

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Filed: 11/25/97
 49th Day: N/A
 180th Day: N/A
 Staff: JEL-V
 Staff Report: 1/15/98
 Hearing Date: 2/12-16/98

STAFF REPORT: PERMIT EXTENSION REQUEST**APPLICATION NO.: 5-87-458-E9****APPLICANT: Sally Bernstein****AGENT: Lynn Heacox****PROJECT LOCATION: 24850 Piuma Rd., Malibu, Los Angeles County**

PROJECT DESCRIPTION: Construction of a two-story, 7,800 sq. ft. single family residence, 880 sq. ft. detached garage, water tank, motor court, stable and 3,400 cu. yds. of grading (1,700 cut and 1,700 fill)

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits: 79-4892 (Clark); Appeal 142-79 (Clark); 79-6289 (Clark); 5-87-458 (Bernstein), 5-87-458A (Bernstein); 5-87-458E, E2-E8 (Bernstein)

PROCEDURAL NOTE

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

- 1) The Executive Director determines that due to changed circumstances the proposed development may not be consistent with the Coastal Act, or
- 2) Objection is made to the Executive Director's determination of consistency with the Coastal Act (14 C.C.R. section 13169).

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

STAFF RECOMMENDATION:

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

No changed circumstances have occurred since the approval of the subject development that affect the project's consistency with the Coastal Act.

FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The applicant has requested a one year extension of the coastal development permit to construct a two-story, 7,800 sq. ft. single family residence, 880 sq. ft. detached garage, water tank, motor court, stable and 3,400 cu. yds. of grading (1,700 cut and 1,700 fill). There is a pre-existing water well located on the site. The proposed project site is located on Piuma Road, Malibu, Los Angeles County and lies within the Malibu Canyon Significant Watershed.

The subject property consists of a previously graded mountain top lot located on the crest of an east-west trending ridgeline on the northern flank of the Santa Monica Mountains. The property is situated on the south and uphill side of Piuma Road, east of Malibu Canyon Road, west of Sherren Road, and north of the Pacific Ocean. An existing 450 foot long driveway provides access to the subject lot.

Physical relief on the property ranges almost 1500 feet from the crest of the ridgeline to the southwest property line located within the Significant Watershed. Slope gradients are as steep as 1:1 on the south (ocean facing side) of the lot. This south facing slope provides unobstructed, panoramic views to the Pacific Ocean about 2.5 miles from the project site. Two knolls joined by a saddle area are the dominant geomorphic features of the lot. The west incline of the eastern knoll has been graded to form flat pad sites for the residence and garage. Many oak trees are present on the northern portion of the site.

B. Background and Permit History

The first application for a Coastal Development Permit on the subject site, 79-4892 (Clark), for a 10,000 sq. ft. single family residence with two garages, tennis court, and enclosed swimming pool was unanimously denied by the Regional Commission in 1979. Total grading for the project was listed as 7,000 cu. yds. in part to excavate the saddle area between the two knolls in order to reduce the project's height. The applicant appealed the decision (Appeal 142-79) but later withdrew and submitted a new application, 79-6289 (Clark) for a smaller 5,500 sq. ft. home.

The revised project, 79-6289 (Clark), was approved subject to conditions requiring a 25 foot setback from the ridgeline, relocation of the pool out of the watershed, and the submittal of revised plans indicating the top of the residence would not exceed 15 feet above the crest of the ridgeline. The project was never constructed.

On November 17, 1987, the Commission approved a new project, in 5-87-458 (Bernstein), for the construction of a 4,400 sq. ft. residence with 1,000 cu. yds. of grading, subject to eight special conditions of approval. As with the two previous permit applications, the Commission's primary issues of concern were the potential impacts on visual resources, the Malibu Canyon Significant Watershed, and geologic/fire hazards. The Commission approved the project with special conditions relating to hazards, geology, open space dedication, landscaping, future improvements, and viewshed protection, including a color restriction for the proposed house as part of the viewshed protection plan.

In January 1990, and again in January 1991 permit extensions were requested and granted without objection. In March 1991 an amendment, 5-87-458A (Bernstein) was requested to increase the size of the project to 7,800 sq. ft. and to allow an additional 2,400 cu. yds. of grading.

Despite the increased size of the house, the proposed structure in 5-87-458A would be no higher above grade than the originally proposed residence and extend no further than the canopies of the existing oak trees located higher and behind the residence. The additional grading would be used to "drop" the house further down into the saddle area between the two knolls. The amendment was approved subject to the revision of three special conditions (view protection, geologic, and drainage) and the addition of a ninth condition, during the Commission hearing of this application, requiring review of the view protection plan by the Santa Monica Mountains Conservancy and the Los Angeles County Department of Parks and Recreation.

The applicant met the nine conditions of approval and the Coastal Development Permit was issued on July 9, 1992. A series of six permit extension requests were subsequently submitted and approved without objections from the period of September 1992 up to the present extension request. The applicant has not begun construction of the project to date.

C. Objection to Extension Request

In August 1997 the Coastal Commission received the most recent extension request. Staff reviewed the request and determined there were no changed circumstances affecting the project's consistency with the Coastal Act. Pursuant to Section 13169 of the Commission's regulations notice was given to all property owners within 100' of the property, from a list supplied by the applicant, and all known interested parties of this determination. A written objection to this determination was received on 11/25/97,

(followed by an addendum on 11/30/97) filed by Mr. David Brown, of the Santa Monica Mountains Task Force/Sierra Club, see attached Exhibits 1 & 2.

