

CALIFORNIA COASTAL COMMISSION

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

Filed: 11/12/98
49th Day: 12/31/98
180th Day: 5/11/99
Staff: S. Hudson
Staff Report: 11/19/98
Hearing Date: December 8, 1998
Commission Action:



STAFF REPORT: CONSENT CALENDAR

APPLICATION NO.: 4-98-201

APPLICANT: Tivoli Cove Homeowner's Association

AGENT: Terry Valente

PROJECT LOCATION: APN: 4460-019-902 adjacent to 26666 Seagull Way, Pacific Coast Highway, City of Malibu; Los Angeles County.

PROJECT DESCRIPTION: Construction of a 40 ft. long, 5 1/2 ft. high, retaining wall and a 25 ft. long, 6 ft. high, foundation retaining wall to be attached to existing caissons and grade beams with 55 cu. yds. of grading (10 cu. yds. cut and 45 cu. yds. fill) and the replacement of an existing storm drain.

LOCAL APPROVALS RECEIVED: Approval in Concept by City of Malibu Planning Department.

SUBSTANTIVE FILE DOCUMENTS: Soils and Engineering-Geologic Investigation for Proposed Access Road Stabilization by California GeoSystems dated 3/7/97; Engineering-Geologic Response Letter by California GeoSystems dated 8/7/97; Updated Soils and Engineering-Geologic Investigation by GeoSystems dated 9/17/98; and Soils and Engineering-Geologic Investigation Addendum Report by GeoSystems dated 11/4/98.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends **approval** of the proposed project with five (5) special conditions as found on pages 3-4. During the 1997/1998 storm season, the damaged storm drain concentrated runoff on to the head scarp area of an active landslide located on site resulting in accelerated slippage and destabilization of the slope fronting the Tivoli Cove condominium complex and the access road. The proposed development is required to remediate an unstable slope which threatens to undermine the existing paved access road and the foundation for the Tivoli Cove Condominium Complex.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformance with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions

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

III. Special Conditions

1. Landscaping and Erosion Control Plan

Prior to issuance of the coastal development permit, the applicant shall submit landscaping and erosion control plans for review and approval by the Executive Director. The landscaping and erosion control plans shall be reviewed and approved by the consulting geologic and geotechnical consultants to ensure that the plans are in conformance with the consultants' geotechnical recommendations. The plans shall incorporate the following criteria:

(a) 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.

(b) 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;

(c) Should grading take place during the rainy season (November 1 - March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations and maintained through the development process to minimize sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location.

2. Plans Conforming to Geologic Recommendation

All recommendations contained in Soils and Engineering-Geologic Investigation for Proposed Access Road Stabilization by California GeoSystems dated 3/7/97; Engineering-Geologic Response Letter by California GeoSystems dated 8/7/97; Updated Soils and Engineering-Geologic Investigation by California GeoSystems dated 9/17/98; and Soils and Engineering-Geologic Investigation Addendum Report by California GeoSystems dated 11/4/98., shall be incorporated into all final design and construction plans including foundations, grading and drainage plans. ***Prior to the issuance of the coastal development permit***, the applicant shall submit for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and

certified that each of those final plans incorporates all of the recommendations specified in the above-referenced geologic evaluations approved by the California Coastal Commission for the project site

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. Proposed changes to the approved final plans shall not occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. Drainage Plans and Maintenance Responsibility

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 and all other impervious surfaces on the subject parcel are collected and discharged in a non-erosive manner. Site drainage shall not be accomplished by sheetflow runoff. With acceptance of this permit, the applicant agrees that should any of the project's surface or subsurface drainage structures fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

4. Material/Design Specifications

The surface of the retaining walls shall be designed to include, or mimic, the color and texture of native materials and appearance of the surrounding natural environment.

5. Applicant's Assumption of Risk

Prior to issuance of the coastal development permit, applicant shall enter into an agreement, in a form and content acceptable to the Executive Director, with the California Coastal Commission which shall provide that: (a) the applicant understands that the site may be subject to extraordinary hazard from landsliding and erosion, and the applicant assumes the liability from such hazards; and (b) the applicant unconditionally waives any claim of liability on the part of the California Coastal Commission and agrees to indemnify and hold harmless the California Coastal Commission, its officers, agents, and employees relative to the California Coastal Commission's approval of the project for any damage from such hazards.

