

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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Hearing Date: 12/9/99
Commission Action:



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-99-154

APPLICANT: John and Susan Montanaro

AGENT: James Eserts

PROJECT LOCATION: 30718 Pacific Coast Highway, Malibu; Los Angeles County.

PROJECT DESCRIPTION: Demolition of an existing 3,500 sq. ft. single family residence, detached garage, and septic system and the construction of a new 5,741 sq. ft. single family residence with attached garage and a septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck stringline to the mean high tide line and the restoration of an existing dune system located on the subject site.

Lot area:	18,250	sq. ft.
Building coverage:	3,500	sq. ft.
Deck/Patio coverage:	1,500	sq. ft.
Ht. abv. ext. grade:	28 ft.	

LOCAL APPROVALS RECEIVED: Approval in Concept City of Malibu Planning Department, Approval in Concept for City of Malibu Engineering and Geotechnical Review, Approval in Concept City of Malibu Environmental Health Department (Septic).

SUBSTANTIVE FILE DOCUMENTS: Wave Uprush Study by Pacific Engineering Group dated 11/11/98; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 6/9/99; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98; Preliminary Soils and Engineering-Geologic Investigation Report by GeoSystems dated 6/30/94; Dune Restoration Program Addendum by Geo Safety dated 10/7/99; and Dune Restoration Program by Geo Safety dated 3/4/97.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed project with eight (8) special conditions as outlined below and on pages 5-10 of the staff report. The proposed project includes the demolition of an existing 3,500 sq. ft. single family residence, detached garage, and septic system and construction of a new 5,741 sq. ft. single family residence with attached garage and a septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck stringline

continued

summary continued

to the mean high tide line and the restoration of an existing dune system located on the subject site.

The project site is located on an 18,250 sq. ft. beachfront parcel of land on the eastern end of Broad Beach between Pacific Coast Highway and the ocean approximately 100 ft. west of Zuma Beach County Park (Exhibit 1). A vegetated dune system is located along the southern beachfront portion of the subject site which is designated as environmentally sensitive habitat area (ESHA) by the Malibu/Santa Monica Mountains Land Use Plan (LUP).

No shoreline protective device is proposed as part of the development and the applicant's coastal engineering consultant has indicated that no such protection is required. Construction of a shoreline protective device would result in potential adverse effects to coastal processes, shoreline sand supply, and public access. Therefore, Special Condition Eight (8) prohibits the construction of a future shoreline protective device to protect the proposed development.

The proposed project will not result in the removal of dune habitat. However, development adjacent to environmentally sensitive habitat areas, such as the dune system located on site, results in potential adverse effects to those habitat areas. In order to mitigate adverse effects to the dune habitat on site from the proposed development, Special Condition Two (2) requires, in part, that the applicant submit a dune habitat restoration program.

To ensure structural and site stability, Special Condition Four (4) requires the applicant to submit project plans certified by all consulting geotechnical coastal engineering consultants as conforming to all recommendations. Although the proposed development will be designed to ensure stability, the project site is located on a beachfront and will be subject to inherent potential hazards such as storm damage, flooding, and liquefaction. Therefore, Special Condition Eight (8) requires the applicant to acknowledge the potential hazards on the project site and waive any claim of liability against the Commission.

New development along the coast can substantially reduce or block public views of the beach and ocean. In past permit actions, the Commission has required that new residential projects provide for a public view corridor of no less than 20% of the width of the lineal frontage of the subject site to protect public views of the coast. Special Condition Seven (7) requires the applicant to execute and record a deed restriction which provides that no less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor. Special Condition One (1) requires the applicant to submit revised plans showing that all proposed development within the view corridor that would block public views of the coast is deleted.

The occupation of sandy beach area by a structure, such as the proposed development, results in potential adverse effects to shoreline sand supply and public access. The applicant is proposing to dedicate a public lateral access easement from the deck stringline to the mean high tide. To mitigate adverse effects to public access, Special Conditions Seven (7) has been required to ensure implementation of the applicant's proposal. In addition, the Commission notes that chronic unauthorized postings of signs illegally attempting to limit public access have occurred on beachfront private properties in the Malibu and Broad Beach area. Therefore, Special Condition Five (5) has been required to prohibit such signs.

STAFF RECOMMENDATION

The staff recommends that the Commission APPROVE the permit application with special conditions.

MOTION

Staff recommends a YES vote on the following motion:

I move that the Commission approve with special conditions Coastal Development Permit 4-99-154 per the staff recommendation as set forth below.

A majority of the Commissioners present is required to pass the motion.

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

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 term or 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. Revised Plans

Prior to issuance of the coastal development permit, the applicant shall submit revised project plans consistent with Special Condition Seven (7), for the review and approval of the Executive Director, which show that no less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean and that all development located within the public view corridor that will block public views of the beach and ocean is deleted.

