

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR**APPLICATION NO:** 4-98-281**APPLICANT:** James Cariker**PROJECT LOCATION:** 6432 Cavalleri Road, City of Malibu, Los Angeles County

PROJECT DESCRIPTION: Subdivision of 3.03 acre site into eight single family residential lots, ranging in size from 12,083 sq. ft. to 18,178 sq. ft., with 4,600 cu. yds. of grading (2,400 cu. yds. cut and 2,200 cu. yds. fill), the demolition of an existing residence with accessory structures, and the construction of a riprap drainage structure. The project also includes a lot line adjustment between the proposed project site and the adjacent parcel to the south, whereby the proposed project site would be decreased in size from 3.23-acres to 3.03-acres.

Lot area:	3.23-acres
Building coverage:	N/A
Project density:	2.6 du/ac
Ht above fin grade:	N/A

LOCAL APPROVALS RECEIVED: City of Malibu "Approval in Concept", "Geologic Review", and "Environmental Health Department Approval" for Tentative Tract 47533

SUBSTANTIVE FILE DOCUMENTS: 5-90-805 (Cariker/Kinser), 4-96-040 (Cariker)

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the subdivision of the proposed project site into eight single family lots with five Special Conditions regarding: mitigation of cumulative impacts (Transfer of Development Credits); landscape and erosion control plans and monitoring; conformance with geologic recommendations; drainage and erosion control plans; and removal of excess cut material.

The proposed project site slopes from Cavalleri Road to Kanan Dume Road in the City of Malibu. The proposed grading is to provide an access road with cul-de-sac and four building pads. The four lots nearest Kanan Dume Road would have no graded pads. The Commission has twice before approved permits for development on this site. Permit 5-90-805 was approved for a 23-unit condominium project. Permit 4-96-040 was approved for the same eight lot subdivision (4-96-040 has expired). As conditioned, the proposed subdivision will be consistent with the visual, sensitive resource, and hazard policies of the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

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

II. Standard Conditions.

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

III. Special Conditions.

1. Cumulative Impact Mitigation.

Prior to the issuance of the Coastal Development Permit, the applicants shall submit evidence, subject to the review and approval of the Executive Director, that the cumulative impacts of the subject development with respect to build-out of the Santa Monica Mountains are adequately mitigated. Prior to the issuance of this permit, the applicant shall provide evidence to the Executive Director that development rights for residential use have been extinguished on seven (7) building sites in the Santa Monica Mountains Coastal Zone. The method used to extinguish the development rights shall be either:

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

2. Landscaping and Erosion Control.

A. Landscape Plan.

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

- (1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. To minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used. The plan shall depict all eucalyptus trees on the project site, with notations for trees to be retained and trees to be removed.
- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire

safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;

- (3) Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- (4) Grading shall not take place during the rainy season (November 1-March 31). The development process shall minimize sediment from runoff waters during construction through the use of sediment basins (including debris basins, desilting basins, or silt traps) placed on the project site prior to or concurrent with the initial grading operations and maintained through the development process;
- (5) All grading activities shall be carried out as expeditiously as feasible and all building pads shall be hydroseeded with native grasses or annuals and the access road paved immediately upon completion of grading, with the exception of pads where permitted construction of a residence will commence within 30 days of grading completion. In the event that grading activities are interrupted for a period of more than 30 days, all exposed areas shall be hydroseeded and interim sediment retention methods shall be implemented.

B. Monitoring Plan

- (1) Five years from the date of the completion of grading, the applicant shall submit, for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.
- (2) If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

3. Plans Conforming to Geologic Recommendation

All recommendations contained in the Update Geotechnical Engineering Report, dated 9/23/98, the Update Geotechnical Engineering Report, dated 3/27/98, both prepared by Miller Geosciences, as well as the Updated Engineering Geologic and Seismic Report, dated 1/5/95, prepared by Mountain Geology; the Soils Exploration Report, dated 5/1/89, prepared by Tierra Tech Testing Lab; and the Geologic Investigation, dated 4/25/89, prepared by Westland Geological Services, shall be incorporated into all final design and construction including grading, septic systems, and drainage. All plans must be reviewed and approved by a geologic/geotechnical engineer as conforming to said recommendations. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

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

4. Drainage and Erosion Control Plans

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a run-off and erosion control plan designed by a licensed engineer which assures that run-off from the road, driveways, pads, and all other impervious surfaces on the subject parcel are collected and discharged in a non-erosive manner which avoids ponding. Site drainage shall not be accomplished by sheetflow runoff. Should the project's drainage structures fail or result in erosion, the applicant/landowner or successor interests shall be responsible for any necessary repairs and restoration.