The objection letter asserted three areas of changed circumstances related to: (1) the inadequacy of water supply; (2) the potential impact of the project on visual resources stemming from (a) park land acquisition in the vicinity since project approval and (b) construction of the Backbone Trail since approval; and (3) new requirements of the Fire Department that would require an additional 100' of vegetation thinning around the development.

Arguments Made in the Objection

Water Availability: The objection asserts that the existing water well at the site may not provide an adequate amount of water to supply domestic and fire protection needs for the proposed project, given the site's location on the crest of a ridge. Further, an extension of the easterly water line along Piuma Road will not be financially feasible, it argues, and thus "adequate public services" will not be provided, as required under Section 30250 (a). Therefore, the inadequacy of water will not "minimize risks to life and property in areas of high geologic, flood and fire hazard", as required under Section 30253 (1).

Inadequate water supply is demonstrated, according to the objection, by the two homes on the adjacent properties to the west and north currently served by wells. Mr. Brown asserts that one home has never had sufficient water flow and the other has limited water, as well. Non-conformance with Sections 30250 (a) and 30253 (1) is cited.

Finally, in his addendum, Mr. Brown inquires as to the 1987 staff report condition requiring the submission of a current hydrology report.

Visual Resources: Mr. Brown asserts that since the project was approved, over 300 acres of park lands within a mile of the subject site have been purchased by the Santa Monica Mountains Conservancy. According to Mr. Brown, these more recently acquired lands have created views of the subject site, from areas not previously accessible to the public, located on Piuma Ridge, a 'highly scenic area' as defined under Section 30251. Further, Mr. Brown argues, the subject site is now visible from the Backbone Trail which passes within half a mile of the site; the land for the Trail was purchased prior to the project's approval but the trail was not actually constructed until after approval.

In his addendum, Mr. Brown also inquires as to the status of the condition requiring the house to be "sandstone rock color".

Fire Hazard Regulations: After the 1993 Malibu Firestorm the Los Angeles County Fire Department increased its brush clearance requirements around structures from a distance of 100 feet to 200 feet. Mr. Brown believes this change in regulations will have

an impact on the area of the site subject to an open space dedication, required as part of the permit, as well as on conformance with Section 30253 (2).

Mr. Brown is also concerned the change in these requirements may alter the project's conformance with the Coastal Act requirements for the minimization of fire hazards, Section 30253 (1), ensuring erosion prevention and geologic stability, Section 30253 (2), and protecting the Significant Watershed resources, 30240 (b).

In his addendum, Mr. Brown further emphasizes the need to review the 200' brush clearance requirement in relation to geologic hazards.

C. Analysis

Water Availability

The Commission analyzed water availability on-site at the time of the original approval in 1987, including for domestic and fire fighting purposes as well as the potential for impact on groundwater levels and water recharge rates. The Commission found the on-site well, which was producing 12-15 gallons a minute, and proposed water tank to be adequate for domestic and fire fighting purposes. Further, staff found the additional 3,000 sq. ft. proposed in the 1992 amendment would be adequately served by the on-site well, given previous flow testing. A hydrology report, developed as a requirement for the previous permit approval, was submitted to address potential groundwater issues.

The subject property is within the Las Virgenes Water District, although not currently served by the District. The nearest water line connections are located between one and one half miles from the subject site at Piuma Road and Cold Creek Road, and Piuma Road and Saddle Peak Road. The Las Virgenes Water District estimate costs to extend a main, the worst case scenario as opposed to a 2" feeder line, to be as high as \$100 per liner foot. Thus, the cost of over \$500,000 to extend water service would indeed be considerable. However, if the property owner is willing and able to assume the financial burden, and meet County Fire and road easement requirements, the Water District would extend service.

More importantly however, is the fact that an adequate well water supply exists on-site. The existing well has been tested as being able to provide 12-15 gallons per minute. Minimum Los Angeles County standards require production at three gallons per minute; thus, the on-site well produces more than four times the required water. No evidence has been provided in the objection, nor has staff analysis disclosed any evidence that contradicts or calls into question the Commission's earlier findings of a flow rate of 12-15 gallons per minute. There is nothing to indicate that the flow rate has changed since 1987.

The neighboring property owners' lack of an adequate well water supply is not relevant to the Bernstein property, as the water well on the subject property has been tested as adequate, and failing that, water service could be extended to the site via the water district. However, in considering the conclusion that water supply is insufficient, the objection merely asserts one neighbor has insufficient water and the other does not have enough flow to serve his needs. There is no actual evidence from the neighbor to support these assertions, nor do these statements in the objection negate the tested flow rates on which the Commission based its original findings.

As to the hydrology report, to which Mr. Brown refers, said report was a recommendation in the 8/25/87 staff report, drafted for the 9/8-11/87 Commission meeting and subsequently postponed until 11/17/87. During the intervening months, staff reviewed the previous report, found the groundwater issues to be adequately addressed and deleted the condition from the staff report.

The fact that an existing, adequately producing well is located on-site, and the property is within the Las Virgenes Water District (should that alternative be necessary or desirable), has not changed since the issue of water availability was reviewed by the Commission prior to the approval of the original Bernstein permit on 11/17/87. As such, there is no "changed circumstances" of an inadequate water supply.