2. Landscape, Erosion Control, and Dune Habitat Restoration Plan

Prior to issuance of a coastal development permit, the applicant shall submit a landscaping, erosion control, and dune habitat restoration plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The landscaping, erosion control, and dune habitat restoration program shall be reviewed and approved by the consulting environmental resource specialist that the plans are in conformance with the consultants' recommendations. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

A. Landscaping Plan

- (1) The portion of the subject site that is not sandy beach (or subject to wave action) shall be planted within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation, 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. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (2) Plantings will 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.
- (3) Vegetation within the public view corridor, as consistent with Special Condition Seven (7), shall be limited to low-lying vegetation of no more than 2 ft. in height.
- (4) All existing invasive plant species, including the existing Myoporum and other invasive vegetation located between the proposed residence and Pacific coast Highway, shall be removed.
- (5) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the

Executive Director. No changes to the approved final plan shall occur without a Coastal Commission-approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

B. Dune Habitat Restoration Plan

All invasive and non-native plant species shall be removed from the dune habitat restoration area as delineated on the site plan prepared by James Eserts date-stamped 11/5/99 and included as Exhibit 3. The dune habitat restoration area shall be revegetated with native plant species appropriate to beach dune vegetation communities. The restoration plan shall also clearly delineate a foot path of no more than 3 ft. in width (sand surface only) for beach access through the dune system by the applicant in order to minimize disturbance to the dune system. The plan shall specify the preferable time of year to carry out the restoration and describes the supplemental watering requirements that will be necessary. The plan shall also specify specific performance standards to judge the success of the enhancement effort. The performance standards shall incorporate ground coverage and survival rates typical to dune vegetation habitat areas. The restoration plan shall be consistent with all recommendations contained in the Dune Restoration Program by Geo Safety, Inc. dated 3/4/97, the Dune Restoration Program Addendum by Geo Safety, Inc. dated 10/7/99, Dune Restoration Program Amendment by Geo Safety, Inc. dated 11/14/99, and as shown on the site plan prepared by James Eserts date-stamped 11/5/99 shall be incorporated into the monitoring plan.

C. Monitoring

- (1) The applicant shall submit, for the review and approval of the Executive Director, a five (5) year Landscape, Erosion Control, and Dune Habitat Restoration Monitoring Program, prepared by an environmental resource specialist, which outlines dune restoration performance standards to ensure that restoration efforts, as required by Special Condition Two (2), at the project site are successful. Successful site restoration shall be determined if the revegetation of native plant species on site is adequate to provide 90% coverage by the end of the five (5) year monitoring period and is able to survive without additional outside inputs, such as supplemental irrigation. The monitoring program shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) showing the area of the project site where restoration will occur prior to restoration.
- (2) The applicant shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, evaluating the success or failure of the restoration project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the criteria and performance standards listed in the proposed restoration plan. These reports shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the progress of recovery at each of the sites. During the monitoring period, all artificial inputs shall be

removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the project site. If these inputs are required beyond the first four years, then the monitoring program shall be extended for an equal length of time so that the success and sustainability of the project sites is ensured. Restoration sites shall not be considered successful until they are able to survive without artificial inputs.

- (3) At the end of a five year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental program to compensate for those portions of the original program which were not successful. The revised, or supplemental dune restoration program shall be processed as an amendment to this Coastal Development Permit.

3. Construction Responsibilities and Debris Removal

The applicant shall, by accepting this permit, agree: a) that no stockpiling of dirt or construction materials shall occur on the beach; b) that all grading shall be properly covered and sand bags and/or ditches shall be used to prevent runoff and siltation; and, c) that measures to control erosion must be implemented at the end of each day's work. In addition, no machinery will be allowed in the intertidal zone at any time. The permittee shall remove from the beach area any and all debris that result from the construction period.

4. Geotechnical Recommendations

All recommendations contained in the Wave Uprush Study by Pacific Engineering Group dated 11/11/98; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 6/9/99; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98; Preliminary Soils and Engineering-Geologic Investigation Report by GeoSystems dated 6/30/94; Dune Restoration Program Addendum by Geo Safety dated 10/7/99; and Dune Restoration Program by Geo Safety dated 3/4/97., shall be incorporated into all final design and construction including recommendations concerning foundation, drainage, and septic system plans must be reviewed and approved by the consultants prior to commencement of development. Prior to issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director of the consultants' 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.

5. Sign Restriction

No signs shall be posted on the property subject to this permit which (a) explicitly or implicitly indicate that the portion of the beach on the subject site (Assessor's Parcel Numbers 4469-026-007) located seaward of the residence and deck permitted in this application 4-99-154 is private or (b) contain similar messages that attempt to prohibit public use of this portion of the beach. Signs limiting public access within that portion of the site designated as environmentally sensitive dune habitat buffer, consistent with Special Condition Six (6), may be allowed if a separate coastal development permit is obtained. In no instance shall signs be posted which read "*Private Beach*" or "*Private Property*." In order to effectuate the above prohibitions, the permittee/landowner is required to submit to the Executive Director for review and approval prior to posting the content of any proposed signs.

