza Beach in samples beginning at eighty feet from the bluff face.

Dr. Holbrook also observed shorebirds actively feeding on the beach, using all of these zones from wave wash to the edge of the dry sand.

The third environmentally sensitive habitat area found at Lechuza Beach is the subtidal habitat. In the case of this beach, the subtidal area supports a well developed giant kelp bed that is several hundred feet in width. The Holbrook report states that:

This kelp bed is located on rocky bottom and was the subject of several biotic surveys during the 1980's (reviewed in Ambrose et. al. 1987). Data from surveys of fish at Lechuza indicate that the bed contains an assemblage of fish that is typical for kelp beds, with the same common species as other kelp beds sampled in Southern California. Of note is the presence of a large population of garibaldi, the California State fish (*Hypsypops rubicundus*) that did not change much from year to year over the sampling period (1980-1985; date of Patton and Harman 1983).

Kelp beds are widely recognized as productive and rich nearshore marine communities. In Southern California they harbor upwards of 100 species of fish and scores of species of plants and invertebrates. A kelp bed community can have hundreds of species in its complex three-dimensional structure... Fishes that occur in and around kelp beds form part of the diet of nearshore marine mammals such as sea lions (*Zalophus californianus*) and harbor seals (*Phoca vitulina*). These latter species are often observed in waters off Lechuza Beach. Giant kelp also is extremely important in the

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<sup>41</sup> Ibid., page 1.

nearshore food chain as it is the source of much detritus (dead plant material) that is consumed as drift by grazing invertebrates and as it decays is degraded by small detritivores in nearby habitats such as the sandy beach and the sandy subtidal.

As indicated above, the City of Malibu has designated Lechuza Beach as an ESHA in its adopted General Plan. Although the Commission has not yet certified an LCP for the City, the City's General Plan has incorporated the Coastal Act definition of ESHA. In recent communications with the City Biologist, Dr. Marti Witter, she has stated that:

Based on this definition, the subtidal, intertidal, kelp beds and rocky habitats are considered important habitat areas because of their high productivity and species diversity... and the undeveloped sandy beach is a locally rare and ecologically important habitat type which is dominated by a few species that are uniquely adapted to the dynamic, physically unstable beach habitat.

Dr. Witter further notes that: "the invertebrate community of the beach habitat forms a critical component of the food chain for shorebirds and several nearshore fishes (General Plan Section 3.2.6)".

The proposed 1,000 foot long revetment and twelve homes will extend approximately 60 to 85 feet from the bluff face out over the intertidal beach area. As discussed in the preceding sections, the Lechuza Beach sand level or beach profile fluctuates greatly on a seasonal basis. In the winter, high tides and wave wash frequently extend to the face of the bluff. The environmentally sensitive intertidal zone and habitat area also fluctuates somewhat with these seasonal variations. The intertidal zone extends from the lowest low tide to the highest high tide. As discussed above, Dr. Holbrook's survey of intertidal species found marine organisms associated with the high intertidal zones at 50 feet from the bluff face, marine organisms associated with the mid intertidal zone at 50 to 80 feet from the bluff and marine organisms associated with the lower two thirds of the intertidal zone beginning at 80 feet from the bluff face. All of these zones are well within the footprint of the proposed rock revetment and proposed houses. As such, potential impacts from the development of the proposed project include: elimination of habitat area; the physical occupation of habitat area with structures; alteration of natural beach profiles as a result of the placement of shoreline protective devices (as discussed above); and changes in water quality resulting from turbidity or septic effluent.

Dr. Holbrook addresses anticipated impacts to the ESHA areas on the proposed project site. Her report identifies three impacts to rocky intertidal areas that would likely result:

First, if revetments, seawalls, pilings, or other structures are installed on rocky areas, there will be loss of that rocky habitat and its associated biota. Although some marine life might eventually attach to and live on walls, revetments, etc. placed in the splash zone or lower, such artificial structures normally do not have equivalent habitat values to natural habitat.

Second, installation of revetments, wall and other structures on the beach is likely to alter beach topography, with transport of sand into the lower tidal zones. Sand deposits on rocky intertidal and subtidal organisms that persist result in mortality of the organisms and loss of this habitat.

Third, degradation of water quality could have an adverse impact on the rocky intertidal biota, especially plants such as surfgrass.

Additionally, the Holbrook report identifies four impacts to the sandy intertidal habitat areas that would likely result from the construction of the proposed project:

(1) Invertebrates that are typically associated with the intertidal zone and are the basis of the food supply of beach-feeding shorebirds and some fishes occur on the project area and indeed occur in proposed locations of the revetments, seawalls, and or caissons. Biologically speaking, this means that some of the project elements lie seaward of the intertidal zone. Regardless of where the MHTL is defined to be, the sampling clearly indicates that marine resources in the public trust could be impacted by elements of the proposed project.

(2) If the revetments, seawalls or other structures are placed fifty or more feet seaward of the bluff they will cover up and destroy sandy beach resources.

(3) Furthermore, even structures such as caissons, or balconies or decks of houses that only partly cover the sand could impede access of shorebirds to their food sources.

(4) If there is beach erosion down to the cobble or bedrock zone as a result of placement of revetments or seawalls there will no longer be suitable habitat for infaunal invertebrates that are the core of the sandy

beach food chain, and their numbers will be reduced, resulting in a net loss of food to shorebirds and certain fishes. Erosion of the sand and changes in the beach profile would also impact the potential for the occurrence of grunion runs at the beach.

Finally, Dr. Holbrook discusses possible adverse impacts to the giant kelp bed and subtidal habitat area that would result from the development of the proposed project:

The kelp bed at Lechuza Beach could be severely affected by increased sediment deposits offshore resulting from beach erosion or from decreased water clarity that could accompany construction activities (such as onshore grading), beach erosion, or releases from the proposed septic systems. When rocky substrate becomes buried young stages of giant kelp cannot become established because the plant requires firm attachment space. Further, it is well known that growth (via photosynthesis) and reproduction of giant kelp are dependent on good water clarity with sufficient light penetration and degraded water quality even without buildup of deep sediments on the ocean bottom can result in declines in growth and/or reproduction.

The Department of Fish and Game previously submitted a letter (*Exhibit 13*) to the Commission regarding the potential adverse impacts the proposed project could have on the marine environment. Consistent with the conclusions of Dr. Holbrook, the letter indicates that the project could have significant adverse impacts on the nearshore and intertidal marine environment, including the kelp beds offshore.

The City of Malibu Biologist has also addressed the anticipated impacts to sensitive resources relative to the proposed project and found that: "the location and scope of this project has the potential to eliminate and/or impact the habitats of the intertidal and subtidal zone, the kelp beds, rocky shoreline, sandy beach, and the coastal bluff" in four ways:

1. The road, homes, and rock revetment will directly eliminate most of the sandy beach habitat.
2. Shoreline structures (the rock revetment) change the physical processes of the sandy beach such as beach slope, sand texture, and wave patterns which can alter the biological composition of the beach's invertebrate community. Because the rock revetment is predicted to significantly alter the beach profile, at a minimum the community composition will be altered, or if the beach is scoured down to cobble or bedrock, the community will be largely eliminated.

3. The rocky intertidal and subtidal zones will be impacted by increased beach erosion and sand deposition leading to loss of habitat and increased mortality of resident organisms.
  
4. Decreased water quality associated with the proposed project from increased turbidity and the proximity of the septic systems will adversely impact the rocky intertidal zone and kelp beds.

Therefore, given the sensitivity of the biological resources on the proposed project site and the proximity of the proposed residences and shoreline protective devices, the Commission finds that the above noted adverse impacts will occur.

In 1992 the applicant commissioned Fugro-McClelland Inc. to prepare a biological impact study to determine the impact to biological resources associated with the proposed development. The report concludes that:

Impacts to onshore resources would not occur as a result of the project. Intertidal impacts to beach-dependent birds are considered less than significant. The project would have no direct effects below the mean high tide line and therefore, impacts to sensitive bird species using the surfline and near shore areas would not occur. Beach erosion or accretion of Lechuza Beach would not occur as a result of the construction of the rock revetment or seawall. Treatment of wastewater from each individual lot in a septic tank, leach field (or trench) and dilution by groundwater prior to discharge would prevent water quality impacts to intertidal, subtidal and nearshore habitats. Off shore areas are sufficiently removed that project-related impacts would not occur.

The applicant's biological consultant assumes the toe of the revetment would be located 75 feet landward of the mean high tide line, would have no direct effects below the mean high tide line and that beach erosion or accretion of Lechuza Beach would not occur as a result of the construction of the rock revetment. The consultant is assuming the beach fluctuates from about 100 feet to 300 feet in width. This would suggest the beach is never less than 100 feet in width. The biological consultant bases this finding on the mean high tide line surveys, wave uprush and coastal engineering studies previously prepared by the applicant's consulting coastal engineers.

However, as discussed earlier in this report, recent survey information clearly demonstrates that the proposed revetment would be subject to wave action at a much greater frequency than the applicant's consultants have projected.

Therefore, the revetment and homes will extend well within the mid-intertidal zone of the beach during the winter months and will displace and destroy portions of this valuable environmentally sensitive habitat area. Furthermore, given that the revetment will be subject to wave action quite frequently during the winter months and given that this is an eroding beach, the revetment will cause and contribute to increased erosion of the beach seaward of its location. This erosion will directly displace and destroy the intertidal habitat for infaunal invertebrates that are the core of the sandy beach food chain on this beach, resulting in a net loss of food to shorebirds and certain fishes. The applicant's consultant also conceded that indirect impacts could occur to the intertidal and subtidal habitats if project-related beach erosion/accretion occurred or water quality were degraded by the septic system effluent.

Every government entity that has studied the subject beach property has concluded that it is an area of great biological significance. This has been confirmed by the recent site-specific studies noted above. The intertidal zone of Lechuza beach is part of a limited and fragile ecosystem that can be easily disturbed and degraded by human disturbance and development. The Commission's biological consultant has determined that the sandy intertidal, rocky intertidal, and subtidal areas of Lechuza beach meet the Coastal Act definition of an ESHA. Based on these studies and information, the Commission finds that Lechuza Beach is an environmentally sensitive habitat area as defined by section 30107.5 of the Coastal Act. Therefore, this area must be protected against any significant disruption of habitat values and only uses dependent on such resources shall be allowed as required by section 30240 of the Coastal Act. Further, section 30230 requires that marine resources shall be maintained, enhanced and where feasible restored and section 30231 indicates that the biological productivity of the quality of Coastal Waters...appropriate to maintain optimum populations of marine organisms...shall be maintained and where feasible restored.

The proposed 1,000 foot long revetment and twelve residences will encroach significantly within the intertidal area which has been designated and documented as an ESHA. The proposed residential development is not a resource dependent use and, therefore, is not consistent with the provisions of section 30240 of the Coastal Act. In addition, the proposed 1,000 foot long rock revetment and twelve homes will directly degrade and adversely impact the environmentally sensitive intertidal zone of this beach which is inconsistent with the provisions of sections 30240, 30230 and 30231 of the Coastal Act.

Therefore, the Commission finds that the proposed project will extend into the environmentally sensitive habitat of Lechuza Beach and that the proposed project will directly displace and destroy this sensitive habitat area which is

inconsistent with the provisions of sections 30230, 30231 and 30240 of the Coastal Act.

### **G. Visual Resources**

Section **30251** of the Coastal Act states that permitted development shall be sited and designed to protect the scenic and visual quality of coastal areas:

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 to this Coastal Act policy the certified Malibu/Santa Monica Mountains LUP contains several policies and standards regarding the protection of visual resources. 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. For example Policy 129 requires that structures should be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment. Policy 120 indicates that new development in highly scenic areas shall be sited and designed to protect views to and along the ocean and minimize the alteration of landforms. Policy 134 requires that structures shall be sited to conform to the natural topography, as feasible and that massive grading and reconfiguration of the site shall be discouraged.

The proposed project will stretch across a 1,000 + foot long section of Lechuza Beach. This section of coast is characterized as an undeveloped, pristine, scenic sandy and rocky beach backed by a 50-55 foot coastal bluff. The emergent rocky outcrops in the mid to lower intertidal areas, the undisturbed sandy beach backed by a high coastal bluff and the undeveloped nature of the western portion of the beach all contribute to the highly scenic nature of this section of the coast.

The proposed project will result in the creation of a large 15 foot high (max. height) rock revetment with a 25 foot long face at a 1.5:1 slope (*Exhibit 4*). The revetment will extend 60-85 feet from the bluff face onto sandy beach and will occupy approximately 80,000 square feet of sandy beach. The proposed homes

are 35 feet high assuming there is a high sand level and only a four foot separation between the sand and bottom of the residence (*Exhibit 5*). Additionally, the proposed residences will extend approximately 60-89 feet from the bluff onto sandy beach. At a low sand level these homes, which would be built on caissons, will be as high as 47 feet above the beach. In addition, the

project includes a 240 foot long retaining wall on top of the western end of the rock revetment to support the road fill in order to meet the existing road grade elevation of western Sea Level Drive. This wall will transition from 0 feet to a maximum of 17 feet at the far western end of the road. The proposal also includes two retaining walls along the western 575 feet of the inland side of the proposed roadway to support a cut slope into the bluff face. In order to align the proposed road with western Sea Level Drive the applicant is proposing to cut into the bluff approximately 20 feet (maximum). The proposed retaining walls are necessary to support the cut slope into the bluff. The two retaining walls are split into a 320 foot long section and 190 foot long section with a 65 foot gap in between the sections. The applicant has not explained how the bluff cut along this 65 foot section will be supported without a retaining wall. The two proposed retaining walls supporting the bluff cuts are designed to transition from zero to a maximum of nine feet in height.

As discussed in the previous section on public access, Lechuza Beach is used by the public for passive recreational use. The primary users are people walking along the shoreline from El Matador State Beach and persons using the pedestrian access gates at the west and east ends of Sea Level Drive. Therefore, this section of beach is viewed by the public walking and recreating on this section of scenic coastline.

The proposed project will result in a 1,000 ft. long by 60 to 89 foot wide (80,000 sq. ft.) section of sandy beach area completely covered by a rock revetment and twelve residential structures. The proposed 15 foot high (maximum) rock revetment, with a 25 foot long, 1.5:1 slope face, 35 - 47 foot high residential structures and the 9-12 foot high (maximum) retaining walls along the western section of the revetment and bluff will create an imposing wall of structures along this 1,000 foot long stretch of beach. The project will significantly alter the natural beach and bluff landforms on this beach by physically covering the natural beach with development and cutting into the bluff face and constructing retaining walls to accommodate the access road. The proposed development would resemble some of the eastern portions of the Malibu coastline where there is a continuous wall of development projecting out on the beach and over the water. This type of development is clearly not visually compatible with or subordinate to the character of this section of the Malibu Coast. The proposed project will adversely impact the visual resources of this coastline and will result

in the significant alteration of the natural beach and bluff landforms. Therefore, the Commission finds that the proposed development is not consistent with the provisions of section 30251 of the Coastal Act.

## **H. Water Quality**

Section **30231** of the Coastal Act states:

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, and minimizing alteration of natural streams.

In addition, to this Coastal Act policy the certified Malibu/Santa Monica Mountains Land Use Plan contains several policies and standards regarding septic systems and water quality. 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 30231 of the Coastal Act. For example Policy 218 requires that all individual septic tanks conform to building and plumbing code standards. Policy 225 requires that the Health Department shall strictly enforce all health, building and plumbing code requirements. Policy 226 indicates that a coastal permit shall not be issued for a development unless it can be determined that sewage disposal adequate to function without creating hazards to public health or coastal resources will be available for the life of the project.

In 1979 the California State Water Resources Control Board designated the off shore area including the intertidal zone between Mugu Lagoon and Latigo Point in Malibu as an Area of Special Biological Significance. The area between Big Sycamore Canyon and Lechuza Point was further recognized as an area of extensive kelp beds and offshore reefs with dependent biological assemblages of exceptional quality. The area was also described in the State Board's findings as being in a natural state and containing the largest open coast kelp beds remaining in the region. These Areas of Special Biological Significance were intended to afford special protection to marine life through prohibition of waste discharges within these areas. Therefore, it is critical that the proposed septic systems are properly designed to ensure these sensitive intertidal and subtidal resources are not adversely impacted by untreated or inadequately treated septic effluent.

The applicant has submitted preliminary design approval of the proposed septic systems from the County Department of Health Services. This approval indicates that the proposed septic systems comply with all county health and plumbing codes. In addition, the County has indicated to staff that health inspectors were present when percolation tests were conducted to insure compliance with the county standards.

Concerns have been previously raised about the effectiveness of the proposed septic systems; specifically, the effectiveness of leach fields in compacted road fill, the potential for the daylighting of effluent on the beach, effluent transport paths, and the cumulative impacts of possibly 17 septic systems in close proximity behind a revetment. The applicant retained three technical consultants to address these questions: David Riggle, a consulting sanitarian; Kenneth Mullen, a consulting engineer; and Geoplan, consulting geologists.

The consultants indicate that the placement of leach fields in a compacted sand medium is an acceptable practice. The consulting sanitarian states:

Historically, the only situation regarding the placement of leach lines/drain fields in compacted fill has been where natural sand exists on the building site. The Los Angeles County Departments of Health Services and Building and Safety have permitted the placement of clean sand on top of natural sand for the construction of leach lines. The sand naturally "compacts" itself, providing a stable condition for the leach line installation.

In regard to the cumulative impacts resulting from a total buildout of all 17 lots behind the revetment, the consultants indicate that because of County Code setback requirements adequate spacing of the systems will preclude any adverse cumulative impacts associated with septic systems. The consulting sanitarian states:

The type of sewage disposal system design for the single family development including the required separation between systems, water table, bedrock and bulkhead wall all act to reduce any accumulative impact. Each system functions independently from the other systems. The effluent filters down through the sand and moves along the bedrock/water contact toward the bulkhead.

The proposed bulkhead design using rock with filter blanket will permit water to flow through, thus eliminating the build-up of water behind the wall. The sewage effluent will have filtered approximately 10 feet down and over 15 feet horizontally through sand before reaching the bulkhead,

having lost its identity by filtration and dilution. A five foot separation between the leaching lines and ocean waters is recognized as being safe.

With regard to the potential for daylighting of effluent on the beach and the effluent pathways, the consultants agree that by the time effluent reaches the toe of the revetment it will have been filtered and diluted to such a degree that it is unrecognizable as sewage. The applicant's consulting engineer states:

The effluent path is as follows: sewage from the residence enters the two chambers septic tank where solids settle out in the first chamber. Overflow from this chamber enters the second chamber for final clarification. Anaerobic bacteria reduce the solids to an inert ash. Relatively clear flow then proceeds to a distribution box where it is equally divided to each leaching line. The leaching lines are perforated pipe laid on a bed of gravel placed in a three feet wide trench. Effluent leaves the leaching lines through the perforations and enters the gravel filled trench. Water then percolates downward to either the water surface or rock surface. Upon contact along that surface it filters through the revetment into the ocean where it is diluted many hundreds of times.

...the effluent commingles with any groundwater that exists on the surface of the bedrock. Prior to its commingling it has traveled through a minimum thickness of 10 feet of sand which acts as a slow sand filter and renders it unrecognizable as sewage.

Historically cobbles have always been present on top of the bedrock in this area. Sand fills the voids between the cobbles. Effluent and groundwater always flow along the bedrock surface, therefore, the cobbles and sand will always keep the effluent from surfacing.

The Malibu Wastewater Management Study (1992) indicates that beach sands allow for fast percolation. This high percolation rate would normally constrain the use of beach sands. But, according to the study, a biological "mat" of algae and other organisms grows among the sand grains. This biological mat is the primary "biotechnology" to reduce the concentration of pathogens in the drainfield sands. The biological mat slows down the infiltration of effluent and treats pathogens by filtration, retention and chemical renovation. Further reductions in concentrations of potential pathogens continue after percolation through the biological mat. The study provides the following breakdown of treatment of septic tank effluent:

Treatment of Septic Tank Effluent by Sands with a Biological Mat

\*Total Coliforms: 2-4 feet of well-drained sand with a biological mat will reduce bacterial concentrations to a level that meets most state and federal standards (loading rate=1.24 gpd per sq. ft.)

\*Fecal Coliforms: In sandy soil, 40 inches were required to remove fecal coliforms.

\*Viruses: Properly dosed and loaded, 2 feet of medium sand have been very effective in removing viruses from treated drainfield effluent. The presence of a biological mat further improves detention, retention, and absorption of viruses. There are no studies that have found viruses in the effluent from a septic tank, despite deliberate dosing of the influent.

The City of Malibu's consulting Environmental Health Specialist, Larry Young, has submitted a letter to the Commission regarding the proposed system. Mr. Young indicates that if the proposed septic system is designed to conform to the Uniform Plumbing Code requirements there should be no adverse individual and cumulative impacts from the proposed septic system. The system as proposed appears to be in conformance with these standards. With regards to the placement of a septic system in compacted fill, Mr. Young states, "Sand is considered to be both self-compacting and, at the same time, the best soil category for percolation of effluent." Finally, Mr. Young indicates that with regard to potential for daylighting of effluent onto the beach, as long as the "Fifteen Feet to Daylight Rule" is enforced the daylighting of effluent should not be a problem. According to project plans the proposed septic system design conforms with the 15 foot to daylight rule. It should also be noted that the City of Malibu has a waste water zoning ordinance which requires that sewage effluent must be treated on the property on which the effluent is created. The applicant is proposing to place the septic system leach fields within Lot A (road lot) which is a separate lot from the lots the proposed residences are located on. Therefore, the project is not consistent with the City of Malibu waste water treatment ordinance. The applicant has provided no evidence of variance from the City's ordinance.

In recent years, the Commission has become concerned about the introduction of non-point source pollution to coastal waters. The U.S. EPA recognizes that one source of non-point pollution is the installation of Onsite Disposal Systems (OSDS) in areas where soil absorption systems do not provide for adequate treatment of effluents containing solids, pathogens, nitrogen, phosphorus, and nonconventional pollutants prior to entry into surface waters and groundwater [see Chapter 4 of the "Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters" (U.S. EPA, 1993)].

Despite the proposed systems' apparent conformance with Uniform Plumbing Code standards, concerns remain about whether the proposed septic systems, if installed, will provide sewage disposal and treatment adequate to protect public health or coastal resources for the life of the project. Specific concerns relate to (1) systems installed in compacted soils, and in areas subject to tidal influence and potential future sea level rise, may be inadequate to allow proper treatment to occur, (2) without proper maintenance and inspection, the proposed bulkhead design (i.e., rock with filter blanket) may not be adequate over the life of the project to permit the continuous flow of septic system effluent through the bulkhead, thus failing to eliminate the build-up of water behind the wall, and (3) unless properly operated, maintained and inspected, septic systems have a high risk of failure which may cause contamination of coastal waters over the life of the proposed development. Regarding the latter concern, the Commission notes that "continuously loaded soil absorption fields have a finite life span and that 50 percent of all fields fail within 25 years" [Oliveri, et al., 1981, as cited in U.S. EPA, 1993].

Consequently, if the project were to be approved, a Special Condition of approval would be necessary requiring that, following installation of each complete septic system, a licensed geologist and sanitary engineer conduct a postconstruction inspection program to ensure that the system was installed properly. The inspection should ensure that design specifications were followed and that soil absorption field areas were not compacted during construction.

The Commission also notes that U.S. EPA recommends several Best Management Practices (BMPs) for septic system operation including the following: (a) perform regular inspections of the septic system; (b) perform regular maintenance of the septic system; (c) retrofit or upgrade improperly functioning systems. Due to the sensitive location of the proposed development and the high risk of failure of septic systems, if the project were to be approved, a special condition would be necessary requiring the applicant to prepare and submit to the Commission for approval a septic system maintenance and inspection plan to include, but not necessarily be limited to, the following practices: (1) a description of any BMPs that will be used to ensure that the systems will operate properly [e.g., garbage disposal restrictions and low-volume plumbing fixtures as recommended by the U.S. EPA (1993)]; (2) a description of how and how often the systems will be inspected and maintained to ensure their proper operation, (3) a plan to retrofit or upgrade improperly functioning systems, and (4) a description of how and how often the bulkhead filter blanket will be inspected and maintained.

Therefore, the Commission finds that the proposed septic system as designed would have an adequate filtration area (approximately 10 feet in depth) to adequately treat the septic effluent and will most likely not daylight on the beach,

and if it did the effluent would be treated and diluted to such a point it would not be considered hazardous. Based on the evidence presented above, the septic system design as proposed is feasible and would function properly as designed in this location if recommended BMPs were incorporated into systems design, functions and regular maintenance.

The Commission further finds that the proposed septic systems if properly maintained and upgraded as necessary based upon implementation of an approved operations and maintenance plan should not affect coastal waters over the life of the project. Based on the evidence presented above it would appear that the septic system design as proposed with the recommended BMPs and incorporation of the recommended conditions is feasible and would function properly as designed in this location. Therefore, the Commission finds that if the project were to be approved the proposed septic system could be found consistent with section 30231 of the Coastal Act subject to the special conditions mentioned above.

### **I. Cumulative Impacts of 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 effects of probable future projects.

The Coastal Act requires that new development be permitted only where public services are adequate and only where public access and coastal resources will not be cumulatively affected by such development. The applicant is proposing to construct a 1,060 foot long extension of Sea Level Drive, a 1,000 foot long revetment and twelve single family residences over a sandy natural beach. The road and revetment extend over 17 beachfront lots that the applicant considers

available for residential development. If the project were approved, the remaining five undeveloped lots (Lots 149E, 149W, 148W, 147E, and 147W) could then be considered infill parcels and would most likely be developed. The preceding section of these findings have documented the significant adverse impacts the proposed development would have on the beach profile, public lateral access along the shoreline, environmentally sensitive habitat areas and visual resources. The findings have pointed out the design inadequacies of the revetment and the residences which demonstrates the homes and revetment would not minimize the risk to life and property or assure the stability and structural integrity of these structures as required by the Coastal Act. The cumulative effect of building out all 17 parcels on this beach would only intensify the significant adverse environmental impacts outlined above.

In addition, as previously noted in these findings large stretches of the Malibu coastline east of Point Dume have been committed to development over the past 70 years. This intense development has cumulatively degraded the environmental quality of significant portions of this coastline. The placement of development over the sandy and rocky beach areas of Malibu have resulted in a direct loss of sandy and rocky intertidal habitat areas which are a critical component of the marine ecosystem. The construction of numerous shoreline protective devices has interrupted the natural shoreline processes and has contributed to the erosion of the shoreline in many areas. The physical occupation of the beaches by development and the erosional impacts of shoreline protective devices have prevented or impeded public access to and along the coastline. In addition, the placement of structures in areas subject to high tides and storm waves has resulted in public costs (through low interest loans and infrastructure repair) in the millions of dollars in the Malibu area. It is clear that the cumulative effects of development along the Malibu coast has adversely impacted coastal resources of the Malibu shoreline.

The proposed construction of a 1,000 foot long revetment, roadway and twelve single family homes with the potential to build out 17 homes over an environmentally sensitive intertidal sandy beach area is a continuation of the type of ill-conceived coastal development pattern seen in eastern Malibu. The incremental effects of this project in conjunction with the effects of the other shoreline development mentioned above will translate into significant adverse impacts and degradation of coastal resources on the Malibu coastline. Furthermore, approval of this project would redefine the Commission's policy on infill development from the development of one or two beach front parcels between existing development to large stretches of open sandy beaches thousands of feet in length. The development of large sections of sandy beach in Malibu would cumulatively adversely impact the coastal resources associated with the Malibu shoreline.

The previous sections of these findings contain extensive documentation of the adverse individual and cumulative impacts the proposed development would have on coastal resources and access, therefore, the Commission finds that the proposed project is not consistent with section 30250(a) of the Coastal Act.

## **J. 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 coastal 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 (LCP) which conforms with Chapter 3 policies of the Coastal Act. On December 11, 1986, the Commission certified the Land Use Plan portion of the Malibu/Santa Monica Mountains Local Coastal Program prepared by the County of Los Angeles. In March 1991, the City of Malibu was incorporated. While the county prepared and certified LUP is no longer legally binding in the newly incorporated City of Malibu and the City does not yet have a certified LCP, the previously 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 Coastal Act policy. The certified LUP contains policies to guide the types, locations, and intensity of future development in the Malibu/Santa Monica Mountains area. Among these policies are those specified in the preceding sections regarding shoreline development, hazards, public access, habitat protection, and marine resources. As proposed, the development will create adverse impacts and will be inconsistent with the policies contained in the LUP, as discussed above.

Since the Commission's last action in 1993 on the applicant's previous applications, the City has made progress towards adopting an LCP. At that time, the Commission's findings noted that the City had not yet prepared a General Plan and had not as yet addressed the City's plans for the beach. Since 1993, however, the City, through adoption of certain General Plan policies, has taken significant steps indicating its intentions regarding plans for this beach. These steps, as discussed below, do not lessen in any way the Commission's 1993 conclusions on this issue. To the contrary, these steps strengthen and underscore that the City has moved a step closer toward submitting an LCP that

underscore that the City has moved a step closer toward submitting an LCP that provides policies to protect the ESHA resources on this site similar to those contained in the City's General Plan and the County's certified LUP.

The City of Malibu, which incorporated in March 1991, has begun the process of preparing its LCP by completing its General Plan in 1995 and certifying an EIR for the General Plan. Several planning committees, composed of private citizens, have been designated to address various issues and a specific LCP Advisory Committee has been appointed to provide input to a private consultant who has been retained by the City to complete and prepare its LCP for submittal to the Commission. The City currently anticipates completing its LCP for submittal to the Commission in August 1998.

As previously stated, the City has adopted a General Plan (November 1995). The General Plan provides the same land use designation for the site which is contained in the County's certified LUP (Residential 4-6 du/ac). Notwithstanding the density designation, the General Plan maps Lechuza Beach as an ESHA based on the Coastal Act definition. The City Biologist has provided site specific documentation that the beach does indeed qualify as an ESHA based on this definition (General Plan Section 3.2.6)<sup>42</sup>. The General Plan also requires that any development that could potentially impact an ESHA be sited to "protect against any significant disruption of habitat values" (General Plan, CON Policy 1.1.4). The City Biologist also identifies the anticipated impacts to the ESHA based on an analysis of the proposed project and notes that the project will "eliminate and/or impact the habitats of the intertidal and subtidal zone, the kelp beds, rocky shoreline, sandy beach and the coastal bluff"<sup>43</sup>, in several significant ways as discussed in a previous section of this report.