IV. Findings and Declarations

The Commission hereby finds and declares as follows:

A. Project Description and Background

The applicant is proposing the construction of a 40 ft. long, 5 1/2 ft. high, 6 inch thick retaining wall and a 25 ft. long, 6 ft. high, 6 inch thick foundation retaining wall to be attached to existing caissons and grade beams with 55 cu. yds. of grading (10 cu. yds. cut and 45 cu. yds. fill) and the replacement of an existing storm drain. Both retaining walls will be primarily located below grade with only 6 inches to one ft. of wall located above grade. The project site is located adjacent to and east of the 102-unit Tivoli Cove condominium complex along that portion of Seagull Way which is within and immediately adjacent to an access easement held by the Tivoli Cove Homeowner's Association on a vacant parcel of land owned by Los Angeles County (APN: 4460-019-902). The subject parcel is operated by the Department of Beaches and Harbors as a public vertical access point to the beach. The Los Angeles County Department of Beaches and Harbors has submitted a letter dated September 30, 1998, in support of the proposed project (Exhibit Five).

During the 1997/1998 storm season, the damaged storm drain concentrated runoff on to the head scarp area of the landslide resulting in accelerated slippage and destabilization of the slope fronting the Tivoli Cove condominium complex and the access road. The proposed development is required to remediate the unstable slope which threatens to undermine the existing paved access road and the foundation for the Tivoli Cove Condominium Complex.

The project site has been the subject of past Commission action. Coastal Development Permit 4-97-126 (Tivoli Cove Homeowners Association) was approved by the Commission for the installation of 13 sets of below-grade caissons under the existing paved access road in order to remediate the effects of an active landslide. The 13 sets of below-grade caissons have been installed. The two retaining walls will serve to retain soil between the existing caissons located beneath the access road and the south-east corner of the condominium complex.

B. Geologic Hazards

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

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

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding.

During the 1997/1998 storm season, a damaged storm drain located on the subject site concentrated runoff on to the head scarp area of the landslide resulting in accelerated slippage and destabilization of the slope fronting the Tivoli Cove condominium complex and the access road. The applicant is proposing the construction of a 40 ft. long, 5 1/2 ft. high retaining wall to retain soil beneath the existing access road and a 25 ft. long, 6 ft. high retaining wall to retain soil beneath the existing condominium complex with 55 cu. yds. of grading to remediate the effects of an active landslide. Both retaining walls will be attached to the existing caissons and will be primarily located below grade with only 6 inches to one ft. of wall located above grade. The proposed project also includes the replacement of the existing damaged storm drain.

The Updated Soils and Engineering Geologic Investigation Report by GeoSystems dated September 17, 1998, indicates that the previously installed caissons will be adequate to support the proposed retaining walls. The report states:

The recent distress to the curb and pavement is the result of soil slippage between and downslope of the soldier piles. The soldier piles are not distressed, and they appear to be performing as intended...the proposed retaining wall, supported on the existing piles, is not expected to apply any additional loading to soldier piles as this loading was incorporated into the original design...Based on our recent site visit, it is the finding of this firm that the subject site is suitable for the proposed remedial repair from a soils and engineering-geologic standpoint provided the recommendations included in the referenced reports are incorporated into the development plans.

The geologic and engineering consultant has included a number of geotechnical recommendations which will increase the stability and geotechnical safety of the site. To ensure that the recommendations of the geotechnical consultant are incorporated into the project plans, the Commission finds that it is necessary to require the applicant, as required by Special Condition Two (2), to submit project plans certified by the consulting geotechnical engineer as conforming to their recommendations.

In addition, the applicant's geologic engineering consultant has indicated that the proposed project will increase site stability and will not result in any adverse effects to the geologic stability of the surrounding area. The applicant's Soils and Engineering-Geologic Investigation Addendum Report by GeoSystems dated March 7, 1997, states that:

It is the finding of this firm that the proposed remedial repair will be safe and that the completed work will not adversely affect the site or adjacent properties. However, it should be clearly understood that the proposed repair is considered to be a remedial measure intended to improve existing site conditions...The remedial repair is not

intended to completely stabilize the existing landslide which is very large and extends offsite.

...

It is impossible to accurately predict the useful lifespan of the proposed retaining wall and the existing soldier piles as it will be dependent upon the rate and extent of future movement of the landslide...The potential for failure of the proposed retaining wall structure is considered to be remote. However, it is likely that the portion of the landslide located downslope of the wall will continue to slide downslope...This is not expected to compromise the retaining wall structure as it will be entirely supported on a substantial soldier pile foundation. However, it may allow the retaining wall backfill to be undermined. In this case, remedial repair may be necessary.

Due to the history and potential hazardous geologic conditions of this site, including the presence of an active landslide, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by Special Condition Five (5). This responsibility is carried out through an agreement between the applicant and the California Coastal Commission. The assumption of risk agreement will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.