6. Offer to Dedicate Lateral Public Access and Declaration of Restrictions

In order to implement the applicant's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicant agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the ambulatory mean high tide line landward to the deck stringline as illustrated on the site plan prepared by James Esserts dated August 1999. At all times following recordation of the offer to dedicate provided for herein, development allowed within the lateral public access easement area identified in the offer to dedicate shall be limited to implementation of the dune habitat restoration program required by Special Condition Two (2).

The portion of the lateral access easement located between the approved deck stringline and the seawardmost limit of dune vegetation on the subject site shall be identified as an environmentally sensitive habitat area (ESHA) buffer. Use of the buffer for lateral public access shall be prohibited except at times when no other dry beach area on the property is available for such use. During such times, use of the buffer for public access shall be restricted to pass and repass only. It is recognized that both the mean high tide line and the dune system on the subject site are ambulatory in nature; therefore, the designated ESHA buffer shall be applicable only to the extent to which the buffer is located landward of the line of Mean High Tide.

The document shall be recorded free of prior liens which the Executive Director determines may affect the interest being conveyed, and free of any other encumbrances which may affect said interest. The offer shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording. The recording document shall include legal descriptions of both the applicant's entire parcel(s) and the easement area. This deed restriction shall not be removed or changed without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

7. Public View Corridor

Prior to the issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, which provides that:

- (a) No less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.
- (b) As consistent with Special Condition One, no structures, vegetation, or obstacles which result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted within the public view corridor.
- (c) Fencing within the public view corridor shall be limited to visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials). Fencing shall be limited to no more than 6 ft. in height. All bars, beams, or other non-visually permeable materials used in the construction of any fence shall be no more than 1 inch in thickness/width and shall be placed no less than 12 inches in distance apart. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.
- (d) Vegetation within the public view corridor, as consistent with Special Condition Two, shall be limited to low-lying vegetation of no more than 2 ft. in height.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

8. Assumption of Risk/Shoreline Protection

- A. By acceptance of this permit, the applicant acknowledges and agrees to the following:
- (1) The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
 - (2) The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
 - (3) The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
 - (4) The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
 - (5) No shoreline protective device shall be constructed, now or in the future, for the purpose of protecting the residential development approved pursuant to coastal development permit 4-99-154 including, but not limited to, the residence, foundations, decks, driveways, or the septic system in the event that these structures are threatened with imminent damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future and by acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing to demolish an existing 3,500 sq. ft. single family residence, detached garage, and septic system and construct a new 5,741 sq. ft. single family residence with attached garage and a septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck stringline to the mean high tide line and the restoration of an existing dune system located on the subject site. No shoreline protective device is proposed as part of the development.

The project site is located on an 18,250 sq. ft. beachfront parcel of land on the eastern end of Broad Beach between Pacific Coast Highway and the ocean (Exhibit 1). The area west of the subject site (Broad Beach) is characterized as a built-out portion of Malibu consisting of residential development. Zuma Beach County Park is located approximately 100 ft. to the east of the subject site. A vegetated dune system is located along the southern beachfront portion of the subject site which is designated as environmentally sensitive habitat area (ESHA) by the Malibu/Santa Monica Mountains Land Use Plan (LUP). Access to the project site is from an existing private road located between the proposed development and Pacific Coast Highway. The project site has been previously developed with a 3,500 sq. ft. residence and detached garage which has been constructed on an at-grade slab foundation. The proposed project includes the demolition of all existing development on the subject site and the construction of a new larger residence on a raised friction pile/beam foundation.

The applicant has submitted evidence of review of the proposed project by the California State Lands Commission (CSLC) which indicates that the CSLC presently asserts no claims that the project is located on public tidelands although the CSLC reserves the right to any future assertion of state ownership or public rights should circumstances change.

The Commission notes that the project site has been subject to past Commission action. Coastal Development Permit 4-95-005 was approved by the Commission on March 10, 1995, for the demolition of the existing single family residence and the construction of a new 6,533 sq. ft. single family residence, septic system, and 348 cu. yds. of grading. However, the development approved by Coastal Development Permit 4-95-005 was never carried out and the permit expired on March 10, 1997. In addition, Coastal Development Permit Waiver 4-95-100 was issued in 1995 for the construction of the existing private access road and retaining wall located between the proposed development and Pacific Coast Highway.

B. Shoreline Processes and Seaward Encroachment

Section 30235 of the Coastal Act states:

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

Section 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.

Finally, 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.*

Past Commission review of shoreline residential projects in Malibu has shown that such development results in potential individual and cumulative adverse effects to coastal processes, shoreline sand supply, and public access. Shoreline development, if not properly designed to minimize such adverse effects, may result in encroachment on lands subject to the public trust (thus physically excluding the public); interference with the natural shoreline processes 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's access to and the ability to use public tideland areas. In order to accurately determine what adverse effects to coastal processes will result from the proposed project, it is necessary to analyze the proposed project in relation to characteristics of the project site shoreline, location of the development on the beach, and wave action.