5. Removal of Excess Cut Material

Prior to the issuance of the coastal development permit, the applicant shall provide for the review and approval of the Executive Director the location of the proposed disposal site for the 200 cu. yds. of excess cut material. All excess cut materials from the proposed project shall be removed from the subject site and taken to the approved disposal site. Should the dumpsite be located in the Coastal Zone, a coastal development permit shall be required.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing the subdivision of a 3.03-acre (net) parcel on Cavalleri Road into eight single family residential lots ranging in size from 12,083 sq. ft. to 18,178 sq. ft. 4,600 cu. yds. of grading (2,400 cu. yds. cut and 2,200 cu. yds. fill) are proposed to create an access road with cul-de-sac and building pads for four of the proposed lots. Structures on the remaining four lots would be built to the existing slope.

The proposed project also includes a lot line adjustment between the existing project site and the adjacent site to the south whereby the proposed project site would be decreased in size from 3.23-acres to 3.03-acres (net). An area 30 feet wide along the east property boundary and an area ranging from 22 feet to 30 feet wide along the northern property boundary would be attached to the adjacent parcel to the south, which is developed with the Malibu Gardens Condominiums. The area along the northern property line is to be utilized for additional seepage pits for sewage disposal from the condominium complex.

Additionally, the proposed project includes the demolition of an existing single family residence and its accessory structures. Finally, a riprap drainage structure is proposed to be placed on the eastern portion of the site.

The proposed project site is located on Cavalleri Road and extends down slope to Kanan Dume Road, approximately 300 feet north of Pacific Coast Highway, within the City of Malibu. Access to the proposed lots would be provided by one access road ending in a cul-de-sac from Cavalleri Road. The site slopes down from Cavalleri Road to Kanan Dume, descending approximately 60 to 70 feet. Drainage across the site is by sheet flow towards Kanan Dume Road. There is a drainage course designated as a "blue-line" stream by the U.S.G.S., which crosses the eastern edge of the project site. Although this stream has not been designated an environmentally sensitive habitat area in past Commission actions, the City of Malibu considered this area a remnant of an ecologically important riparian habitat. There is also a small eucalyptus grove along the northern edge of the site. The eucalyptus tree area has not been designated an environmentally sensitive habitat area.

The area surrounding the proposed project site is developed with a variety of residential densities. Two condominium complexes are located immediately to the south and west (containing 56 and 68 units respectively). In addition, a cluster of commercial development is located to the southeast of the project site on either side of Kanan Dume Road, north of Pacific Coast Highway.

B. Past Commission Actions.

The Commission has twice acted on applications for development on the subject project site. The Commission approved Permit 5-90-805 (Cariker/Kinser) for the subdivision of the subject site into 23 residential condominiums with 17,000 cu. yds. of grading. The approved units were to range in size from 1,900 sq. ft. to 2,200 sq. ft. and 25 ft. in height. The permit was approved with Special Conditions relating to revised plans, cumulative impacts mitigation, landscaping, erosion control, and drainage plans, future improvements deed restriction, and geologic review. This approved development was never constructed and this permit has since expired.

In 1995, the City of Malibu approved a substantially revised Tentative Tract 47533 for the subdivision of the subject site into eight residential parcels. In 1996, the Commission approved Permit 4-96-040 (Cariker) for the subdivision of the subject project site into 8 single-family residential lots with 4,900 cu. yds. of grading, a lot line adjustment, and the demolition of an existing single family residence. This permit was approved with Special Conditions relating to landscaping plans, drainage and erosion control plans, cumulative impact mitigation, geologic review, and fire department review of the proposed road. Although the applicant had been working to comply with the conditions of Permit 4-96-040, no extension request was filed with the Commission prior to the expiration of the permit. As such, this permit expired in April 1998. The applicant is now applying for the same development previously considered by the Commission in Permit 4-96-040.

C. Cumulative Impacts of New Development.

The Commission has consistently emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area.

Section 30250(a) of the Coastal Act states that:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

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 connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

The applicant is proposing first a lot line adjustment whereby the size of the existing parcel would be reduced from 3.23-acres to 3.03-acres. A strip of property along the northern and eastern property boundaries would be added to the property to the south. The purpose of this proposed adjustment would be to allow for the placement of seepage pits for the disposal of sewage for the existing condominium complex on the lot to the south of the subject site.