The General Plan will eventually be reviewed by the Commission as all or part of the LUP component of an LCP submittal for consistency with Chapter 3 of the Coastal Act. Although the Commission has not yet formally reviewed the General Plan or any portion of an LCP submittal, it can be anticipated from the City's actions to date, that the future submittal would likely include not only the General Plan policies stated above, but also additional policies which would guide development on this beach relative to mitigating impacts to the ESHA. Such policies might allow a minimal amount of development on this beach, less than that provided by the current Land Use or Zoning designation, which simply provides a range or maximum density without consideration of other policies which would be applied on a site specific basis to control development, protect resources, ensure public safety and geologic stability, etc.

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<sup>42</sup> Letter from Marti Witter, Ph.D, City of Malibu Biologist, to California Coastal Commission, January 21, 1997.

<sup>43</sup> Ibid., page 2.

Such an approach in the LCP would be similar to the County's certified LUP which contains several additional policies intended to protect resources and guide development beyond the designated density range for any specific site as discussed in prior sections of this report. For example, the County's LUP contains further site development restrictions or policies in Table 1 which provide additional restrictions on development in designated ESHA's and other important resource areas which could have the effect of reducing the size, scale, and many other components of a proposed development to considerably less than could be allowed by simply considering the density range. It is highly likely that several of the County's policies which have been previously found consistent with the Coastal Act, or equally protective policies which could be directly applicable to the subject site and the proposed development will be incorporated into the City's LCP submittal. The City of Malibu's 1995 inclusion of policies similar to those of the County's LUP into its General Plan underscores this likelihood.

Prior findings of this report indicate the proposed project's numerous inconsistencies with many of the County's LUP policies, as well as the policies of the Coastal Act. Therefore, for the reasons stated above, the Commission finds that approval of the proposed project will prejudice the ability of the City of Malibu to prepare an LCP that conforms to the policies of Chapter 3 of the Coastal Act.

#### **K. California Environmental Quality Act.**

Section 13096 (a) of the Commission's administrative regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5 (d)(2)(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 Certified Malibu Land Use Plan which the Commission continues to use as guidance provides that:

P67 Any project or use which cannot mitigate significant adverse impacts as defined in the California Environmental Quality Act on sensitive environmental resources (as depicted on Figure 6) shall be denied.

Furthermore, Section **15042** of the CEQA Guidelines provides in relevant part that:

A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed.

Previous sections of these findings contain extensive documentation of the significant adverse impacts the proposed development would have on the environment of the Malibu portion of the California coastline. There are feasible alternatives to the proposed project which would lessen the impact on the environment. As proposed, the project contemplates a complete build-out of this entire undeveloped, empty stretch of sandy beach. The applicant has never applied for a significantly scaled down project e.g., involving fewer houses or a project that does not include a shoreline protective device. Furthermore, as discussed in the section entitled "Constitutional Issues" there has been an offer to purchase the property for an open space recreation area.

Therefore, for reasons previously cited in the findings above, the Commission finds that the proposed project is not the least environmentally damaging feasible alternative and cannot be found consistent with the requirements of the Coastal Act to conform with CEQA.

#### **L. Constitutional Issues**

Section 30010 of the Coastal Act states:

The legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

Analysis of a coastal development application does not always end with consideration of whether the project complies with the resource protection policies of the Coastal Act. Where, as here, the applicant contends that application of these policies would take or damage private property for public use without providing just compensation, section 30010 authorizes the Commission to evaluate such a claim and implement these policies in a manner that will avoid a taking.

In considering the applicant's development projects in the past the Commission has not been in a position to determine whether variances from the resource protection policies of the Act under section 30010 were necessary to avoid a taking because the Commission's actions were based in large part on a lack of reliable information concerning such fundamental aspects of the project as the boundary line between private and public property interests at Lechuza Beach and the expected impacts on the beach of the various shoreline protective devices proposed by the applicant. Without this information the Commission could not reach a final determination concerning the uses that might be made of the property. Invocation of section 30010 is not appropriate until the Commission has determined that the property may not otherwise be developed consistent with the policies of the Coastal Act.

Moreover, although the applications submitted by the applicant purportedly concerned the construction of individual residences on individual vacant beach lots, all the applications also proposed the construction of a road and a shoreline protective device, or devices, along the sandy beach. The eventual development plan portrayed in these applications would lead to the construction of residences on most, if not all, of the 17 lots on the beach. None of the plans or accompanying information submitted by the applicant proposed or discussed alternative, less intensive developments that would significantly reduce the cumulative number of residences to be constructed or avoid the requirement for extensive road and shoreline improvements along the property. Thus, the Commission did not have the occasion or the opportunity to determine whether a scaled back or substantially modified project could be approved consistent with the Coastal Act.

The Court's order requiring the Commission to take final action on this project in light of the rulings of the Court does not resolve these deficiencies in information. For instance, while the Court has established boundary lines between the property interests of the State, Lechuza and MEHOA in the beach, the Court's decision is not final because both Lechuza and the State Lands Commission have filed appeals and there are persuasive reasons to believe this decision may ultimately be modified. Additionally, there are no rulings by the Court specifically dealing with the other issues presented by the proposed project, including the impacts that construction of a shoreline protective device may have on the beach. Indeed, as discussed above, in contrast to the testimony provided to the Commission at its previous hearings, the evidence submitted to the Court concerning how to locate the mean high tide line on the property demonstrated that waves routinely encroach on the area of the beach proposed for development. This calls into question the accuracy of much of the information previously presented to the Commission on the effects of the proposed shoreline protective works.

Given the Court's order, however, the Commission is now required to analyze the takings issues raised by the applicant in spite of these informational inadequacies. As will be discussed in the analysis set out below, the Commission therefore determines, based on the information available, and in compliance with the directive of the Court, that consistent with its authority under section 30010 the Commission may authorize the applicant to construct up to three residences and related improvements on the subject property to avoid a taking. An additional application and hearing on this development will be necessary, however, because the Commission does not have sufficient information to determine with exactitude either the location and size of this development or what, if any, conditions should be attached to the coastal permit authorizing this use.

**1. To Determine Whether Application of a Regulation Constitutes a Taking Requires an Ad Hoc Analysis of Several Factors**

The courts have observed that there are no brightline rules that either courts or government entities can use to determine when a regulatory action constitutes a taking. Instead, whether the application of a regulation will cause a taking requires an ad hoc factual inquiry into several factors. These factors include the economic impact of the regulation on the property, particularly "the extent to which the regulation has interfered with distinct investment-backed expectations." (Penn Central Transp. Co. v. New York City (1977) 438 U.S. 104, 124) These investment-backed expectations must be "reasonable." (Keystone Bituminous Coal Assn. v. Debenedictis (1987) 480 U.S. 470, 495.) Further, a land use regulation or decision may cause a taking if it denies an owner all economically viable use of his or her land unless there are well-established principles in state property or nuisance law that justify a restriction on all use. (Lucas v. South Carolina Coastal Council (1992) 505 U.S. 1003.) Finally, another factor that must be considered is whether the land use regulations at issue substantially advance a legitimate state interest. (Nollan v. California Coastal Commission (1987) 483 U.S. 825.)

**2. Defining the Parcel for Purposes of the Takings Analysis.**

In order to undertake a takings analysis a threshold issue that must be determined is how to define the parcel affected by the government action. In the present situation, before the Commission can determine what amount of development it must permit on the applicant's property to avoid a taking it must first decide whether it should treat the subject property as (1) a single parcel for which an economically viable use must be allowed only for the single parcel or (2) 17 individual lots for which an economically viable use must be allowed for each lot. For the reasons that follow, the Commission finds that it must view the subject property as a single parcel for purposes of this analysis.

There are a limited number of court decisions discussing how to properly characterize the property at issue for purposes of determining when a regulatory action constitutes a taking. These decisions are uniform, however, in concluding that there are no set rules for identifying the appropriate parcel and, therefore, as in the other areas of takings law, an ad hoc review of several factors should be considered in each case. Factors identified by the courts include the degree of contiguity, the dates of acquisition, the extent to which the property has been treated as a single parcel and the degree to which past government actions have accorded different treatment to portions of the property. "The effort should be to identify the parcel as realistically and fairly as possible, given the entire factual and regulatory environment." (Ciampitti v. United States (Ct. Cl. 1991) 2 Cl.Ct. 310, 21 ELR 20866, 20870.) The fact that the property may consist of several legal lots is not determinative of whether the property must be treated as one parcel or several for takings purposes. (Ibid; Tabb Lakes, Ltd. v. United States (1993) 10 F.3d 796; Aptos Seascape Corp. v. County of Santa Cruz (1982) 138 Cal.App.3d 484.)

A review of the following facts relating to the subject property leads the Commission to the conclusion that the applicant's property is a single parcel for the purposes of conducting a takings analysis:

- 1) The Adamson Company sold the entire subject property to Mr. Haynie, Lechuza's general partner, in a single transaction in March 1990. The Adamson Company is the direct descendant of the original subdivider of the property. Thus, the property had remained in single ownership for many years.
- 2) The entire subject property was sold for approximately \$2.025 million. The sale did not treat or value the property on an individual lot basis.
- 3) In negotiating the purchase of the subject property Mr. Haynie discussed the development potential of the entire property and indicated that construction of only two or three homes on the beach would "represent a victory." He added, "Two or three homes may not seem like very many homes relative to the size of the property, but I believe that any construction project which gets approved on this beach, which has been slated for a public beach by the Coastal Commission, is a great achievement; and three homes is far better than no homes at all." (*Exhibit 24*). Therefore, Mr. Haynie himself understood when he purchased the property that it would be viewed as a single parcel and that the Commission was not compelled to permit development on each of the 17 lots.

- 4) The subject property is physically contiguous, consisting of an uninterrupted stretch of undeveloped sandy beach.
- 5) All the parcels in the subject property are subject to the same zoning designation. No government action has accorded different zoning to individual parcels.
- 6) The deed of trust securing the note that financed Mr. Haynie's purchase of his interest from his limited partners encumbers the entire property.
- 7) From the beginning the applicant has proposed to develop the property as a single parcel. Although the applicant filed "separate" applications for individual houses, it also sought the approval of a 985-foot seawall that would extend across the entire parcel, as well as a road along the length of the beach that would connect East and West Sea Level Drive. In other words, the initial January 1991 applications did not seek to develop just four lots; they proposed eventual development on all seventeen lots with a seawall and road for access to all the lots. Similarly, the current application seeks to develop the entire parcel with a seawall. Especially in view of the fact that it primarily is the seawall, and not the houses themselves, that create the most adverse physical impacts, it is appropriate to treat these permit applications as an integrated effort to develop the entire subject property.
- 8) The subject property is a "subdivision" in name only. In order to market the individual lots, the property must first be developed with a road to allow access to the lots, as well as with a seawall that would protect the road and the septic system. Without approval and construction of the infrastructure, a prospective purchaser of an interior lot would have no assurance when or if her property ever would be accessible. Thus, it is correct to treat this project as if it were a de facto subdivision project. Consistent with this determination, and as discussed in the preceding paragraph, the applicant has in fact sought to develop the property as if it were a subdivision through its efforts to construct a single seawall on the entire parcel, as well as a road to provide each individual lot with road access.
- 9) In order to determine the fair market value of the individual lots, the applicant's appraiser treated the subject property as a single piece of vacant land that required completion of necessary

infrastructure before the individual lots could be marketed. The appraiser observed: "In order to determine the current value of the lots in their unimproved condition, your appraiser has estimated the value of the lots after being improved with street and utilities." Likewise, he stated that: "Before a sales program can begin, the 17 lots on Sea Level Drive will require the installation of utilities and reconstruction of the road in order to sell them at the projected market value." The approach of the applicant's own appraiser confirms the view that the subject property must be viewed as a single parcel of raw vacant land which must be developed before the individual lots can be marketed.

10) In the takings litigation the applicant seeks damages for the taking of the entire subject property as of January 10, 1991, the date when the Commission first denied Lechuza's application to construct the 1200-foot road, 985-foot seawall and four individual houses. If the 17 lots were intended to be viewed separately for constitutional takings purposes, the applicant should have sought damages dating to January 10, 1991, only for the taking of the four lots for which it sought to construct houses. Moreover, to date applications have been submitted to construct houses on only 12 of the 17 lots, yet the applicant alleges a taking of the entire subject property. Because the applicant has treated the subject property as a single parcel for takings purposes, it is appropriate that the Commission also treat the subject property as a single parcel for evaluating the constitutional effect of its decision.

There are several factors that might be advanced against treating the subject property as one parcel for taking purposes. In particular, the applicant has pointed to the fact that the 17 lots were created as part of a legal subdivision. As discussed above, this is a factor to be considered in characterizing the property, but it is not by itself determinative of whether the property should be regarded as one parcel or many individual lots. Instead, the history of this property demonstrates that it has consistently been viewed as one parcel. The applicant also may point out that separate applications were filed for the development of residences on individual lots. The filing of separate applications, however, does not change the fact that the applications planned from the outset for an integrated development on the entire parcel involving the construction of a seawall and road that served all seventeen lots.

Finally, the applicant purported to sell several of the lots to different individuals in 1992, leading to a higher valuation of these lots by the County Assessor for property tax purposes. This apparent treatment of these lots as separate

parcels is subverted, however, by Mr. Haynie's subsequent admission to the Assessor's office that:

"Although these transfers of property were recorded as normal sales, they were not normal; the sales did close; however, 98% of the money was received by the Seller, Lechuza Villas West, L.P. in the form of a note which was due and payable if, and only if, the seller was successful in obtaining all discretionary approvals from all governmental agencies having jurisdiction for the construction of a house in excess of 2,500 square feet." (*Exhibit 22.*)

When these approvals were not forthcoming these sales were rescinded and Mr. Haynie argued, unsuccessfully, that the property should be valued for tax purposes based on the original sale of the entire property for \$2.1 million. (There is no explanation in the letter for the discrepancy between the purchase agreement price of \$2.025 million and the later claim that the property sold for \$2.1 million.)

The applicant's insistence that there be separate applications and the later, irregular sales of the property demonstrate an awareness that the subject property is truly a single parcel and that some effort needed to be undertaken to create the illusion that it was seeking approval for the development of separate and unrelated lots. For the many reasons expressed above, however, these attempts do not alter the conclusion that the subject property has been and must continue to be treated as a single parcel for constitutional takings purposes.

**3. Application of the Requirements of the Coastal Act to the Applicant's Development Proposal Substantially Advances Legitimate State Interests**

The Commission's findings indicate that the applicant's project is inconsistent with numerous provisions of the Coastal Act and will have a number of deleterious effects on coastal resources. In particular, the proposed shoreline protective device will exacerbate erosion of the sandy beach and render the publicly owned tidelands on the site unavailable for public access and recreation. Additionally, in conflict with local planning policies and supporting evidence identifying the area as an environmentally sensitive habitat area, the proposed development, if allowed, will despoil one of the only remaining pristine beaches in the Malibu area. The applicant's development plans also raise significant health and safety concerns because the proposed residences will be subject to destructive wave action, while the construction of the proposed development of the shoreline protective device and road along the bluff at the landward boundary of the property poses a threat to the existing development at the top of the bluff.

Denial of this project because it would destroy sensitive resources, adversely impact public property interests and jeopardize public health and safety substantially advances legitimate government interests. The Commission concludes that, consistent with the Court's directive in this case its October 8, 1996 ruling, so long as an economically viable use remains, no taking would occur if it denies the applicant's proposals on these bases.

#### **4. Economically Viable Use**

In the Commission's 1993 staff report it was noted that regardless of the Commission's past permit actions the property evidently retained use and value. In support of this conclusion the Commission cited an offer by MEHOA to purchase the property for \$2.1 million. MEHOA proposed to make the property available for recreational use and has further indicated that this offer is still open. Since this offer, the applicant has also rejected a proposal by the County of Los Angeles to purchase the property for recreational purposes for around \$7 million.

Numerous courts have concluded that the fact that property retains sale value demonstrates that the property has an economically viable use. (Long Beach Equities v. County of Ventura (1991) 231 Cal.App. 1016, 1032.) In ruling on the applicant's motion for summary judgment, however, Judge Hiroshige held that the ability to sell the property did not provide the applicant with a viable use and, instead, the prior purchase offers were only relevant to the determination of damages. This issue will be raised in the Commission's appeal, but for purposes of the present hearing, the Commission must comply with the Court's direction and will not consider that these offers to purchase the property are determinative of whether the property has economically viable use.

Aside from the possibility that the property might be sold to an institution or individual for recreational or open space use, the staff has considered whether use of the property for recreational or commercial purposes could provide an economically viable use. For instance, it might be possible to lease the property for use by a private recreational club that exists in this area. However, in the time available it has not been possible to determine whether such uses would be feasible. Additionally, there are obvious constraints on the property, such as the lack of parking and developable space even for commercial purposes, that call into question the practicality of such uses. These issues would have to be examined in more detail before the Commission could determine with assurance that these uses would be economically viable.

In the ordinary course of the planning process, the applicant generally has the burden of coming forward and demonstrating that a use provided for by

government is not economically viable. In the present situation, however, the Court has directed the Commission to make a decision on uses that would be permitted on the property at the February 1997 meeting. Given this direction, the Commission concludes that based on the currently available information private residential use provides the only clear, economically viable use of this property.

##### **5. Lechuza's Reasonable Investment-Backed Expectations**

The Commission's preceding findings and discussion applying the resource protection and access policies of the Coastal Act to the applicant's development proposal amply demonstrate that from an objective perspective any purchaser of the subject property would have to be aware that development of the property would be subject to rigorous review and strict limitations. As described above, the property is one of the few pristine sandy beach areas in the Malibu area and for this reason long has been designated in the County LUP as an ESHA. It also is informally used by the public and local residents to obtain access to the ocean and therefore provides recreational use. Plainly stated, the policies of the Coastal Act regarding the preservation of public access to the ocean and protection of environmentally sensitive areas do not encourage private residential development on the sandy beach that comprises the subject property. Any reasonably-informed person would have been aware of this.

Moreover, the evidence confirms that the entire beach is subject to significant wave action, including a storm that washed out the only development attempted on the property over fifty years ago. Because of these natural conditions, any development on the subject property will require the construction of shoreline protective devices to offer even a modicum of safety. Yet, the Coastal Act generally prohibits the construction of seawalls or other shoreline protective devices where this would be necessary to protect such new development. Further, the Act also limits construction near eroding cliffs and bluffs, such as the ones that form the landward edge of the subject property. In view of these well-established policies in the Act, as well as the Commission's findings on other permit applications from the Lechuza area, no purchaser of the property could have reasonably believed that it could obtain a permit to develop all the lots on this sandy beach.

Significantly, a review of the facts and representations made during the purchase of the subject property indicates that the applicant was well aware of the constraints placed by the Coastal Act on the development potential of the property. For instance, in negotiating for the purchase of the property Mr. Haynie stated:

"My experience in processing difficult projects through the Coastal Commission, including the project referenced above [Lieberman], indicates to me that it would be impossible to use the Adamson Companies' beach property where Sea Level Drive washed out for any development project." (Exhibit 24.)

He also observed:

"It is noted that any competent civil engineer can design construction plans to replace Sea Level Drive and can design homes for the individual lots; however, an experienced developer in this area knows that a project of this magnitude on this particular beach would most likely be overwhelmingly disapproved, . . . . If a project is not approved before Malibu cityhood, then in my opinion, no project will ever be approved; the state will appraise the property at a value which reflects that the property is unbuildable due to hazardous conditions, enforce the sale through public condemnation proceedings, and the beach will be made public. The price paid by the state for the property will be consistent with the value of any property which can't be built on as a result of landslides, earthquake faults or other hazardous conditions (i.e. less than \$1 million). It is also noted that any proposed project on the beach will meet with extensive resistance and criticism by the State Lands Commission, the Corps of Engineers and the Homeowner's Association." (Exhibit 24.)

His conclusion was that: "In general, I believe that an approval for the construction of two or three homes in this washed out beach area would represent a victory." (Exhibit 24.)

Mr. Haynie's dim view of the development potential of the property was subsequently borne out in discussions with the Commission staff, including the executive director, where the staff indicated that any proposal to develop the subject property would present serious conflicts with the resource protection policies of the Coastal Act.

Given these uncertainties, Mr. Haynie's initial purchase offer for the property contained two options. Under one option he offered to purchase the property for \$2.8 million contingent on his receiving approval to develop a minimum of three residences on the property. As an alternative he also proposed to purchase the property for \$1.4 million without any contingencies relating to development. The final purchase agreement arranged for the sale of the property for \$2.025 million and expressly stated the "Seller is making no express or implied warranties or representations regarding title to or extent, location, configuration or condition of

the Property or its development potential of fitness for any intended use." (Exhibit 22.) Mr. Haynie also specifically agreed that "he is purchasing the Property "as is" in its existing state." (Exhibit 22.) The agreement further indicated "that the location of the mean high tide line will have a material effect on the existence, extent, configuration and development potential of Seller's Residential lots." (Exhibit 22.)

In addition to Mr. Haynie's specific representations at the time of purchase, the \$2 million purchase price is consistent with the conclusion that the applicant did not have a reasonable, investment-backed expectation that it would be able to construct residences on each of the 17 lots comprising the subject property. This amount of money bought limited development potential in the Malibu area in the early 1990s. For instance, the applicant's own appraiser believes that the retail value of an individual 60 ft. wide beach parcel in Malibu without regulatory constraints was \$1.8 million in 1990. In actual sales, two vacant lots on Sea Level Drive sold in 1990 for \$1 million each. These lots were distinguishable from the subject property because they were landward of a developed portion of Sea Level Drive and therefore did not require the construction of road improvements or shoreline protective devices. In other respects, however, they were similar to the subject property in that the lots across from them were subject to deed restrictions ensuring that they would not be developed and, as a result, would not interfere with the purchasers' visual and physical access to the ocean. These and other sales figures relevant to the Malibu area at the time of Mr. Haynie's purchase of the subject property support the conclusion that for \$2 million a reasonably prudent purchaser could expect to acquire beach property for the development of one, two or possibly three residences in Malibu, but not more, and certainly not 17.

Taking into consideration the value of beachfront property in Malibu, the Commission observes that from a purely objective perspective, permitting a single residential unit on the subject property would provide an economically viable use. The courts have, however, also directed that the reasonable investment-backed expectations of the property owner should be considered in determining what level of use is required to avoid a claim of a taking. After reviewing the comments and actions made in connection with the purchase of the subject property, the Commission concludes that the applicant understood there was a speculative nature to this transaction and further understood that the policies of the Coastal Act would severely limit the development of this property. At the very most it had the expectation that it could obtain approval for three residences and not more. Approving the construction of more than this number of residences on this sandy beach would provide the applicant with a windfall at the expense of the legitimate resource protection goals of the State. Therefore the Commission, mindful that the Court has already determined that there has been a taking in this case, finds that the applicant had a reasonable, investment-

backed expectation that it might construct up to three residences on the subject parcel when it was purchased. To avoid a taking the Commission may approve an application for this level of use, but no more.

**6. Would Development of the Applicant's Parcel Constitute a Nuisance Justifying Denial of All Economic Use of the Property?**

The homeowners have argued that any development of the subject property would constitute a nuisance and therefore under the U.S. Supreme Court's holding in Lucas v. South Carolina Coastal Council, the Commission would be justified in denying the applicant any use of its property. They contend that the activity required by the applicant's construction of a shoreline protective device, particularly the transportation of rock and sand by trucks on Sea Level Drive, will create a nuisance and disrupt the adjacent neighborhood by creating dust, noise and vibrations. They also claim that construction of the seawall will create a nuisance because it will accelerate erosion of the beach, a portion of which is subject to a 25-foot wide recreation easement in favor of the homeowners, and obstruct access to this easement and the public trust lands below the mean high tide line. The homeowners' position on these matters may have merit.

It is well established that contemporary environmental regulations, including regulations affecting coastal development, are in essence an exercise of the government's traditional authority to regulate activities in the nature of a nuisance. (CEED v. California Coastal Zone Conservation Com. (1972) 43 Cal.App.3d 306, 318.) This is reflected in the policies of the Coastal Act that direct the Commission to consider issues that have been part of the traditional focus of nuisance law, such as the need to minimize the adverse impacts of development on coastal waters and streams or to assure that new development will not contribute significantly to erosion or geologic instability. It is therefore appropriate for the Commission to consider nuisance allegations, and state nuisance law requirements, when it applies the policies of the Coastal Act to a specific development.

With regard to the homeowners' claims, nuisance law does support the contention that the creation of dust, noise and vibrations can in certain instances constitute a nuisance. (Venuto v. Owens-Corning Fiberglas Corp. (1971) 22 Cal.App.3d 116, 126.) Further a nuisance may be prohibited even where it will only last for a temporary duration. (People v. Jones (1988) 205 Cal.App.3d Supp.1) The Commission is unaware of any support in the law, however, for the proposition that all use of property may be prevented because of the potential for dust, noise and vibration due to construction activity. In general, mitigation measures may be adopted to minimize the nuisance caused by these deleterious side effects of development; a total elimination of use would seem

insupportable. Thus, the Commission does not agree with the homeowners that it may deny all use of property because of these potential impacts.

A more significant issue is presented by the contention that construction of the shoreline protective device will have an adverse impact on the homeowner's use of their recreational easement. One of the axioms of nuisance law is that "one must use his own property in a manner which does not unnecessarily damage the property of others, or diminish their equal right to the full enjoyment thereof." (*Katenkamp v. Union Realty Co.* (1936) 6 Cal.2d 765, 774.) Courts have applied this principle to prohibit the development of revetments at the ocean shoreline that change the flow and deposition of sand along the coast. (*Ibid.*) On the other hand, this rule is not absolute and must be balanced with the equally well established nuisance law principle, called the "common enemy" doctrine, that holds that a property owner has the right to erect reasonable defenses to protect his property "from the inroads of the sea." (*Id.*, ap pp. 773-774.) This doctrine is also subject to the limitation that a property owner "has no right to do more than is necessary for his defense, and to make improvements at the expense of his neighbor." (*Id.*, at p. 774.)

Viewed from the context of these nuisance law principles affecting the construction of shoreline protective works it appears the homeowners may have a nuisance claim against the applicant if the proposed revetment will lead to the erosion and eventual destruction of the portion of the beach that is subject to their easement. This easement, which was intended to provide the homeowners with recreational opportunities on the beach, will have limited or no utility if the easement area is submerged in several feet of water most of the time. Similar considerations arise with regard to the State's interest in the portions of the beach that are subject to public ownership. Erosion of the beach will fundamentally alter the purposes for which this area may be used for public purposes. Balanced against these nuisance claims is the applicant's contention that it has right to use the subject property and the Court's order requiring the Commission to make a determination on what uses can be made of the property. In the absence of any apparently dispositive nuisance law indicating that all use of shoreline property may be denied to prevent damage to land adjoining the property, and also considering the Court's direction that the Commission identify what uses would be allowed on the property, the Commission concludes that, while there is a sound basis for the homeowners' contention, it may not deny the applicant's use of the subject property on the theory that the proposed shoreline protective device will constitute a nuisance. The Commission notes, however, that under the "common enemy" doctrine a property owner is only entitled to erect "reasonable" defenses to the sea, and has no right to do more than is "necessary." The Commission's determinations that (1) uses on the subject property should be limited to only those necessary to provide an economically viable use and satisfy reasonable investment-backed expectations and, (2) other

development on the property should be prohibited to prevent destruction of coastal resources and other property interests in the beach, are consistent with these nuisance law principles. Nuisance law therefore provides additional support for the Commission's conclusion that it is not required to permit development on all of the 17 lots that comprise the applicant's parcel.

### **7. Requirements for the Approval of a Coastal Permit**

In accordance with the order of the Court, the Commission has determined that it could approve a permit for up to three residences on the subject property to ensure the applicant receives a Constitutionally mandated use. The determination on whether to apply for one, two or three residences is up to the applicant. For the reasons explained above, however, no such permit can be approved at this time because there are too many variables to be decided concerning the potential size, design and location of these residences. The Commission will need a new application and supporting information addressing these aspects of the project before it will be in a position to approve a permit and determine what, if any, permit conditions might be necessary. To minimize delay, the Commission will waive further permit fees and the need to obtain prior local approvals if this application is made within two months from the date of this decision.

As an aid to the applicant, and as evidence to the Court that the Commission has given thorough consideration to the level of residential use that may be made of the property, the Commission also concludes that it is appropriate at this time to provide the applicant with general guidance on how to design a project for the subject property. In particular, the Commission notes that while section 30010 instructs the Commission to construe the policies of the Coastal Act in a manner that will avoid a taking of property, it does not authorize the Commission to otherwise suspend the operation of or ignore these policies in approving a permit application. Therefore, although residential development may be approved to provide an economically viable use of the subject property, the project must comply in all other aspects with Coastal Act resource protection policies. For instance, to ensure the development is as safe as possible given the development difficulties presented by the subject property, the applicant may be allowed to construct a shoreline protection device. In order to minimize the possible erosive effects of such a wall and limit the amount of sandy beach habitat that it will cover, this device should, however, be the minimum necessary to protect any proposed residential structure.

For similar reasons, the Commission also suggests that development should be clustered to avoid unnecessary extensions of the development onto the beach. In general, it appears development should be planned for the area of the property currently designated at Lots 155E, 154 and 153. The staff anticipates

that clustering development at this end of the subject property will have less deleterious impacts on shoreline processes and the environmentally sensitive sandy intertidal and rocky intertidal zones. Under a clustering concept the applicant also could, but would not necessarily be required to, propose the construction a single structure divided into 3 condominiums or other multi-family units.

In other regards, the project should comply with applicable ordinances, or the guidance provided in the Malibu/Santa Monica Mountains Land Use Plan. As an example, in accordance with the LUP, the height of any proposed structures should not exceed 35 feet above the average sand level at the development site. The applicant should also seek clearance from the State Lands Commission. If the Lands Commission is unable or unwilling to provide such authorization, any permit must be conditioned upon the conclusion of the quiet title appeals to ensure that the project does not encroach on the property interests of the public or of MEHOA.

Finally, the Commission notes that its determination is that the applicant may be permitted to construct up to three units on the entire subject parcel. The entire subject parcel should therefore be included in the application for development. The project application should identify how the portions of the property that would not be used for development would be restricted in the future to uses that are consistent with the Coastal Act.

# APPENDIX A

## SUSTANTIVE FILE DOCUMENTS

Malibu/Santa Monica Mountains District Interpretive Guidelines. Coastal Commission. 1981

Certified Malibu/Santa Monica Mountains Land Use Plan. County of Los Angeles. 12/11/86.

Adopted City of Malibu General Plan. November 1995

City of Malibu. Article IX Interim Zoning Ordinance. 1993.