It should be noted that an assumption of risk agreement or deed restriction for hazardous geologic conditions is commonly required for new development throughout the greater Malibu/Santa Monica Mountains region in areas where there exist potentially hazardous geologic conditions, or where previous geologic activity has occurred either directly upon or adjacent to the site in question. However, as the underlying land is held by the County of Los Angeles, an assumption of risk deed restriction is not possible and an agreement between the applicant and the Coastal Commission is required to accomplish the same effect. The Commission has required such deed restrictions or agreements for other development throughout the Malibu/Santa Monica Mountains region.

The Commission also finds that the minimization of site erosion will add to the stability of the site. Erosion can best be minimized by requiring the applicant to landscape all disturbed and graded areas of the site with native plants, compatible with the surrounding environment. Therefore Special Condition One (1) has been required to ensure that all proposed disturbed and graded areas are stabilized and vegetated. In addition, development on slopes and the use of non-permeable surfaces, such as asphalt roads, often intensifies storm runoff in a destructive manner, thereby contributing to an increased potential for erosion and landslides on property. Uncontrolled runoff over the edge or away from the access road will result in erosion and further destabilization of the project site. Therefore, to ensure that drainage is conveyed off site in a non-erosive manner, the Commission finds that it is necessary to require the applicant, as required by Special Condition Three (3), to submit drainage plans certified by the consulting geotechnical engineer as conforming to their recommendations. In addition, to further ensure that the project's drainage structures will not contribute to further destabilization of the project site or surrounding area and

that the project's drainage structures shall be repaired should the structures fail in the future, Special Condition Three (3) also requires that the applicant agree to be responsible for any repairs or restoration of eroded areas should the drainage structures fail or result in erosion. Therefore, the Commission finds that the proposed project, as conditioned above, is consistent with Section 30253 of the Coastal Act.

C. Public Access and Visual Resources

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 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.

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 subordinated to the character of its setting.

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. Section 30220 of the Coastal Act requires coastal areas suited for coastal recreational activities, that cannot be provided at inland water areas, be protected. Further, Section 30251 of the Coastal Act requires that visual

qualities of coastal areas shall be considered and protected, landform alteration shall be minimized, and where feasible, degraded areas shall be enhanced and restored.

As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with...the need to protect...rights of private property owners..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the U.S. Supreme Court's decision in the case of *Nollan vs. California Coastal Commission*. In that case, the court ruled that the Commission may legitimately require a lateral access easement where the proposed development has either individual or cumulative impacts which substantially impede the achievement of the State's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate those impacts.

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

The subject parcel is owned and operated by the Los Angeles County Department of Beaches and Harbors as an unimproved public vertical access point to the beach. The Department of Beaches and Harbors has submitted a letter dated September 30, 1998, in support of the proposed project (Exhibit Five). The two proposed retaining walls will be located within and immediately adjacent to the Tivoli Cove Homeowners Association access easement located approximately 260 ft. landward from the mean high tide line and separated from the sandy beach by Latigo Shore Drive, which is a private road. As such, the proposed development, due to geographic location, will not result in any adverse effects to lateral access along the beach. In addition, the unimproved public vertical accessway to the beach is located on the eastern portion of the subject site and will not be adversely impacted by the construction of the proposed retaining walls. Therefore, the Commission notes that the proposed development will not result in any adverse effects to public access either to or along the beach.

Although the proposed development will not result in any adverse effects to public access, the proposed project will result in potential adverse effects to visual resources. The proposed retaining walls will be visible from the beach and the public vertical access easement located on the subject site. In order to minimize any adverse effects to the visual resources on site, the applicant is proposing to reconstruct the slope downslope (seaward) of the two proposed retaining walls so that only six inches to one foot of each wall will be visible above grade.

However, as discussed in the previous section, the applicant's geologic and engineering consultant has indicated that the proposed retaining walls will serve to retain soil upslope from the walls but that the portion of the landslide located downslope of the walls may continue its downslope movement. The applicant's geologic and engineering consultant has also indicated that it is not possible to accurately predict the lifespan of the reconstructed slope located downslope of the retaining walls. The Commission notes that if, over a period of time, the reconstructed slope fails, then the proposed retaining walls will become partially or completely visible from public viewing areas including the beach and the vertical accessway to the beach. Therefore, in order to ensure that potential adverse effects to public views are minimized, Special Condition Four (4) requires the surface of the retaining walls to be designed to include, or mimic, the color and texture of native materials and appearance of the natural environment. In addition, the Commission also finds that the minimization of site erosion will add to the stability of the reconstructed slope, thereby also serving to minimize adverse effects to the visual resources on the subject site. Erosion can best be minimized by requiring the applicant to landscape the reconstructed slope with native plants, compatible with the surrounding environment. Thus, Special Condition One (1) has been required to ensure that all disturbed and graded areas, including the reconstructed slope, will be stabilized and vegetated. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30210, 30211, 30220, and 30251 of the Coastal Act.