Site Shoreline Characteristics

The proposed project site is located on Broad Beach in the City of Malibu. Broad Beach is characterized as a relatively wide beach which has been developed with

numerous single family residences located to the west of the subject site. A well developed, but disturbed, dune system is located along Broad Beach seaward of the residential development. The Malibu/Los Angeles County Coastline Reconnaissance Study by the United States Army Corp of Engineers dated April 1994 indicates that residential development on Broad Beach is generally protected by the wide nature of the beach and the presence of the existing dune field. However, the report also states that Broad Beach is subject to periodic episodes of beach recession and recovery that expose development along Broad Beach to potential storm damage and flooding from severe storm events. The applicant's coastal engineering consultant has also indicated that Broad Beach is an oscillating (equilibrium) beach which experiences seasonal erosion and recovery. The Wave Uprush Study by Pacific Engineering Group dated 11/11/98 further indicates that the width of the beach changes seasonally and that the subject beach experiences a seasonal foreshore slope movement (oscillation) by as much as 100 ft.

Stringline

As a means of controlling seaward encroachment of residential structures on a beach to ensure maximum public access and minimize wave hazards, as well as minimize adverse effects to coastal processes, shoreline sand supply, and public views, the Commission has, in past permit actions, developed the "stringline" policy. As applied to beachfront development, the stringline limits the seaward extension of a structure to a line drawn between the nearest corners of adjacent structures and limits decks to a similar line drawn between the nearest corners of the adjacent decks. The Commission has applied this policy to numerous past permits involving infill on sandy beaches and has found it to be an effective policy tool in preventing further encroachments onto sandy beaches.

In the case of this project, the dripline of the proposed deck will be located approximately 10 ft. further landward than the seawardmost extent of the existing back yard/lawn area and fence to be demolished which are currently located on the subject site. As such, the Commission notes that the proposed development will be located further landward than the currently existing development on site. Further, the proposed development will be located landward of the appropriate stringline and will not result in the seaward encroachment of residential development on Broad Beach (Exhibit 3). Therefore, the Commission finds that the proposed project will not result in the seaward encroachment of development on Broad Beach and will serve to minimize adverse effects to coastal processes.

Wave Uprush and Mean High Tide Line

The Site Plan prepared by James Esserts dated August 1999 delineates several different surveyed locations of the ambulatory mean high tide line during winter and summer months on the subject site between 1951 and 1998. The surveyed information submitted by the applicant indicates that the most landward measurement of the

ambulatory mean high tide line on the project site occurred in August 1951 when the mean high tide line on site was located approximately 365 ft. seaward of the Pacific Coast Highway right-of-way line. The seaward most extension of the proposed development (the dripline of the proposed deck) will be located 162 ft. seaward of the highway right-of-way line (approximately 203 ft. landward of the August 1951 mean high tide line). Based on the submitted information, the Commission notes that the proposed development will be located landward of the August 1951 mean high tide line and should not extend onto public tidelands under normal conditions.

Although the proposed structure will be located landward of the August 1951 mean high tide line, the Wave Uprush Study prepared by Pacific Engineering Group dated 11/11/98 indicates that the maximum wave uprush at the subject site is expected to occur approximately 189 ft. seaward of the Pacific Coast Highway right-of-way line (approximately 27 ft. seaward of the proposed deck stringline). The Commission notes that although the proposed residence will not be subject to wave uprush under normal tidal conditions, recent winter storms, including the El Nino Event of 1998 resulted in severe erosion of the beach and damage to several residences located in the Broad Beach area. The applicant's engineering consultant has indicated that the proposed residence will be constructed on a friction pile foundation and will not require a shoreline protection device to ensure structural stability in the event that the proposed development is exposed to wave action during storm events. The seaward extent of the septic system and leach field will be located approximately 32 ft. from the Pacific Coast Highway right-of-way line (approximately 157 ft. landward of the maximum wave uprush limit). The applicant's coastal engineering consultant has concluded that since the proposed septic system will be located well landward of the maximum wave uprush limit, no shoreline protection device is required to protect any portion of the proposed system. The Wave Uprush Report dated 11/11/99 states that:

The proposed leach field septic system should be located no farther than 170 feet seaward from the Pacific Coast Highway Right-of-Way Line so as not to require a protective structure such as a bulkhead or revetment. At this location, a protective structure is not required.

The applicant's coastal engineering consultant has made several other recommendations regarding the foundations of the residence, floor slab elevation, and the location of the septic system in order to minimize adverse effects to shoreline sand supply and to ensure the structural stability of the proposed development. To ensure that all recommendations by the coastal engineering consultant have been incorporated into the proposed development, Special Condition Four (4) requires the applicant to submit project plans certified by the consulting coastal engineer and geotechnical engineer as conforming to all recommendations contained in the Wave Uprush Study by Pacific Engineering Group dated 11/11/98; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 6/9/99; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98; and the Preliminary Soils and Engineering-Geologic Investigation Report by

GeoSystems dated 6/30/94 to ensure structural and site stability and that the proposed development will not result in adverse effects to shoreline processes. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. 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.