County of Los Angeles Fire Department Fire Code Standard No. 10.207 (A).

## **STUDIES AND PUBLICATIONS**

Ambrose, Richard F. MALIBU MARINE REFUGE: Protecting the Marine Environment and Its Flora and Fauna. 1996.

U.S. Army Corps of Engineers. Los Angeles District. Reconnaissance Study of the Malibu Coast. 1994

Christiansen, Herman. "Economic Profiling of Beach Fills" in Coastal Sediments '77. 1977.

Coastal Frontiers Corporation, Lechuza Beach Report. January 12, 1997

Dean, Robert G., "Coastal Sediment Processes: Toward Engineering Solutions". Coastal Sediments '87. 1987.

Denison, Frank and Hugh Robertson. "Assessment of 1982-83 Winter Storms Damage to Malibu Coastline". California Geology. September 1985.

Graber & Thompson. The Issues and Problems of Defining Property Boundaries on Tidal Waters in California. California's Battered Coast (California Coastal Commission, 1985).

- Griggs, G., J. Tait, and W. Corona. "The Interaction of Seawalls and Beaches: Seven Years of Monitoring, Monterey Bay, California". Shore and Beach. Vol. 62, No. 3. 1994
- Hale. "Modeling the Ocean Shoreline". Shore and Beach (Vol. 43, No. 2). October 1975).
- Holbrook, Sally J. Report on Marine Resources at Lechuza Beach. January 24, 1997.
- Johnson. "The Significance of Seasonal Beach Changes in Tidal Boundaries". Shore and Beach. (Vol. 39, No. 1). April 1971.
- Kraus, Nicholas. "Effects of Seawalls on the Beach". Journal of Coastal Research. Special Issue # 4, 1988.
- Kuhn, Gerald G. Coastal Erosion along Oceanside Littoral Cell, San Diego, California. 1981
- Maloney & Ausness. "The Use and Legal Significance of the Mean High Water Line Coastal Boundary Mapping". 53 No. Carolina L. Rev. 185 (1974).
- McDougal, W.G., M.A. Sturtevant, and P.D. Komar. "Laboratory and Field Investigation of the Impact of Shoreline Stabilization Structures on Adjacent Properties". Coastal Sediments '87. 1987.
- National Academy of Sciences. Responding to Changes in Sea Level, Engineering Implications. National Academy Press, Washington D.C. 1987.
- Nunez, "Fluctuating Shorelines and Tidal Boundaries: An Unresolved Problem", 6 San Diego L.Rev. 447 (1969).
- Shalowitz, Shore and Sea Boundaries, Vols. I and II (1962, 1964).
- Shepard, Beach Cycles in Southern California, Beach Erosion Board Technical Memorandum No. 20 (U.S. Army Corps of Engineers, 1950).
- Slosson, James and James Krohn. "Southern California Landslides of 1978 and 1980". Storms, Floods and Debris Flows in Southern California and Arizona 1978 and 1980". Proceedings of Symposium by the National Research Council.
- State of California. State Department of Boating and Waterways (formerly Navigation and Ocean Development). Shore Protection in California. 1976.

State of California. State Water Resources Control Board. California Marine Waters—Areas of Special Biological Significance Reconnaissance Survey Report, Mugu Lagoon to Latiqo Point, Ventura and Los Angeles Counties. 1979.

Tait, J.F and G.B. Griggs. "Beach Response to the Presence of a Seawall: A Comparison of Field Observations". Shore and Beach. Vol. 58, No. 2, pp 11-28. 1990.

Thompson, "Seasonal Orientation of California Beaches". Shore and Beach (Vol. 55, Nos. 3-4). July 1987.

Williams, Phillip & Associates and Peter Warshall & Associates. Malibu Wastewater Management Study. March 1992.

## **LETTERS and MEMOS**

Letter to Lesley Ewing from Douglas Inman, Ph.D., February 25, 1991

Letter to John Ainworth from Ian Collins of Arctec Offshore Corporation, October 12, 1992

Letter to Lesley Ewing from Dr. Craig Everts of Moffat and Nichols Engineers, March 14, 1994

Letter to California Coastal Commission from President of Malibu Encinal Homeowner's Association, January 15, 1997

Jon Moore, Noble Consultants, January 20, 1997

## **COASTAL PERMIT APPLICATIONS**

5-87-762 & 5-87-762R (Monkarsh); 5-86-412 (Lieberman); P-78-2824 (Beyer); P-79-5359 & A-259-79 (Gershwin); P-78-2733 (Apollo); P-78-4308 & 5-82-728 (Gershonoff); 5-84-295 (Beyer); 5-87-1028 (Lieberman); 5-88-578 (House); 5-89-012 (Lieberman); 5-90-302 (Gershonoff); 5-90-807 (Boeckman); and 5-91-0 (Moore).

**PLEASE NOTE:** The exhibits referenced in the 1/28/97 staff report for the Lechuza Villas West applications to be considered by the Commission at their 2/4/97 hearing are bound in a separate packet attached to this staff report.

**PLEASE NOTE:** This packet contains the exhibits to the 1/29/97 staff report for the Lechuza Villas West Applications to be considered by the Coastal Commission at their 2/4/97 hearing.

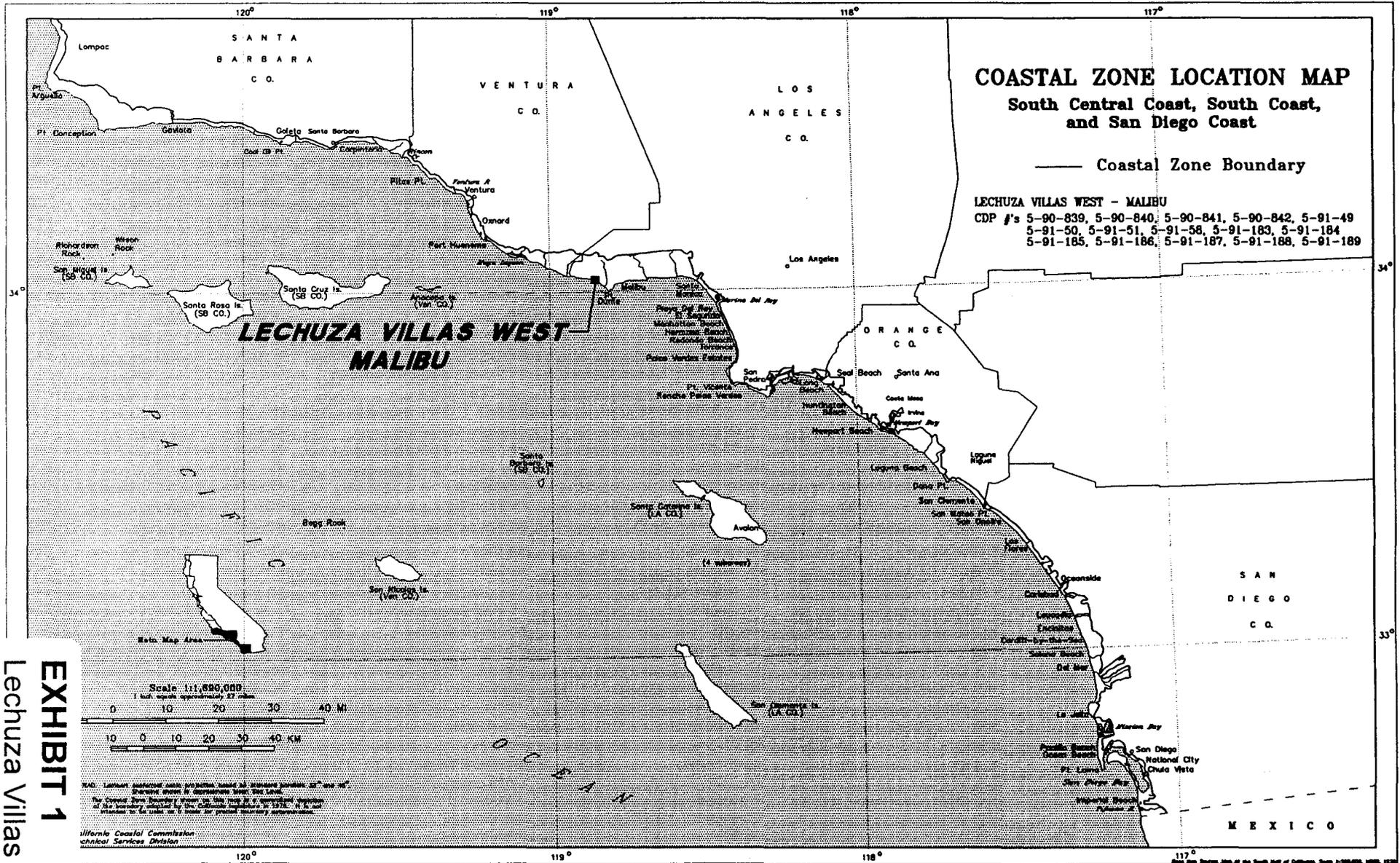
## LIST OF EXHIBITS

1. Location Map
2. Site Plan
3. Aerial Photograph of Project Site
4. Typical Cross Sections of Revetment and Road
5. Typical Cross Section of Residence
6. Mean High Tide Line Surveys of Lechuza Beach
- 7A. Photographs of Wave Uprush on Beach -- 1983 and 1993
- 7B. Photographs of Wave Uprush on Beach -- 1994 and 1996
8. Schematic of Sandy Beach Profile
9. Mean High Tide Line Fluctuations at Lots 152 and 153
- 10A. Shoreline Profiles of Beach -- Lot 146
- 10B. Shoreline Profiles of Beach -- Lot 153
11. Aerial Photo of House Destroyed in 1938
12. Sea Lion Haul Out On Lechuza Point
13. Letter from Department of Fish and Game
14. Tentative Decision Denying Writ of Mandate, 11/21/94
15. Statement of Decision Denying Writ of Mandate, 12/23/94
16. Statement of Decision Re. Quiet Title, 6/11/96
17. Judgment Re. Quiet Title Decision, 6/11/96
18. Notice of Ruling Re. Motion for Summary Judgment, 10/8/96

*(list continued on next page)*

**LIST OF EXHIBITS (continued)**

19. Partial Judgement Granting Remand Pursuant to C.C.P. §1094.5(e), 11/26/
20. Peremptory Writ of Mandate, 11/27/96
21. Notice of Ruling that Commission's Appeal Not Operate as a Stay, 12/31/96
22. Applicant's Purchase Agreement For Property
23. Applicants Letter to County Tax Assessor
24. Letter From Norman Haynie to Anson Phillips

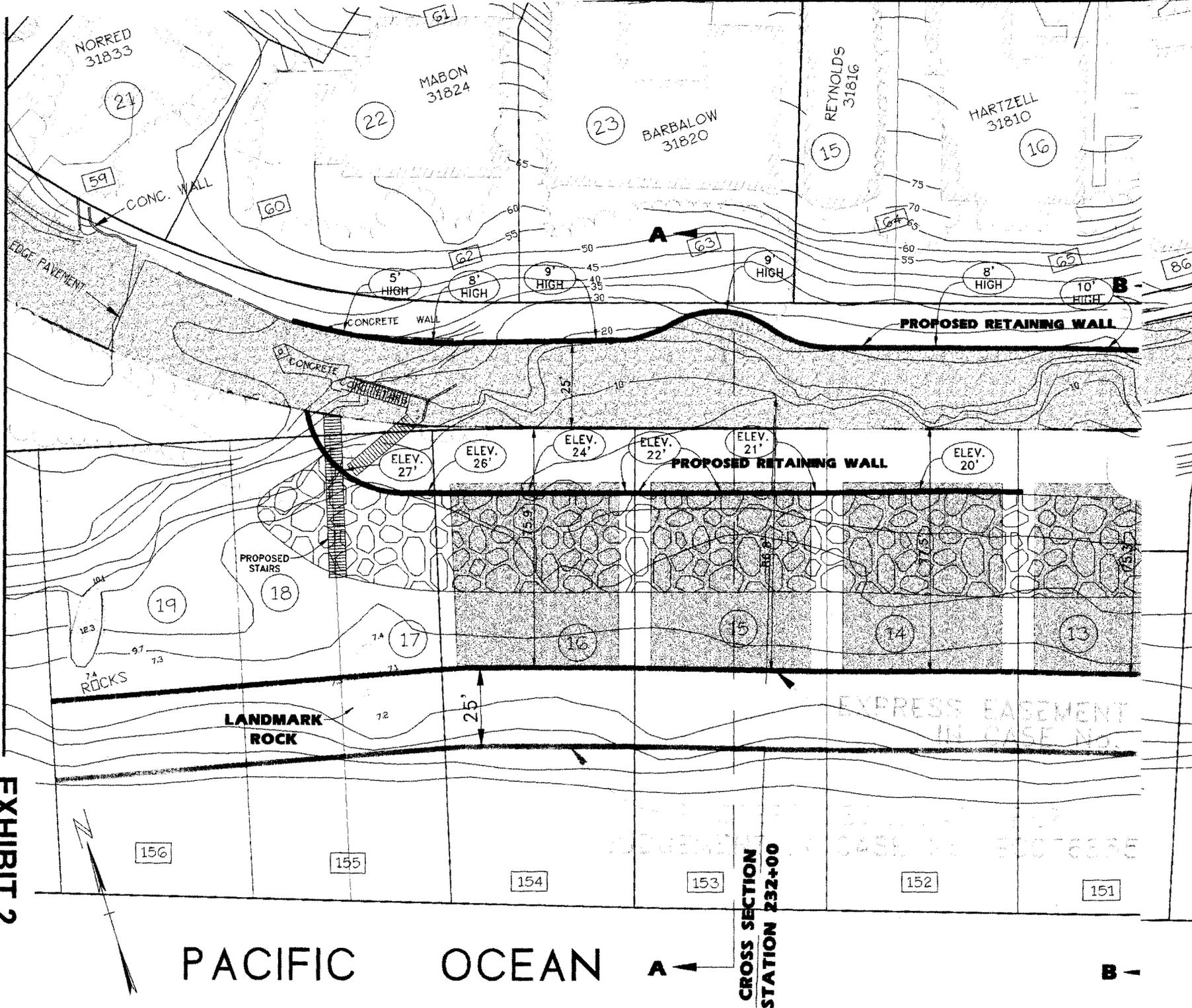


**EXHIBIT 1**  
 Lechuza Villas West  
 Location Map

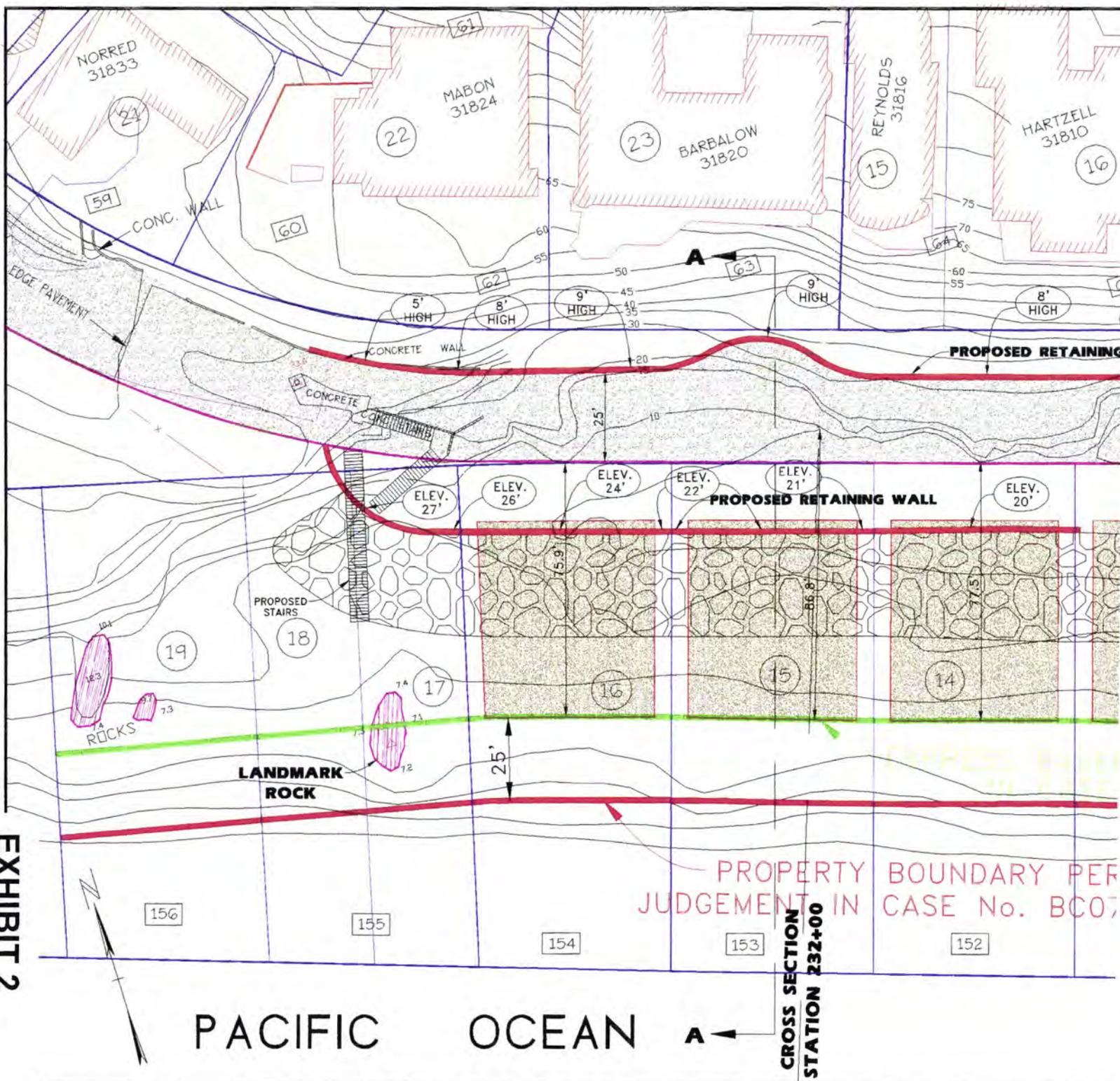
NOTE: Lighthouse positions shown are based on standard meridian 27° west of Greenwich, which is approximately True Sea Level.  
 The Coastal Zone Boundary shown on this map is a generalized version of the boundary established by the California Legislature in 1972. It is intended to be used as a guide for general inventory administration.

California Coastal Commission  
 Technical Services Division

Source: Bureau of Land Management, U.S. Department of the Interior, from 1:250,000 scale maps.



**EXHIBIT 2**  
**Lechuza Villas West**  
**Site Plan**



MOORE  
31804

DUKOFF  
31770

17

18

19

22

24

26

66

67

2'  
HIGH

7'  
HIGH

6'  
HIGH

72

74

**PROPOSED**

**PROPOSED RETAINING WALL  
PAVED**

RR TIE STAIRS

**PROPOSED  
ROCK SEAWALL**

12

22

5

11

10

9

8

7

6

25'

150

149

LOT  
U

148

147

146

145

**CROSS SECTION  
STATION 228+00**

C

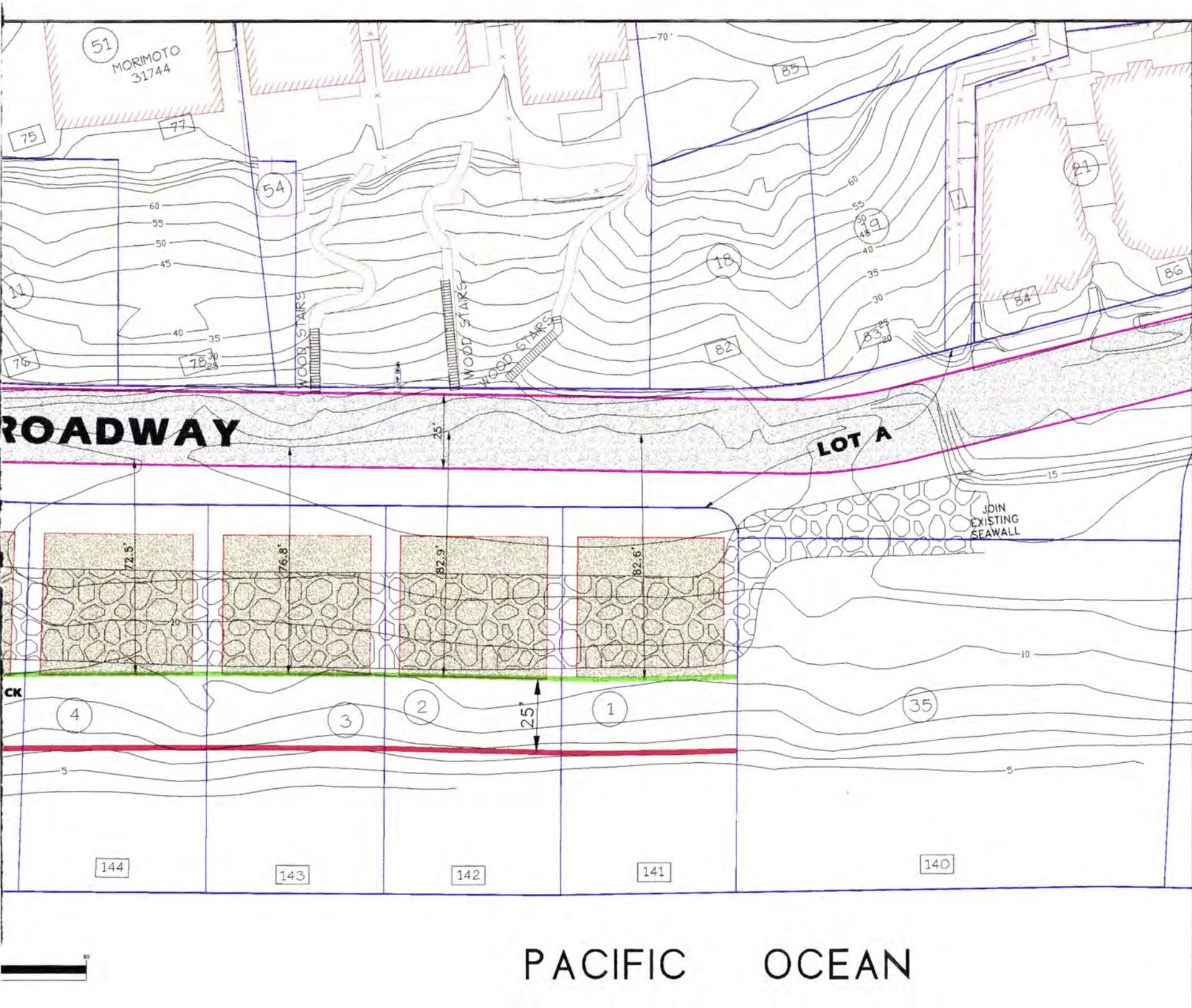
GRAPHIC



1 inch = 10 feet

SURVEYOR'S SEAL







Proposed Building Envelope



Parcel Boundaries



Proposed Rock Revetment



Existing Seawall



State-Owned Tidelands Boundary Per California Superior Court Decision

Recreational easement comprised of the area landward of the Court decision line and seaward of the seaward extent of the building envelopes.

Photo Source: 1993 California Department of Boating and Waterways, 1:12000, Flightline 61, Frame 3, 4/14/93

Map Source: Site plans submitted with CDP applications

Note: All Locations Approximate.  
For Illustrative Purposes Only.

# Lechuza Villas West

CDP #'s 5-90-839, 5-90-840, 5-90-841, 5-90-842, 5-91-49, 5-91-50, 5-91-51, 5-91-58, 5-91-183, 5-91-184, 5-91-185, 5-91-186, 5-91-187, 5-91-188, 5-91-189



**EXHIBIT 3**  
Aerial Photograph of  
Lechuza Villas West  
Project Site

N



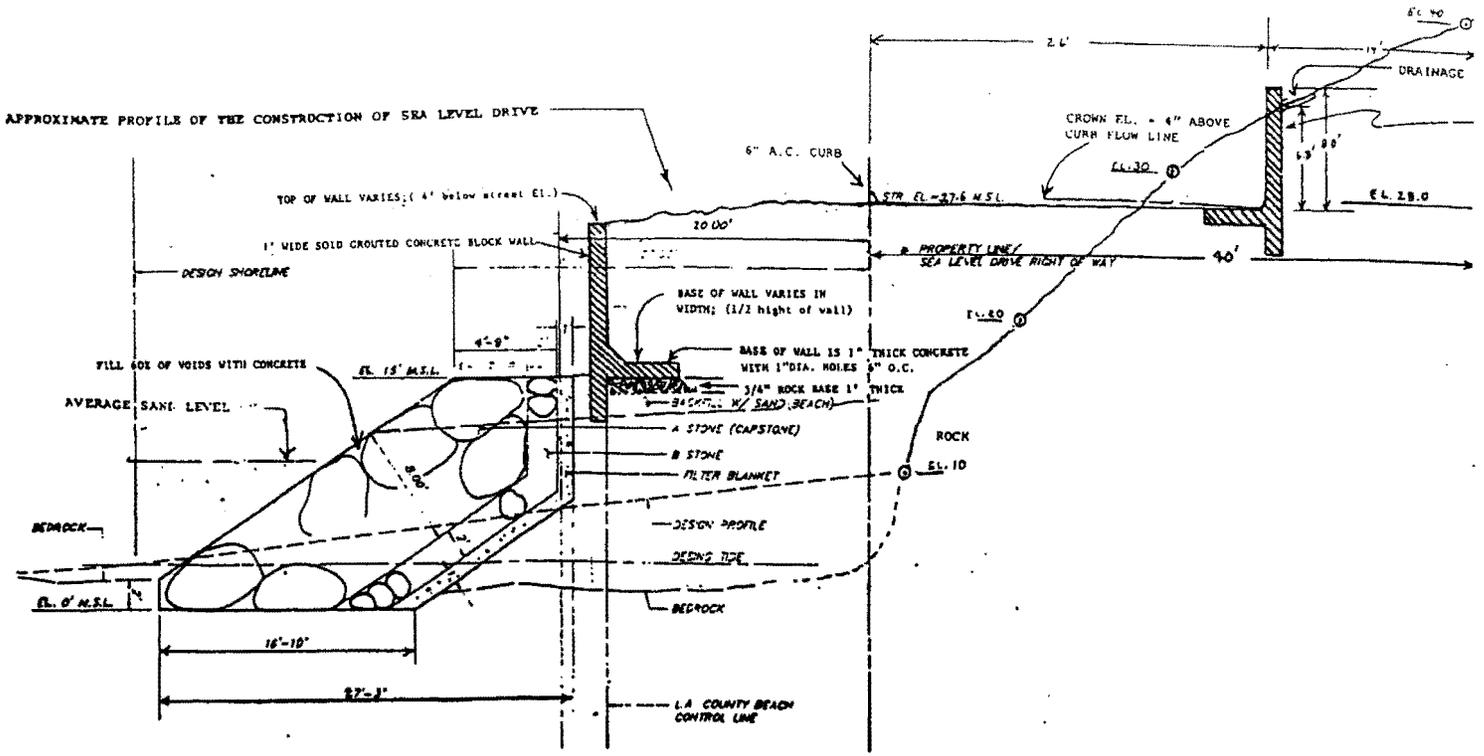
Approximate Scale

PACIFIC

OCEAN

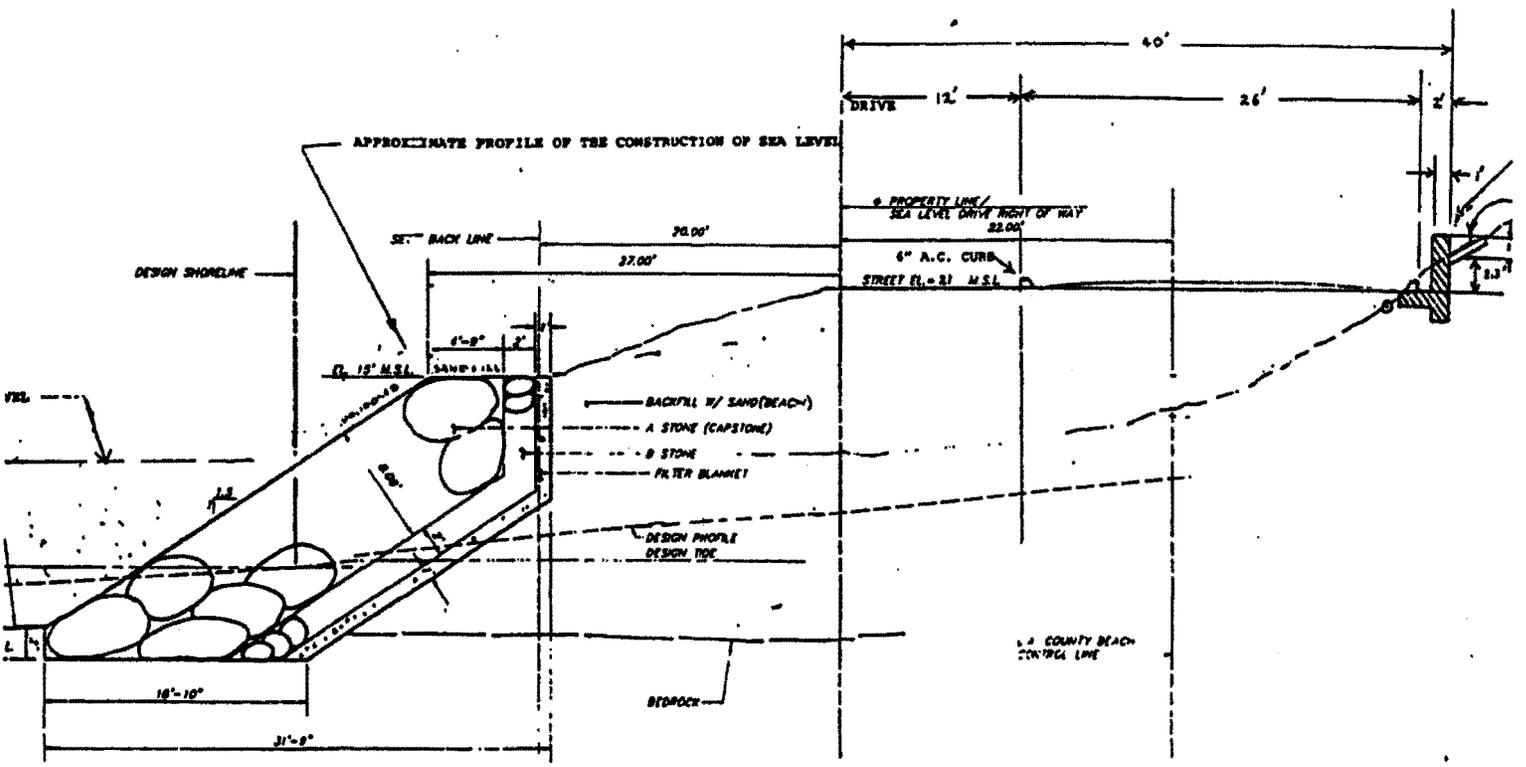


California Coastal Commission  
Technical Services Division



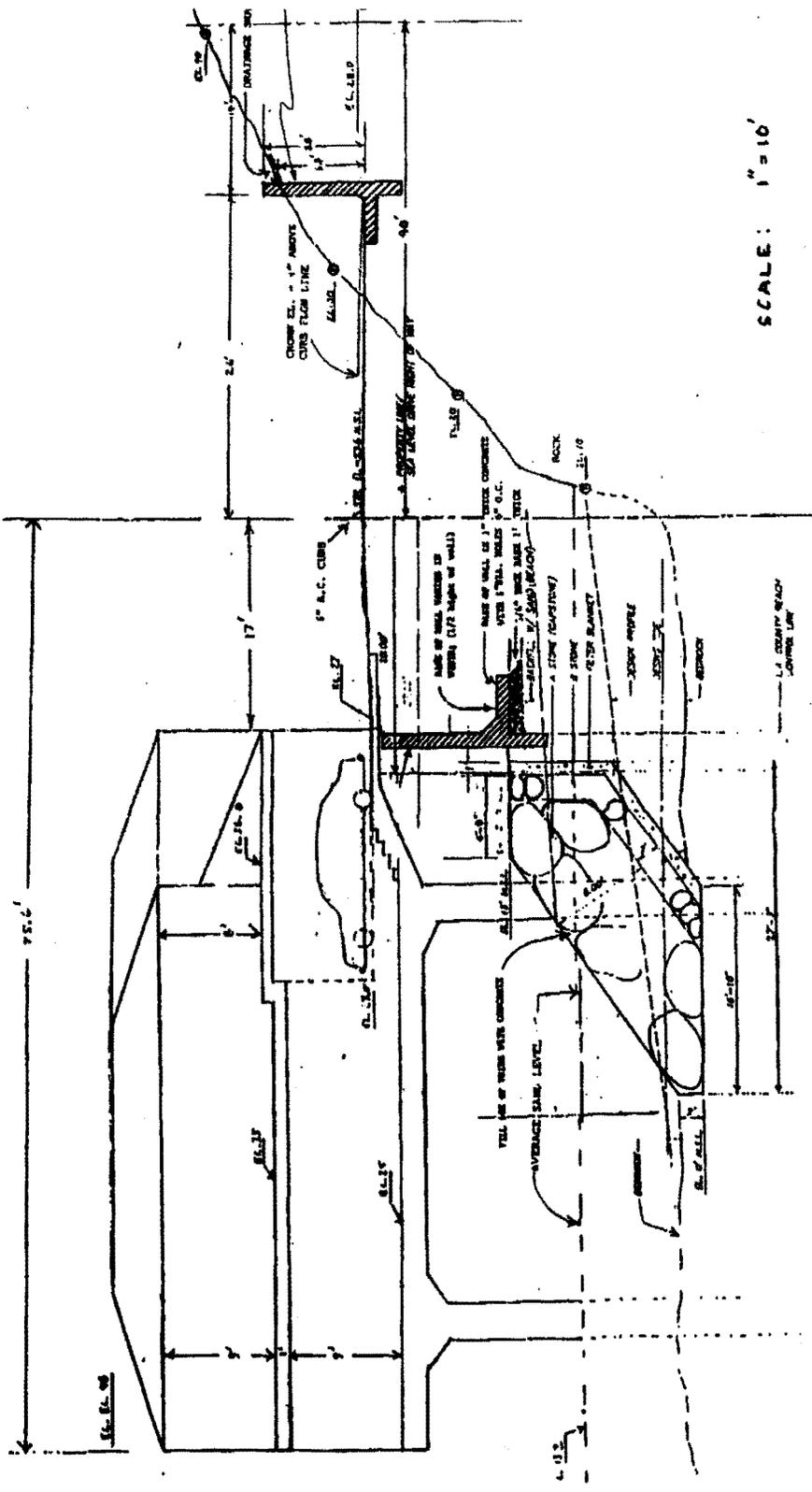
**SECTION A - A**  
SCALE: 1" = 6'