D. Local Coastal Program

Section 30604 of the Coastal Act states that:

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

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

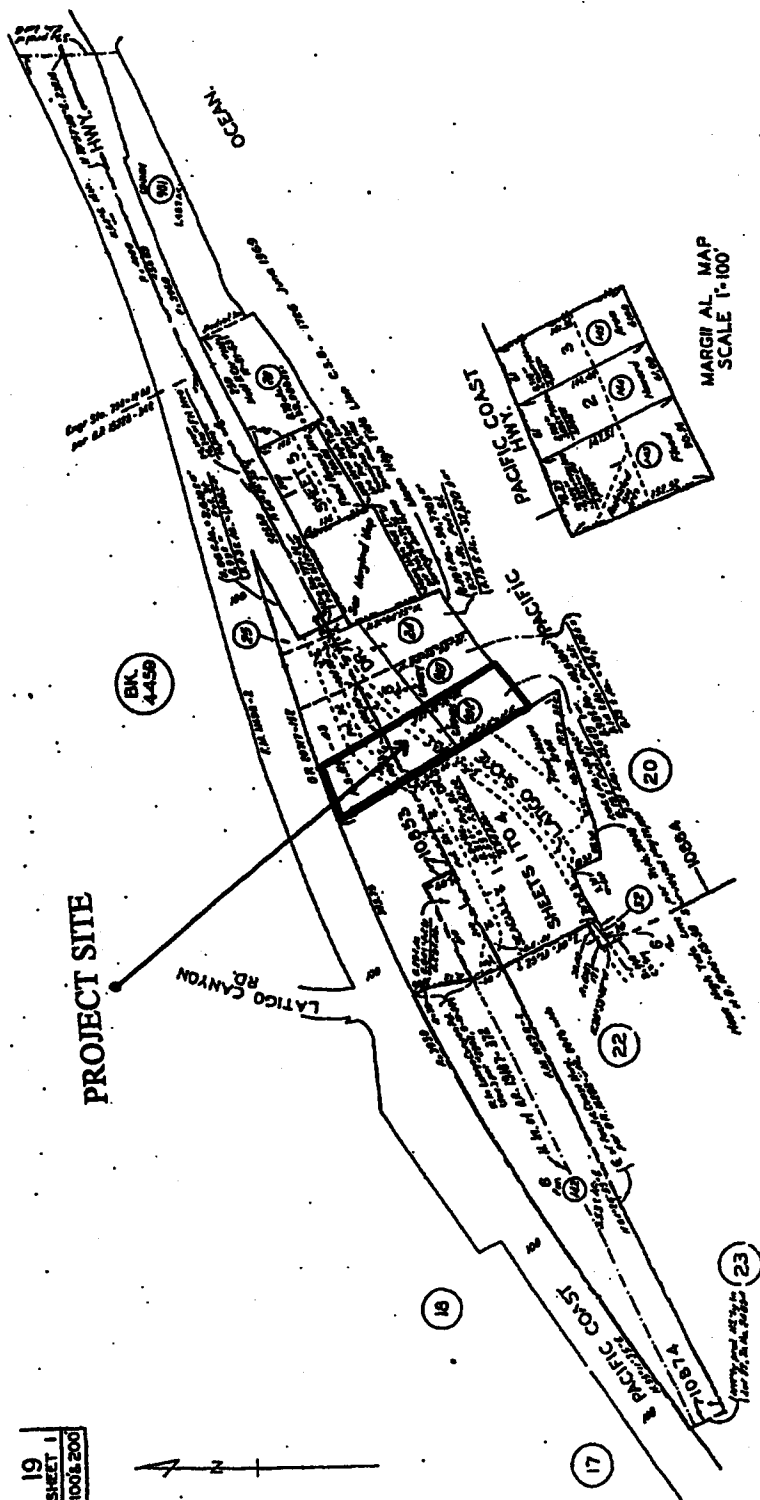
E. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) 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.