Future Shoreline Protective Devices

In the case of the proposed project, the applicant does not propose the construction of any shoreline protective device to protect the proposed development. However, as discussed above, areas of Broad Beach have experienced extreme erosion and scour during severe storm events, such as El Nino storms. It is not possible to completely predict what conditions the proposed residence may be subject to in the future. The Commission notes that the construction of a shoreline protective device on the proposed project site would result in potential adverse effects to coastal processes, shoreline sand supply, and public access.

Interference by shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile which results from a reduced beach berm width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on their own property. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. This effects public access again through a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. As set forth in earlier discussion, Broad Beach is currently characterized as a wide oscillating beach. However, the applicant's consultant has also indicated that seasonal foreshore slope movement on the subject site can be as much as 100 ft. The Commission notes that if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. The Commission also notes that many studies performed on both oscillating and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device exists. Fourth, if not sited landward in a location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments, bulkheads, and

seawalls interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

The adverse effects of shoreline protective devices are greater the more frequently that they are subject to wave action. In order to minimize adverse effects from shoreline protective devices, when such devices are found to be necessary to protect existing development, the Commission has required applicants to locate such structures as far landward as is feasible. In addition, since shoreline protective devices are most often required to protect existing septic systems, the Commission has also required applicants to locate septic systems as far landward as feasible [4-97-191 (Kim)]. The Commission has also required the utilization of alternative technologies for sewage disposal such as bottomless sand filter systems because they are able to be designed to occupy less area on the beach and, therefore, be located further landward than a standard system. In the case of the proposed project, the proposed septic system will be of a bottomless sand filter design and will be located as landward as feasible. The Commission notes that the applicant is proposing to construct a large residence that will extend further seaward than a smaller residence would. The applicant's coastal engineering consultant has confirmed that no shoreline protective device is required to protect either the proposed residence (which will be constructed entirely on an engineered friction pile foundation able to withstand wave action) or to protect the septic system (which will be located approximately 157 ft. landward of the maximum wave uprush limit).

In addition, the Commission notes that Section 30235 of the Coastal Act allows for the construction of a shoreline protective device when necessary to protect existing development or to protect a coastal dependent use. The Commission further notes that the approval of a shoreline protective device to protect new residential development, such as the proposed project, would not be required by Section 30235 of the Coastal Act. The construction of a shoreline protective device to protect a new residential development would conflict with Section 30253 of the Coastal Act which states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. In addition, the construction of a shoreline protective device to protect new residential development would also conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms, including sandy beach areas which would be subject to increased erosion from such a device. To ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition Eight (8) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residence, septic system, etc.

Conclusion

The proposed residence will be located landward of the August 1951 mean high tide line and be designed to eliminate the necessity for a shoreline protective device. The septic system for the proposed residence will be located as landward as feasible, will not be subject to wave uprush, or require the construction of a shoreline protective device. Further, the proposed development will be located landward of the appropriate stringline and will not result in the seaward encroachment of residential development on Broad Beach.

In addition, no shoreline protective device is proposed as part of the development. The applicant's coastal engineering consultant has confirmed that no shoreline protective device is required to protect either the proposed residence or the septic system. However, as previously discussed, areas of Broad Beach have experienced extreme erosion and scour during severe storm events, such as El Nino storms. It is not possible to completely predict what conditions the proposed residence may be subject to in the future. As discussed in detail above, the construction of a shoreline protective device to protect new residential development would result in potential adverse effects to coastal processes, shoreline sand supply, and public access and would not be consistent with Sections 30235, 30251, or 30253 of the Coastal Act. Therefore, to ensure that the proposed project is consistent with Sections 30235, 30251, and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition Eight (8) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residence, septic system, driveway, etc. Further, to ensure structural and site stability, Special Condition Four (4) requires the applicant to submit project plans certified by the consulting coastal engineer and geotechnical engineer as conforming to all recommendations contained in the Wave Uprush Study by Pacific Engineering Group dated 11/11/98; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 6/9/99; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98; and the Preliminary Soils and Engineering-Geologic Investigation Report by GeoSystems dated 6/30/94.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Sections 30235, 30251, and 30253.

C. Hazards and Geologic Stability

Section 30253 of the Coastal Act states in pertinent 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 would be located along the Malibu coastline, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Malibu coastline include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Even beachfront properties have been subject to wildfires. Finally, beachfront sites are specifically subject to flooding and erosion from storm waves.

The applicant has submitted a Wave Uprush Study by Pacific Engineering Group dated 11/11/98; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 6/9/99; Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98; and the Preliminary Soils and Engineering-Geologic Investigation Report by GeoSystems dated 6/30/94. The consultants have determined that the proposed development will serve to ensure geologic and structural stability on the subject site. The Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98 concludes that:

It is the finding of this firm that the proposed building...will be safe and that the property will not be affected by any hazard from landslide, settlement or slippage and the completed work will not adversely affect adjacent property...provided our recommendations are followed.