Note  
When the seaward retaining wall exceeds a height of 7 feet the builder may use a retaining wall constructed of concrete soldier piles placed side by side



**SECTION C - C**  
SCALE: 1" = 6'

**EXHIBIT 4**  
Lechuza Villas West  
Typical Cross Section  
of Retevment and Road



SCALE: 1" = 10'

SECTION 4 - A  
GENERAL CROSS-SECTION OF HOUSE ON LOT 154

**EXHIBIT 5**  
Lechuza Villas West  
Typical Cross Section  
of Residence



LOT "A"

EXPRESS EASEMENT PER JUDGEMENT  
IN CASE No. BC076855

PROPERTY BOUNDARY PER  
JUDGEMENT IN CASE No. BC076855

GRAPHIC SCALE



( IN FEET )  
1 inch = 80 ft.

CROSS SECTION  
STATION 284+00

PACIFIC O

**EXHIBIT 6**  
Lechuza Villas West  
Mean High Tide Surveys  
of Lechuza Beach



**GAMES SURVEYING & MAPPING, INC.**  
2248 HASTINGTON DRIVE SOUTH LOS ANGELES, CALIFORNIA 90022 (213)223-1011

SURVEY FOR

**MEAN HIGH TIDE LINE SURVEYS - LECHUZA BEACH**

SCALE: 1"=80'

PLOTTED: JANUARY 28, 1997

DRAWN: WHITEGORN

MALIBU, CALIFORNIA



Vantage Point #1



Wave uprush over beach, February 1983

Vantage Point #2



Wave uprush over beach, January 19, 1993

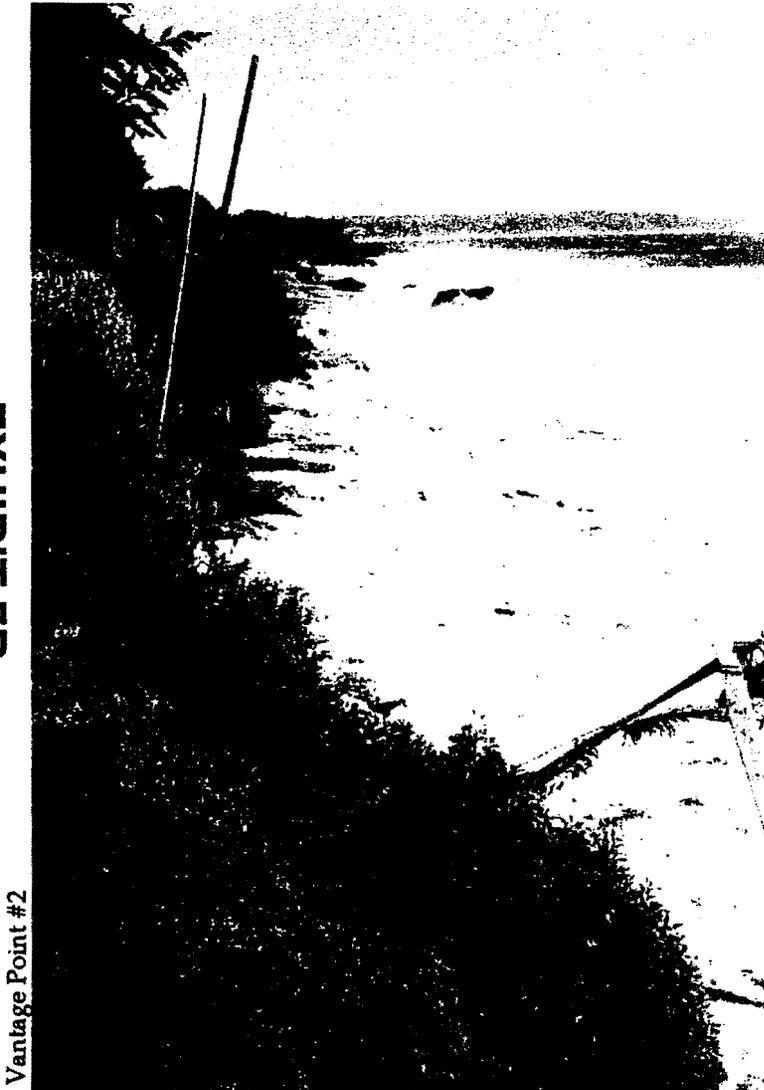
Note: Photos supplied by Peter Dixon



California Coastal Commission  
Technical Services Division

**EXHIBIT 7A**  
Lechuza Villas West  
Photos of Wave Uprush on  
Beach--1983 and 1993

**EXHIBIT 7B**  
Lechuza Villas West  
Photos of Wave Uprush on  
Beach--1994 and 1996



Vantage Point #2

Wave uprush over beach, February 1994



Vantage Point #2

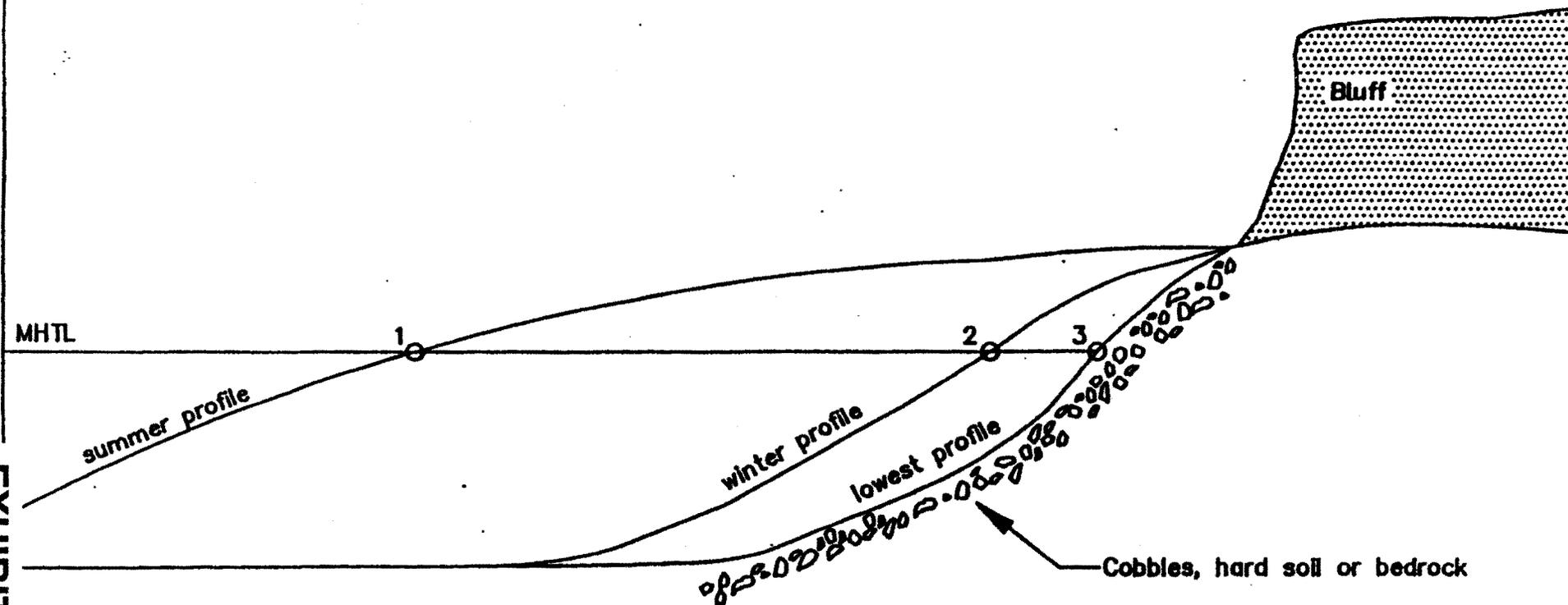
Wave uprush over beach, Winter 1996

Note: Photos supplied by Peter Dixon



California Coastal Commission  
Technical Services Division

# SCHEMATIC SANDY BEACH PROFILES



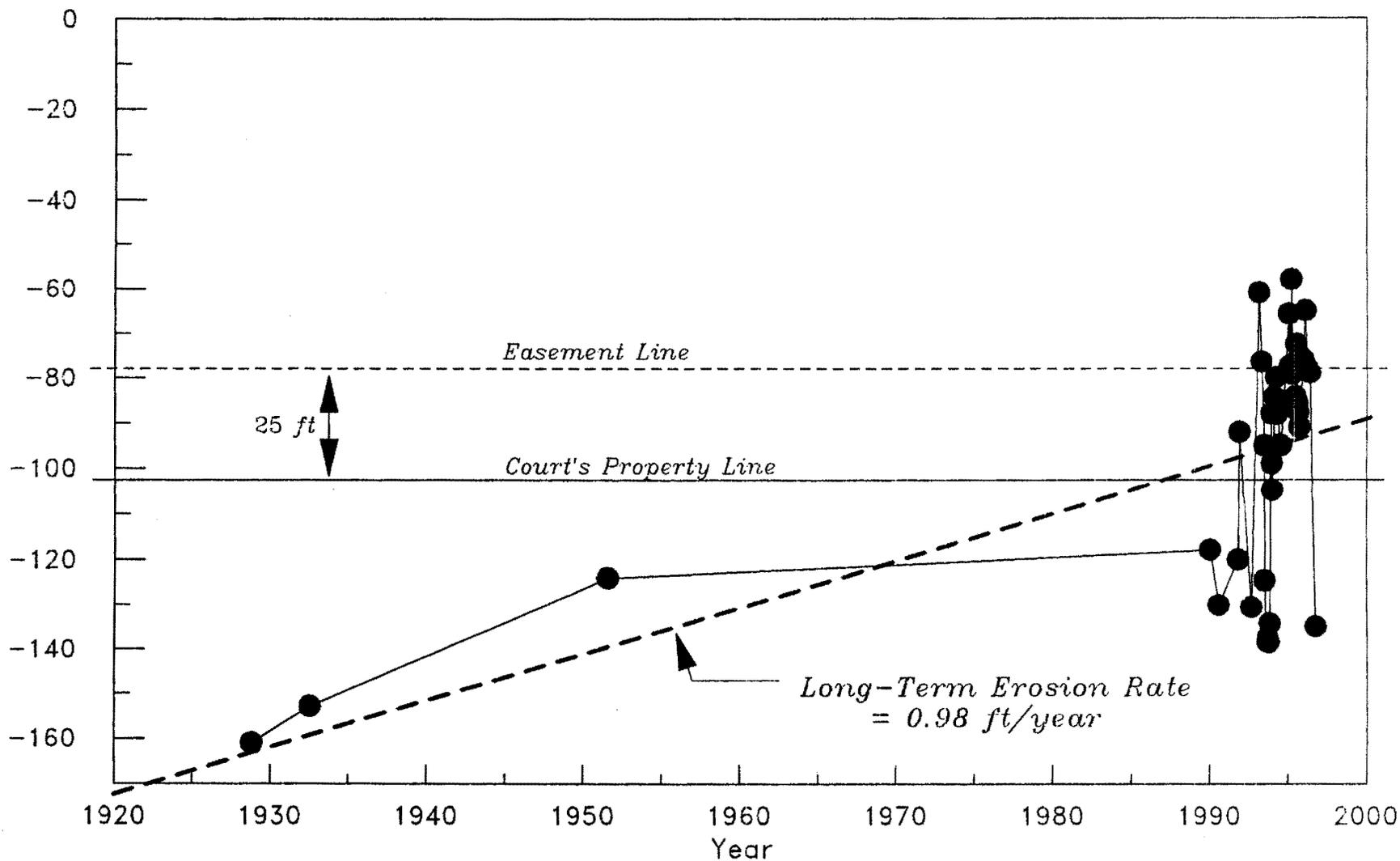
- 1 mean high tide line at summer profile
- 2 mean high tide line at winter profile
- 3 mean high tide line at lowest profile (extreme storm conditions)

NOTE: Drawing not to scale; Intended for illustrative purposes only.

**EXHIBIT 8**  
Lechuza Villas West  
Schematic of Sandy  
Beach Profile

# MHTL FLUCTUATIONS AT LOT 152/153

Distance from North Property Line, feet



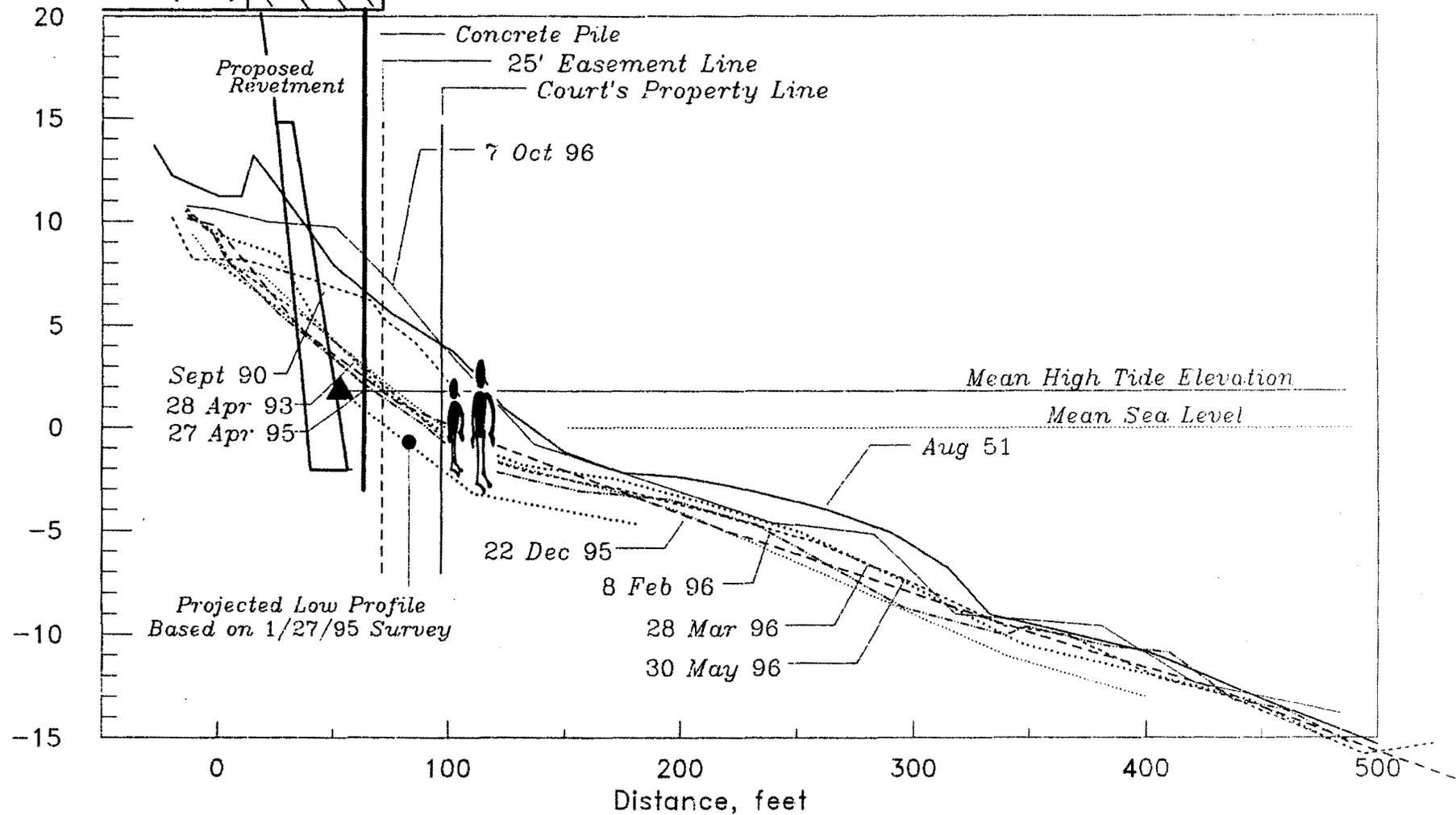
**EXHIBIT 9**  
Lechuza Villas West  
Mean High Tide Fluctuation  
at Lots 152 and 153

Los Angeles County Beach Survey Baseline

Profile 228+00

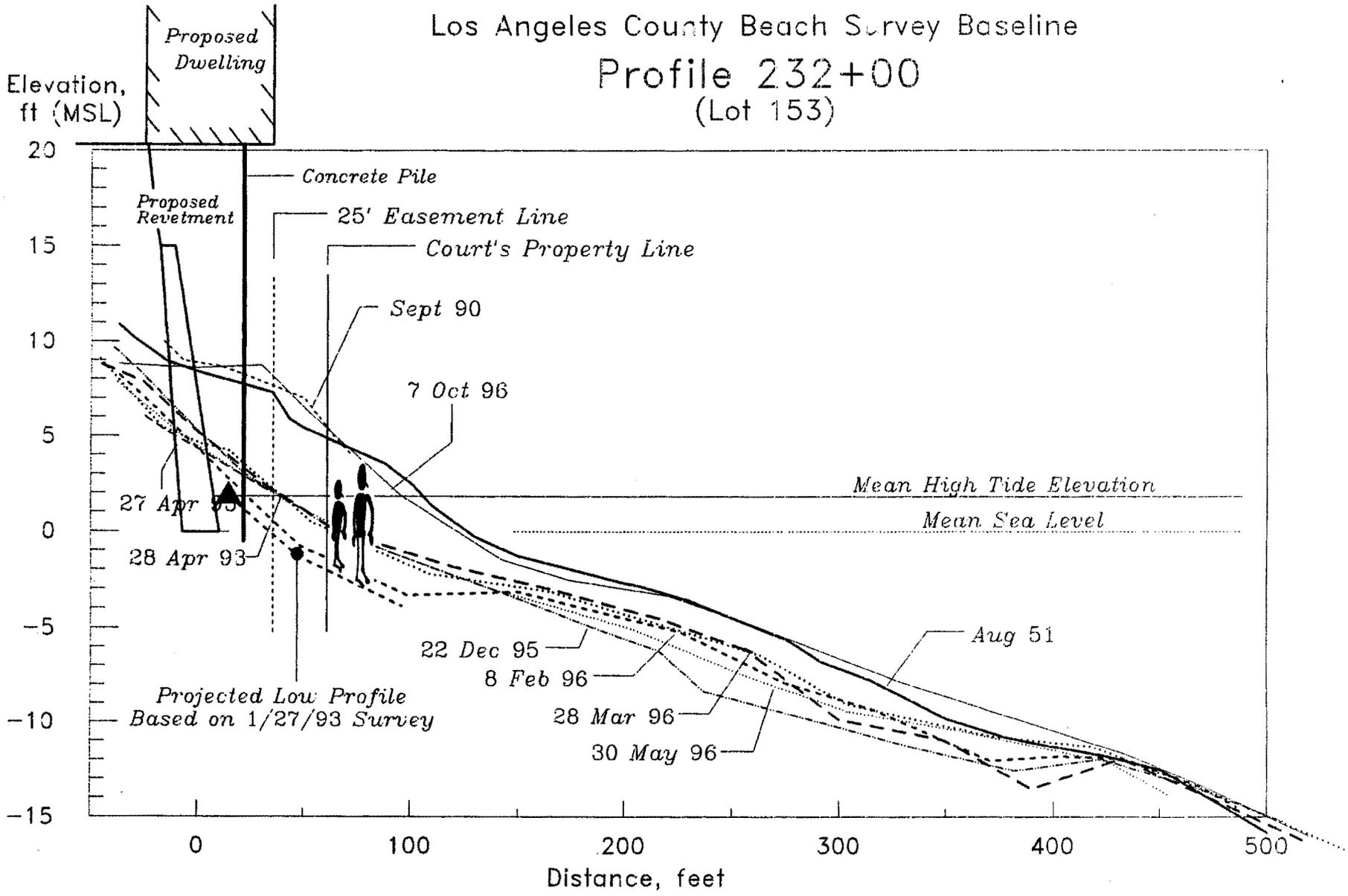
(Lot 146)

Elevation, ft (MSL)



**EXHIBIT 10A**  
Lechuza Villas West  
Shoreline Profiles of  
Beach--Lot 146

# Los Angeles County Beach Survey Baseline Profile 232+00 (Lot 153)



**EXHIBIT 10B**  
 Lechuza Villas West  
 Shoreline Profiles of  
 Beach--Lot 153

Home and road built in 1933 and destroyed in 1938 storm.  
(Remnant dunes also shown in photo)

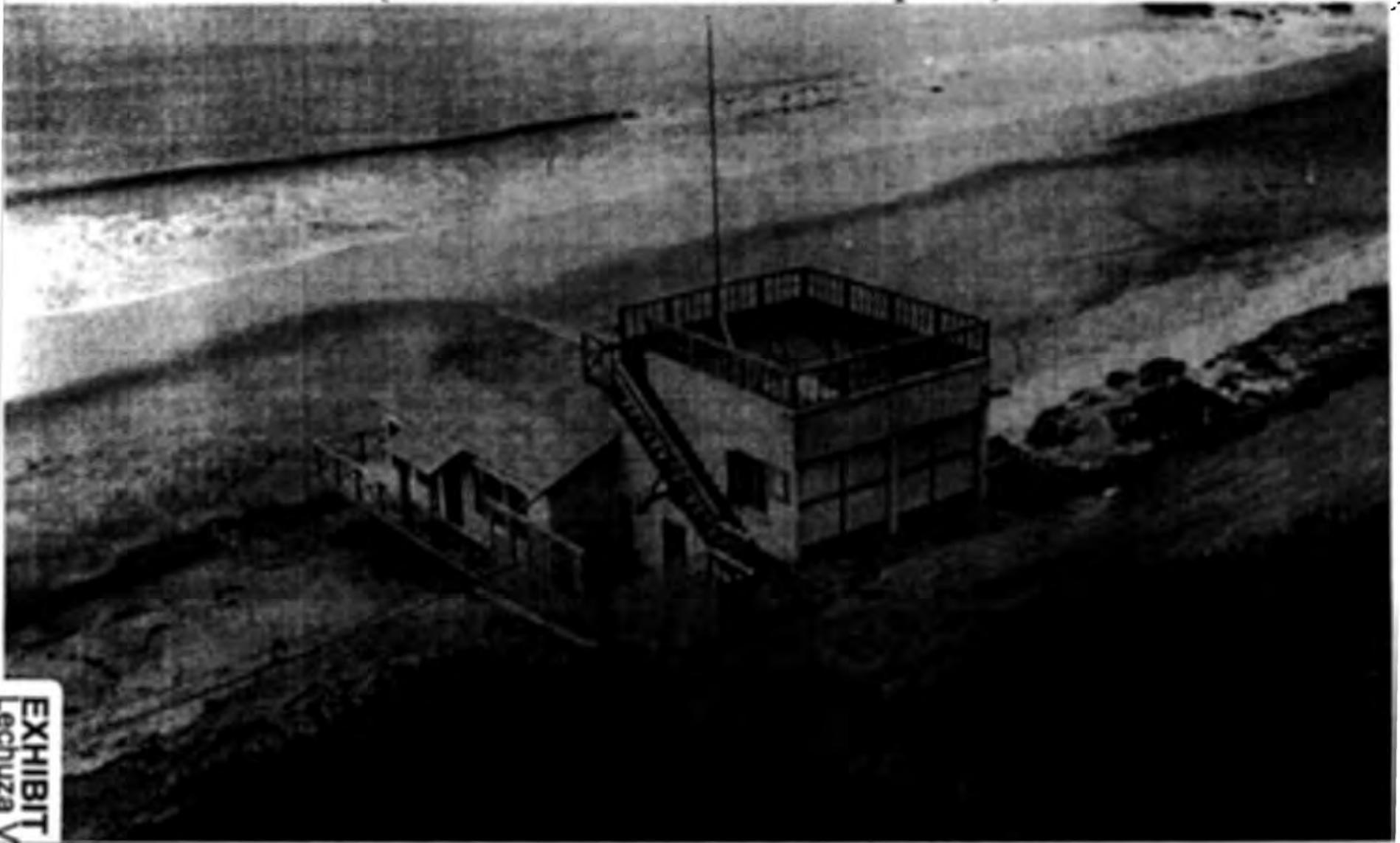


EXHIBIT  
Lechuza

11  
Illas West  
Aerial Photo of House  
Destroyed in 1938

Note: Exact date of photo unknown.  
Supplied by applicant.



## Lechuza Point Sea Lion Haulout May 1994

Note: Photo supplied by Peter Dixon

**EXHIBIT 12**  
Lechuza Villas West  
Sea Lion Haul Out  
on Lechuza Point



California Coastal Commission  
Technical Services Division

## DEPARTMENT OF FISH AND GAME

Marine Resources Division  
330 Golden Shore, Suite 50  
Long Beach, CA 90802  
(213) 590-5180



January 7, 1991

Jack Ainsworth  
California Coastal Commission  
245 W. Broadway, Suite 380  
Long Beach, CA 90802

Dear Mr. Ainsworth: 

I am writing to followup on our tour of the proposed Malibu site.

I am concerned that the project, as designed, could have a significant negative impact on the nearshore marine communities as a result of construction and subsequent sand movement. The beach we surveyed appears to be representative of that part of the southern California intertidal system. Any disruption of sand can cause loss of habitat and mortality for a number of important sand dwelling organisms, such as Blepharipoda sp. and Emerita sp. The Pismo clam (Tivela stultorum) is an important sport species that is returning to southern California beaches after great losses in the early 1980's. Pismo clams inhabit beaches such as the one in question, and the proposed construction could negatively impact their return to the beach. Also, loss of, or changes in, the slope of the beach could disrupt beach use by spawning grunion.

Another concern is that the nearshore subtidal reefs which support kelp (Macrocystis) beds could be buried by sand transport resulting from construction runoff and further sand movement caused by the placement of the rock revetment in (or near) the tidal zone. Substrate burial, such as described above, has been implicated in loss of rocky-kelp communities in other areas, notably Palos Verdes.

Respectfully,

A large, stylized handwritten signature in black ink, appearing to read "John J. Grant".

John J. Grant  
Nearshore Habitat Development  
Coordinator

JJG:etp

**EXHIBIT 13**  
Lechuza Villas West  
Letter from Dept. of  
Fish and Game

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Date: November 21, 1994

Honorable ROBERT H. O'BRIEN, Judge  
NONE, Deputy Sheriff

DAROLYN JENSEN, Deputy Clerk  
NONE, E.R.M.