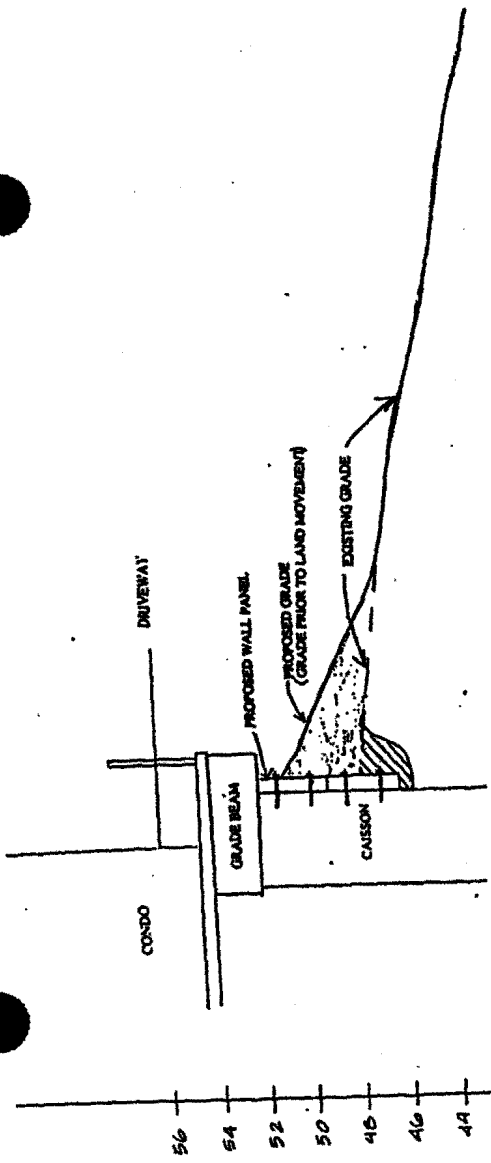
The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

SMH-VNT

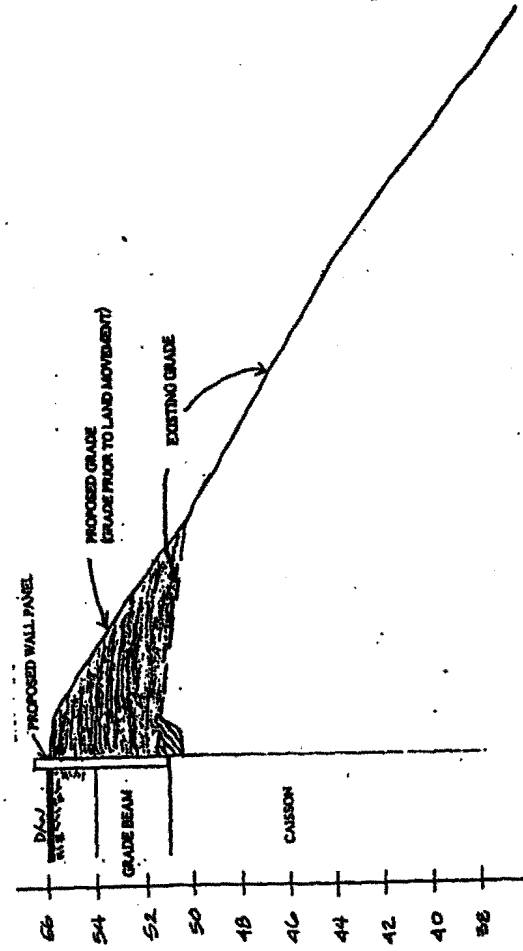
File smh/permits/consent/4-98-201 Tivoli Cove



4460 19
SHEET 1
SCALE 1" = 1000' 200'



SECTION - A
SCALE: 1/4" = 1'



SECTION - B
SCALE: 1/4" = 1'

AREA OF RECOMPACTION
AREA OF CUT



COUNTY OF LOS ANGELES
DEPARTMENT OF BEACHES AND HARBORS



September 30, 1998

STAN WISNIEWSKI
DIRECTOR
KERRY GOTTLIEB
CHIEF DEPUTY

Tivoli Cove Homeowners Association
26665 Seagull Way
Malibu, California 90265

Dear Homeowners:

This letter responds to your notice of your intent to install a six-inch thick lagging wall along/below Seagull Way, as well as along the upper part of the stairway on the eastern edge of your property. It is understood that this work will require some grading and landscaping of soil on the County's property, outside of your road easement.

Because this project will help stabilize a portion of the County's property, and there appears to be no negative impact on public access or the environment, the County supports the project.

Please feel free to use this letter to assist you in obtaining any necessary permits from the City of Malibu, the California Coastal Commission, or any other agencies having regulatory authority over it.

If there are any questions regarding this matter, please feel free to contact me at (310) 305-9573.

Very truly yours,

STAN WISNIEWSKI, DIRECTOR

Dean R. Smith
Executive Assistant

SW:DRS:be
C: Terry Valente