The Wave Uprush Study by Pacific Engineering Group dated 11/11/98; Preliminary Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 6/9/99; Soils and Engineering-Geologic Investigation Update Report by GeoSystems dated 11/2/98; and the Preliminary Soils and Engineering-Geologic Investigation Report by GeoSystems dated 6/30/94 include a number of geotechnical and engineering recommendations to ensure the stability and geotechnical safety of the site. To ensure that the recommendations of the geotechnical and coastal engineering consultants have been incorporated into all proposed development, Special Condition Four (4) requires the applicant to submit project plans certified by both the consulting geotechnical and geologic engineer and the coastal engineering consultant as conforming to all recommendations to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. 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.

As discussed above, the Commission notes that the applicant's engineering consultants have indicated that the proposed development will serve to ensure relative geologic and structural stability on the subject site. However, the Commission also notes that the proposed development is located on a beachfront lot in the City of Malibu and will be subject to some inherent potential hazards. The Commission notes that the Malibu coast has historically been subject to substantial damage as the result of storm and flood occurrences--most recently, and perhaps most dramatically, during the 1998 severe El Nino winter storm season. The subject site is clearly susceptible to flooding and/or wave damage from storm waves, storm surges and high tides. Past occurrences have caused property damage resulting in public costs through emergency responses and low-interest, publicly-subsidized reconstruction loans in the millions of dollars in Malibu area alone from last year's storms.

In the winter of 1977-1978, storm-triggered mudslides and landslides caused extensive damage along the Malibu coast. According to the National Research Council, damage to Malibu beaches, seawalls, and other structures during that season caused damages of as much as almost \$5 million to private property alone.

The El Nino storms recorded in 1982-1983 caused high tides of over 7 feet, which were combined with storm waves of up to 15 feet. These storms caused over \$12.8 million to structures in Los Angeles County, many located in Malibu. The severity of the 1982-1983 El Nino storm events are often used to illustrate the extreme storm event potential of the California, and in particular, Malibu coast. The 1998 El Nino storms also resulted in widespread damage to residences, public facilities and infrastructure along the Malibu Coast.

Thus, ample evidence exists that all beachfront development in the Malibu area is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. The proposed development will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future. The Coastal Act recognizes that development, even as designed and constructed to incorporate all recommendations of the consulting coastal engineer, may still involve the taking of some risk. When development in areas of identified hazards is proposed, the Commission considers the hazard associated with the project site and the potential cost to the public, as well as the individual's right to use the subject property.

The Commission finds that due to the possibility of liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire, the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted

development. The applicant's assumption of risk, as required by Special Condition Eight (8), when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the proposed development.

In addition, the Commission notes that the proposed development includes the demolition of an existing residence and detached garage and the construction of a new larger residence. The Commission further notes that construction/demolition activity on a sandy beach, such as the proposed project, will result in the potential generation of debris and or presence of equipment and materials that could be subject to tidal action. The presence of construction equipment, building materials, and excavated materials on the subject site could pose hazards to beachgoers or swimmers if construction site materials were discharged into the marine environment or left inappropriately/unsafely exposed on the project site. In addition, such discharge to the marine environment would result in adverse effects to offshore habitat from increased turbidity caused by erosion and siltation of coastal waters. To ensure that adverse effects to the marine environment are minimized, Special Condition Three (3), requires the applicant to ensure that stockpiling of construction materials shall not occur on the beach, that no machinery will be allowed in the intertidal zone at any time, all debris resulting from the construction period is promptly removed from the sandy beach area, all grading shall be properly covered, and that sand bags and/or ditches shall be used to prevent runoff and siltation.

Therefore, the Commission finds, for the reasons set forth above, that the proposed development, as conditioned, is consistent with Section 30253 of the Coastal Act.

D. Public Access

The Coastal Act mandates the provision of maximum public access and recreational opportunities along the coast. The Coastal Act contains several policies which address the issues of public access and recreation along the coast.

Coastal Act Section 30210 states that:

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.

Coastal Act Section 30211 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.

Coastal Act Section 30212(a) provides that in new shoreline development projects, access to the shoreline and along the coast shall be provided except in specified circumstances, where:

(1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30220 of the Coastal Act states that:

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

Coastal Act sections 30210 and 30211 mandate that maximum public access and recreational opportunities be provided and that development not interfere with the public's right to access the coast. Likewise, section 30212 of the Coastal Act requires that adequate public access to the sea be provided to allow use of dry sand and rocky coastal beaches.

All projects requiring a coastal development permit must be reviewed for compliance with the public access and recreation provisions of Chapter 3 of the Coastal Act. Based on the access, recreation and development sections of the Coastal Act, the Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline.

The major access issue in this permit application is the occupation of sandy beach area by a structure and potential effects on shoreline sand supply and public access in contradiction of Coastal Act policies 30211 and 30221. The subject site is located on Broad Beach, approximately 100 ft. west (upcoast) of the nearest public beach (Zuma Beach County Park) and approximately ½ mile to the east (downcoast) of an existing public vertical accessway. The Commission notes that Zuma Beach County Park is the most heavily used beach in the Malibu area. The Commission further notes that many beachgoers who access the beach from Zuma Beach County Park, or the public vertical accessways along Broad Beach, often walk along the shoreline between Lechuza Point (located approximately 1 mile upcoast from the project site) and Point Dume (located approximately 3 miles downcoast from the project site) including the southern beachfront portion of the subject site.