The applicant also proposes the subdivision of the resultant 3.03-acre parcel into eight residential parcels, with 4,600 cu. yds. of grading (2,400 cu. yds. of cut and 2,200 cu. yds. of fill to construct an access road and four building pads. Houses on the remaining four lots (Lots 3-6) would be constructed to the slope and no building pad are proposed. Following is a table showing the proposed size of each lot:

PROPOSED LOT	NET ACREAGE
1	.31 acres
2	.27 acres
3	.35 acres
4	.38 acres
5	.28 acres
6	.29 acres
7	.26 acres
8	.25 acres

The Coastal Act requires that new development, including subdivisions and multi-family projects, be permitted only where public services are adequate and only where public access and coastal resources will not be cumulatively affected by such development. In addition, criteria regarding 50 percent development and minimum lot size are provided for land divisions outside existing developed areas. In this case, the proposed project site is located on the coastal terrace, an area which the Commission has, in past decisions, recognized as an existing developed area. As such, this criteria is not applicable to the proposed project.

In past permit actions, the Commission has looked to the land use designations of the Malibu/Santa Monica Mountains Land Use Plan for guidance on the maximum density and intensity of land use that may be permitted in any particular area. While the LUP is no longer legally binding within the City of Malibu, the land use designations are instructive on the level of density that the Commission has previously found allowable consistent with the policies of the Coastal Act. In this case, the LUP designates the proposed project site for the Residential IVB Category, which allows 6 to 8 dwelling units per acre. The proposed project would result in a density of 2.6 dwelling units per acre. As such, the proposed project would be consistent with the density category. Additionally, the Commission has previously found [Permit 4-96-040 (Cariker)] that the subdivision of the project site into eight parcels was consistent with the policies of the Coastal Act.

In addition to assuring that newly created parcels are consistent with the maximum allowable density and intensity for each area, the Commission has repeatedly emphasized the need to address the cumulative impacts of new development in the Malibu/Santa Monica Mountains area in past permit actions. The cumulative impact problem stems from the existence of thousands of undeveloped and poorly sited parcels in the mountains along with the potential for creating additional parcels and/or residential units through subdivisions and multi-unit projects. Because of the large number of existing undeveloped lots and potential future development, the demands on road capacity, services, recreational facilities, and beaches could be expected to grow tremendously. In addition, future build-out of many lots located in environmentally sensitive areas would create adverse cumulative impacts on coastal resources.

As a means of addressing the cumulative impact problem in past actions, the Commission has consistently required, as a special condition to development permits for land divisions and multi-unit projects, participation in the Transfer of Development Credit (TDC) program as mitigation (155-78, Zal; 158-78, Eide; 182-81, Malibu Deville; 196-86, Malibu Pacifica; 5-83-43, Heathercliff; 5-83-591, Sunset-Regan; and 5-85-748, Ehrman & Coombs). The TDC program has resulted in the retirement from development of existing, poorly-sited, and non-conforming parcels at the same time new parcels or units were created. The intent of the program is to insure that no net increase in residential units results from the approval of land divisions or multi-family projects while allowing development to proceed consistent with the requirements of Section 30250(a).

In several permit actions in Los Angeles County prior to the City of Malibu's incorporation (5-86-592, Central Diagnostic Labs; 5-86-951, Ehrman and Coombs; 5-85-459A2, Ohanian; and 5-86-299A2 and A3, Young and Golling), the Commission found that until other mitigation programs were both in place and able to be implemented, it is appropriate for the Commission to continue to require purchase of TDC's as a way to mitigate the cumulative impacts of new subdivisions and multi-residential development. In 1986, the Commission certified the Malibu/Santa Monica Mountains Land Use Plan, which is no longer legally binding within the City of Malibu. The Plan contained six potential mitigation programs that if in place would adequately mitigate the cumulative impacts of new development. However in approving the above cited permit requests, the Commission found that none of the County's six mitigation programs, as defined in the LUP, were "self-implementing" or adequate to offset the impact of increased lots in the Santa Monica Mountains and that mitigation was still required to offset the cumulative impacts created by land divisions and multi-unit projects. The Commission found that the TDC program, or a similar technique to retire development rights on selected lots, remained a valid means of mitigating cumulative impacts. Without some means of mitigation, the Commission would have no alternative but denial of such projects based on the provisions of Section 30250(a) of the Coastal Act.

The applicants propose to subdivide one parcel of land into eight residential lots. The proposed number of residential units is consistent with the character of the area. The subject parcel is an existing legal parcel. Therefore, no cumulative impact mitigation requirements shall be imposed as a condition of approval of this permit regarding the legality of the existing parcel.