Visual Resources

From the outset of the coastal permitting process for the subject site, the Commission has recognized the highly scenic value of Piuma Ridge, its prominence from and proximity to several scenic highways and trails, and its visibility from Malibu Creek State Park. The potential impact of the current permit, and the three previous permit applications, on public visual resources has been a prime concern of the Commission. The Commission analyzed the visual aspects of each of the proposed projects in detail, as outlined in 1987 for the original permit, 5-87-458 (Bernstein), and again in 1991 for the approval of the permit amendment, 5-87-458A (Bernstein).

In both cases, the Commission found the original project and the subsequent amendment to be consistent with the visual resources protection policy of the Coastal Act, subject to a view protection plan. The viewshed protection plan for the original permit, 5-87-458, (Special Condition No. 4) required: the project be setback at least 25 feet from the ridge top; the exterior to be sandstone color; the roof be composed of materials compatible with the existing character of the site and also color-coordinated to match the existing terrain; and a landscape plan be submitted to ensure all onsite development be screened from Piuma Road.

The amended permit, 5-87-458A, added (which includes the sandstone color requirement noted in Mr. Brown's addendum) the following components to the viewshed protection plan: a) all graded areas to be planted with native drought-resistant plants,

b) all structures shall be painted earth tone colors, c) ancillary structures shall be of consistent colors, d) windows shall be non-glaring and non-reflective, and e) water tanks and satellite dishes shall be screened by landscape (Special Condition No. 1).

In addition, the amended permit required the view protection plan be submitted to the Santa Monica Mountains Conservancy and the L. A. County Department of Parks and Recreation for review and comment concurrently with the Commission staff to ensure adequate viewshed mitigation. All of the above conditions were complied with and the permit was issued on July 9, 1992.

Mr. Brown cites the recently purchased park land surrounding the project and the construction of the Backbone Trail subsequent to the coastal development permit as changed circumstances. A review of the special conditions of approval summarized above demonstrates how the project was modified in order to achieve consistency with the Coastal Act requirements for the protection of visual resources found under Section 30251.

Backbone Trail: At the time of the permit approval, the Commission explicitly recognized in the staff report the importance of the visual resources, and specifically noted the variety of public viewpoint locations (including the Backbone Trail) from which the potential impact was reviewed (8/25/87 staff report for 5-87-458 (Bernstein)):

"Because of the parcel's location on top of a narrow, scenic ridgeline the Commission notes that special attention must be made as to the project's consistency with Section 30251 of the Act, particularly with respect to considering the visual impacts of this project on public views."

"...it was possible for both staff and the agent to agree that the project site would be visible from the following: Pacific Coast Highway near the Civic Center Area, Piuma Road, Malibu Canyon Road, Malibu Creek State Park, the Backbone Trail, Tapia Park, Malibu Bluffs State Park, at various turnouts along two priority designated scenic highways-- Malibu Canyon Road and Piuma Road-- as well as Castro and Saddle Peaks and as far away as the San Fernando Valley."

Clearly, the Commission recognized that the proposed building site was located on a prominent ridgeline and the project would be visible from a number scenic highways, park lands, and the Backbone Trail. In fact, even though the Backbone Trail was not yet constructed, its site location as a future trail was analyzed. Specifically, the Commission found that because the roof line of the proposed residence would extend no higher and behind the canopies of a number of existing oak trees located higher and behind the residence, the proposed residence would not break the ridgeline view as seen from the Backbone Trail.

The Commission explored alternative building sites on the property and found the proposed building site to be the preferred location to minimize visual and

landform alteration impacts. In addition, the Commission found that the proposed project design and location required special conditions would adequately mitigate the visual impacts associated with the proposed project.

Park lands: The Commission acknowledged this project would be visible from an extensive area extending from Pacific Coast Highway to San Fernando Valley, and recognized the surrounding scenic highways, park lands and trails. The Commission performed an extensive visual analysis of the project's potential impact on these visual resources for both the original permit in 1987 and the amendment in 1991. In both cases, the Commission found that through a combination of careful siting, design modifications and landscape screening the project could be mitigated through special conditions so as to conform with Section 30251 of the Coastal Act.

Despite the fact that most of park land acquisitions cited by Mr. Brown occurred prior to the Commission's 1991 action on the permit amendment, the visual analysis which was performed in 1987 and again in 1991 was sufficiently thorough and comprehensive to adequately address the addition of any new park lands in the immediate vicinity. Specifically, the visual analysis looked at the proposed site from the floor of Malibu Canyon, from various turnouts along Piuma Road and Malibu Canyon Road scenic highways, from Tapia and Malibu Creek State Park lands, and from as far away as Pacific Coast Highway, and Castro and Saddle Peaks.

The siting and design of the proposed residence was closely scrutinized in relation to the ridgeline, one of the primary visual concerns due to its prominent visibility. To mitigate this impact, the Commission required through special conditions, the residence be setback 25' from the ridgeline and constructed no higher than the oak canopy to the north of the proposed building site. The Commission further modified the project through landscaping and design conditions to ensure that from any angle, native landscape would soften the visual appearance, the color of the structures would blend into the environment, and there would be no glaring or reflective windows.

The addition of any park land since the 1991 permit approval does in fact constitute a changed circumstance. However, given the Commission's recognition of the significance of the visual resources, the level of visual analysis performed, and the comprehensive set of special conditions imposed to mitigate any potential visual impacts, the addition of new park land does not affect the project's consistency with the Coastal Act.