BC076855

(Parties and Counsel checked if present)

LECHUZA VILLAS WEST, ETC.

Counsel For NO APPEARANCES

CALIFORNIA COASTAL COMMISSION, ETC,  
ET AL

Defendant

NATURE OF PROCEEDINGS: TENTATIVE DECISION

Copies of the Tentative Decision, signed and filed this date, and this minute order are sent by U.S. Mail this date addressed as follows:

LAW OFFICES OF SHERMAN STACEY  
233 WILSHIRE BLVD., SUITE 510  
SANTA MONICA, CA 90401-1306

PETER KAUFMAN, DEPUTY ATTORNEY GENERAL  
110 WEST A STREET, #1100  
P.O. BOX 85266  
SAN DIEGO, CA 92186-5266

ROBERT PHILEBOSIAN  
SHEPPARD, MULLIN, RICHTER & HAMPTON  
333 S. HOPE STREET, FLOOR 48  
LOS ANGELES, CA 90071-1406

EXHIBIT 14  
Lechuza Villas West  
Tent. Dec. Denying Writ  
of Mandate, 11/21/94

PO  
IT

FILED  
LOS ANGELES SUPERIOR COURT

NOV 21 1994

CLERK OF COURT  
375 N. HOUSTON STREET, DEPT. 100

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

**LECHUZA VILLAS WEST, a California  
General Partnership,**

**Petitioner/Plaintiff,**

**vs.**

**CALIFORNIA COASTAL COMMISSION,  
a State Agency; STATE OF  
CALIFORNIA, and DOES 1 through  
20, inclusive,**

**Respondents/Defendants.**

**Case No. BC 076 855**

**TENTATIVE DECISION  
{CCP 632, CRC 232}**

The action was filed March 15, 1993.

The third, fourth and fifth causes of action relate to allegations of denial of any economically viable use of property without compensation, such being a violation of the constitutional right to just compensation.

The second cause of action seeks declaratory relief that respondent may not prohibit development based on Public Resources

1 code section 30211 unless a court has found that the public has  
2 acquired a right of access to the sea.

3  
4 The first cause of action seeks a writ of mandate directed to  
5 respondent to set aside its denial of petitioner's consolidated  
6 application seeking approval to construct on the subject property.

7  
8 WRIT OF MANDATE

9 The findings of the Commission resulting in the denial is  
10 based on the following:

11  
12 (1) The mean high-tide line (and thus the boundary between  
13 public and private lands) has been landward of the proposed  
14 project;

15  
16 (2) The proposed project is not consistent with the public  
17 trust;

18  
19 (3) The proposed project would obstruct a public navigation  
20 easement with a use inconsistent with that easement;

21  
22 (4) Approval of the project would prejudice the preparation  
23 of the City of Malibu's Land Coastal Program;

24  
25 (5) The project would be inconsistent with the protective  
26 policies of the Coastal Act, i.e., shoreline protection, hazards,  
27 access, water quality, sensitive resources, recreation and visual.

28 (Ex. B to Petition, AR 8181-8182.)

1 Respondent moves to deny the petition for writ of mandate.

2  
3 The principal issue herein is the location of the boundary  
4 line between tidelands and petitioner's property. The law sets the  
5 boundary at the ordinary high-water mark (CC 830), defined as the  
6 "mean high-tide line". Petitioner takes issue with the principle  
7 asserted by respondent, that because the mean high-tide line  
8 changes, the boundary changes. Rather, petitioner asserts the line  
9 must be set by averaging the most landward and seaward mean high-  
10 tide lines, citing People v. Wm. Kent Estate Co., 242 Cal.App.2d  
11 156.<sup>1</sup>

12  
13 People v. Wm. Kent Estate Co., 242 Cal.App.2d 156, holds:

14  
15 (1) "Ordinary high-water mark" is an average height of the  
16 high waters at a particular place over a longer period of time,  
17 i.e., 18.6 years (Wm. Kent, at p. 159).

18  
19 (2) The "average" connotes a "fixed figure" (at p. 160).

20  
21 (3) A finding or judgment [in that case] that implies that  
22 "ordinary high tide" is variable (i.e., it may fluctuate naturally  
23 from time to time") is uncertain (at pp. 158 and 160).

24  
25  
26  
27 <sup>1</sup>There is no evidence that respondent, in the past or now,  
28 "chose to ignore" this case. Respondent does, however, offer a  
different analysis as to what the case holds.

1           However, all the appellate court did in Wm. Kent was reverse  
2 for a retrial because the parties had failed to present sufficient  
3 evidence relating to "gradual and imperceptible" accretion (or  
4 deliction) resulting in movements which afford "a basis for fixing  
5 an average, mean, or ordinary line of the shore against which the  
6 average plane of the waters at high tide may be placed to determine  
7 a reasonably definite boundary line" (Wm. Kent, at pp. 160-161).  
8 The Court agreed that something in between a "mathematical line"  
9 and a constantly moving line "should be possible" (at p. 161).

10  
11           Wm. Kent is not controlling law that tidal boundaries are to  
12 be set by a fixed line. Indeed, it appears that the retrial was a  
13 failure to so fix the line at the site involved. (AR 8297, 8311.)  
14

15           Although petitioner asserts that the evidence was  
16 uncontroverted that the average mean high-tide line "was downward  
17 of all proposed construction" (page 10, lines 1-5 of opposition),  
18 the complexity of fixing a "mean high-tide line" is obviously no  
19 easy matter and involves substantial historical and sovereign  
20 public rights as well as private property rights.

21  
22           The most obvious prerequisite for proper review of  
23 petitioner's claims is to establish the boundary lines of  
24 plaintiff's property. Otherwise, all of the issues encompassed  
25 within the "tidelands" issue cannot be addressed either in terms  
26 whether the denial of the application was an abuse of discretion  
27 an unconstitutional taking without due process of law, or otherwise  
28 improper.

1 A ruling in petitioner's favor in the within proceeding would  
2 not be the final word on the issues without a definitive boundary  
3 setting judgment, e.g., a quiet title action. If, for example, the  
4 issues herein were to be decided in petitioner's favor with a  
5 quasi-definite line set as suggested by Weiss (i.e., "approximately  
6 15 feet landward of the 1932 tract mean high-tide line") and  
7 sometime later a lawsuit develops relating to an accident on the  
8 property, the property owner would have to be ascertained in order  
9 to attach liability exposure. If a quiet title action were decided  
10 among the possible owners (i.e., petitioner and the State of  
11 California and all its agencies), then that determination would be  
12 res judicata thereafter as to petitioner and its successors.

13  
14 Not only is there substantial evidence in the record disputing  
15 the Weiss theory (see, e.g., AR 8900) of an established boundary  
16 (see, e.g., AR 5102-5148), the court does not "find that the  
17 estimates of the line of mean high tide utilized by Uzes were  
18 unreasonable and could not be utilized...." (See lines 14-18,  
19 page 15 of opposition.) There is substantial evidence through Uzes  
20 to support respondent's denial for the reason that the mean  
21 high-tide line has been landward of the proposed project.<sup>2</sup>

22  
23 Respondent's motion is granted. The court interprets the  
24 petition in light of the administrative decision denying

25  
26 <sup>2</sup>The court's review here is generated by whether there is  
27 "substantial evidence" to support the decision. Petitioner's  
28 vested right claims are premature without first establishing what  
the boundaries of its property are, and then only will "vested  
right" review take place if all the criteria for such is in place.  
See Lucas v. South Carolina Coastal Council (1992) 112 S.Ct. 2110.

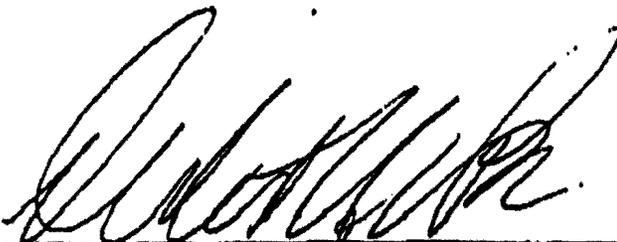
1 petitioner's application partially based on the Commission being  
2 unable to discern from the evidence presented by petitioner a  
3 definite seaward boundary line, and thus it was unable to decide  
4 the issues raised by the phenomena of the "mean high-tide" line.  
5 Petitioner had the burden of presenting the boundaries of its  
6 property. It could not. (See AR 8190, 8188.) Therefore, the  
7 Commission's decision is proper on that ground alone.  
8

9 Petitioner needs to establish its boundary line in a quiet  
10 title action, then apply to the Commission and, if the applications  
11 are then denied, petition for administrative mandate.  
12

13 The court does not reach the third, fourth and fifth causes of  
14 action. However, the second cause of action for declaratory relief  
15 is subsumed by the ruling herein.  
16

17 Counsel for respondent to prepare, serve and file in  
18 Department 85 a proposed statement of decision and proposed  
19 judgment within 7 days of the date of this order. The judgment  
20 will not be entered on the first and second causes of action until  
21 decision is made on the third, fourth and fifth causes of action  
22 because of the "one-judgment" rule. Nevertheless, the procedure  
23 for objecting to and finalizing this judgment as required by  
24 CRC 232 will be followed.  
25

26 DATED: 11/21/94



ROBERT H. O'BRIEN  
Judge of the Superior Court

Original  
FILED

LOS ANGELES SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEC 23 1994

EDWARD M. KRITZMAN, CLERK  
BY DAROLYN JENSEN DFP IT

DEC 19 1994

LECHUZA VILLAS WEST, a California )  
 General Partnership, )  
 )  
 ) Petitioner/Plaintiff, )  
 ) v. )  
 )  
 ) CALIFORNIA COASTAL COMMISSION, )  
 ) a State Agency; STATE OF )  
 ) CALIFORNIA, and DOES 1 through )  
 ) 20, inclusive, )  
 )  
 ) Respondents/Defendants. )

No. BC 076855  
(Mandate assigned to  
Judge O'Brien)

PROPOSED STATEMENT  
OF DECISION

INTRODUCTORY STATEMENT

This action involves a challenge to the statutory and constitutional validity of a permit decision made by the California Coastal Commission (hereinafter "Commission"). It comes to the Court on a motion, brought by respondents, for an order denying a petition for writ of mandate.

Petitioner, Lechuza Villas West, filed a series of applications for the development of property which were consolidated and then denied by the Commission. Petitioner has attacked that decision in an action which includes a petition for writ of mandate (First Cause of Action), a complaint for declaratory relief (Second and Third Causes of Action) and a complaint for damages for inverse condemnation (Fourth and Fifth

EXHIBIT 15  
Lechuza Villas West  
State. of Dec. Denying  
Writ of Mandate, 12/23/94

1 Causes of Action).

2 This Court rules only on the First and Second Causes of  
3 Action dealing with the statutory validity of the Commission's  
4 permit decision. The remaining causes of action dealing with the  
5 alleged unconstitutionality of the Commission's action are before  
6 Judge Hiroshige in Department 16 of this Court.

7 FACTUAL ISSUES

8 1. The property on which the development at issue is  
9 proposed to be located consists of lots 141-154 in Tract No.  
10 10630 of the Malibu Encinal Tract. (A.R., pp. 34; 8179.) It is  
11 commonly known as Lechuza Beach and is in the City of Malibu in a  
12 cove to the west of Lechuza Point and approximately 1,000 feet  
13 east of El Matador State Beach. (A.R., p. 8192.) Lots 141-154  
14 are not located on an existing street. The nearest street is the  
15 west terminus of East Sea Level Drive and the east terminus of  
16 West Sea Level Dr. More than 1600 feet of sandy beach separate  
17 the termini of these streets. (A.R., p. 8183.) There is a bluff  
18 paralleling the shore immediately to the north of the subject  
19 property. (A.R., p. 8192.)

20 2. In October 1990, petitioner filed application Nos. 5-  
21 90-839, 5-90-840, 5-90-841 and 5-90-842 for a project involving a  
22 1,200 foot road, a 985 foot rock revetment to protect the road  
23 and four 35 foot high single family residences to be constructed  
24 on lots 144, 148, 151 and 154. (Petition, pp. 3-4.) At the time  
25 this application was filed, petitioner did not own the property.  
26 However, it had entered into a purchase agreement for it. (A.R.,  
27 p. 34-48.) At the time the application was filed, the City of

1 Malibu had not yet come into existence. As a result, petitioner  
2 obtained approval in concept from the County of Los Angeles.  
3 (A.R., p.176.) Though it is required by the CC&Rs governing the  
4 subdivision in which the property at issue is located, petitioner  
5 had not received approval of its project from the subdivision's  
6 homeowner's association. (A.R., pp. 9434-36.)

7 3. In November 1990, the homeowners association and several  
8 individual homeowners within the subdivision filed suit against  
9 petitioner's grantor, the Adamson Company. (A.R., p. 4836.) The  
10 suit claimed that the association and the named individuals had  
11 acquired a prescriptive easement over the property at issue.  
12 (A.R., pp. 4840-41.)

13 4. On January 10, 1991, the Commission denied the  
14 petitioner's October 1990 permit application. (Petition, p. 4.)  
15 Petitioner filed a petition for writ of mandate challenging the  
16 validity of this decision. (Petition, pp. 7-8.)

17 5. On January 10, 1991, the Adamson Company, by quit claim,  
18 transferred title to the property at issue to petitioners,  
19 Lechuza Villas West, Limited Partnership. (A.R., pp. 8928; 8940-  
20 43.) Lechuza Villas West, L.P., is comprised of the Curci-  
21 Turner Co. and Norman Haynie. (A.R., p. 8961.)

22 6. In March 1991, petitioner submitted applications Nos. 5-  
23 91-049, 5-91-050, 5-91-051, 5-91-058 and 5-91-059 for a project  
24 involving a 314 foot extension of East Sea Level Dr. and a 349  
25 foot rock sea wall to protect it, a 148 foot extension of West  
26 Sea Level Dr. and a 188 foot rock seawall to protect it and five  
27 35 foot high single family residences on Lots 142, 143, 144, 153

1 and 154. (A.R., p. 8184.) These applications received approval  
2 in concept from the County of Los Angeles because the City of  
3 Malibu had not yet come into existence. (A.R., p. 1549.)

4 7. On April 11, 1991, the Commission denied these  
5 applications. (A.R., pp. 1802-2362; Petition, p. 8.) Petitioner  
6 filed a petition for writ of mandate challenging the validity of  
7 the Commission's decision. (Petition, p. 13.)

8 8. In February 1991, petitioners submitted applications  
9 Nos. 5-91-183, 5-91-184, 5-91-185, 5-91-186, 5-91-187, 5-91-188,  
10 and 5-91-190 for a project involving a 314 foot extension of East  
11 Sea Level Dr., a 60 foot driveway extension off of it and a 349  
12 foot rock seawall to protect both, a 148 foot extension of West  
13 Sea Level Dr., a 60 foot driveway extension off of it and a 188  
14 foot long rock seawall to protect both and seven 35 foot high  
15 single family residences to be constructed on lots 141, 145, 146,  
16 148, 150, 151 and 152. (A.R., p. 8184.) These applications  
17 received approval in concept from the County of Los Angeles  
18 because the City of Malibu had not yet come into existence.  
19 (A.R., p. 2402.)

20 9. On December 10, 1991, the Commission denied these  
21 applications. (A.R., pp. 4153-54.) Petitioner filed a request  
22 for reconsideration of this decision with the Commission. The  
23 Commission granted that request for reconsideration. (Petition,  
24 p. 14.)

25 10. At the Commission's request, the applications at issue  
26 in petitioner's previously filed petitions for writ of mandate  
27 (See Statement of Facts ¶¶ 11 & 14 supra) were, by court order,

1 remanded to the Commission for consideration at the same time as  
2 the applications at issue in petitioner's request for  
3 reconsideration. (Petition, p. 14.)

4 11. In October 1992, petitioner proposed to change  
5 applications 5-91-183 through 5-91-188 and 5-91-190 by  
6 substituting the rock seawall used to protect the street  
7 extensions with a caisson wall. (A.R., pp. 9779-9786.) The  
8 caisson wall design did not have approval in concept from the  
9 City of Malibu which had come into existence and which now had  
10 jurisdiction over the project. (A.R., p. 8185.) Because the  
11 caisson wall design represented a significant change in the  
12 project and did not have approval in concept from the City of  
13 Malibu as required by the Commission's regulations (14 Calif.  
14 Code of Regs. § 13052), the Commission refused to consider them.  
15 (Id.)

16 12. On November 4, 1992, the State of California claimed  
17 title to and a public right of navigation and recreation over  
18 portions of the project site (A.R., pp. 8256-57.) That claim was  
19 reaffirmed on January 12, 1993. (A.R., pp. 9061-9074.)

20 13. On January 14, 1993, the Commission held a hearing on  
21 all of petitioner's applications. On that date, the Commission  
22 denied all the applications and adopted the recommendation of its  
23 staff as its findings. (A.R., pp. 9408-9409; findings, at A.R.,  
24 pp. 8179-8271.)

25 14. On February 12, 1993, petitioner asked the Commission  
26 to reconsider its decision. (A.R., p. 9418-20.) On April 14,  
27 1994, the Commission denied that request. (A.R., p. 9424, 9426.)



1 writs of mandate and all declaratory relief actions appended to  
2 writs of mandate. (Local Rule 2.5.)

3 2. A declaratory relief cause of action which is directed  
4 at the statutory validity of a quasi-judicial decision is to be  
5 construed as a petition for writ of mandate. (Hostetter v.  
6 Andersen (1952) 38 Cal.2d 499.)

7 3. The Second Cause of Action is directed at the statutory  
8 validity of the Commission's permit decision. This Court  
9 construes that cause of action as a petition for writ of mandate.

10 4. This Court declines to rule on the Third, Fourth and  
11 Fifth Causes of Action of the Complaint inasmuch as those matters  
12 are presently before Judge Hiroshige in Department 16 of this  
13 Court.

14 5. This Court finds that the Commission could not determine  
15 whether petitioner's project was consistent with Public Resources  
16 Code section 30211 without a proper delineation of the boundary  
17 between petitioner's property and sovereign lands of the State of  
18 California. This Court, likewise, finds that statutory and  
19 constitutional validity of the Commission's permit decision  
20 cannot be addressed until the proper boundaries of petitioner's  
21 property are delineated. The burden of establishing the proper  
22 boundaries of petitioner's property rests with petitioner. In  
23 this case, petitioner could not establish the proper boundaries  
24 of its property.

25 This Court rejects petitioner's contention that People  
26 v. Wm. Kent Estate Co. (1956) 242 Cal.App.2d 156 holds that tidal  
27 boundaries are to be set by a fixed line. All the appellate

1 court did in that case was reverse for a retrial because the  
2 parties had failed to present sufficient evidence relating to  
3 "gradual and imperceptible" accretion (or deliction) resulting in  
4 movements which afford "a basis for fixing an average, mean, or  
5 ordinary line of the shore against which the average plane of the  
6 waters at high tide may be placed to determine a reasonably  
7 definite boundary line." (Id. at pp. 160-161.) The Kent court  
8 agreed that something in between a "mathematical line" and a  
9 constantly moving line "should be possible". (Id. at 161.)  
10 However, it appears that the retrial was a failure to fix such a  
11 line at the site involved. (A.R., pp. 8297, 8311.)

12 In this case, there is substantial evidence that a  
13 dispute exists over the proper boundary between petitioner's  
14 property and State tidelands. This Court finds that the  
15 estimates of the line of mean high tide utilized by Mr. Uzes were  
16 reasonable and constituted substantial evidence supporting a  
17 claim by the State of California to title to portions of the  
18 project site.

19 Given the existence of this substantial evidence, the  
20 Commission acted within its discretion in denying petitioner's  
21 application. The Commission's decision does not determine title.  
22 Only a quiet title action can definitively establish the boundary  
23 between petitioner's property and that of the State.

24 6. In reaching its decision, this Court has applied  
25 the substantial evidence test to factual issues. Petitioner can  
26 have no vested right claim without first establishing what the  
27 boundaries of its property are, and then "vested right" review

1 will take place only if all the criteria for such is in place.

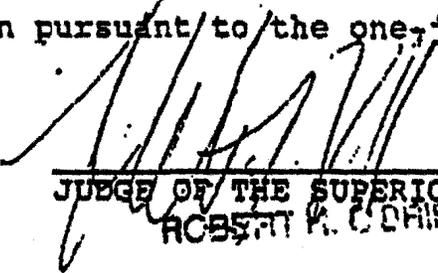
2 (Lucas v. South Carolina Coastal Council (1992) 112 S.Ct. 2886.)

3 7. Given its ruling on the boundary issue, there is no  
4 need to reach the issue of the validity of the Commission's other  
5 findings supporting denial of the application or whether the  
6 Commission could approve petitioner's project without violating  
7 the California Environmental Quality Act given petitioner's  
8 failure to perform a survey for the Globose Dune Beetle.

9 8. Respondents' motion is granted, the petition for  
10 writ of mandate is denied and the Second Cause of Action is  
11 dismissed.

12 9. Judgment shall not be entered on the First and  
13 Second Causes of Action until a decision is reached on the Third,  
14 Fourth and Fifth Causes of Action pursuant to the one-judgment  
15 rule.

16 12123194

  
17 JUDGE OF THE SUPERIOR COURT  
18 ROBERT P. O'BRIEN

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MAY 20 1996

ORIGINAL FILED  
DEPT. 54

JUN 11 1996

SUPERIOR COURT

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(818) 907-9898; (213) 872-2900

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6 Santa Monica, California 90401-1306  
(310) 394-1163

7 Attorneys for Petitioner/Plaintiff  
8 LECHUZA VILLAS WEST  
SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

11 LECHUZA VILLAS WEST, a California )  
12 Limited Partnership, )  
13 )  
14 )  
15 )  
16 )  
17 )  
18 )  
19 )  
20 )  
21 )  
22 )

Petitioner/Plaintiff,

v.

11 CALIFORNIA COASTAL )  
12 COMMISSION, a State Agency; STATE )  
13 OF CALIFORNIA; STATE LANDS )  
14 COMMISSION, a State agency; the )  
15 MALIBU-ENCINAL HOMEOWNERS )  
16 ASSOCIATION; and DOES 2 through )  
17 20, inclusive, )  
18 Respondents/Defendants. )  
19 )  
20 )  
21 )  
22 )

20 RELATED CROSS-ACTIONS.  
21

CASE NO. BC076855

(Complaint assigned to Judge Hiroshige)

~~Second Proposed~~ STATEMENT OF DECISION

TRIAL DATE: October 18, 1995

DEPT.: 54

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 This matter came on regularly for bench trial in Department 54 of the above-  
25 entitled Court, the Honorable Ernest M. Hiroshige, Judge, Presiding. Fred N. Gaines  
26 and L. Elizabeth Strahlstrom of Reznik & Reznik, A Law Corporation, and Sherman  
27 L. Stacey appeared on behalf of Plaintiff LECHUZA VILLAS WEST, L.P. ("Plaintiff").  
28 Dennis M. Egan and Joseph Barbieri, Deputy Attorneys General, appeared on behalf

& Reznik  
Ventura Blvd.  
Sherman Oaks, CA  
91403-3002  
(818) 907-9898  
(213) 872-2900  
NET 100501DCIS ON LES (06/20/96)

**EXHIBIT 16**  
Lechuza Villas West  
State. of Decision re  
Quiet Title, 6/11/96

1 of Defendants and Cross-Complainants THE STATE OF CALIFORNIA and the  
2 STATE LANDS COMMISSION (the "STATE"). Terence M. Sternberg, of Vittal &  
3 Sternberg, appeared on behalf of Defendant and Cross-Complainant MALIBU-  
4 ENCINAL HOMEOWNERS ASSOCIATION ("MEHOA").<sup>1</sup> Trial commenced on  
5 October 13, 1995 and concluded on December 11, 1995.

6 By stipulation the parties agreed to a bifurcated trial. This Statement of  
7 Decision involves the first phase of the bifurcated trial and constitutes a final decision  
8 as to the Sixth, Seventh, and Eighth Causes of Action of Plaintiff's First Amended  
9 Complaint, the entirety of the STATE's cross-complaint (the First, Second, Third and  
10 Fourth Causes of Action as contained therein), and the entirety of MEHOA's Cross-  
11 Complaint (the First, Second and Third Causes of Action as contained therein). The  
12 Third, Fourth and Fifth Causes of Action of Plaintiff's First Amended Complaint  
13 remain before this Court for later trial.

14  
15 I.

16 **SUMMARY OF THE ISSUES TRIED.**

17 This matter involved the determination of the location of the southern or  
18 seaward boundary of 19 beachfront lots, Lots 141-156 in Tract No. 10630 as recorded  
19 in Book 181, Pages 6-11 of Maps in the official records of the County Recorder of Los  
20 Angeles County ("the subject property"). This matter also involved the STATE'S  
21 claim of a public navigational servitude over all portions of the subject property  
22 covered from time to time by the ebb and flow of the ocean tide. Finally, this action  
23 involved MEHOA's claim of an express easement over the subject property based on  
24 language found in the Covenants, Conditions and Restrictions ("CC&Rs") affecting  
25 Tract No. 10630.

26 ///

27  
28 <sup>1</sup> While the above-referenced parties were the only parties to appear at trial, all  
named parties have stipulated to be bound by the outcome of this action.

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II.

DECISION.

A. The Court Finds That The Location Of The Seaward Boundary Of Plaintiff's Property Is The Average Location Of The Surveyed Mean High Tide Lines On The Subject Property.

During trial proceedings and on the record the Court has previously indicated the basis by which the Court has found that the case of People v. William Kent Estate Co., 242 Cal.App.2d 156 (1966) (hereafter the "Kent Estate Case") governs the decision of this Court in determining the seaward boundaries in question. Both the County of Lake v. Smith, 228 Cal.App.3d 214 (1991) and Littoral Development v. SF Bay Conservation & Dev., 24 Cal.App.4th 1050 (1994) quote Kent Estate with approval.

The Kent Estate case found that under Civil Code Section 830 that as to the "tide-water" that the "ordinary high-water mark" is the seaward boundary.

Kent Estate held that on beaches subject to a fluctuating mean high tide line due to annual erosion and accretion, that the ordinary high water mark will constitute an "average" fixed location of the mean high tide line which then serves as the seaward boundary between private property and public tidelands. The beach in Kent Estate had an annual fluctuation of as much as 80 feet and the Lechuza Beach fluctuation is as much as 110 feet.

The STATE'S position, ignoring the Kent Estate Case's almost 30-year precedent, argues that a seaward boundary on a fluctuating beach moves constantly with the ebb and flow of the tide. The STATE'S position violates two tideland principles: (1) a migration of the seaward boundary between public tidelands and private property in accordance with the landward and seaward movement of the mean high tide line occurs only when the changes are gradual and imperceptible, due to the natural accretion and deliction of the sand due to gradual wave action; and

1 (2) the seaward boundary does not change as a result of "avulsion" or the sudden or  
2 violent action of the elements.

3 The Court adopts the reasoning and authorities contained in Plaintiff's Offer of  
4 Proof in Support of Determination of a Fixed Seaward Boundary, filed November 13,  
5 1995, in making this ruling.

6 The Court finds that the Plaintiff has carried its burden of establishing an  
7 average fixed boundary as to the 19 lots in question in accordance with generally  
8 accepted principles of oceanography, geology, engineering, surveying and statistics to  
9 justify the Court's finding that the average mean high tide line as found in Table 2 of  
10 Trial Exhibit 321 determines the southern or seaward boundary of the lots in  
11 question. Attached hereto as Exhibit "A" is a copy of Table 2 from Trial Exhibit 321.  
12 Attached hereto as Exhibit "B" is a map showing the location of the boundary as  
13 described in Exhibit "A."

14 The Court is dismayed that the STATE has apparently ignored applicability of  
15 the Kent Estate Case to these proceedings when it has been good law for some  
16 30 years. The STATE has taken the position that Kent Estate is either wrongly  
17 decided or otherwise inapplicable to beachfront development cases and puts forward  
18 no alternative basis to interpret the impact of the Kent Estate Case on future  
19 seaward boundary disputes.

20 Therefore the Court feels compelled to attempt to remediate future disputes  
21 regarding seaward boundaries by ruling as follows: that in the future, when property  
22 owners of coastal beachfront property seek to determine their seaward boundary in  
23 circumstances that make the analysis of the Kent Estate Case applicable the property  
24 owner will:

- 25 1. Commission surveys using generally acceptable principles of  
26 oceanography, geology, engineering, surveying and statistics to  
27 determine the average mean high tide line for the previous 2 years;

28

2. The data for the computation shall encompass at least one survey for each previous season (the previous winter, spring, summer and fall); and
3. If the STATE (or an appropriate governmental agency) wishes to contest the property owner's boundary determination then the STATE may maintain its own surveys using the same methodology and present its contrary position; and/or challenge the validity of the data and methodology of the property owner's position.

**B. The Court Finds That The Subject Property Is Not Subject To A Navigational Easement Landward Of The Seaward Boundary.**

The Court finds that the subject property is not subject to a public navigational or recreational easement landward of the seaward boundary (as such boundary is shown on Exhibit "B").

The case of Aptos Seascape Corp. v. County of Santa Cruz, 138 Cal.App.3d 484 (1982) precludes the STATE'S claim of a public navigational servitude. In Aptos, the court disposed of the State's claim that the public's right to use private beachfront property extended to "that point reached by the highest annual swells of the sea" such that the beach up to the highest high water mark was burdened with a "public servitude." The court held that the public's rights do not extend to the area beyond the public tideland/private property boundary.

The STATE has asserted a claim for a "public recreational easement" or "navigational servitude" which would allow the public to use any portion of the subject property which is touched by tidal water even if only during high tides or storm conditions. The STATE has failed to meet its burden of proof regarding this claim.

In addition, the STATE has failed to prove any implied dedication of an easement for recreational use over the subject property under the doctrine enunciated in Gion v. City of Santa Cruz, 2 Cal.3d 29 (1970).

1 C. The Court Finds That MEHOA'S Express Easement Is Measured 25  
2 Feet Landward From the Southerly Boundary of the Subject Property.

3 The Court rejects MEHOA's claim that its express easement is located by  
4 measuring twenty-five (25) feet landward from the location of the mean high tide line  
5 as it moves from day to day. The Court finds that the express easement contained in  
6 the CC&Rs for the subject property (Trial Exhibit No. 542) is measured 25 feet  
7 landward from the southerly boundary of the subject property as established by this  
8 Decision. A map showing the location of such easement is attached hereto as Exhibit  
9 "B." MEHOA has failed to meet its burden of proof as to all other claims set forth in  
10 MEHOA's Cross-Complaint.

11  
12 III.