As discussed above, the Commission has approved new subdivisions, but has continued to require purchase of TDC's as one of the alternative mitigation strategies. Staff review indicates that the incremental contribution to cumulative impacts would be the creation of seven additional lots. Impacts such as traffic, sewage disposal, recreational uses, visual scenic quality and resource degradation would be associated with the development of the seven additional lots in this area. Therefore, the Commission determines that it is necessary to impose a requirement on the applicant, in order to insure that the cumulative impacts of the creation of seven additional legal buildable lots are adequately mitigated. This permit has therefore been conditioned (Condition No. 1) to require the applicant to mitigate the cumulative impacts of the subdivision of this property, either through purchase of seven (7) TDCs or participation along with a public agency or private nonprofit corporation to retire habitat or watershed land in amounts that the Executive Director determines will retire the equivalent number of potential building sites. The Commission finds that as conditioned, the proposed project is consistent with Section 30250 of the Coastal Act.

D. Visual Resources

Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of 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.

The proposed project site is located between Cavalleri Road and Kanan Dume Road, approximately 300 feet north of Pacific Coast Highway. Kanan Dume Road has been designated as a scenic highway. The Commission has, in past decisions, required that development that may be viewed from scenic highways or other public areas minimize impacts to visual resources.

The proposed project includes 4,600 cu. yds. of grading (2,400 cu. yds. cut and 2,200 cu. yds. fill) to create an access road with cul-de-sac and building pads for four of the proposed lots (Lots 1, 2, 7, and 8). Structures on the remaining four lots (Lots 3, 4, 5, and 6) would be built to the existing slope on raised foundations. These four lots are those located on the eastern slope of the subject site, descending to Kanan Dume

Road. The grading plan includes the construction of a 3:1 fill slope necessary to support the proposed cul-de-sac. This fill slope is located on the western edge of the proposed Lots 4 and 5.

The design of the proposed subdivision would minimize landform alteration. Only that grading necessary to create the access road and four building pads is included. The cut and fill slopes proposed to create pads on Lots 1, 2, 7, and 8 are all 3:1 slopes which, when landscaped, would minimize the appearance of manufactured slopes. The lots closest to Kanan Dume Road would not include any graded building pads. There would be a 3:1 slope to support the cul-de-sac located on Lots 4 and 5. As such, grading would be minimized, particularly for those lots most visible from Kanan Dume Road. Through this application for the subdivision of the existing parcel into eight residential lots, the applicant is indicating the total amount of grading necessary to provide an access road and building area for each proposed lot. Any permit application for future development of a residence on each lot should include no additional grading in order to minimize landform alteration. The Commission will review future applications to ensure that landform alteration is minimized.

Although the Commission finds that the proposed project would minimize grading and landform alteration, it is necessary to require the applicant to landscape all graded slopes to minimize visual impacts as well as to minimize erosion and sedimentation from bare soils. Bare, graded slopes are highly visible from great distances, contrasting with adjacent naturally vegetated areas. Revegetating graded slopes serves to soften and screen their visual impact. In order to ensure that all graded areas are properly revegetated, Condition No. 2 requires the applicant to prepare a landscape and erosion control plan and to monitor the success of the revegetation. This plan must incorporate the use of native, drought tolerant vegetation to minimize the need for irrigation. Further, if for any reason the project were to be interrupted or abandoned during grading, bare soil would be left exposed, resulting in visual impacts. In order to ensure that bare soils are not left exposed for extended periods, the applicant is required to hydroseed all building pad areas with native grasses or annuals if the grading operation should be interrupted for 30 days or more, or at the completion of grading if house construction would not commence within 30 days. The pad seeding must be provided as an interim measure to minimize erosion from the graded pads until such time as houses are constructed. Native grasses or annuals may be easily removed just prior to the commencement of construction.

In its approval of the tentative tract map, the City of Malibu included a condition which requires the applicant to obtain site plan review for any structures over 18 feet in height on any of the proposed lots in order to ensure protection of visual resources. Additionally, the City required that any structures proposed for Lots 4 and 5, nearest Kanan Dume Road, be no higher than 18 feet on their east elevation. These restrictions will serve to minimize any impact to visual resources from the construction of future residences. At such time as the Commission reviews permit applications for houses on the subject proposed parcels, it may be necessary to require design restrictions such as

height limits, the use of earth tones, or landscaping to screen and soften development from Kanan Dume Road.

Staff would note that in the Commission's approval of Permit 5-90-805 (Cariker/Kinser) for a 23-unit condominium complex, the Commission required a redesign of the proposed project such that removal of the eucalyptus grove would be avoided. The Commission found that the existing trees would screen the view of the 25-ft. high condominiums from Kanan Dume. In the approval of the subsequent Permit 4-96-040 (Cariker) for an eight lot subdivision, the Commission found that the development of eight residences would result in a significant reduction in site coverage, that the residences would not extend as close to Kanan Dume and that less grading would take place on the eastern portion of the lot, as compared to the condominium project. The Commission did not require any condition on Permit 4-96-040 regarding the eucalyptus trees. The applicant indicates that the bulk of the eucalyptus trees will be retained on site. Of the approximately 18-20 trees on the site, the applicant estimates that 5 trees may need to be removed to accommodate the development and ensure that the trees do not pose a fire safety hazard to any future residences. The remainder of the trees would be retained on the site and would provide some screening of the development as seen from Kanan Dume Road, north of the project site.