Therefore, neither the purchase of additional park land since 1987 nor the recent development of the Backbone Trail constitute changed circumstances which would affect the project's consistency with the Coastal Act.

Fire Hazard Regulations

Mr. Brown is concerned the change in brush clearance requirement from 100' to 200' will alter the project's consistency with the Coastal Act requirements for the minimization of fire hazards, Section 30253 (1), erosion prevention and geologic stability requirements, Section 30250 (2), and park and ESHA protection requirements, Section 30240 (b). The Commission acknowledges that Los Angeles County Fire Department brush clearance requirements have changed since permit approval. The revised regulations have increased the brush clearance zone from 100' to 200' (maximum) in extra hazardous areas. The ridge top location of the subject site is considered an extra hazardous area, and would likely require the 200' clearance standard.

The Commission carefully considered the relationship between fire hazards, erosion and Significant Watershed protection (including re-siting the house on alternative locations on the lot) with the understanding that a balance was needed between the inherent conflict of fuel load reduction and erosion control, particularly in a Significant Watershed:

"Because site development will occur in the watershed as well as vegetation clearance to protect the house from fire, the Commission finds that development encroaching into an environmentally sensitive habitat area will have potentially serious adverse impacts in the resources within the watershed, and that therefore, certain special conditions are necessary to ensure that the proposed development will protect these resources and be consistent with section 30240 of the Coastal Act and the certified Land Use Plan." (8/25/87 staff report for 5-87-458 (Bernstein))

In particular, the Commission found the project to be consistent with Section 30253 (2) of the Coastal Act based on three special conditions related to an open space dedication, a landscaping/fuel modification plan and a future improvements restriction. Of particular relevance here is the provision which permits selective thinning of vegetation within a 100' radius of the main structure, found under the open space dedication requirement:

"Vegetation within the Malibu Canyon Significant Watershed within 100' radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. The offer to dedicate shall be subject to the review and approval by the Executive Director."

The intent of the above mentioned conditions is to ensure that thinning due to fire clearance requirements does not increase erosion, geologic instability, or result in adverse impacts to the habitat of the significant watershed. The future improvements deed restriction and open space dedication condition attached to the permit indicate that fuel modification for fire protection purposes is permitted subject to a fuel modification plan which limited clearance to a 100 foot radius around the residence.

The new County Fire Department requirement for a 200 foot radius clearance zone differs in scope from the provisions of the above mentioned special conditions. The increased fuel modification requirements will require that the permit be amended in order to implement this new requirement. Therefore, the change to the fuel modification requirement since the project's approval is a changed circumstance.

However, the Commission finds that the increased fuel modification requirement does not constitute a changed circumstance which would affect the consistency of the project with the Coastal Act. The thinning zone will reduce the overall fuel load but will retain a significant vegetative cover in this area, as the fire/fuel clearance zone will be limited to thinning of vegetation and not clear cutting.

The thinning rather than complete removal of native vegetation helps to retain the natural erosion control properties, such as extensive deep root systems, provided by these species. Similarly, the thinned vegetative cover that is retained within the 200' provides a native habitat transition zone between the grounds immediately surrounding the residence and the significant watershed. Therefore, the additional fire clearance will not result in increased erosion or geologic instability and will not significantly impact the sensitive habitat cover of this site.

In addition, the Commission has recently approved a number of permit applications for residential developments in significant watersheds with the increased fire/fuel clearance areas including: 4-97-087 (Erlandson), 4-97-015 (Sayles), 4-96-172 (Olsen) and 4-96-025 (Jason). In each of these cases, as in this case, the terrain is steep and rugged, and the biotic communities are comprised of mostly coastal sage scrub and chaparral.

The Commission found in these cases that the developments, as conditioned with landscaping and erosion control plans, would not cumulatively or individually result in any adverse impacts to the significant watershed areas and were consistent with the resource and visual protection policies of the Coastal Act. Thus, the Commission has through past permit actions permitted 200' clearance zones within significant watershed areas with similar biotic and physical characteristic as the subject site.

Therefore, although the change in brush clearance requirements is a changed circumstance which will require an amendment to the permit, these brush clearance/thinning requirements do not affect the project's consistency with the Coastal Act.

D. Conclusion

The Commission found, in its approvals of Permit 5-87-458, A1 and Extensions E1-E9, that the proposed project is consistent with Chapter 3 policies of the Coastal Act, and would not prejudice the ability of Los Angeles County to prepare a local coastal program which is consistent with the provisions of the Coastal Act. As discussed above, the objections raised by Mr. Brown's letter do not constitute changed circumstances which would affect the proposed project's consistency with the Coastal Act.

Specifically, the circumstances surrounding water availability, either via the existing well or the extension of a water line, have not changed. Likewise, the potential visual impact of the project from the Backbone Trail presents no changed circumstance, given the previous analysis and mitigation of the issue.

Although the increase in park lands since 1991 does constitute a changed circumstance, given the original scope of review and adequacy of the view protection plan this circumstance does not affect the project's consistency with the Coastal Act. Similarly, the 200' fire clearance regulation does present a changed circumstance. Given the additional 100' clearance zone will be limited only to thinning of native vegetation the habitat and watershed functions of this area will be retained and will not result in any significant adverse impacts to resources or site stability. Therefore, this changed circumstance does not affect the project's consistency with the Coastal Act.

Staff investigation has identified no other possible changed circumstances. There have been no other changes to the proposed project or the project site which would cause the Commission to find the project inconsistent with the Coastal Act. The proposed project is consistent with the Coastal Act and will not prejudice the ability of Los Angeles County to prepare an LCP which is consistent with the Coastal Act.