The State owns tidelands, which are those lands located seaward of the mean high tide line as it exists from time to time. By virtue of its admission into the Union, California became the owner of all tidelands and all lands lying beneath inland navigable waters. These lands are held in the State's sovereign capacity and are subject to the common law public trust. The public trust doctrine restricts uses of sovereign lands to public trust purposes, such as navigation, fisheries, commerce, public access, water oriented recreation, open space, and environmental protection. The public trust doctrine also severely limits the ability of the State to alienate these sovereign lands into private ownership and use free of the public trust. Consequently, the Commission must avoid decisions that improperly compromise public ownership and use of sovereign tidelands.

Where development is proposed that may impair public use and ownership of tidelands, the Commission must consider where the development will be located in relation to tidelands. The legal boundary between public tidelands and private uplands is relation to the ordinary high water mark. In California, where the shoreline has not been affected by fill or artificial accretion, the ordinary high water mark of tidelands is determined by locating the existing "mean high tide line." The mean high tide line is the intersection of the elevation of mean high tide with the shore profile. Where the shore is composed of sandy beach whose profile changes as a result of wave action, the location at which the elevation of mean high tide line intersects the shore is subject to change. The result is that the mean high tide line (and therefore the boundary) is an "ambulatory" or moving line that moves seaward through the process known as accretion and landward through the process known as erosion.

Consequently, the position of the mean high tide line fluctuates seasonally as high wave energy (usually but not necessarily) in the winter months causes the mean high tide line to move landward through erosion, and as milder wave conditions (generally associated with the summer) cause the mean high tide line to move seaward through accretion. In addition to ordinary seasonal changes, the location of the mean high tide line is affected by long term changes such as sea level rise and diminution of sand supply.

The Commission must consider a project's direct and indirect effect on public tidelands. To protect public tidelands when beachfront development is proposed, the Commission must consider (1) whether the development or some portion of it will encroach on public tidelands (i.e., will the development be located below the mean high tide line as it may exist at some point throughout the year) and (2) if not located on tidelands, whether the development will indirectly affect tidelands by causing physical impacts to tidelands. In the case of the proposed project, the State Lands Commission presently does not assert a claim that the project intrudes onto sovereign lands.

Even structures located above the mean high tide line, however, may have an adverse effect on shoreline processes as wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately to the extent and

availability of tidelands. That is why the Commission also must consider whether a project will have indirect effects on public ownership and public use of shorelands. The applicants seek Commission approval of a new beachfront residence supported on friction pile foundation. As previously discussed in detail, although the proposed project will not include the construction of any shoreline protection device, the direct occupation of sandy area by the proposed residence, will result in potential adverse effects to public access along the sandy beach.

Although no shoreline protective device is proposed as part of this project, the Commission notes that interference by a shoreline protective device has a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile, which results from reduced beach width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area of public property available for public use. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. The effect of this on the public is again a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they eventually affect the profile of a public beach. Fourth, if not sited landward in a location that insures that the revetment is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave' energy. Finally, revetments and bulkheads interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

As previously discussed in detail, the applicant's coastal engineering consultant has indicated that no shoreline protective device is required to protect either the proposed residence (which will be constructed on a friction pile foundation) or the septic system (which will be located landward of the maximum wave uprush limit). Therefore, to ensure that the proposed project does not result in future adverse effects to public access, Special Condition Eight (8) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residence, garage/guesthouse, septic system, driveway, etc.

In addition, the Commission must also consider whether a project affects any public right to use shorelands that exist independently of the public's ownership of tidelands.

In addition to a new development's effects on tidelands and on public rights protected by the common law public trust doctrine, the Commission must consider whether the project will affect a public right to use beachfront property, independent of who owns the underlying land on which the public use takes place. Generally, there are three additional types of public uses identified as: (1) the public's recreational rights in navigable waters guaranteed to the public under the California Constitution and state common law, (2) any rights that the public might have acquired under the doctrine of implied dedication based on continuous public use over a five-year period; and (3) any additional rights that the public might have acquired through public purchase or offers to dedicate.

These use rights are implicated as the public walks the wet or dry sandy beach below the mean high tide plane. This area of use, in turn moves across the face of the beach as the beach changes in depth on a daily basis. The free movement of sand on the beach is an integral part of this process, and it is here that the effects of structures are of concern.

The beaches of Malibu are extensively used by visitors of both local and regional origin and most planning studies indicate that attendance of recreational sites will continue to increase significantly over the coming years. The public has a right to use the shoreline under the public trust doctrine, the California Constitution and California common law. The Commission must protect those public rights by assuring that any proposed shoreline development does not interfere with or will only minimally interfere with those rights. In the case of the proposed project, the potential for the permanent loss of sandy beach as a result of the change in the beach profile or steepening from potential scour effects, as well as the presence of a residential structure out over the sandy beach does exist.