In conclusion, the Commission finds that the proposed subdivision will minimize landform alteration. Further, if a landscape plan is developed, implemented, and monitored for all graded and disturbed areas in accordance with Condition No. 2, the proposed project will minimize impacts to visual resources. The Commission finds that, as so conditioned, the proposed project is consistent with Section 30251 of the Coastal Act.

E. Sensitive Resources/Coastal Waters and Streams.

Section 30231 of the Coastal Act states that:

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

Section 30240 of the Coastal Act states that:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those 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 those areas, and shall be compatible with the continuance of those habitat and recreation areas.

There is a small eucalyptus grove along the northern edge of the site. The eucalyptus tree area has not been designated an environmentally sensitive habitat area. As discussed above, in the Commission's approval of Permit 5-90-805 (Cariker/Kinser) for a 23-unit condominium complex, the Commission required a redesign of the proposed project such that removal of the eucalyptus grove would be avoided for visual resource purposes. The Commission found that the existing trees would screen the view of the 25-ft. high condominiums from Kanan Dume. In the approval of Permit 4-96-040 (Cariker) for the eight lot subdivision, the Commission did not require any condition regarding the eucalyptus trees. The Commission found that:

While it is generally known that Monarch Butterflies preferentially select Eucalyptus Groves for roosting, it has also been documented that the majority of the trees are not always selected. For reasons not clear to biologists, some Eucalyptus become annually utilized sites for habitat and warrant protection while others do not. The current documentation on which trees are utilized seems centered on the relationship between the pattern of assemblage of the trees as well as other factors such as proximity to water courses. There is no evidence that the trees in question have been so utilized by Monarchs in the last six years since the past permit was approved by the Commission (Nov. 1990).

The City of Malibu approval of the proposed subdivision did not identify evidence of use of the trees by Monarch butterflies. The environmental review of the project states that while this type of tree can create a fire hazard if they grow too close to structures, such mature trees also provide numerous economic, environmental and aesthetic benefits and should not be indiscriminately removed. The applicant indicates that the bulk of the eucalyptus trees will be retained on site. Of the approximately 18-20 trees on the site, the applicant estimates that 5 trees may need to be removed to accommodate the development and ensure that the trees do not pose a fire safety hazard to any future residences. The remainder of the trees would be retained on the site.

In addition, the proposed project site contains a drainage course designated as a "blue-line stream" by the U.S.G.S. map for the area. The stream is located at the far eastern edge of the property. While this area does contain riparian vegetation, it has not been designated as an environmentally sensitive habitat area in past Commission actions. In the City of Malibu's review of the proposed subdivision, the City Biologist identified the stream course as a remnant ecologically important riparian habitat and as an area that can naturally moderate the effects of storm water runoff quality and quantity. The proposed configuration of the subdivision would not result in any grading or construction of structures near the existing riparian vegetation. All grading will be over 80 feet from the stream. As such, the riparian area can be maintained in a natural state.

However, grading and drainage associated with the development of the access road and building pads could contribute to erosion and water quality problems which could

adversely impact the riparian area. The Commission has found in past decisions, that development projects, particularly those involving grading and landform alteration, can adversely impact sensitive resource areas through increased erosion and runoff. The grading of pads and roads and removal of natural vegetation exposes bare soil that can be eroded, leading to increased sedimentation. The proposed project would increase the density of the site, which will result in a substantive increase in lot coverage from that which exists. The replacement of native vegetation and soil with impervious surfaces like roads, structures, patios, etc. increases peak runoff. Natural vegetation captures and retains a significant amount of precipitation, releasing it to minor drainage courses hours and days later. When this process is superceded by the placement of impervious surfaces, more storm runoff is conveyed much sooner and at a higher velocity to drainage channels, resulting in larger peak discharges occurring sooner after storm events. This can have impacts on stream channel morphology and can cause flooding. Changes in a stream channel by erosion and channel scour can result in the loss of habitat area.

In order to minimize impacts to riparian areas and other sensitive resources, the Commission has consistently required that alteration of landforms be minimized and that any graded or disturbed areas are landscaped with native vegetation. Restoring vegetative cover reduces the erosion potential of bare soil. Further, the Commission has required the installation of properly designed drainage systems in order to ensure that storm runoff is conveyed from the project site in a non-erosive manner and that peak runoff is not increased as a result of the project.