Accordingly, the Commission finds that there are no changed circumstances present which have occurred since the project's approval that affect the project's consistency with the Coastal Act. Therefore, the Commission grants a one year extension of the coastal development permit.

FROM :

PHONE NO. :

EXHIBIT NO. 1

APPLICATION NO.

5-87-45B-E9

(BERNSTEIN)

M. P. 01

BN

**santa monica mountains
task force/sierra club
angeles chapter**

Box 344 • Woodland Hills, California 91365-0344

November 25

to: Jack Ainsworth or John Ledbetter

from: David M. Brown

re: Appeal of time extension for permit **5-87-45B-E9** and any related amendments, including list of four changed circumstances to justify denying the extension. A map showing new park acquisitions and existing water lines (verified by viewing the Las Virgenes Municipal Water District's water line map) is also enclosed.

We believe that, after the passage of ten years with no development activity on this site, it is in both the public interest and that of ensuring conformity with the requirements of the Coastal Act and the Malibu LUP that the original permit - including the 1991 amendment - be allowed to lapse and a new application be made and reviewed under the changed circumstances noted below.

Sincerely,



David M. Brown
Conservation Chair
Santa Monica Mountains
Task Force

P. S. A clean copy of this submittal will follow by mail.

PERMIT EXTENSION NO. 5-87-458-E9 (BERNSTEIN) - CHANGED CIRCUMSTANCES

(This is a ten-year-old permit for a 4400 sq ft single-family home expanded to 7800 sq ft in 1991. The site is the crest of Pioma Ridge, which forms both the north rim of 1500-1800'-deep Malibu Canyon and the prominent ridgeline that forms the visual backdrop for Malibu Lagoon (Surfrider) State Beach and Pacific Coast Highway in the Civic Center area of Malibu.)

(The site is at 1700' elevation on Pioma Road, a scenic highway in the Malibu LUP, and directly above Malibu Canyon Road, another scenic highway. Today state park land virtually surrounds the site at distances of 1200' to 2100' from the permit site.)

(Though the site is on a paved road, the hearest water line is 4000 linear feet to the north and 1100' below the site in the community of Monte Nido. Following Pioma Road, the nearest water line is approximately 14,600' from the site. A second water line is situated 5800' linear feet and 8500 road feet east of the site at an elevation of 2192'. All lots between these two water lines on Pioma Ridge are lacking in piped-in water.)

CHANGED CIRCUMSTANCES

- 1) At the time of approval of this permit a tract (Dempster, T.T. 44238) was pending before Los Angeles County on a mile-long 200+-acre property. This tract was expected to extend the easterly water main along Pioma Road to within 4000' of the Bernstein property.

The Dempster tract was not approved and the property has been purchased by the Santa Monica Mountains Conservancy for addition to the Malibu Canyon unit of Malibu Creek State Park. No development will be built on this. the largest ownership in the vicinity of the Bernstein property.

It is very possible that, without the Dempster tract, it will not be financially feasible to extend the water main to service the handful of lots along this section of Pioma Road.

Given the location of this project on the crest of a rugged ridge rising over 1500' above the canyon below, there is good reason to believe that a well ~~alone~~ will not provide sufficient water to meet the needs of a 7800 sq ft house, keep a water tank filled, and water in the erosion control landscaping required in Special Condition 1. (a) of the 1987 approval.

The adequacy of the water supply for this house needs to be reviewed in a new hearing to ensure that the ~~proposed~~ water supply for any home built on this site constitutes an "adequate public service" under Section 30250 (a) and minimizes risk to life and property in areas of high geologic ... and fire hazard" as required by Section 30253 (1).

page 2

CHANGED CIRCUMSTANCES, 5-87-458-E9, cont.

- 2) Parcels with two small houses on them border the Bernstein property on the west and the north. The house to the west, a 1200 sq ft home owned by a party named Olney, was approved by the Commission in 1979, using a well for water supply.

According to a recent conversation with David Clark, who owns a small, very unobtrusive home on the north side of Pioma road just north of Bernstein, Olney never had sufficient flow from his well to serve the needs of Olney and his tenant. In fact, according to Clark, Olney "... burned out three transmissions ... " trucking water up to his home,

As for Clark's water supply from his well, he made the following comments about his and his wife's living habits,

- "We don't flush very much; we have a big yard."
- "We could never have a washing machine."
- "I would never live here if I had kids."

This new information about the inadequacy of wells as a source of water for the two modest homes bordering on the Bernstein site needs to be investigated through a reopening of the Bernstein permit to ensure conformity of a future project on this site with Sections 30250 (a) and 30253 (1).

- 3) Since the 1987 Bernstein approval, the Santa Monica Mountains Conservancy has purchased over 300 acres of park lands within a mile of the Bernstein site. These purchases include several existing and potential viewsites offering spectacular views of Malibu Canyon and Lagoon, Santa Monica Bay, Saddle Peak, and the Goat Buttes.

These new parklands provide views of the Bernstein site from directions and locations that were not accessible to the public when the Bernstein application was approved in 1987.

Pioma Ridge certainly qualifies as a "highly scenic area" under Section 30251 of the Coastal Act. It dominates the view from Malibu Lagoon State Beach and Malibu Canyon Road, and it is a prominent and highly visible landform from several scenic highways and from Malibu Creek State Park.