13 CONCLUSION

14 As detailed above, this Court finds that Plaintiff has carried its burden of  
15 proving ownership of the subject property to the seaward boundary as established by  
16 this Court. The Court also finds that the subject property is not burdened with a  
17 public navigational servitude landward of the location of the seaward boundary.  
18 Finally, the Court determines that MEHOA's express easement pursuant to the  
19 CC&Rs for Tract No. 10680 is measured 25 feet landward from the southerly  
20 boundary of the subject property.

21 This Court will retain jurisdiction over this matter for the purpose of  
22 determining the claims yet to be tried, and as to all other matters the Court may  
23 appropriately determine.

24  
25 DATED JUN 11 1996, 1996

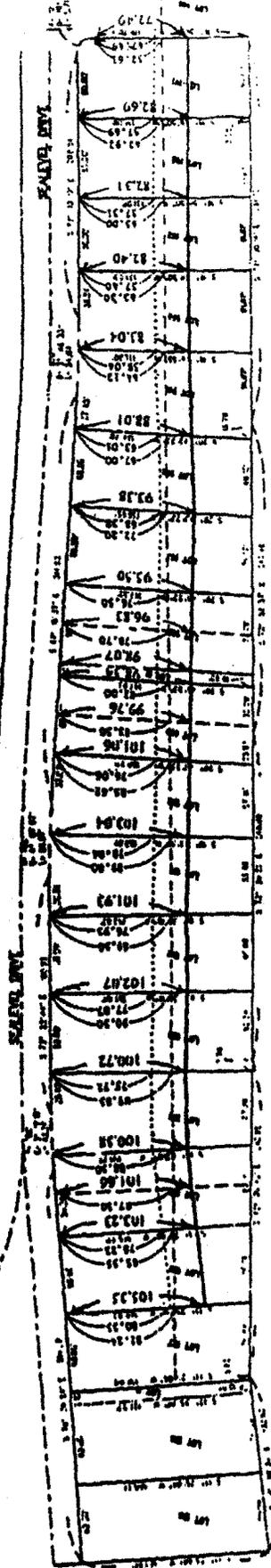
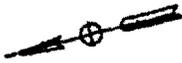
*Ernest M. Hiroshige*

26 ERNEST M. HIROSHIGE  
27 Judge of the Superior Court

Table 2: Run3: All Survey Data

CBS	N	MEAN	STD	L90	H90	L95	H95
1	32	105.35	18.13	99.91	110.79	98.81	111.90
2	33	103.23	22.09	96.71	109.76	95.38	111.08
3	34	101.66	24.03	94.67	108.65	93.24	110.07
4	35	100.58	26.24	93.06	108.11	91.53	109.64
5	35	100.72	27.17	92.92	108.51	91.34	110.09
6	37	102.07	28.23	94.19	109.94	92.59	111.54
7	36	101.93	26.38	94.47	109.39	92.95	110.91
8	36	103.04	26.18	95.64	110.45	94.13	111.95
9	36	101.06	25.91	93.73	108.39	92.24	109.88
10	36	99.76	25.49	92.55	106.97	91.09	108.44
11	36	98.54	25.24	91.40	105.68	89.95	107.13
12	36	98.07	25.15	90.96	105.18	89.51	106.63
13	36	96.83	24.92	89.79	103.88	88.35	105.32
14	36	95.50	24.65	88.53	102.47	87.11	103.89
15	37	93.38	23.99	86.59	100.08	85.33	101.44
16	36	88.01	23.49	81.35	94.65	80.01	96.00
17	36	83.04	24.07	76.23	89.84	74.84	91.23
18	36	82.40	23.85	75.65	89.14	74.28	90.51
19	36	82.31	22.84	75.35	88.77	74.54	90.08
20	36	82.69	22.22	76.41	88.99	75.13	90.26
21	36	72.49	21.72	66.35	78.64	65.10	79.89

PORTION OF  
TRACT 10630



PACIFIC OCEAN

LEGEND

- Fixed Boundary Line Established By The California Superior Court.
- Building Stringline: Established By The California Coastal Commission.
- Proposed Northernly Boundary Of NEMCO'S Claimed Easement Is 25 Feet North Of The Established Boundary Line.

RECORDED  
PAGE 106 076-00  
C. 10-10-1988

LEGAL DESCRIPTION

LOTS 91 THROUGH 94 OF TRACT NO. 10630 IN THE COUNTY OF LOS ANGELES AND PART OF SECTION 10, TOWNSHIP 11 NORTH, RANGE 14 WEST, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

DATE OF RECORD

THE MAP IS A TRUE COPY OF THE ORIGINAL OF WHICH A COPY IS KEPT IN THE OFFICE OF THE COUNTY CLERK OF LOS ANGELES COUNTY, CALIFORNIA.

NOTES

SEE HOW THE ELEVATION USED FOR THIS MAP IS 0.00

EXHIBIT "C"

OWNER'S NAME  
LACRETA VILLAS WEST, S.P.  
10700 P.A.R. SUITE 400  
MALLINO, CA.  
90254



SCALE  
DATE  
BY

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA )  
3 COUNTY OF LOS ANGELES ) ss.

4 I am employed in the County of Los Angeles, State of  
5 California. I am over the age of 18 and not a party to the within  
6 action; my business address is 15456 Ventura Boulevard, Fifth  
7 Floor, Sherman Oaks, California 91403.

8 On June 14, 1996, I served the foregoing document described  
9 as

10 **"STATEMENT OF DECISION"**

11 on all interested parties in this action by placing a true copy  
12 thereof enclosed in a sealed envelope addressed as follows:

13 **SEE ATTACHED SERVICE LIST**

14 **VIA FACSIMILE AND MAIL:**

15 I am "readily familiar" with the firm's practice of  
16 collection and processing correspondence for mailing. Under the  
17 practice it would be deposited with U.S. postal service on that  
18 same day with postage thereon fully prepaid at Sherman Oaks,  
19 California in the ordinary course of business. I am aware that on  
20 motion of the party served, service is presumed invalid if postal  
21 cancellation date or postage meter date is more than one day after  
22 date of deposit for mailing in affidavit.

23 Executed on June 14, 1996, at Sherman Oaks, California.

24 I declare under penalty of perjury under the laws of the  
25 State of California that the above is true and correct.

26   
27 \_\_\_\_\_  
28 Loretta King

SERVICE LIST ATTACHMENT

1  
2 Daniel E. Lungren  
3 Attorney General of the  
4 State of California  
5 Peter Kaufman, Esq.  
6 Supervising Deputy Attorney General  
7 P. O. Box 85266  
8 San Diego, CA 92186-5266  
9 Telephone: (619) 645-2020

VIA FAX NO. (619) 645-2012

10 Joseph Barbieri, Esq.  
11 Dennis Eagan, Esq.  
12 Deputy Attorney General  
13 2101 Webster Street  
14 12th Floor  
15 Oakland, CA 94612-3049  
16 Telephone: (510) 286-3822

VIA FAX NO. (510) 286-4020

17 Terence M. Sternberg, Esq.  
18 Vittal and Sternberg  
19 21700 Oxnard Street  
20 Suite 1640  
21 Woodland Hills, CA 91367-7326  
22 Telephone: (818) 710-7801

VIA FAX NO. (818) 593-6192

23 Sherman L. Stacey, Esq.  
24 Law Offices of Sherman L. Stacey  
25 233 Wilshire Boulevard  
26 Suite 510  
27 Santa Monica, CA 90401-1306  
28 Telephone: (310) 394-1163

VIA FAX NO. (310) 394-7841

1 FRED N. GAINES, ESQ. (State Bar No. 125472)  
2 L. ELIZABETH STRAHLSTROM, ESQ. (State Bar No. 174252)  
3 REZNIK & REZNIK, A Law Corporation  
15456 Ventura Boulevard, 5th Floor  
4 Sherman Oaks, California 91403-3002  
(818) 907-9898; (213) 872-2900

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MAY 20 1996

ORIGINAL FILED  
DEPT. 54

5 SHERMAN L. STACEY, ESQ. (State Bar No. 62879)  
233 Wilshire Boulevard, Suite 510  
6 Santa Monica, California 90401-1306  
(310) 394-1163

JUN 11 1996

SUPERIOR COURT

7 Attorneys for Petitioner/Plaintiff  
8 LECHUZA VILLAS WEST

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

11 LECHUZA VILLAS WEST, a California )  
Limited Partnership, )

CASE NO. BC076855

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Petitioner/Plaintiff, )

(Complaint assigned to Judge Hiroshige)

v. )

[Proposed] JUDGMENT RE SIXTH,  
SEVENTH AND EIGHTH CAUSES OF  
ACTION IN PLAINTIFF'S FIRST  
AMENDED COMPLAINT, ALL  
CAUSES OF ACTION IN CROSS-  
COMPLAINT OF STATE OF  
CALIFORNIA AND STATE LANDS  
COMMISSION, AND ALL CAUSES OF  
ACTION IN CROSS-COMPLAINT OF  
MEHOA

15 CALIFORNIA COASTAL )  
COMMISSION, a State Agency; STATE )  
OF CALIFORNIA; STATE LANDS )  
16 COMMISSION, a State agency; the )  
MALIBU-ENCINAL HOMEOWNERS )  
17 ASSOCIATION; and DOES 2 through )  
20, inclusive, )

Respondents/Defendants. )

Trial Date: October 18, 1995  
Department: 54

20 RELATED CROSS-ACTION )  
21 )

22 This matter came on regularly for bench trial in Department 54 of this Court,  
23 the Honorable Ernest M. Hiroshige, presiding. Fred N. Gaines and L. Elizabeth  
24 Strahlstrom, of Reznik & Reznik, a law corporation, and Sherman L. Stacey  
25 appeared on behalf of Plaintiff LECHUZA VILLAS WEST, L.P. ("Plaintiff");  
26 Dennis M. Eagan and Joseph Barbieri, Deputy Attorneys General, appeared on  
27 behalf of Defendants and Cross-Complainants the STATE OF CALIFORNIA and the  
28 STATE LANDS COMMISSION (the "STATE"); Terence M. Sternberg, of Vittal &

EXHIBIT 17  
Lechuza Villas West  
Judgment re Quiet Title  
Decision, 6/11/96

1 Sternberg, appeared on behalf of Defendant and Cross-Complainant MALIBU-  
2 ENCINAL HOME OWNERS ASSOCIATION, INC. ("MEHOA"). Trial having  
3 commenced on October 18, 1995 and concluded on December 11, 1995, and the Court  
4 having issued its statement of decision, filed June 11, 1996, IT IS  
5 **HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

6 **1. In Resolution of the Sixth Cause of Action in the Plaintiff's**  
7 **First Amended Complaint and the First and Second Causes of Action in the**  
8 **STATE's Cross-Complaint:** The subject property consists of Lots 141-156 of Tract  
9 No. 10630 as recorded in Book 181, pages 6-11 of Maps in the official records of the  
10 County Recorder of Los Angeles. The ordinary high water mark constitutes the  
11 seaward boundary of the subject property. In accordance with the reasoning set  
12 forth in People v. William Kent Estate Co., 242 Cal.App.2d 156 (1966), the ordinary  
13 high water mark is the average fixed location of the mean high tide line. The  
14 southern boundary of the subject property is the line formed by connecting the  
15 points that are determined by measuring southerly from the northern property  
16 boundary along each side lot line for the distances described below. The respective  
17 southerly distances along each side lot line, measured from the northwestern corner  
18 of each lot, are as follows:

<u>Lot No.</u>	<u>Distance from Northwestern Corner of Lot</u>
156	105 feet
155W	103 feet
155E	102 feet
154	101 feet
153	101 feet
152	102 feet
151	102 feet
150	103 feet

1	149W	101 feet
2	149E	100 feet
3	U	99 feet
4	148W	98 feet
5	148E	97 feet
6	147	96 feet
7	146	93 feet
8	145	88 feet
9	144	83 feet
10	143	82 feet
11	142	82 feet
12	141	83 feet
13	140	72 feet

14 | See Map attached hereto as Exhibit "A." The southern boundary of the subject  
15 | property that is described in this paragraph is a permanently fixed line.

16 |       **2.     In Resolution of the Seventh Cause of Action in the Plaintiff's**  
17 | **First Amended Complaint and the Third and Fourth Causes of Action in**  
18 | **the STATE's Cross-Complaint:** The STATE has failed to meet its burden of proof  
19 | regarding the existence of a public easement in navigable waters for recreational  
20 | purposes that exists independently of the STATE's claim of ownership to tide and  
21 | submerged lands, and the subject property is not encumbered with any such  
22 | easement.

23 |       **3.     In Resolution of the Eighth Cause of Action in the Plaintiff's**  
24 | **First Amended Complaint:** The STATE has failed to establish the existence of an  
25 | easement for public recreational use based on implied dedication under the doctrine  
26 | in Gion v. City of Santa Cruz, (1970) 2 Cal.3d 29, and the subject property is not  
27 | encumbered with any such easement.

28 |

1           4.     In Resolution of the First and Second Causes of Action in  
2 MEHOA's Cross-Complaint: The express easement contained in the Covenants,  
3 Conditions and Restrictions for Tract No. 10630 is measured 25 feet landward from  
4 the southerly boundary of the subject property as established in Section 1. supra, of  
5 this Judgment. See Map attached hereto as Exhibit "A."

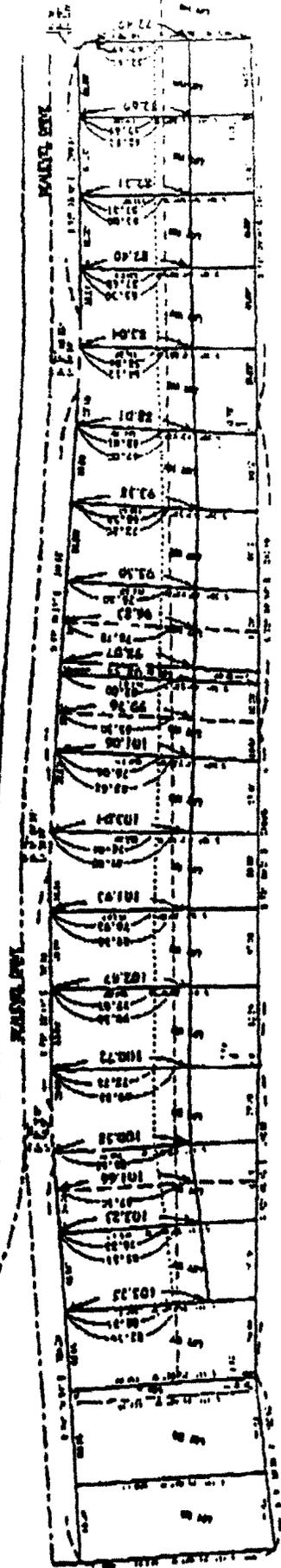
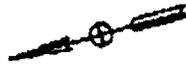
6           5.     In Resolution of the Third Cause of Action in MEHOA's Cross-  
7 Complaint: MEHOA has failed to meet its burden of proof as to the claims set  
8 forth in the Third Cause of Action of MEHOA's Cross-Complaint.

9 *Ernest M. Hiroshige*

10 DATED: JUN 11 1995

11 ERNEST M. HIROSHIGE  
12 Judge of the Superior Court

PORTION OF  
TRACT 10630



PACIFIC OCEAN

LEGEND

Fixed Boundary Line Established by The  
California Superior Court.

Building Stringlines: Established by the  
California Coastal Commission.

Proposed Northerly Boundary of MERONA'S  
Claimed Easement in 25 Feet North of  
The Established Boundary Line.

RECORDING  
PAGE 62, 97-100  
L.P. 10630 TRACT 10630

LOCAL DESCRIPTION

THIS TRACT IS PART OF TRACT 10630 IN THE COUNTY  
OF LOS ANGELES AND THE SAME IS THE PROPERTY OF  
MERRON & COMPANY, INCORPORATED, A CORPORATION  
OF THE STATE OF CALIFORNIA.

NAME OF SURVEY

THE SURVEY OF 5.77-34-25 ON THE COUNTY OF  
LOS ANGELES AND THE SAME IS THE PROPERTY OF  
MERRON & COMPANY, INCORPORATED, A CORPORATION  
OF THE STATE OF CALIFORNIA.

DATE

NOVEMBER 1957

*[Handwritten signature and notes]*

EXHIBIT "C"

APPROVED BY  
LUCIANA WILLIAMS, Surveyor L.P.  
MERRON & COMPANY, INCORPORATED  
MERRON, CALIFORNIA

APPROVED BY  
[Signature]

EXHIBIT A

2 STATE OF CALIFORNIA )  
3 COUNTY OF LOS ANGELES ) ss.

4 I am employed in the County of Los Angeles, State of  
5 California. I am over the age of 18 and not a party to the within  
6 action; my business address is 15456 Ventura Boulevard, Fifth  
7 Floor, Sherman Oaks, California 91403.

8 On August 14, 1996, I served the foregoing document described  
9 as

10 "NOTICE OF ENTRY OF JUDGMENT PURSUANT TO CODE OF CIVIL  
11 PROCEDURE §664.5(a)"

12 on all interested parties in this action by placing a true copy  
13 thereof enclosed in a sealed envelope addressed as follows:

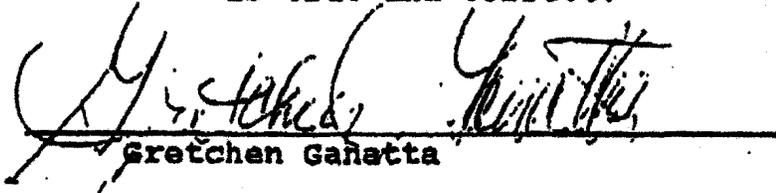
14 SEE ATTACHED SERVICE LIST

15 VIA FACSIMILE AND MAIL:

16 I am "readily familiar" with the firm's practice of  
17 collection and processing correspondence for mailing. Under the  
18 practice it would be deposited with U.S. postal service on that  
19 same day with postage thereon fully prepaid at Sherman Oaks,  
20 California in the ordinary course of business. I am aware that on  
21 motion of the party served, service is presumed invalid if postal  
22 cancellation date or postage meter date is more than one day after  
23 date of deposit for mailing in affidavit.

24 Executed on August 14, 1996, at Sherman Oaks, California.

25 I declare under penalty of perjury under the laws of the  
26 State of California that the above is true and correct.

27   
Gretchen Ganetta

SERVICE LIST ATTACHMENT

1  
2 Daniel E. Lungren  
3 Attorney General of the  
4 State of California  
5 Peter Kaufman, Esq.  
6 Supervising Deputy Attorney General  
7 P. O. Box 85266  
8 San Diego, CA 92186-5266  
9 Telephone: (619) 645-2020

VIA FAX NO. (619) 645-2012

7 Joseph Barbieri, Esq.  
8 Dennis Eagan, Esq.  
9 Deputy Attorney General  
10 2101 Webster Street  
11 12th Floor  
12 Oakland, CA 94612-3049  
13 Telephone: (510) 286-3822

VIA FAX NO. (510) 286-4020

12 Terence M. Sternberg, Esq.  
13 Vittal and Sternberg  
14 21700 Oxnard Street  
15 Suite 1640  
16 Woodland Hills, CA 91367-7326  
17 Telephone: (818) 710-7801

VIA FAX NO. (818) 593-6192

16 Sherman L. Stacey, Esq.  
17 Law Offices of Sherman L. Stacey  
18 233 Wilshire Boulevard  
19 Suite 510  
20 Santa Monica, CA 90401-1306  
21 Telephone: (310) 394-1163

VIA FAX NO. (310) 394-7841

1 FRED N. GAINES, ESQ. (State Bar No. 125472)  
L. ELIZABETH STRAHLSTROM, ESQ. (State Bar No. 174262)  
2 REZNIK & REZNIK, A Law Corporation  
15456 Ventura Boulevard, 5th Floor  
3 Sherman Oaks, California 91403-3002  
(818) 907-9898; (213) 872-2900

4 SHERMAN L. STACEY, ESQ. (State Bar No. 62879)  
5 233 Wilshire Boulevard, Suite 510  
Santa Monica, California 90401-1306  
6 (310) 394-1163

7 Attorneys for Petitioner/Plaintiff  
LECHUZA VILLAS WEST

9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES

11 LECHUZA VILLAS WEST, a California )  
Limited Partnership, )

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CASE NO. BC076855

(Complaint assigned to Judge Hiroshige)

NOTICE OF ENTRY OF JUDGMENT  
PURSUANT TO CODE OF CIVIL  
PROCEDURE § 664.5(a).

15 CALIFORNIA COASTAL )  
COMMISSION, a State Agency; STATE )  
OF CALIFORNIA; STATE LANDS )  
16 Coastal Commission, a State agency; )  
the MALIBU-ENCINAL )  
17 HOMEOWNERS ASSOCIATION; and )  
DOES 2 through 20, inclusive, )

18 Respondents/Defendants. )  
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20 RELATED CROSS-ACTIONS.  
21

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

24 PLEASE TAKE NOTICE that on June 11, 1996, the Honorable Judge Ernest  
25 M. Hiroshige of the above-entitled Court entered Judgment in favor of Plaintiff,  
26 LECHUZA VILLAS WEST, and against Defendants STATE OF CALIFORNIA and  
27 STATE LANDS COMMISSION and Defendant MALIBU-ENCINAL HOMEOWNERS  
28 ASSOCIATION. Attached hereto as Exhibit "A" is a true and correct copy of the

1 Judgment Re Sixth and Eighth Causes of Action in Plaintiff's First Amended  
2 Complaint, All Causes of Action in Cross-Complaint of State of California and State  
3 Lands Commission, and All Causes of Action in Cross-Complaint of MEHOA, as filed  
4 on June 11, 1996.

5 DATED: August 14, 1996

FRED N. GAINES  
L. ELIZABETH STRAHLSTROM  
REZNIK & REZNIK,  
A Law Corporation

6  
7  
8 By 

9 FRED N. GAINES  
10 Attorneys for Petitioner/Plaintiff  
11 LECHUZA VILLAS WEST  
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REZNIK & REZNIK  
A LAW CORPORATION  
15456 VENTURA BOULEVARD, FIFTH FLOOR  
SHERMAN OAKS, CALIFORNIA 91403-3002  
(818) 907-9898 (213) 872-2900

Refer To File Number  
1665.01

## TELECOPY TRANSMITTAL NOTICE

From FAX Number: (818) 907-8465

Date: August 14, 1996

Time:

TO: Joseph Barbieri, Esq.  
Peter H. Kaufman, Esq.  
Terence M. Sternberg, Esq.  
Sherman Stacey, Esq.

FAX NO: (510) 286-4020  
(619) 645-2012  
(818) 593-6192  
(310) 394-7841

FROM: Fred N. Gaines, Esq.

NUMBER OF PAGES TRANSMITTED (including this Notice): 11

CLIENT/CASE NAME: Lechuza Villas West v. California Coastal Commission

IF PAGES MISSING, PLEASE CALL: (818) 907-9898 -or- (213) 872-2900

CONTACT: Gretchen

ITEM(S) FAXED: Notice of Entry of Judgment Pursuant to Code of Civil Procedure §664.5(a).

MESSAGE TO RECIPIENT:

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/08/96

DEPT. 54

HONORABLE Ernest Hiroshige

JUDGE

S. MCKINNEY

DEPUTY CLERK

HONORABLE  
9

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

M. ASTORGA, CRT. AST.

Deputy Sheriff

NONE

Reporter

9:00 am BC076855

Plaintiff

Counsel

LECHUZA VILLAS WEST,  
VS  
CALIFORNIA COASTAL  
COMMISSION, ET. AL

Defendant

NO APPEARANCES

Counsel

NATURE OF PROCEEDINGS:

MOTION FOR DEFENDANT, CROSS-DEFENDANT AND CROSS-COMPLAINANT MALIBU-ENCINAL HOME OWNERS ASSOCIATION, INC. FOR AN ORDER TO STRIKE AND IN THE ALTERNATIVE TAX COSTS AND FOR IMPOSITION OF SANCTIONS;

RULING ON SUBMITTED MATTER;

Pursuant to stipulation of counsel, the above motion is continued to OCTOBER 9, 1996, at 8:30 a.m. in Department 54.

In the matter heretofore taken under submission on September 12, 1996, the Court now rules as follows:

As to all three motions substantively address the same issues, the Court issues one tentative ruling determinative of all motions. The Court finds summary adjudication is proper as to one or more claims for damages pursuant to Code of Civil Procedure Section 437c(f)(1).

Plaintiff's motion for summary adjudication of issues is granted as set forth below: The Court adopts the reasoning and authorities of Plaintiff Lechuza Villas West. The Court first finds that the issue of a temporary taking is ripe and properly before this Court. See First Lutheran Church v. Los Angeles County, 482 U.S. 304 (1987) (holding that a landowner who claims

MINUTES ENTERED  
10/08/96  
COUNTY CLERK

EXHIBIT 18  
Lechuza Villas West  
Notice of Ruling re Motion  
for Sum. Judge., 10/8/96

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 10/08/96

DEPT. 54

HONORABLE Ernest Hiroshige

JUDGE

S. MCKINNEY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

M. ASTORGA, CRT. AST.

Deputy Sheriff

NONE

Reporter

9:00 am

BC076855

Plaintiff

Counsel

LECHUZA VILLAS WEST,  
VS  
CALIFORNIA COASTAL  
COMMISSION, ET.AL

Defendant

NO APPEARANCES

Counsel

**NATURE OF PROCEEDINGS:**

that his/her land has been taken by a land-use regulation may recover damages for the time before it is finally determined that the regulation constitutes a taking of his/her property).

The 5th Amendment provides that private property may not be taken for public use without just compensation. Pennsylvania Coal Co. V. Mahon, 260 U.S. 393 (1922) articulates the general rule that "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." Where regulation denies all economically beneficial or productive use of land a taking will be found. Lucas v. South Carolina Coastal Council, 112 S.Ct. 2886 (1992); Agins v. City of Tiburon, 447 U.S. 255, 260 (1980) ("The fifth amendment is violated when land-use regulation does not substantially advance legitimate state interests or denies an owner of economically viable use of his land.").

The court finds that Plaintiff has been temporarily deprived of all economically viable use of the property. (Plaintiff's Separate Statement of Undisputed Facts paragraphs 25, 30, 36, 68). Defendants' arguments to the contrary go to the issue of determining damages, not to the issue of whether a taking has occurred. (See Arick declaration; Mahon declaration). Using the property to develop beachfront homes was the investment backed expectation in the case herein, not using the property for recreational pur-

<p align="center"><b>MINUTES ENTERED 10/08/96 COUNTY CLERK</b></p>
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/08/96

DEPT. 54

HONORABLE Ernest Hiroshige

JUDGE

S. MCKINNEY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

M. ASTORGA, CRT. AST.

Deputy Sheriff

NONE

Reporter

9:00 am

BC076855

Plaintiff

Counsel

LECHUZA VILLAS WEST,  
VS  
CALIFORNIA COASTAL  
COMMISSION, ET. AL

Defendant

NO APPEARANCES

Counsel

NATURE OF PROCEEDINGS:

poses. (See, e.g., Plaintiff's Separate Statement of Undisputed Facts 5-8, 12, 15, 21, 22, 32). The main issue is : "Lechuza did not seek the unfettered development of its property. Lechuza did have an expectation when it purchased the 17 recorded beach-front lots, it would own them. Lechuza also expected that as the owner of this property, it would be able to do something with it. Instead, the State claimed ownership of the property and denied all use of it." (Reply at 3:3-7).

The Court also finds that its purported legitimated state interests have been rejected by Lucas. Lucas, 112 S.Ct. at 2897-98.

Based on the above, the Court GRANTS the motion for summary adjudication as to the 4th cause of action on the grounds that Plaintiff has been temporarily deprived of all economically viable or productive use of its property, that the State's and Coastal Commission's actions do not substantially advance any legitimate state interest; and Plaintiff's reasonable investment backed expectations have been temporarily destroyed.

As the Court grant's Plaintiff's Motion for Summary Adjudication, Defendants' Motion for Summary Judgment is denied. As set forth above, the Court finds that the issue of a temporary taking is properly before it and therefore ripe.

MINUTES ENTERED  
10/08/96  
COUNTY CLERK

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 10/08/96

DEPT. 54

HONORABLE Ernest Hiroshige

JUDGE

S. MCKINNEY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

M. ASTORGA, CRT. AST.

Deputy Sheriff

NONE

Reporter

9:00 am BC076855

Plaintiff

Counsel

LECHUZA VILLAS WEST,  
VS  
CALIFORNIA COASTAL  
COMMISSION, ET. AL

Defendant

NO APPEARANCES

Counsel

**NATURE OF PROCEEDINGS:**

However, as to the 5th cause of action for permanent taking, Defendant's Motion for Summary Adjudication is GRANTED. The Court adopts Defendants' reasoning and authorities as to the issue of a permanent taking and ripeness of that issue only. The Court rejects Plaintiff's argument that the State is not responsible for protecting MEHOA's easement rights, and that the possible infringement of Plaintiff's project into MEHOA's easement is not a proper subject of the Commission's consideration. See Public Resources Code Section 30604(a); Section 30200(a); Section 30210; and Section 30601.5. See also Carstens v. California Coastal Com., 182 Cal.App. 3d 277, 290 (1986) (recognizing that the Coastal Act requires that balancing of competing interests and that the "Public Resources Code section 30210 makes specific reference to... private property interests.") (not cited in either parties' papers); Liberty v. California Coastal Com., 113 Cal.App.3d 491, 502 (1980) (not cited in either parties' papers).

Section 30210 specifically refers to the "rights of private property owners." Although neither party cites authority dispositive of the issue, the Court interprets that portion of Section 30601.5 which states that "[w]here the applicant for a coastal development is sought. Thus, as Plaintiff seeks to develop on property to which it cannot claim fee ownership, Plaintiff must address MEHOA's easement claims

<p align="center"><b>MINUTES ENTERED</b> 10/08/96 <b>COUNTY CLERK</b></p>
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/08/96

DEPT. 54

HONORABLE Ernest Hiroshige

JUDGE

S. MCKINNEY

DEPUTY CLERK

HONORABLE  
9

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

M. ASTORGA, CRT. AST.

Deputy Sheriff

NONE

Reporter

9:00 am BC076855

Plaintiff  
Counsel

LECHUZA VILLAS WEST,  
VS  
CALIFORNIA COASTAL  
COMMISSION, ET.AL

Defendant NO APPEARANCES  
Counsel

NATURE OF PROCEEDINGS:

before this Court can render a decision of the permanent taking issue.

The Court's ruling does not violate the general rule that a trial court judge may not overrule a ruling of another judge as the Court's ruling determines the issue of a temporary taking and not the issue of a permanent taking for which a determination before the Commission of the boundary line pursuant to the Mandate decision is necessary.