In order to ensure that all graded areas are properly revegetated, the Commission finds it necessary to require the applicant to prepare a landscape and erosion control plan (Condition No. 2) and to monitor the success of the revegetation. This plan must incorporate the use of native, drought tolerant vegetation to minimize the need for irrigation. The plan shall also note the location of all eucalyptus trees on site, noting those trees to be removed and those that will be retained. Additionally, the Commission finds it necessary to require the applicant to not carry out grading activities during the rainy season. Further, if for any reason the project were to be interrupted or abandoned during grading, bare soil would be left exposed, resulting in adverse impacts to the stream from sedimentation. In order to ensure that bare soils are not left exposed for extended periods, the applicant is required to hydroseed all building pad areas with native grasses or annuals if the grading operation should be interrupted for 30 days or more, or at the completion of grading if house construction would not commence within 30 days. The pad seeding must be provided as an interim measure to minimize erosion from the graded pads until such time as houses are constructed. Native grasses or annuals may be easily removed just prior to the commencement of construction.

Additionally, the proposed 4,600 cu. yds. of grading (2,400 cu. yds. of cut and 2,200 cu. yds. of fill) would result in 200 cu. yds. of excess material. In order to ensure that this material is disposed of in a manner that ensures it will not contribute to erosion or sedimentation, it is necessary to require the applicant to provide the location where the

material will be placed. Should this location be within the coastal zone, a coastal development permit would be required. Condition No. 5 sets forth this requirement.

With regard to drainage, the proposed project includes the construction of a riprap drainage structure to serve as the inlet to an existing drainage pipe that runs along Kanan Dume Road. The Commission finds it necessary to also require the applicant to submit detailed drainage and erosion control plans. Condition No. 4 is required to ensure that project drainage be achieved in a non-erosive manner and that the applicant assumes responsibility for the maintenance of all drainage devices on site.

Finally, the Commission recognizes that the potential build-out of lots in Malibu, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area. A favorable percolation test was performed on the proposed project site, which indicates that there is adequate percolation to allow for eight septic systems on the property. In addition, the applicant has submitted evidence of preliminary approval of future septic systems from the City's Environmental Health Department. This approval indicates that the sewage disposal system for the project in this application complies with all minimum requirements of the Uniform Plumbing Code. The Commission has found in past permit actions that compliance with the health and safety codes will minimize any potential for wastewater discharge that could adversely impact coastal waters.

In conclusion, the Commission finds that the proposed subdivision, as conditioned to develop and implement a landscape and drainage plan and to provide the location for the disposal of all excess cut material, is consistent with Section 30231 and 30240 of the Coastal Act.

F. Local Coastal Program.

Section 30604 of the Coastal Act states that:

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

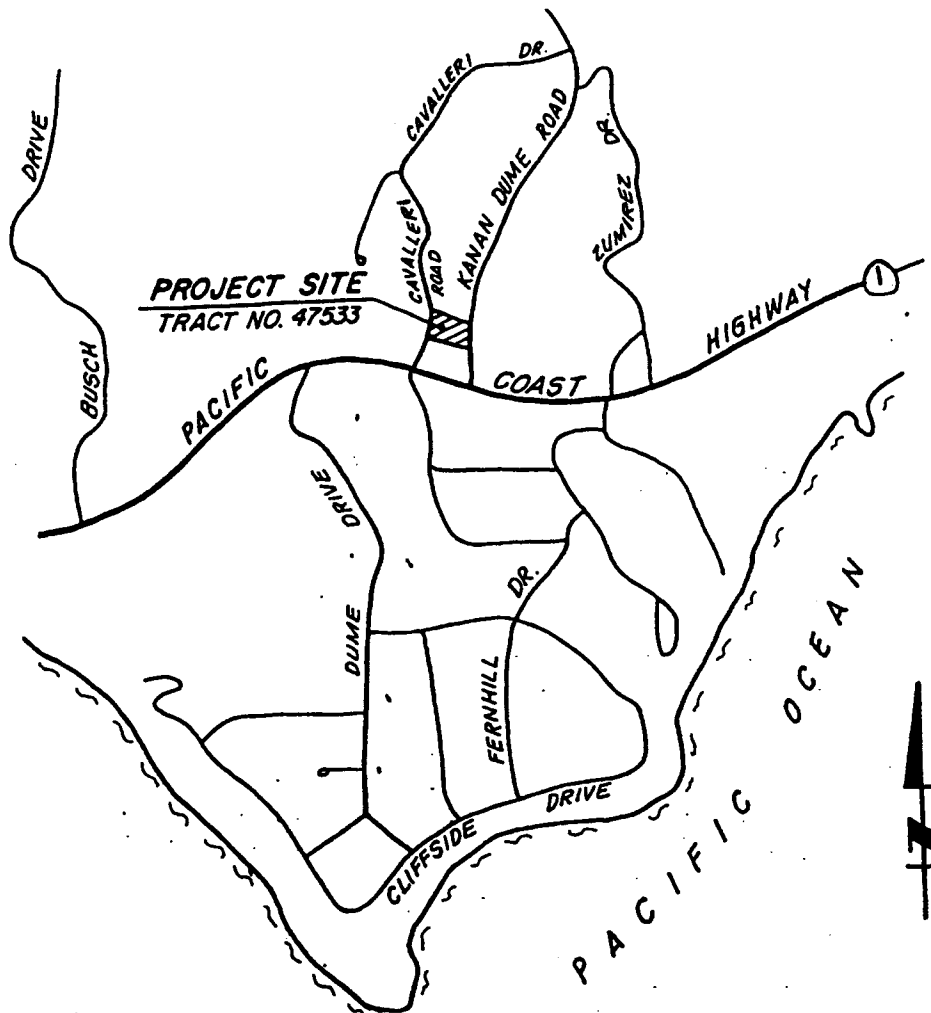
Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 of the Coastal Act. The preceding sections provide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