In addition, the State Backbone Trail descends the spectacular west face of Saddle peak north of the subject property, passing within half a mile of the Bernstein site. The land for this major trail was purchased before 1987, but the trail itself was not constructed until after the approval of the Bernstein permit, providing public access to a number of views of the site.

300-plus acres of new park purchases and a major new trail since 1987, all providing views of this highly visible site on this prominent ridgeline in this "highly scenic area", as designated in the Malibu LUP (#9, Malibu Canyon, #11, Pioma Road Crest) certainly constitute "changed circumstances"

CHANGED CIRCUMSTANCES, 5-87-458-E9, cont.

requiring reevaluation of the potential visual impacts of the 1987 approval to ensure conformity with Section 30251.

The 1987 staff report (p. 5) notes that "... in past permit decisions the Commission has required new development to be reduced in size or be redesigned to be no higher than one story high when it has found it necessary to minimize a project's visual impact." Yet this project was approved and subsequently expanded through amendment to a house of 7800 sq ft and a height of 31 feet. Would such a house be approved on a prominent ridgeline in Big Sur? Why was Piuma Ridge treated any differently?

The changed circumstances of an inadequate well water supply with little likelihood of future water main expansion to the site and the purchase of additional parkland and construction of new trails on all sides of the site would seem to dictate a reevaluation of the Commission's original decision not to require this house to be limited to one story and a smaller footprint, as is the case with the Olney and Clark homes.

- 4) The 1987 Coastal Development Permit (p.3) permits selective thinning of native vegetation within 100' of the main structure, but the Los Angeles County Fire Department changed its requirements after the 1993 Topanga-Malibu Fire and now commonly requires clearance or thinning of brush for 200' around structures. This new requirement will impact the open space dedication required in that permit. It will also make it much more difficult to bring the project into conformity with Section 30253 (2).

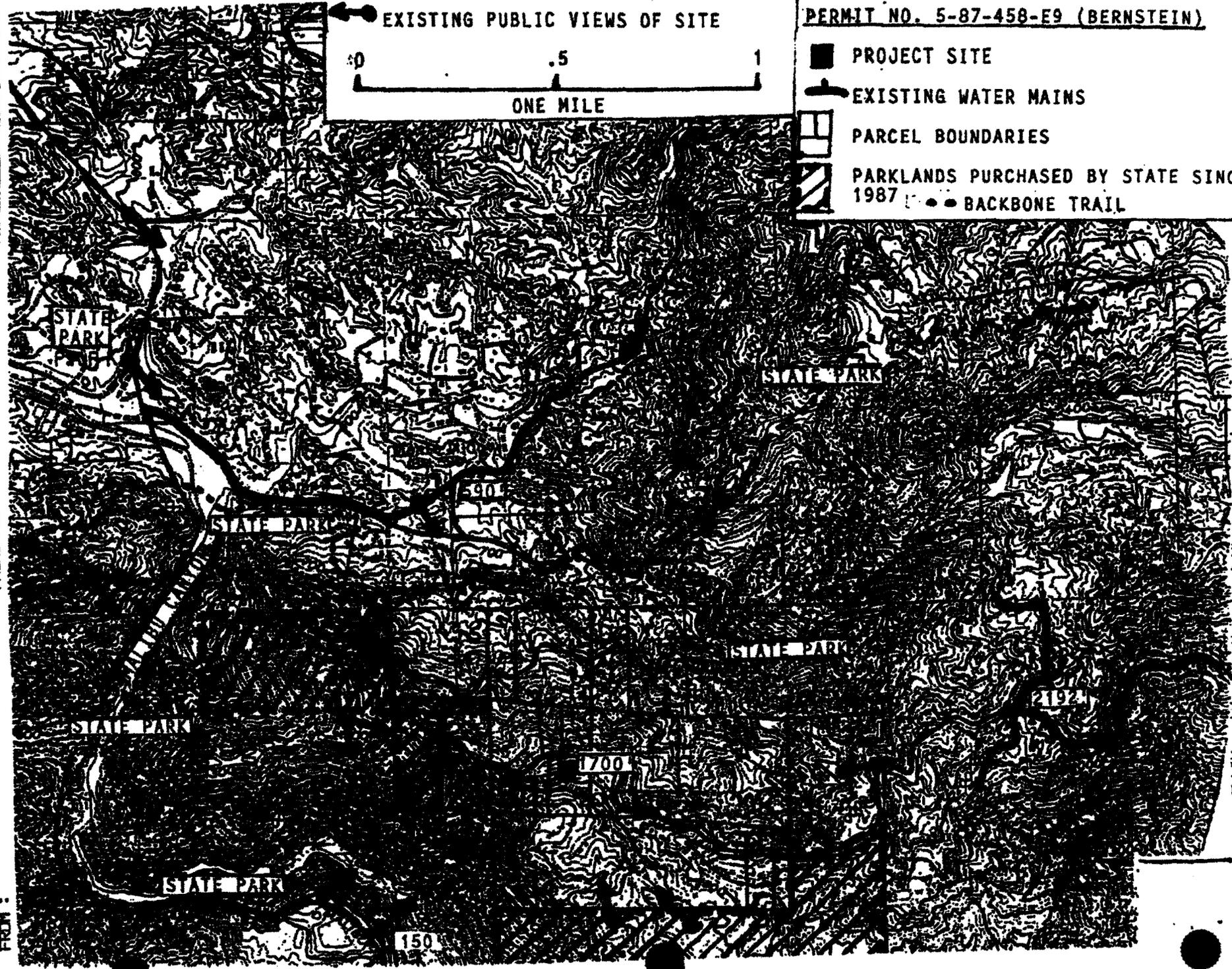
There is every reason to believe the Fire Department would require the maximum brush clearance on this site. It is at the crest of two draws in a steep north-to northeast facing slope that rises 900' in about 2000'. (Brush fires are driven by Santa Ana winds from the northeast that commonly reach gale force with humidity of 1-10% and temperatures up to 100°. According to Chief Don Anthony of the Los Angeles City Fire Department, 40-100 acres of mature coastal chaparral generate the heat of the Hiroshima atomic bomb. Chief Anthony also points out that, under Santa Ana conditions even the greens on a golf course will burn.)