Based on the above-rulings, Defendants' motion for judgment on the pleadings is essentially moot.

All evidentiary objections are overruled.

Defendants' Request for Judicial Notice is granted.

A copy of this minute order is sent via U.S. mail this date to counsel appearing at the hearing addressed as follows:

Fred N. Gaines, Esq.  
L. Elizabeth Strahlstrom, Esq.  
REZNIK & REZNIK  
15456 Ventura Boulevard  
Fifth Floor  
Sherman Oaks, CA 91403-3026

MINUTES ENTERED  
10/08/96  
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 10/08/96

DEPT. 54

HONORABLE Ernest Hiroshige

JUDGE

S. MCKINNEY

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

M. ASTORGA, CRT. AST.

Deputy Sheriff

NONE

Reporter

9:00 am

BC076855

Plaintiff

Counsel

LECHUZA VILLAS WEST,  
VS  
CALIFORNIA COASTAL  
COMMISSION, ET. AL

Defendant

NO APPEARANCES

Counsel

NATURE OF PROCEEDINGS:

SHERMAN L. STACEY, ESQ.  
233 Wilshire Boulevard, Suite 510  
Santa Monica, CA 90401

Joseph Barbieri, Esq.  
DEPUTY ATTORNEY GENERAL  
Department of Justice  
Attorney General's Office  
2101 Webster Street, 12th Floor  
Oakland, CA 94612-3049

Peter H. Kaufman, Esq.  
SUPERVISING DEPUTY ATTORNEY GENERAL  
Department of Justice  
Office of the Attorney General  
110 West A Street, Suite 1100  
San Diego, CA 92186-5266

MINUTES ENTERED  
10/08/96  
COUNTY CLERK

1 FRED N. GAINES, ESQ. (State Bar No. 125472)  
KEVIN M. KEMPER, ESQ. (State Bar No. 174871)  
2 REZNIK & REZNIK, A Law Corporation  
15456 Ventura Boulevard, 5th Floor  
3 Sherman Oaks, California 91403-3002  
(818) 907-9898; (213) 872-2900

RECEIVED  
DEPT. 54

NOV 26 1996

4 SHERMAN L. STACEY, ESQ. (State Bar No. 62879)  
5 233 Wilshire Boulevard, Suite 510  
Santa Monica, California 90401-1306  
6 (310) 394-1163

7 Attorneys for Petitioner/Plaintiff  
LECHUZA VILLAS WEST  
8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

11 LECHUZA VILLAS WEST, a California )  
Limited Partnership, )  
12 )  
Petitioner/Plaintiff, )

CASE NO. BC076855

(Complaint assigned to Judge  
Hiroshige)

13 v. )

PARTIAL JUDGMENT GRANTING  
REMAND PURSUANT TO CODE OF  
CIVIL PROCEDURE § 1094.5(e)

14 CALIFORNIA COASTAL COMMISSION, )  
15 a State Agency; STATE OF )  
CALIFORNIA; STATE LANDS )  
16 COMMISSION, a State agency; the )  
MALIBU-ENCINAL HOMEOWNERS )  
17 ASSOCIATION; and DOES 2 through 20, )  
inclusive, )

DATE : November 12, 1996  
TIME : 9:00 a.m.  
DEPT.: 54

18 Respondents/Defendants. )  
19 )

DISCOVERY CUT-OFF: 12/9/96  
MOTION CUT-OFF : 12/24/96  
TRIAL DATE : 01/08/97

20 RELATED CROSS-ACTIONS. )  
21 )

22 The above-entitled matter came before this Court on November 12, 1996, on  
23 Plaintiff LECHUZA VILLAS WEST's Motion for Remand pursuant to Code of Civil  
24 Procedure § 1094.5(e). Fred N. Gaines, Esq. and Kevin M. Kemper, Esq. appeared on  
25 behalf of Plaintiff LECHUZA VILLAS WEST. Joseph Barbieri and Clara Slifkin,  
26 Deputy Attorneys General, appeared on behalf of Defendants the STATE OF  
27 CALIFORNIA and CALIFORNIA COASTAL COMMISSION.

1 Based upon the papers filed in support of and in opposition to this Motion, and  
2 the argument of counsel, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED  
3 that:

4 1. A peremptory writ shall issue commanding respondent CALIFORNIA  
5 COASTAL COMMISSION (hereinafter "Commission") to reconsider the permit  
6 applications at issue in the above matter (Coastal Development Permit Application  
7 Nos. 5-90-839, 5-90-840, 5-90-841, 5-90-842, 5-91-184, 5-91-185, 5-91-186, 5-91-187, 5-  
8 91-49, 5-91-50, 5-91-51, 5-91-58, 5-91-59, 5-91-183, 5-91-188, and 5-91-190). The  
9 Commission shall reconsider such permit applications based on the evidence  
10 contained in the Administrative Record in this matter and the relevant rulings of this  
11 Court in this action. Such reconsideration by the Commission shall be completed  
12 within sixty (60) days of the date of the Judgment.

13 2. This judgment shall have no effect on the Court's ruling of October 8, 1996  
14 granting Summary Adjudication as to Plaintiff's Fourth Cause of Action and this  
15 Court shall retain jurisdiction over this matter for later trial on the issue of damages.

16 3. This judgment for a peremptory writ is without prejudice to plaintiff's claim  
17 to damages for a taking of property without just compensation commencing on the  
18 date that the Commission first denied applications for the use of the subject property.  
19 This judgment is for the sole purpose of remanding for reconsideration by the  
20 Commission of its decision to deny the Coastal Development Permit Applications  
21 listed in Paragraph 1 above in light of this Court's prior rulings and judgments in  
22 this matter, and shall have no res judicata effect as to any issue of law or fact raised  
23 in this matter.

24 4. Counsel shall meet and confer in an effort to agree upon a new trial date in  
25 light of this Judgment.

26 *5. Nothing in this Judgment shall be construed to limit or control in any way the discretion legally vested in the Commission pursuant to C.C.P. § 1094.5(f)\**

27 DATED: November 20, 1996

28 *ERNEST M. HIROSHIGE*  
**THE HONORABLE ERNEST M. HIROSHIGE**  
JUDGE OF THE SUPERIOR COURT

\*5. Nothing in this judgment shall be construed to limit or control in anyway the discretion legally vested in the Commission pursuant to C.C.P. §1094.5(f).

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA )  
3 COUNTY OF LOS ANGELES ) ss.

4 I am employed in the County of Los Angeles, State of  
5 California. I am over the age of 18 and not a party to the within  
6 action; my business address is 15456 Ventura Boulevard, Fifth  
7 Floor, Sherman Oaks, California 91403.

8 On November 27, 1996, I served the foregoing document  
9 described as:

10 **PARTIAL JUDGMENT GRANTING REMAND PURSUANT TO CODE OF  
11 CIVIL PROCEDURE § 1094.5(e)**

12 on the interested parties in this action by faxing a true copy to  
13 the facsimile number noted below, and by thereafter placing a true  
14 copy thereof enclosed in sealed envelope with postage thereon  
15 fully prepaid addressed as follows:

16 **\*\*SEE ATTACHED SERVICE LIST\*\***

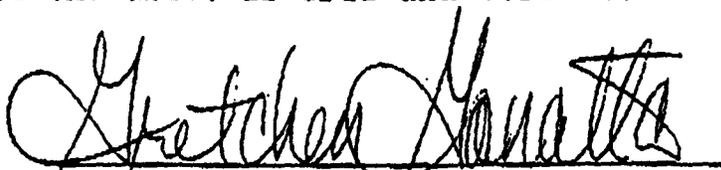
17 BY MAIL:

18 I deposited such envelope in the mail at Sherman Oaks,  
19 California.

20 X As follows: I am "readily familiar" with the firm's  
21 practice of collection and processing correspondence for mailing.  
22 Under that practice it would be deposited with U.S. postal service  
23 on that same day with postage thereon fully prepaid at Sherman  
24 Oaks, California, in the ordinary course of business. I am aware  
25 that on motion of party served, service is presumed invalid if  
26 postal cancellation date or postage meter date is more than one  
27 day after date of deposit for mailing in affidavit.

28 Executed on November 27, 1996, at Sherman Oaks, California.

I declare under penalty of perjury under the laws of the  
State of California that the above is true and correct.

  
GRETCHEN GANATTA

SERVICE LIST

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Joseph Barbieri, Esq.  
Dennis Eagan, Esq.  
Deputy Attorneys General  
2101 Webster Street, 12th Floor  
Oakland, CA 94612-3049  
Telephone: (510) 286-3822

VIA FAX NO.: (510) 286-4020

Clara L. Slifkin, Esq.  
Office of the Attorney General  
300 South Spring Street, Suite 5212  
Los Angeles, CA 90013  
Telephone: (213) 897-9442

VIA FAX NO.: (213) 897-2801

Terence M. Sternberg, Esq.  
Vittal and Sternberg  
21700 Oxnard Street, Suite 1640  
Woodland Hills, CA 91367-7326  
Telephone: (818) 710-7801

VIA FAX NO.: (818) 593-6192

Sherman L. Stacey, Esq.  
Law Offices of Sherman L. Stacey  
233 Wilshire Boulevard, Suite 510  
Santa Monica, CA 90401-1306  
Telephone: (310) 394-1163

VIA FAX NO.: (310) 394-7841

1 FRED N. GAINES, ESQ. (State Bar No. 125472)  
KEVIN M. KEMPER, ESQ. (State Bar No. 174871)  
2 REZNIK & REZNIK, A Law Corporation  
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3 Sherman Oaks, California 91403-3002  
(818) 907-9898; (213) 872-2900

4 SHERMAN L. STACEY, ESQ. (State Bar No. 62879)  
5 233 Wilshire Boulevard, Suite 510  
Santa Monica, California 90401-1306  
6 (310) 394-1163

7 Attorneys for Petitioner/Plaintiff  
LECHUZA VILLAS WEST  
8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

11 LECHUZA VILLAS WEST, a California )  
Limited Partnership, )

12 Petitioner/Plaintiff, )

13 v. )

14 CALIFORNIA COASTAL COMMISSION, )  
15 a State Agency; STATE OF )  
CALIFORNIA; STATE LANDS )  
16 COMMISSION, a State agency; the )  
17 MALIBU-ENCINAL HOMEOWNERS )  
ASSOCIATION; and DOES 2 through 20, )  
18 inclusive, )

19 Respondents/Defendants. )

20 RELATED CROSS-ACTIONS. )

CASE NO. BC076855

(Complaint assigned to Judge Hiroshige)

PEREMPTORY WRIT OF MANDATE

22 The People of the State of California to:

23 THE CALIFORNIA COASTAL COMMISSION

24 Partial Judgment having been entered in this action ordering that a peremptory  
25 writ of mandate be issued from this Court,

26 YOU ARE HEREBY COMMANDED upon receipt of this Writ to set aside your  
27 decision of January 14, 1993 denying the Coastal Development Permit Applications of  
28 the Plaintiff LECHUZA VILLAS WEST (Coastal Development Permit Application

1 Nos. 5-90-839, 5-90-840, 5-90-841, 5-90-842, 5-91-184, 5-91-185, 5-91-186, 5-91-187, 5-  
2 91-49, 5-91-50, 5-91-51, 5-91-58, 5-91-59, 5-91-183, 5-91-188, and 5-91-190).

3 YOU ARE FURTHER COMMANDED immediately upon receipt of this Writ to  
4 take all necessary action to place such permit applications on your agenda for  
5 reconsideration consistent with the Partial Judgment Granting Remand Pursuant to  
6 Code of Civil Procedure § 1094.5(e) entered by this Court on November \_\_\_\_, 1996.  
7 Such reconsideration by the Commission shall be completed within sixty (60) days of  
8 the date of the Judgment. The Commission shall reconsider such permit applications  
9 based on the evidence contained in the Administrative Record in this matter and the  
10 relevant rulings of the Court in this action.

11 YOU ARE FURTHER COMMANDED to make and file a return to this Writ on  
12 or before January 27, 1997, setting forth what you have done to comply.

*1-11-16  
gmt*

13 \*Nothing in this writ shall be construed to limit or control in any way  
14 the discretion legally vested in the Commission pursuant to C.C.P. § 1094.5(f)

14 DATED: November \_\_\_\_, 1996

~~CLERK OF THE SUPERIOR COURT~~

15 NOV 27 1996



17 John Clarke  
18 Clerk of the Superior Court  
19 by S. Lumb  
20 Deputy

\*\*"Nothing in this judgment shall be construed to limit or control in anyway the discretion legally vested in the Commission pursuant to C.C.P. §1094.5(f)."

25  
26  
27  
28



1 FRED N. GAINES, ESQ. (State Bar No. 125472)  
L. ELIZABETH STRAHLSTROM, ESQ. (State Bar No. 174262)  
2 REZNIK & REZNIK, A Law Corporation  
15456 Ventura Boulevard, 5th Floor  
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(818) 907-9898; (213) 872-2900

4 SHERMAN L. STACEY, ESQ. (State Bar No. 62879)  
5 233 Wilshire Boulevard, Suite 510  
Santa Monica, California 90401-1306  
6 (310) 394-1163

7 Attorneys for Petitioner/Plaintiff  
LECHUZA VILLAS WEST, L.P.  
8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

11 LECHUZA VILLAS WEST, a ) CASE NO. BC076855  
California Limited Partnership, )  
12 ) (Complaint assigned to Judge  
Petitioner/Plaintiff, ) Hiroshige)  
13 )  
v. ) NOTICE OF RULING  
14 )  
CALIFORNIA COASTAL COMMISSION, )  
15 a State Agency; STATE OF )  
CALIFORNIA; STATE LANDS )  
16 COMMISSION, a State agency; the )  
MALIBU-ENCINAL HOMEOWNERS )  
17 ASSOCIATION; and DOES 2 through )  
20, inclusive, )  
18 Respondents/Defendants. )

DISCOVERY CUT-OFF: 12/9/96  
MOTION CUT-OFF : 12/24/96  
TRIAL DATE : 03/05/97

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 30, 1996, Plaintiff  
LECHUZA VILLAS WEST's ("Plaintiff") Application for Order That  
Appeal of Peremptory Writ of Mandate Not Operate As a Stay of  
Execution of Partial Judgment Granting Writ Pursuant to C.C.P. §  
1110(b) came on for hearing in the above-entitled matter in  
Department 54 of this Court, the Honorable Ernest M. Hiroshige

1 presiding. Fred N. Gaines and L. Elizabeth Strahlstrom of Reznik  
2 & Reznik, a Law Corporation, appeared on behalf of Plaintiff.  
3 Deputy Attorneys General Joseph Barbieri and Clara Slifkin  
4 appeared on behalf of Defendants the STATE OF CALIFORNIA and the  
5 CALIFORNIA COASTAL COMMISSION (Collectively the "State").

6 The Court issued a tentative ruling on the Application, a  
7 true and correct copy of which is attached hereto as Exhibit "A."

8 After hearing oral argument of counsel, the Court adopted the  
9 tentative ruling as its final order and granted Plaintiff's  
10 Application for an Order that the State's Appeal of the Peremptory  
11 Writ of Mandate Not Operate as a Stay of Execution of the Partial  
12 Judgment Granting such Writ pursuant to Code of Civil Procedure §  
13 1110(b).

14  
15 The Court further ordered that:

16 1. The Court's previously issued Judgment Granting Writ of  
17 Mandate and Peremptory Writ of Mandate are modified to require the  
18 California Coastal Commission to conduct a hearing and take final  
19 action on Plaintiff's Consolidated Permit Applications no later  
20 than at the Commission's February 4-7, 1997 meeting in San Diego.  
21 There is to be no further postponement or continuance of such  
22 hearing and action;

23 2. The Coastal Commission shall file and serve by messenger  
24 or fax a copy of its final written decision on Plaintiff's  
25 Consolidated Permit Applications no later than noon on February  
26 14, 1997.

27 3. The previously ordered trial date of January 27, 1997 is  
28 vacated.

1 4. The trial in this matter is now set to begin on March 5,  
2 1997 at 9:30 a.m. in Department 54 of this Court. The Court will  
3 give priority to the trial of this matter.

4 5. The parties shall file and serve by messenger or fax  
5 their Opening Briefs on the effect of the Coastal Commission's  
6 final decision on Plaintiff's permit applications on the trial on  
7 damages no later than noon on February 21, 1997. Such Opening  
8 Briefs shall not exceed 10 pages in length.

9 6. The parties may file and serve by messenger or fax a  
10 Reply Memorandum by no later than noon on February 26, 1997. Such  
11 Reply Briefs shall not exceed 5 pages in length.

12 7. Plaintiff was ordered to prepare this Notice of Ruling.  
13

14 DATED: December 31, 1996

FRED N. GAINES, ESQ.  
L. ELIZABETH STRAHLSTROM, ESQ.  
REZNIK & REZNIK  
A Law Corporation

17 By: FNG  
18 FRED N. GAINES  
19 Attorneys for Plaintiff and Cross-  
20 Defendant LECHUZA VILLAS WEST, L.P.  
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TENTATIVE RULING

Lechuza Villas West v. Calif. Coastal Commission

# 9, BC 076855

Hearing date: December 30, 1996

Dept. 54, Judge Ernest M. Hiroshige

**T/R: GRANT PLAINTIFF'S APPLICATION FOR ORDER THAT APPEAL OF PREEMPTORY WRIT OF MANDATE NOT OPERATE AS A STAY OF EXECUTION OF PARTIAL JUDGMENT GRANTING WRIT OF MANDATE PURSUANT TO CCP 1110B.**

The Court adopts the reasoning of the Plaintiff's moving and reply papers and finds that there is a sufficient showing that Plaintiff will suffer irreparable harm to its business if execution is stayed.

That Plaintiff will suffer irreparable harm is shown at least in its representation that it has defaulted on its \$ 6 million note on the properties in question and will logically be subject to foreclosure proceedings. Plaintiff has also shown that it will not be able to financially withstand the delay of an appeal in this matter.

The Court finds there is a showing by Plaintiff that it is also in the public interest that a stay not be granted. Plaintiff has argued persuasively that it is the public's funds that are fueling the State's efforts to continue this litigation by appealing the ruling of this Court with full knowledge of the adverse financial impact on the Plaintiff in this case and the lack of legal precedent for their position. The Court has commented on the record previously that the actions of the Coastal Commission and the State in denying Plaintiff's building applications coincided, coincidentally, with the U.S. Supreme Court ruling requiring compensation for a "taking" if governmental regulations precluded any and all development of a landowner's property (Lucas v. So. Carolina Coastal Council, 112 S. Ct. 2886(1992)). The State's "new" theory that the landowner did not own the property in question due to the ever moving tide seems to be, frankly, a transparent attempt get around the Supreme Court decision. The Court has also noted on the record previously that the State in this action has clearly ignored the 30 years of legal precedent established by the People vs. William Kent State, 242 C.A. 2d 156(1966) case in California. In short, there is an aspect of bad faith on the State's part in pursuing their legal theory in this case that, in the Court's opinion, is not in the public's interest.

Plaintiff to notice.

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA )  
3 COUNTY OF LOS ANGELES ) ss.

4 I am employed in the County of Los Angeles, State of  
5 California. I am over the age of 18 and not a party to the within  
6 action; my business address is 15456 Ventura Boulevard, Fifth  
7 Floor, Sherman Oaks, California 91403.

8 On December 31, 1996, I served the foregoing document  
9 described as:

10 **NOTICE OF RULING**

11 on the interested parties in this action by faxing a true copy to  
12 the facsimile number noted below, and by thereafter placing a true  
13 copy thereof enclosed in sealed envelope with postage thereon  
14 fully prepaid addressed as follows:

15 **\*\*SEE ATTACHED SERVICE LIST\*\***

16 BY MAIL:

17 I deposited such envelope in the mail at Sherman Oaks,  
18 California.

19 X As follows: I am "readily familiar" with the firm's  
20 practice of collection and processing correspondence for mailing.  
21 Under that practice it would be deposited with U.S. postal service  
22 on that same day with postage thereon fully prepaid at Sherman  
23 Oaks, California, in the ordinary course of business. I am aware  
24 that on motion of party served, service is presumed invalid if  
25 postal cancellation date or postage meter date is more than one  
26 day after date of deposit for mailing in affidavit.

27 Executed on December 31, 1996, at Sherman Oaks, California.

28 I declare under penalty of perjury under the laws of the  
State of California that the above is true and correct.

  
\_\_\_\_\_  
GRETCHEN GANATTA

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Joseph Barbieri, Esq.  
Dennis Eagan, Esq.  
Deputy Attorneys General  
2101 Webster Street, 12th Floor  
Oakland, CA 94612-3049  
Telephone: (510) 286-3822

VIA FAX NO.: (510) 286-4020

Clara L. Slifkin, Esq.  
Office of the Attorney General  
300 South Spring Street, Suite 5212  
Los Angeles, CA 90013  
Telephone: (213) 897-9442

VIA FAX NO.: (213) 897-2801

Terence M. Sternberg, Esq.  
Vittal and Sternberg  
21700 Oxnard Street, Suite 1640  
Woodland Hills, CA 91367-7326  
Telephone: (818) 710-7801

VIA FAX NO.: (818) 593-6192

Sherman L. Stacey, Esq.  
Law Offices of Sherman L. Stacey  
233 Wilshire Boulevard, Suite 510  
Santa Monica, CA 90401-1306  
Telephone: (310) 394-1163

VIA FAX NO.: (310) 394-7841

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SOUTH CENTRAL COAST DISTRICT

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COURTESY R&E DRESSING, CSR 04669

**PURCHASE AGREEMENT**

THIS PURCHASE AGREEMENT (the "Purchase Agreement") is entered into this 22<sup>nd</sup> day of March, 1990, by and between THE ADAMSON COMPANIES, a California limited partnership ("Seller"), and NORMAN R. HAYNIE ("Buyer").

**RECITALS**

A. Seller, as successor in interest of Marblehead Land Company, believes it is the owner of that certain real property located in Malibu, County of Los Angeles, State of California, described as Lot 76 and Lots 141 through 154, inclusive, and the easterly half of Lot 155 of Tract No. 10630 (collectively, Seller's "Residential Lots"), as recorded September 23, 1932, in Book 181, pages 6 to 11 inclusive of Maps, records of said County ("Tract No. 10630"), together with a 10-foot access easement between Lots 148 and 149 designated Lot U, and together with other appurtenant easements and rights benefiting said Lots.

B. Seller, as successor in interest of Marblehead Land Company, believes it is the record owner of (i) Lot A of Tract No. 10630, which is commonly known as "Sea Level Drive" and which constitutes a private street for the benefit of Lots 1 through 170 (the "Residential Lots") within Tract No. 10630 and (ii) all or some of the lettered Lots B, D, F, G, H, I, J, K, L, M, N, O, P, R, S, T, V and X of Tract No. 10630, which lots provide certain street, driveway, walking and utility easements to certain of the Residential Lots (all of said lettered lots together with Lots A and U, collectively referred to as the "Lettered Lots.")

C. Seller, as successor in interest of Marblehead Land Company, believes it is the owner of Lot 140 of Tract No. 10630, which Seller has advised Buyer is believed to be a community beach lot for the benefit of the Residential Lots.

D. Seller's Residential Lots, Lot 140 and the Lettered Lots are collectively referred to hereinafter as the "Property". If in the course of title investigation, it shall be determined that Seller (or its predecessor, Marblehead Land Company) owns any additional real property interests within Tract No. 10630 excluding any additional Residential Lots and excluding adjacent community beach (Parcel 009, Map 4470, page 17), such additional property interests shall be included within the Property as herein described, and quitclaimed to Buyer at the Closing, it being the intention of the parties that Buyer shall acquire all other real property interests

*Handwritten initials and signature*

**EXHIBIT 22**  
Lechuza Villas West  
Applicant's Purchase  
Agreement

owned by Seller (or its predecessor Marblehead Land Company) in said Tract.

E. Buyer and Seller wish to enter into the Purchase Agreement to provide for the purchase and sale of Seller's interest in the Residential Lots, Lot 140 and the Lettered Lots of Tract No. 10630 on the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, the parties hereto hereby agree as follows:

#### AGREEMENT

1. AGREEMENT TO PURCHASE AND SELL; PURCHASE PRICE; DEPOSIT; LIQUIDATED DAMAGES:

1.1 Agreement to Purchase and Sell. Seller agrees to sell and convey the Property to Buyer, and Buyer agrees to purchase and acquire the Property, subject to the conditions and upon the terms set forth herein, for a total purchase price of Two Million Twenty-Five Thousand Dollars (\$2,025,000.00) (the "Purchase Price").

1.2 Payment of Purchase Price/Escrow. As soon as practical and in any event within five (5) business days after the date hereof, an executed copy of the Purchase Agreement shall be deposited with Malibu Escrow Co., Malibu, California (the "Escrow Company"), together with the Escrow Instructions provided for below. Upon opening, there shall be deposited Buyer's Cashier's Check in possession of Seller payable to the Escrow Company in the sum of \$80,000.00 as a good faith deposit (the "Deposit") on the Purchase Price, and shall deposit or cause to be deposited with the Escrow Company for payment to Seller at or prior to the Closing (hereinafter defined) immediately-available additional funds in the sum of \$1,945,000.00 in payment of the balance of the Purchase Price.

1.3 Release of Deposit to Seller. Buyer hereby agrees with Seller and authorizes and instructs the Escrow Company that the Deposit shall be released to Seller outside of escrow immediately upon satisfaction, deemed satisfaction, or waiver of the title report condition provided for in Paragraphs 3(C) and 4.1 hereof and of the condition specified in Paragraph 3(E).

*Handwritten:*  
S. H. K.  
R. H. D.

1.4 Liquidated Damages to Seller. IF BUYER DEFAULTS FOR ANY REASON WHATSOEVER IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, THE ENTIRE DEPOSIT PLUS ANY EXTENSION PAYMENT MADE BY BUYER PURSUANT TO PARAGRAPH 6.2 HEREOF SHALL BE RETAINED BY SELLER AS DAMAGES FOR BUYER'S DEFAULT. BUYER AND SELLER AGREE THAT THEY HAVE MADE GOOD FAITH REASONABLE EFFORTS TO DETERMINE WHAT SELLER'S DAMAGES WOULD BE IN THE EVENT OF A DEFAULT BY BUYER. SELLER AND BUYER HAVE BEEN UNABLE TO ARRIVE AT ANY MEANINGFUL FORMULA OR MEASURE OF DAMAGES FOR BUYER'S DEFAULT AND HAVE THEREFORE AGREED THAT SUCH DAMAGES WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO DETERMINE IN THE EVENT OF BUYER'S DEFAULT. THE DEPOSIT AND ANY EXTENSION PAYMENT SHALL SERVE AS LIQUIDATED DAMAGES AND SHALL BE SELLER'S SOLE RIGHT TO DAMAGES EXCEPT THAT SELLER SHALL HAVE THE OPTION, EXERCISABLE BY NOTICE TO BUYER WITHIN FIFTEEN (15) DAYS AFTER BUYER'S BREACH, TO PURSUE THE REMEDY OF SPECIFIC PERFORMANCE AGAINST BUYER AND, IF USED, IT SHALL BE AN ALTERNATIVE TO RETAINING THE DEPOSIT AS LIQUIDATED DAMAGES. BY INITIALING OR SIGNING WHERE INDICATED BELOW, THE PARTIES SPECIFICALLY APPROVE THIS LIQUIDATED DAMAGES PROVISION.

SELLER <sup>N.R.H.</sup> Norman Suss RMA  
BUYER N.R.H.

## 2. SELLER'S CONDITIONS

All of Seller's obligations under the Purchase Agreement are subject to and contingent upon the satisfaction or waiver of the following conditions precedent ("Seller's Conditions Precedent") on or before the Closing:

(A) Buyer shall deposit with Escrow Company immediately-available funds in an amount equal to the Purchase Price.

(B) Seller shall have satisfied itself, within ten (10) days after receipt of the Preliminary Title Report (hereinafter defined), that it can lawfully transfer its interests in the Property to Buyer. In the event Seller does not notify Buyer in writing within said 10-day period that it is not so satisfied, then this condition shall be deemed satisfied or waived.

(C) Buyer's representations and warranties made herein being true and correct as of the Close of Escrow.

*Norman Suss*  
*RMA*

(D) At the Close of Escrow, the absence of any pending litigation enjoining the sale or conveyance of the Property by Seller.

In the event Seller's Conditions Precedent are not fulfilled or waived, Seller shall have the right to terminate the Purchase Agreement by giving written notice to Buyer, whereupon all rights and obligations hereunder of each party shall be at an end. Seller may, at its election, waive in writing any of Seller's Conditions Precedent.

### 3. BUYER'S CONDITIONS

Buyer's obligation to purchase the Property shall be subject to and contingent upon the satisfaction or waiver of the following conditions precedent ("Buyer's Conditions Precedent"):

(A) Seller's timely performance of all of its obligations under the Purchase Agreement.

(B) Seller's representations and warranties made herein being true and correct as of the date of the Close of Escrow.

(C) Buyer's review and approval of the Preliminary Title Report as provided for in Paragraph 4.1 below.

(D) The willingness of the Title Company (hereinafter defined) to issue to Buyer, upon the sole condition of the payment of its regularly scheduled premium, the Title Policy described in Paragraph 4.2 below.

(E) Buyer's approval of the matters referred to in Paragraph 5.1.3 within (10) business days after the date hereof. In the event Buyer does not notify Seller in writing within said 10-day period that it disapproves said matters, then this condition shall be deemed satisfied or waived.

(F) At the Close of Escrow, the absence of any pending litigation enjoining the sale or conveyance of the Property by Seller or claiming an interest in or to acquire the Property, including without limitation a proceeding related to the matter disclosed as Item 6 on Exhibit "A" hereof.

In the event any of Buyer's Conditions Precedent are not fulfilled or waived, Buyer shall have the right to terminate the Purchase Agreement by giving written notice to Seller,

*See*  
*H.R.K.*  
*EWJ*

whereupon all rights and obligations hereunder of each party shall be at an end. Buyer may, at its election, waive in writing any of Buyer's Conditions Precedent.