development, as conditioned, will not prejudice the City of Malibu's ability to prepare a Local Coastal Program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

F. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications 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 effect, which the activity may have on the environment.

There will no negative effects caused by the proposed development that will not be adequately mitigated by implementation of the conditions of approval. Therefore, the proposed project, as conditioned, is found consistent with CEQA and the policies of the Coastal Act.



VICINITY MAP

SCALE: 1" = 2000' J.G. 112, C-6. 436/592

KEY MAP

SCALE: 1" = 200'
5-92/436

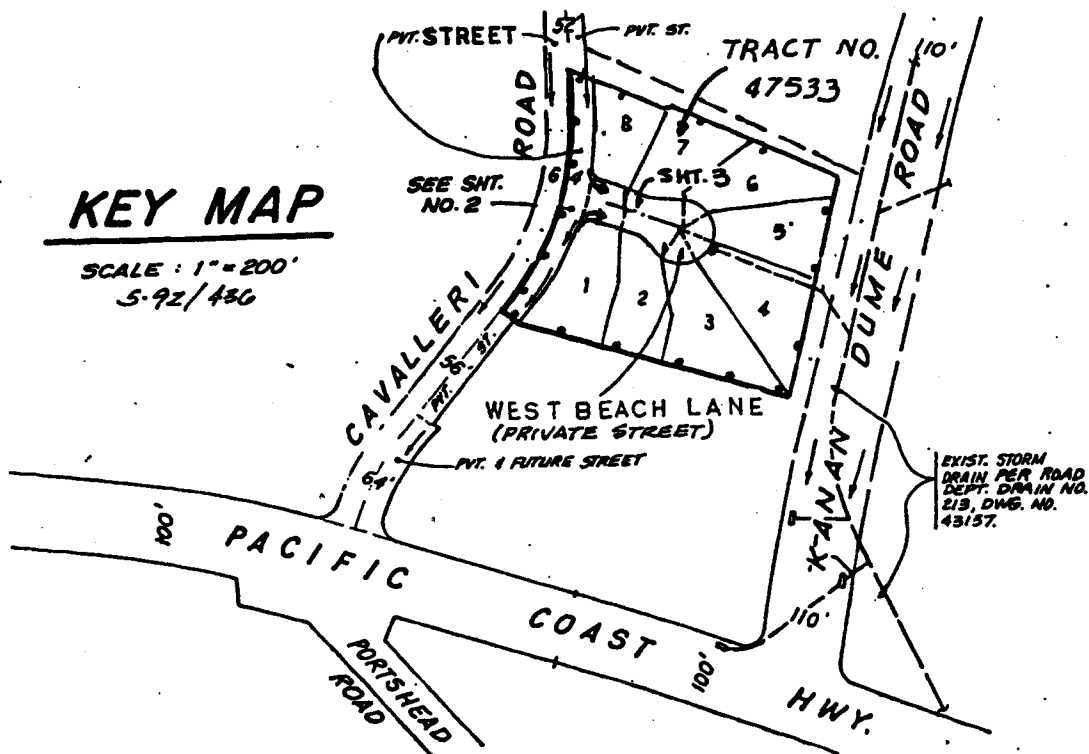


EXHIBIT 1

4-98-281

Vicinity Map

2" I.P. WITH
ANC. PLUG, R.E. 2088
NO REF., ACCEPTED
S POINT ON NE'LY
LINE OF PARCEL 10
S. 54-37/39

DETAIL
n.t.s.