Given the County's new brush clearance requirements and the steep, winding configuration of Piuma Road, which takes escaping residents northeast (into the oncoming fire) which ever direction they flee, 5-87-458 needs to be reexamined to ensure that fire hazard can be minimized in conformity with Section 30253 (1) without creating conflicts with the erosion prevention and geologic stability requirements of Section 30250 (2) and the park and ESHA protection requirements of 30240 (b).

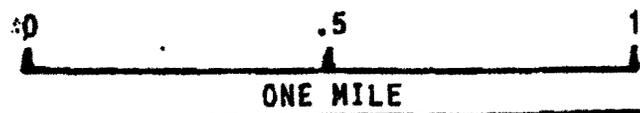
Nov. 26 1997 08:33AM P05

PHONE NO. :

FROM :



EXISTING PUBLIC VIEWS OF SITE



PERMIT NO. 5-87-458-E9 (BERNSTEIN)

-  PROJECT SITE
-  EXISTING WATER MAINS
-  PARCEL BOUNDARIES
-  PARKLANDS PURCHASED BY STATE SINCE 1987
-  BACKBONE TRAIL

STATE PARK

STATE PARK

STATE PARK

STATE PARK

STATE PARK

STATE PARK

150

1700

2192

MOUNTAIN VIEW

**santa monica mountains
task force/sierra club
angeles chapter**

Box 344 • Woodla

EXHIBIT NO. 2

APPLICATION NO.

5-87-458-E9

(BERNSTEIN)

November 30, 1997

to: Jack Ainsworth or John Ledbetter

from: David M. Brown

re: Addendum to appeal of time extension for permit 5-87-458-E9
faxed to Ventura office on 11/25.

Addendum to 5-87-458-E9

- The 1987 staff report notes that a 'hydrology plan' was required as a condition of a previous approval on this site, but was apparently never completed. The 1987 staff report requires submission of a "current hydrology report" as a condition of the new (1987) approval. Given the fact that no water main has been extended any closer to this site in the 20 years I have been aware of permit activity in this area and that the chief development that might have brought about such an extension (Dempster) has been purchased for parkland, shouldn't a "current hydrology report" be required and reviewed in a public hearing before issuing any further permit extensions for 5-87-458-E9? (See p. 9 of 8/25/87 report)

(The 1991 staff report for the additional 3200 square feet makes no mention of the required hydrology report, nor does it evaluate the ability of the well to supply domestic and fire protection water for the added square footage of structure.)

- The 1987 staff report requires that the house be of a "sandstone rock color" "color coordinated to match the existing terrain" (p. 4). These conditions do not appear in the 1991 staff report for the amended square footage or in the Coastal development permit for the amended project issued the following year.

Yesterday I drove Piuma Road with my Sister and Brother-in-law from Milwaukee and my Brother-in-law's mother from Pittsburgh. My guests, who had traveled to many scenic places in their lifetimes, were simply stunned by the spectacular views of mountains, coast, and canyon available from viewsites in the vicinity of this project. Two of these viewsites were from property that was not in public ownership at the time of the 1987 approval, again emphasizing the need to review the design and size of any project approval on this site in light of the changed circumstances of additional park acquisitions in the immediate vicinity of the site.

- The 1987 staff report contains a number of references to geologic hazard areas on this property ("ancient landslide areas", p. 11, "landslide areas" and "restricted area geologic setback", p. 14, and "on site active landslides", p. 19). Geologic conditions need to be reevaluated in light of the Fire department's requirement of 200' of vegetation clearance and the impact of such clearance on slope stability.

CALIFORNIA COASTAL COMMISSION

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

October 2, 1997

**NOTICE OF EXTENSION REQUEST FOR COASTAL
DEVELOPMENT PERMIT**

Notice is hereby given that: **Mrs. Sally Bernstein**

has applied for a one year extension of Permit No: **5-87-458-E9**

granted by the California Coastal Commission on: **October 1, 1997**

for: **construction of a two-story, 7,800 sq. ft. single family residence, 880 sq. ft. detached garage, and water tan, motor court, stable and 3,400 cu. yds. of grading (1,700 cut 1,700 fill).**

at: **24850 Pluma Rd., Malibu (Los Angeles County)**

Pursuant to Section 13169 of the Commission Regulations the Executive Director has determined that there are no changed circumstances affecting the proposed development's consistency with the Coastal Act. The Commission Regulations state that "if no objection is received at the Commission office within ten (10) working days of publishing notice, this determination of consistency shall be conclusive. . . and the Executive Director shall issue the extension." If an objection is received, the extension application shall be reported to the Commission for possible hearing.