4. TITLE.

4.1 Permitted Title Exceptions. Seller shall quitclaim to Buyer all of its right, title and interest in and to the Property subject to (i) those matters of record and off-record as approved by Buyer as hereinafter provided, (ii) easement and other rights of owners of the Residential Lots and possible claims based upon adverse possession or prescriptive use of the Property (subject to Buyer's approval rights as herein provided), (iii) other possible easements, claims, pending and potential proceedings and actions by owners of Residential Lots and by the public (subject to Buyer's approval rights as herein provided), (iv) the effect of all zoning, land use, and other laws, ordinances, rules, regulations and requirements of governmental agencies having jurisdiction, and (v) all other matters excluded from coverage under the printed terms of the Title Policy (collectively, the "Approved Title Exceptions"). Seller shall promptly request the Escrow Company to provide to Buyer a Preliminary Title Report on the Property together with legible copies of all recorded exceptions referred therein. (Said preliminary report and copies of documents are collectively referred to as the "Preliminary Title Report.") Subject to the provisions of Paragraph 4.3, Buyer shall have ten (10) days after receipt of the Preliminary Title Report to satisfy himself as to the status of title (both record and off-record items) to the Property and approve or disapprove the same in writing to the Escrow Company and Seller. Buyer's taking title to the Property subject to "Approved Title Exceptions" is strictly intended to delineate the limitations upon Seller's obligations hereunder and shall not be construed by any third party, including without limitation any title insurer, as constituting (nor do the parties hereto intend that the foregoing constitutes) an agreement of the Buyer to accept, suffer, assume or agree to any defects, liens, encumbrances, adverse claims or other matters affecting the Property. In the event Buyer does not so approve or disapprove the Preliminary Title Report or any exceptions shown therein within said 10-day period, then the Preliminary Title Report shall be deemed approved by Buyer. Excepting the matters described in Paragraph 4.3 below and monetary liens and assessments, Seller reserves the right, but shall not be obligated, to remove or cure any title exception disapproved by Buyer, and Seller shall have ten (10) days after receipt of Buyer's disapproval to notify Buyer of any such election to remove or cure, and any failure to so notify Buyer in writing shall be deemed an election by Seller not to remove

*Handwritten initials:*  
GMA  
W.R.H.  
2001

or cure. Seller shall use its reasonable efforts to cause the Preliminary Title Report to be delivered to Buyer within ten (10) business days after mutual execution and delivery of this Agreement, and in the event of any delay in delivery thereof, the time periods for Buyer's performance under this Agreement shall be extended by the period of delay.

4.2 Evidence of Title. At the Close of Escrow, First American Title Company of Los Angeles, or such other licensed land title company mutually designated by the parties, shall issue to Buyer its ALTA Standard Coverage Owner's Policy of Title Insurance (1987) with presently applicable regional exceptions (or equivalent policy) coverage in the amount of the Purchase Price, showing title to the Property vested in Buyer at the Closing subject only to the Approved Title Exceptions ("Title Policy").

4.3 Certain Title Matters. Notwithstanding the provisions of Paragraph 4.1, (i) in the event the Preliminary Title Report shows that the Property or portions thereof is of record in the name of Marblehead Land Company, Seller undertakes to provide to the Title Company such documents and records as it may reasonably request to reflect Seller's right to transfer the same, and (ii) in the event any one or more of the Lettered Lots other than Lot A is shown by the Preliminary Title Report to be held or owned by any person or entity other than Seller or Marblehead Land Company (or an entity wholly owned by Seller or Marblehead Land Company), such Lot or Lots shall still be quitclaimed to Buyer but otherwise deemed to be deleted from this Purchase Agreement and there shall be no adjustment in the Purchase Price. Accordingly, the foregoing matters in this Section 4.3 shall not be a basis of disapproval of the Preliminary Title Report by Buyer.

## 5. REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 Seller's Representations. Except as provided herein, Seller is making no express or implied warranties or representations regarding the title to or extent, location, configuration or condition of the Property or its development potential or fitness for any intended use. Buyer is purchasing the Property without reliance on any warranties or representations of Seller except such warranties and representations of Seller as provided for herein. Seller makes the following representations and warranties to Buyer, which representations and warranties shall be true and correct on the Closing Date as though such representations and warranties were made at and as of the Closing Date.

*See  
N.R.H.  
encl*

5.1.1 Seller has full power and authority to execute and deliver the Purchase Agreement and Escrow Instructions and to perform all obligations arising under the Purchase Agreement, and all such actions have been duly authorized by all necessary action on the part of Seller.

5.1.2 Prior to the Close of Escrow or until earlier termination of this Purchase Agreement, Seller shall not sell, convey or otherwise voluntarily transfer or encumber any interest in the Property without the prior written consent of Buyer.

5.1.3 Seller is aware of the off-record title matters described on Exhibit "A" hereof attached hereto, and has concurrently herewith provided all documentation actually known by the undersigned partner(s) and Mr. John H. Hanan of Seller as contained in Seller's files. Except for the matters disclosed in Exhibit "A," neither the undersigned partner(s) nor Mr. John Hanan of Seller has any actual knowledge (but without investigation and with no express or implied duty or obligation to investigate) of any pending or threatened proceedings or any adverse off-record title claims affecting the Property which have not been disclosed to Buyer.

5.1.4 With respect to Paragraph 2(B) hereof, Seller is not presently aware of any legal impediment to transfer of the Property to Buyer.

5.2 Buyer's Representations. Buyer makes the following representations and warranties to Seller, which representations and warranties shall be true and correct on the Closing Date as though such representations and warranties were made at and as of the Closing Date.

5.2.1 Buyer has full power and authority to perform all obligations thereafter arising under the Purchase Agreement.

5.2.2 Buyer shall make his own independent analysis of the title, extent, location, configuration, condition, and ability to develop and use the Property, and Buyer acknowledges that he is purchasing the Property "as is" in its existing state and that Seller is making no representations or warranties with respect thereto except as expressly set forth in this Agreement. Without limitation of the foregoing, Buyer acknowledges that the exact location of Lot A may not have been determined finally by survey and is the subject of dispute as between or among certain owners of Residential Lots having easement rights in Lot A, that Lot 140 is or may be designated a community beach lot, that there is

*Handwritten signature*  
N.K.F.  
G.M.

pending or proposed litigation by and among owners of Residential Lots and/or the Malibu Encinal Homeowners Association, Inc. relating to the development of certain sand lots in Tract 10630, and that the location of the mean high tide line will have a material effect on the existence, extent, configuration and development potential of Seller's Residential Lots.

5.2.3 Upon and after the Close of Escrow, Buyer hereby assumes and agrees to pay and perform all of the obligations thereafter arising out of the ownership of the Property (whether such obligations are of record or arise by prescriptive or adverse rights of others or by operation of law) and agrees to defend and indemnify Seller against and hold it free and harmless from any loss, cost, damage liability claim, action, cause of action or expense (including without limitation reasonable attorney fees and costs of defense) arising out of any act or omission of Buyer relating to the Property or any use or activity upon or with respect to the Property after the Close of Escrow.

5.3 Access to Property; Studies. Buyer and its contractors shall have access to the Property for the purpose of conducting a survey and performing such tests and investigations of the condition thereof as Buyer shall reasonably desire; provided that (i) Buyer shall not conduct any activities which interfere with the rights of the owners of other Residential Lots, (ii) Buyer shall return the Property to the same condition as it existed prior to such tests and investigations, and (iii) Buyer shall defend and indemnify Seller against and hold it free and harmless from any loss, cost, damage, liability, claim, action cause of action or expense (including without limitation reasonable attorneys' fees and costs of defense) arising out of Buyer's activities on the Property. If for any reason, other than material default by Seller, Buyer does not complete the purchase of the Property, Buyer shall deliver to Seller all reports of the studies, tests and investigations conducted by or on behalf of Buyer with respect to the Property and the same shall become the property of Seller at no additional expense to Seller.

5.4 Cooperation. Prior to close of Escrow, Seller shall reasonably cooperate with Buyer in furnishing available information related to Buyer's applications or inquiries to governmental agencies having jurisdiction of the Property, provided, however, (i) Buyer shall not make any such applications or inquiries in the name of or on behalf of Seller without Seller's prior written approval, and (ii) Buyer shall make any requests for such information in writing and provide reasonable time to respond. In the event Buyer so requests,

*Shaw*  
*N.R.H.*  
*END*

Seller shall confirm Seller's consent to Buyer's application (in Buyer's name) for any governmental permit or approval or Certificate of Compliance respecting any portion of the Property, and shall confirm Buyer's status as purchaser under this Agreement. If required in order to meet any deadline for filing, without limitation upon the foregoing, Seller shall use its best efforts to furnish such consent or otherwise cooperate as described herein within two (2) days after Buyer's written request therefor.

## 6. CLOSING

6.1 Time and Place. The Closing of the transaction contemplated by the Purchase Agreement, including Buyer's payment of the Purchase Price to Seller and recording of Seller's deed or deeds to the Property (the "Closing"), shall take place not later than sixty (60) days after the date hereof, subject to extension as provided for in Paragraph 6.2. The terms "Close of Escrow," "Closing Date" and/or the "Closing" are used herein to mean the time the deed or deeds is filed for record by Escrow Company in the office of the County Recorder of Los Angeles County. Except as otherwise provided herein to the contrary, any document, instrument or funds that must be delivered to Escrow Company "on or before the Closing" means delivery on or before 12:00 noon (Pacific Standard Time) of the last business day immediately preceding the Close of Escrow. The Closing shall be held at the offices of Escrow Company or at such other place as the parties shall mutually agree.

6.2 Extension of Closing. Buyer shall have the right to extend the Closing for one 30-day period subject to the following conditions: (i) at the time of the first such extension, Buyer shall have satisfied or waived Buyer's Conditions Precedent provided for in Paragraph 3(C) and 4.1 and in Paragraph 3(E), (ii) the Escrow Company shall have delivered to Seller the Deposit as provided for in Paragraph 1.3, (iii) Buyer shall not be in default in performance of his obligations under the Purchase Agreement, and (iv) Buyer shall not later than the third business day prior to the Closing Date give Seller written notice of his election to extend accompanied by the payment of \$25,000.00 as an extension fee for the 30-day period, which amount shall be payable to Seller directly outside of Escrow. Seller and Buyer agree that such payment shall be in consideration for Seller extending the escrow and keeping the Property off the market as a result thereof, that such payment shall not be credited against the Purchase Price for the Property, and that if the Escrow does not close for any reason other than a material default on the part of Seller, the extension payment shall not be refundable.

*Shaw*  
*N.E.H.*  
*2/11/81*

6.3 Seller's Closing Requirements. On or before the Closing, Seller shall, at its expense, deliver the following to Escrow Company:

6.3.1 A Quitclaim Deed or Deeds, duly executed and acknowledged and in recordable form, conveying all Seller's right, title and interest in the Property to Buyer, subject to the Approved Title Exceptions;

6.3.2 A Certificate of Non-Foreign Person Status in reasonable form as approved by or on behalf of Buyer; and

6.3.3 Such other documents and information as shall be reasonably requested by the Escrow Company.

6.4 Buyer's Closing Requirements. On or before the Closing, Buyer shall pay, or cause to be paid, to Escrow Company immediately-available funds in an amount equal to the Purchase Price in accordance with the provisions of Paragraphs 1.1 and 1.2 hereof.

6.5 Delivery of the Closing Payments to Escrow Company. All fees and amounts paid to Seller at the Closing shall be deemed made to Seller only when immediately-available funds, in the correct amount, are delivered by Escrow Company to Seller.

6.6 Further Assurances. Prior to and after the Closing, each party shall, whenever requested but at no expense to it, execute any instruments reasonably requested of it by or on behalf of the other to confirm, assure or validate any of the transactions contemplated by the Purchase Agreement.

## 7. ADJUSTMENTS AND PRORATIONS

7.1 General. Nondelinquent general and special real or personal property taxes shall be prorated by the parties as of the Close of Escrow.

## 8. EXPENSES

8.1 Expenses of Seller. Seller shall pay (a) all documentary transfer taxes on the Deeds; (b) the cost of the Title Policy; (c) one-half (1/2) of the escrow costs; and (d) any other costs and expenses not expressly provided for herein which are customarily paid by the seller in a real estate transaction involving the purchase and sale of real property located in Los Angeles County, California.

*John  
N.R.H.  
RMS*

8.2 Expenses of Buyer. Buyer shall pay (a) fees for recording the Deeds, (b) one-half (1/2) of the escrow costs, and (c) any other costs and expenses not expressly provided for herein which are customarily paid by the buyer in a real estate transaction involving the purchase and sale of real property located in Los Angeles County, California.

9. RISK OF LOSS

9.1 Casualty. If, prior to the Closing, the Property is materially damaged by vandalism, earthquake, acts of God or other casualty or cause, Buyer shall have the right to terminate the Purchase Agreement upon notice to Seller. Seller shall have no obligation to repair or restore any portion of the Property under any circumstances.

10. BROKERS AND COMMISSIONS

10.1 Representations. Buyer and Seller represent and warrant to each other that neither they nor their affiliates have dealt with any broker, finder or the like in connection with this transaction except that Buyer has or may be deemed to have received consulting services from two persons in connection with this transactions and shall be solely responsible for any payments to said persons pursuant to separate contractual arrangements. Seller and Buyer each agree to indemnify, defend and hold the other harmless from and against all loss, cost (including attorneys' fees), damage liability claim, action or cause of action resulting from the claims of any broker, finder or the like (or anyone claiming to be a broker or finder) on account of any services claimed to have been rendered to the indemnifying party in connection with the transactions contemplated by this Purchase Agreement, which indemnification obligation shall in the case of the Buyer include but not be limited to compensation of the aforesaid consultants.

11. ASSIGNMENT AND EXCHANGE

The Purchase Agreement and any rights hereunder may be assigned by Seller in order to facilitate a tax deferred exchange pursuant to Section 1031 of the Internal Revenue Code of 1986. Buyer agrees to fully cooperate in connection with such exchange so long as (a) Buyer does not incur any expense or liability in connection therewith, (b) Buyer shall not be required to take title to any property (other than the Property), and (c) the Closing Date shall not be delayed by reason of such exchange. Seller shall indemnify, defend, and hold Buyer harmless from and against any claims, losses,

*Handwritten signature:*  
S. R. H.  
D.M.

liability, damages, costs and expenses (including without limitation reasonable attorneys' fees) incurred by Buyer in connection with Buyer's participation in any exchange attempted or consummated by Seller. Buyer may assign or transfer his rights under this Purchase Agreement to any corporation, partnership or joint venture in which Buyer owns or holds at least a fifty percent (50%) interest, provided that the other owner, partner or venturer is first approved by Seller, which approval shall not be unreasonably withheld. Except as provided above in this Section, Buyer shall not assign, encumber, or otherwise transfer, voluntarily or involuntarily, his interest in or under this Purchase Agreement without the prior written consent of Seller which shall not be unreasonably withheld. Any purported transfer made in violation of the foregoing provisions shall be of no effect.

## 12. GENERAL PROVISIONS

12.1 Successors and Assigns. The agreement herein contained shall bind and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

12.2 Gender and Number. Whenever the context so requires, the singular number shall include the plural, and the use of any gender shall include all genders.

12.3 Entire Agreement/Interpretation. The Purchase Agreement together with a supplementary letter agreement of even date herewith (as to which the Escrow Holder need not be concerned) contains the complete and entire Agreement between the parties respecting the Property and all portions thereof and rights therein and respecting the transaction contemplated herein, and supersedes all prior negotiations, agreements, representations and understandings, if any, oral or written between the parties respecting the Property and such matters. The Purchase Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto.

12.4 Counterparts. This document may be executed in one or more separate counterparts, each of which, when so executed, shall be deemed to be an original. - Such counterparts shall, together, constitute and be one and the same instrument.

12.5 Modifications. The Purchase Agreement may not be modified, discharged or changed in any respect whatsoever, except by a further agreement in writing duly executed by Buyer and Seller. However, any consent, waiver, approval or authorization shall be effective if signed by the party granting or making such consent, waiver, approval or authorization.

*Shaw  
NKH  
RUC*

12.6 Notices. Any notice, demand, consent, authorization or other communication (collectively a "Notice") which either party is required or may desire to give to or make upon the other party pursuant to the Purchase Agreement shall be effective and valid only if in writing, signed by the party giving such Notice, and delivered personally to the other party (or upon an officer, general partner or officer of a general partner of the other party if such party is not an individual) or sent by facsimile transmission, express courier or delivery service or by registered or certified mail of the United States Postal Service, return receipt requested, addressed to the other party as follows (or to such other address or person as either party or person entitled to Notice may by notice to the other specify):

TO SELLER: THE ADAMSON COMPANIES  
12381 Wilshire Boulevard  
Suite 201  
Los Angeles, California 90025

Attn: Mr. John Hanan  
FAX: (213) 207-4444

WITH A COPY TO: CARLSMITH, WICHMAN, CASE, MURAI  
AND ICHIKI  
515 South Figueroa, 9th Floor  
Los Angeles, California 90071

Attn: Roger B. Baymiller, Esq.  
FAX: (213) 623-0032

TO BUYER: NORMAN R. HAYNIE  
22761 Pacific Coast Highway  
Suite 260  
Malibu, California 90265

FAX: (213) 456-9821

WITH A COPY TO: HILL WYNNE TROOP & MEISINGER  
10940 Wilshire Boulevard  
Los Angeles, CA 90024-3902

Attn: Robert E. Duffy, Esq.  
FAX: (213) 443-7599

TO ESCROW COMPANY: MALIBU ESCROW CO.  
22241 Pacific Coast Highway  
Malibu, California 90265

*SM*  
*M.K.H.*  
*END*

Unless otherwise specified, notices shall be deemed given when received, but if delivery is not accepted, on the earlier of the date delivery is refused or the third day after the same is deposited with the United States Postal Service.

12.7 Captions. The captions of the Purchase Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope, meaning or intent of the Purchase Agreement.

12.8 Applicable Law and Severability. This document shall, in all respects, be governed by the laws of the State of California applicable to agreements executed and to be wholly performed within the State of California. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail but the provision of this document which is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

12.9 No Third Party Beneficiaries. The Purchase Agreement is for the sole benefit of the parties hereto, their respective successors and permitted assigns, and no other person or entity shall be entitled to rely upon or receive any benefit from the Purchase Agreement or any term thereof.

12.10 Remedies. Unless specifically set forth to the contrary herein, all of the rights or either party under the Purchase Agreement are intended to be distinct, separate and cumulative, and no such right or remedy herein mentioned is intended to be an exclusion or a waiver of any of the others.

12.11 Survival. The covenants, warranties, representations and indemnities contained herein shall survive the Closing.

12.12 Expenses. Except as expressly otherwise provided herein, the parties shall each pay their own costs and expenses in connection with the negotiation, execution and delivery of the Purchase Agreement.

12.13 Execution. The submission of the Purchase Agreement for examination does not constitute an offer by or to either party. The Purchase Agreement shall be effective and binding only after execution and delivery by the parties hereto.

*Shaw*  
N.R.H.  
E.M.A.

12.14 Attorneys' Fees. In the event any action be instituted by a party to enforce any of the terms and provisions contained herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees, costs and expenses, including any such fees, costs and expenses on appeal or to collect upon an award of fees and costs fixed by the Court.

12.15 No Waiver. Unless specifically provided in the Purchase Agreement to the contrary, a waiver by either party hereto of a breach of any of the covenants, conditions or agreements herein to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

12.16 Change of Ownership. Buyer will hand Escrow Company before Close of Escrow, a completed "Preliminary Change of Ownership Report" which Escrow Company is instructed to file accompanied by the deed or deeds with the Los Angeles County recorder; or, in the absence thereof Escrow Company will pay, and charge to Buyer, an additional \$20.00 for each deed to the Los Angeles County Recorder if required. It is understood that Escrow Company does not have sufficient information to complete this form and will not be required to furnish information therefor.

12.17 Performance of Acts on Business Days. In the event that the final date for payment of any amount or performance of any act hereunder falls on a Saturday, Sunday or holiday, such payment may be made or act performed on the next succeeding business day.

12.18 Time. Time is of the essence with respect to this Agreement and all the terms, provisions, covenants and conditions hereof.

*Sms*  
*12.14*  
*BRAD*

IN WITNESS WHEREOF, the parties have caused this Purchase Agreement to be executed as of the date first above written.

**SELLER:**

THE ADAMSON COMPANIES,  
a California limited partnership

By: *Sylvia R. A. Neville Sheridan*  
Sylvia R. A. Neville Sheridan  
Managing General Partner

By: *Rhoda-May A. Dallas*  
Rhoda-May A. Dallas  
General Partner

**BUYER:**

*Norman R. Haynie*  
Norman R. Haynie

EXHIBIT "A"  
To  
PURCHASE AGREEMENT  
Between  
The Adamson Companies and Norman R. Haynie

1. Easements for pedestrian access by condominium owners on property adjacent or near to Tract 10630. Richard H. Tourtelot, Inc. v. Malibu Encinal Homeowners Association (Los Angeles Superior Court Case No C 427 330) and related Settlement Agreement.
2. The Malibu Encinal Homeowners Association, Inc. (MEHA) discussed at its September 24, 1989 annual meeting that the removal of a stairway by The Adamson Companies has purportedly caused heavier pedestrian traffic down East Sea Level Drive.
3. Discussion and action at said annual meeting of MEHA (i) as to the existence of a "Covenant" among owners of some homes on the land side of Sea Level Drive and owners of certain beach lots to protect the rights to use of beach and prohibit development of "lots specifically listed in the Covenant", and (ii) the existence of pending or proposed litigation related thereto and for financial support by MEHA in such litigation.
4. Malibu Encinal Homeowners Association v. Stephen Crothers, Melissa Crothers (Superior Court of Los Angeles, Case No. WEC 127541) relating to alleged encroachment of carport upon Lot A and to a dispute as to exact location of boundaries of Lot A.
5. Form of Deed which is believed to have been utilized for some or all of Residential Lots within Tract 10630 and which, among other things, reserves certain rights in Lot 140 and provides for certain easements in or over other Lots within Tract 10630, including Seller's Residential Lots.
6. Claim and threatened litigation to compel sale of the Property to Stuart Miller, contained in letter dated March 16, 1990.
7. Dispute as to the extent of Lot "A" on the Westside with respect to previously unused portion thereof.

*SMO*  
*N.R.H.*  
*DNH*

ASSESSMENT APPEALS BOARD

THE MALIBU VISTA  
PROFESSIONAL CENTER

September 14, 1993

Los Angeles County Tax Assessor  
Hall of Administration  
500 W. Temple Street  
Los Angeles, CA 90012

Dear Los Angeles County Tax Assessor:

Lechuza Villas West, L.P. hereby appeals the taxes levied against Lots 140 through 156 of Tract No. 10630 as said tract was recorded in the County of Los Angeles Recorder's Office on September 23, 1932, Book 181, Pages 6 through 11, inclusive of maps.

Said lots are also described as Tax Assessor Parcels:

4470-001-035	Lot 140
4470-028-001	Lot 141
4470-028-002	Lot 142
4470-028-003	Lot 143
4470-028-004	Lot 144
4470-028-005	Lot 145
4470-028-006	Lot 146
4470-028-007	Lot 147
4470-028-008	E 1/2 Lot 148
4470-028-009	W 1/2 Lot 148
4470-028-010	E 1/2 Lot 149
4470-028-011	W 1/2 Lot 149
4470-028-012	Lot 150
4470-028-013	Lot 151
4470-028-014	Lot 152
4470-028-015	Lot 153
4470-028-016	Lot 154
4470-028-017	E 1/2 Lot 155
4470-028-018	W 1/2 Lot 155
4470-028-019	Lot 156

The above referenced lots, with the exception of the West 1/2 of Lot 155 and Lot 156, were all purchased for less than \$2,100,000 on January 14, 1991 by Lechuza Villas West, L.P.. Relative to taxation procedure the taxes should be based on this value.

During the month of March 1991 the Partnership sold Lot 143 to Richard Stoddard, Lot 144 to Dalton Creaser, Lot 153 to Frank Arico and Lot 154 to Michael Hollander. The sales prices were as follows:

Lot 143, APN 4470-028-003, sold for \$1,675,000
Lot 144, APN 4470-028-004, sold for \$1,675,000
Lot 153, APN 4470-028-015, sold for \$1,845,000
Lot 154, APN 4470-028-016, sold for \$1,800,000.

22761 Pacific Coast Highway • Suite 260 • Malibu, California 90265 • Telephone (310) 456-5515 • Fax (310) 456-9821

**EXHIBIT 23**  
Lechuza Villas West  
Applicant's Letter to  
County Tax Assessor

Los Angeles County Tax Assessor  
September 14, 1993  
Page Two

Although these transfers of property were recorded as normal sales, they were not normal; the sales did close; however, 98% of the money was received by the Seller, Lechuza Villas West, L.P. in the form of a note which was due and payable if, and only if, the seller was successful in obtaining all discretionary approvals from all governmental agencies having jurisdiction for the construction of a house in excess of 2,500 square feet. The governmental agencies involved included the County of Los Angeles, the California State Lands Commission, the California Coastal Commission and the City of Malibu. Although the seller, Lechuza Villas West, L.P. diligently filed applications with each of these agencies on numerous occasions during the past 2-1/2 years, the Coastal Commission and the State Lands Commission have refused to permit even one house to be built on said properties. In summary, the owner has been categorically denied any and all economic use of the land. Additionally, there is no assurance that the State of California will ever permit the lots to be used for any economically valuable purpose.

As a result of the seller's failure to obtain any approvals for permits to build homes on any of the above stated lots, the four sales referenced above were rescinded and the property was quitclaimed back to the seller, Lechuza Villas West, L.P..

Since the only sales, other than the original sale of the land from the Adamson Companies to Lechuza Villas West, L.P. were rescinded and voided, the amount of property taxes due should be based on the original sale of January 14, 1991, i.e. \$2,100,000.

The west 1/2 of Lot 155 and Lot 156 were purchased by Norman R. Haynie in June of 1990 for \$300,000. Although I, Norman Haynie, sold Lot 156 to David Moore, the majority of the purchase price was dependent on Mr. Haynie obtaining the approval of a house to be constructed on Lot 156. All of the governmental agencies referenced above had to approve the construction of any home on the lot. To this date, no home has been approved on Lot 156 and the note in the amount of \$980,000 should be discounted to "0" because the amount of money which has been paid on the note is zero and the amount of money that the note is actually worth is zero.

If the County of Los Angeles, the City of Malibu, and the State of California decide that they would like to receive more tax monies based on values which the owner had hoped he could sell the land for then these governmental agencies may consider approving some use of the land by its owners; in reality the lots are without

Los Angeles County Tax Assessor  
September 14, 1993  
page Three

value unless and until they can be used for some purpose that has economic value.

If you have any questions regarding this appeal please do not hesitate to call me at your convenience; we would like to clear this issue up as quickly as possible so that the inappropriate tax liens can be removed from our land.

Sincerely yours,

*Norman R. Haynie*  
Norman R. Haynie  
General Partner  
Lechuza Villas West, L.P.

# THE MALIBU VISTA PROFESSIONAL CENTER

Mr. Anson Phillips  
227 Tranquillo Road  
Pacific Palisades, CA 90272

Dear Anson:

I am interested in talking with Mrs. Neville or her representative concerning the Adamson Companies' property, being the Sea Level Drive lots on Encinal Beach, consisting of approximately 880 square feet of beach frontage. My experience with the State Lands Commission and the California Coastal Commission over the past 17 years, as well as my specific knowledge regarding recent Coastal Commission decisions and judicial decisions, gives me a clear understanding of the possibility for any development of this property. Such development will be extremely difficult due to the matters I will discuss in this letter.

The Coastal Act of 1976 gives the Coastal Commission the unilateral authority to deny a project which is in a dangerous or hazardous location. An example of this is the Liberman house which was proposed on a 60 foot wide parcel of property adjacent to Sea Level Drive at the most easterly end of Sea Level Drive where the street has never washed out. Although there are six homes located on the ocean side of Sea Level Drive where the Liberman's house was proposed, the Coastal Commission denied the Liberman house project. In fact, over a period of six years, the Coastal Commission denied construction of the house, as a result of three separate applications to build different kinds of houses. During the third application, the Coastal Commission staff indicated that building a house on Sea Level Drive was in direct conflict with the Coastal Act of 1976 which prohibits the building of a project in an extremely hazardous location; the project was denied a third time. This ruling was made even though Sea Level Drive has never washed out where the Liberman's house was designed.

When the Libermans had failed three times to obtain approval for their house, they came to me and I was hired to handle the application for the fourth time. Through a series of creative engineering designs and heavy duty politics, I was able to obtain approval for the house. I am not relating this story to you to brag, but only to give you knowledge of the most recent project which was proposed on Sea Level Drive in an area which is fronted on a stable street and a stable bluff which was, in fact, not hazardous at all.

My experience in processing difficult projects through the Coastal Commission, including the project referenced above, indicates to me that it would be impossible to use the Adamson Companies' beach property where Sea Level Drive washed out for any development project.

22761 Pacific Coast Highway, Suite 260 • Malibu, California 90265 • (

**EXHIBIT 24**  
Lechuza Villas West  
Letter from Norman Haynie  
to Anson Phillips

Mr. Anson Phillips

Page 3

not seem like very many homes relative to the size of the property, but I believe that any construction project which gets approved on this beach, which has been slated for a public beach by the Coastal Commission for over 15 years, is a great achievement; and three homes is better than no homes at all.

It is noted that any competent civil engineer can design construction plans to replace Sea Level Drive and can design homes for the individual lots; however, an experienced developer in the area knows that a project of this magnitude on this particular beach would most likely be overwhelmingly disapproved, and there will be no time to redesign the project or perform the necessary negotiations to get a much smaller project approved. If a project is not approved before Malibu cityhood, then in my opinion, no project will ever be approved; the state will appraise the property at a value which reflects that the property is unbuildable due to hazardous conditions, enforce the sale through public condemnation proceedings, and the beach will be made public. The price paid by the state for the property will be consistent with the value of any property which can't be built on as a result of landslides, earthquake faults or other hazardous conditions (i.e. less than \$1 million). It is also noted that any proposed project on the beach will meet with extensive resistance and criticism by the State Lands Commission, the Corps of Engineers and the Homeowner's Association.

I want very much to obtain the opportunity to try to get a project approved on the Adamson beach property, and I believe that my credentials and track record relative to coastal development verify that I am the best person to obtain an approval of a project on this very difficult and problem-burdened property.

I have attached a brief summary of my professional experience which will indicate that I have never lost the final decision by the California Coastal Commission or the County of Los Angeles during the last 17 years. This track record was established as a result of the approval of projects which were very complicated and that required a high degree of creativity, engineering knowledge, and political involvement. I hope that I can use my skills to create some value for the Adamson property and consummate the purchase of the property.

If you have any questions in regard to the above information or the project history attached hereto, please do not hesitate to call me at your earliest convenience.

Sincerely,

*Norman R. Haynie*  
Norman R. Haynie

NRH:ly