FD. 2° I.P. L.3 4982 NO REF.
ACCEPTED AS N.E. CORNER
LOT 10 FITS LINE OF OCCUPATION

FD. SPK. & W.
PER L.A.CO.
ROAD DEPT.
F.B. 1204-319
4320

FD 2" I.P. W/ CONC. PLUG
UNREADABLE NUMBER
NO REF. ACCEPTED AS NE. COR.
... 77122 EITS

FD. L & T.-
STAMPED
L.A. CO. DEN
PER P.W.F.
1204-319-

EXHIBIT 2
4-98-281
Tract Map

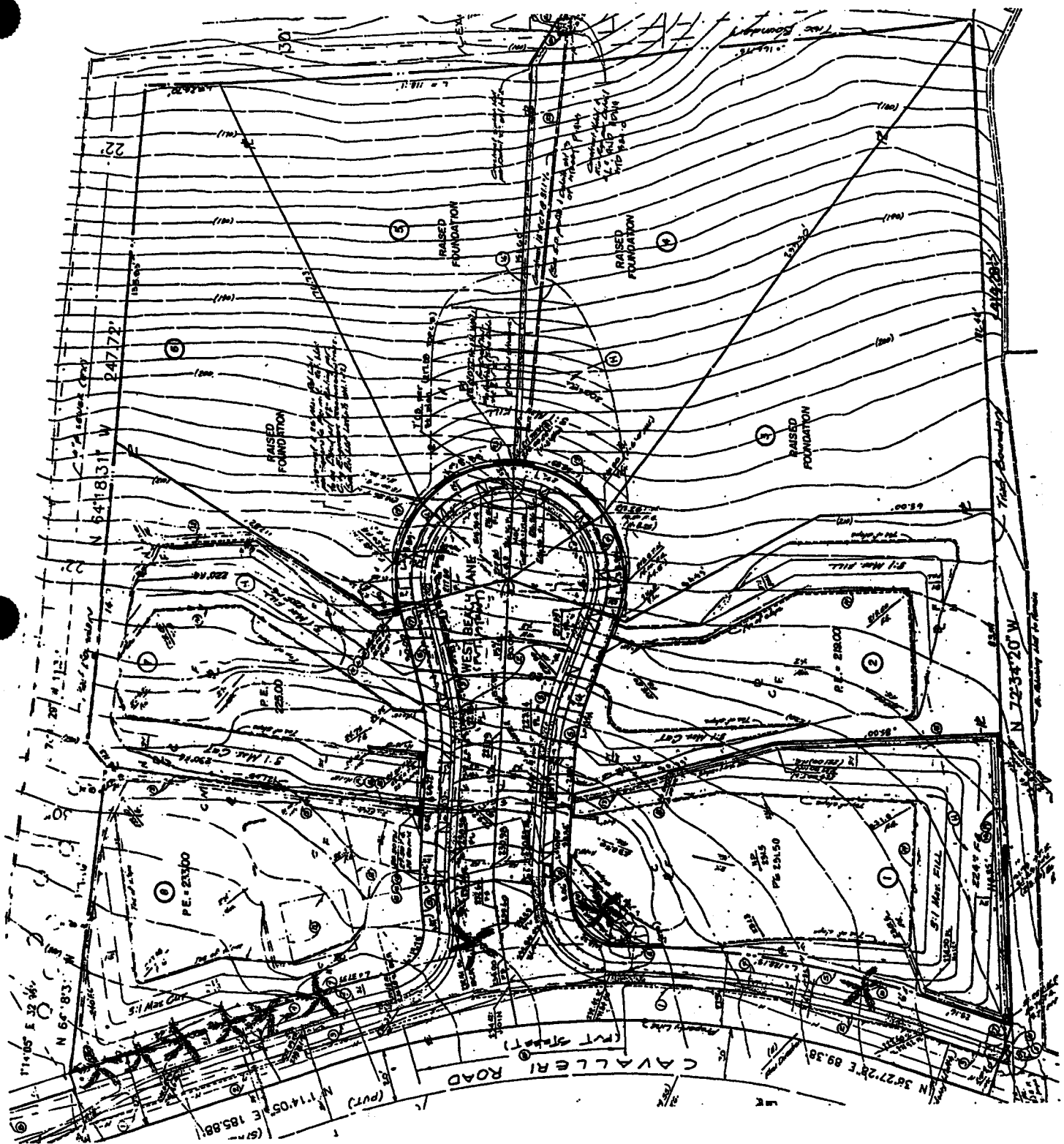


EXHIBIT 3
4-98-281
Grading Plan