Persons wishing to object or having questions concerning this extension application should contact the district office of the Commission at the above address or phone number.

Sincerely,
PETER M. DOUGLAS
Executive Director

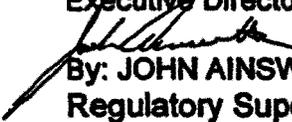

By: JOHN AINSWORTH
Regulatory Supervisor

EXHIBIT NO. 3
APPLICATION NO.
5-87-458E9
(BERNSTEIN)

FILE COPY

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 W. BROADWAY, STE. 380
BOX 1450
LONG BEACH, CA 90802-4416
(310) 590-5071

Page 1 of 5
Date: July 9, 1992
Permit No. 5-87-458



COASTAL DEVELOPMENT PERMIT

On November 17, 1987, the California Coastal Commission granted to

JORDON BERNSTEIN

this permit subject to the attached Standard and Special conditions, for development consisting of:

Construction of a two-story, 7,800 sq. ft. single family residence, 880 sq. ft. detached garage, and water tank, motor court, stable and 3,400 cu. yds. of grading (1,700 cut 1,700 fill).

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

The development is within the coastal zone in Los Angeles County at 24850 Piuma Road, Malibu.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
Executive Director

By: Jordan Bernstein
Title: Malibu Supervisor

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

Date _____

Signature of Perm _____

EXHIBIT NO. 4
APPLICATION NO.
5-87-458E9
(BERNSTEIN)

COASTAL DEVELOPMENT PERMIT

Page 2 of 5
Permit No. 5-87-458

STANDARD CONDITIONS:

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

SPECIAL CONDITIONS:

(1) Applicant's Assumption of Risk/Waiver or Liability

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

(2) Plans Conforming to Geologic Recommendations

All recommendations contained in the Geologic Investigation dated 6/87, by Mountain Geology Inc. shall be incorporated into all final design and construction including grading, septic systems and drainage. All plans must be reviewed and approved by the consultants prior to commencement of development. Prior to the issuance of the amended coastal development permit, the applicant shall submit evidence for the review and approval of the Executive Director of the consultant's review and approval of all final design and construction plans.

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

(3) Open Space Dedication

Prior to transmittal to the permit, the applicant as landowner shall map and record an irrevocable offer to dedicate to a public agency or private association acceptable to the Executive Director an easement for open space and habitat protection. The easement shall be over that portion of the dedicator's real property that lies on the steep, south facing slope of the parcel generally south of the 1695 foot contour within the Malibu Canyon Significant Watershed, as generally depicted on Exhibit 4. The easement shall restrict the applicant or his successor in interest from grading, landscaping, or placement of structure(s) within the easement area.

Vegetation within the Malibu Canyon Significant Watershed within a 100' radius of the main structure; may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. The offer to dedicate shall be subject to the review and approval by the Executive Director. The offer shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.

The offer shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowners. The offer shall be irrevocable for a period of 21 years, such period running from the date of recording.

(4) View Protection Plan

Prior to transmittal of the amended permit, the applicant shall submit a viewshed protection plan which shall incorporate the following:

- (a) The graded building site and all graded areas not covered by the house, garage, patio areas or paved driveway shall be planted and landscaped with native, drought-resistant plants.
- (b) Colors of all structures including fences shall be earth tones to blend with the surrounding landscape.
- (c) Ancillary structures and other appurtenant improvements shall be consistent with the colors and materials of the residence.
- (d) Windows shall be non-glaring and non-reflective.
- (e) On-site water tanks and satellite dishes shall be adequately screened by landscaping.

(5) Landscaping and Fuel Modification

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

- (a) The cut slopes above and below the building pad shall be planted with native vegetation selected for erosion control and fire resistance;
- (b) No grading, irrigation, use of pesticides or herbicides, or herbicides, or landscaping using exotic plant materials shall occur south of the ridgeline, within the Malibu Canyon Significant Watershed easement area described in condition (3) (above).

(6) Future Improvements

Prior to transmittal of permit, applicant shall record a deed restriction, in a form and content acceptable to the Executive Director, which provides that Coastal Development Permit 5-87-458 is for the approved development only, and that any further additions or improvements to the property including clearing of vegetation and grading (except as noted below) will require a new Coastal Development Permit from the Coastal Commission or its successor agency. The deed restriction shall specify that clearance of vegetation up to 30 feet around the residence, and selective thinning of vegetation with a 100' radius of the house, is allowed for fire protection purposes, and will not require a new permit. The deed restriction shall be binding on all successors in interest, heirs and assigns.

(7) Drainage Plan.

Prior to transmittal of the amended permit the applicant shall submit for the review and written approval of the Executive Director, a drainage and runoff control plan. This plan shall document that runoff from the roof, driveway and other impervious surfaces will be collected and appropriately discharged. Runoff shall be directed away from the hillside where appropriate, and any runoff directed over the hillside shall be retained and discharged at a non-erosive velocity and elevation in order to protect the scenic resources and habitat values of the hillsides from degradation by scouring or concentrated runoff.

(8) Septic System

Prior to transmittal of permit, the applicant must submit a plot plan of the site indicating where the seepage pits will be located and verification from a registered geologist that lateral seepage of effluents will not trigger landslides or contaminate area groundwater resources.

(9) Agency Review

Prior to the issuance of the CDP the applicant must submit verification from the Santa Monica Mountains Conservancy and the Los Angeles Dept. of Park and Recreation that the view shed protection plan is adequate.