In past permit actions, the Commission has required that all new development on a beach, including new single family residences, provide for lateral public access along the beach in order to minimize any adverse effects to public access. In order to conclude with absolute certainty what adverse effects would result from the proposed project in relation to shoreline processes, a historical shoreline analysis based on site-specific studies would be necessary. Although this level of analysis has not been submitted by the applicant, the Commission notes that because the applicant has proposed as part of the project an offer to dedicate a lateral public access easement along the entire southern portion of the lot, as measured from the dripline of the proposed deck, it has not been necessary for Commission staff to engage in an extensive analysis as to whether the imposition of an offer to dedicate would be required here absent the applicant's proposal. As such, Special Condition Six (6) has been required in order to ensure that the applicant's offer to dedicate a lateral public access easement is transmitted prior to the issuance of the coastal development permit.

The Commission notes that new residential development, fences, walls, and landscaping, in addition to use of the road shoulder for residential parking, results in potential adverse effects to public beach access when such development is located along the shoulder of Pacific Coast Highway in a manner which precludes a pedestrian's ability to utilize the road shoulder where no sidewalk is located. In order to eliminate. In addition, in past permit actions regarding new residential development along Pacific Coast Highway, the Commission has required that the applicant construct sidewalk improvements in order to eliminate such adverse effects to public access in coastal areas. In the case of the proposed project, the Commission notes that the proposed development will be located on the seaward side of an existing private access road located south of Pacific Coast Highway and that no part of the proposed development will encroach into highway road easement. In addition, the Commission further notes that the subject site is located along a semi-rural stretch of Pacific Coast and where there is ample open area for pedestrian use of the existing road shoulder. As such, the Commission notes that in this case, the proposed development will not result in any adverse effects to public pedestrian access along Pacific Coast Highway and that a condition requiring the applicant to construct sidewalk improvements on the subject site is not required.

In addition, the Commission notes that chronic unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties in the Malibu area. These signs have an adverse effect on the ability of the public to access public trust lands. In fact, staff notes that more conflicts between private property owners and public beachgoers have been documented along Broad Beach than along any other beach in the Malibu area and that a "Private Beach Patrol" has been used by the Broad Beach Homeowner's Association in past years to patrol Broad Beach and enforce a "No Trespassing" policy. Staff have received numerous complaints, particularly during summer months, from beachgoers who have stated that private residents, or the Beach Patrol, have inhibited public access along Broadbeach. The Commission has determined, therefore, that to ensure that applicants clearly understand that such postings are not permitted without a separate coastal development permit, it is necessary to impose Special Condition Five (5) to ensure that similar signs are not posted on or near the proposed project site. Signs limiting public access within that portion of the site designated as environmentally sensitive dune habitat buffer, consistent with Special Condition Six (6), may be allowed if a separate coastal development permit is obtained. The Commission finds that if implemented, Special Condition Five (5) will protect the public's right of access to the sandy beach below the MHTL.

For all of these reasons, therefore, the Commission finds that as conditioned, the proposed project is consistent with Sections 30210, 30211, 30212, and 30220 of the Coastal Act.

E. Environmentally Sensitive Resources

Section 30240 states:

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

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

Section 30240 of the Coastal Act states that environmentally sensitive habitat areas (ESHAs) must be protected against disruption of habitat values. To assist in the determination of whether a project is consistent with section 30240 of the Coastal Act, the Commission has, in past coastal development permit actions for new development in the Malibu area, looked to the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. The Malibu LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. For instance, Policy 72 of the LUP provides that when new development is proposed adjacent to an environmentally sensitive habitat area, then open space or conservation easements shall be required in order to protect resources within the ESHA. In addition, Policy 104 of the LUP provides that restoration of damage to habitat(s) shall be required as a condition of permit approval. Further, Policy 109 of the LUP provides that for all new development on Broad Beach, vegetation disturbance, including recreation or foot traffic on vegetated dunes, should be minimized and where access through the dunes is necessary then well-defined footpaths shall be developed and used.

A vegetated dune system, designated as environmentally sensitive habitat area (ESHA) by the Malibu/Santa Monica Mountains Land Use Plan (LUP), is located along the southern beachfront portion of the subject site. Although the dune system on the subject site has been highly disturbed from past residential development, in past permit actions, the Commission has found that Broad Beach is unique in that it is the only area along the Malibu coastline where a system of vegetated sand dunes is found. Native plant species found on the subject site which are characteristic of dune habitat include: Silver beach bur (*Ambrosia chamissonis*), Pink sand verbena (*Abronia umbellata*), Beach salt bush (*Atriplex leucophylla*), and Beach evening primrose (*Camissonia cheiranthifolia*). The Commission further notes that the Broad Beach dunes have been classified as "Southern Foredunes" in the Holland community classification system by the California Department of Fish and Game and that such dune communities are listed as "very threatened" by the State of California.

The Commission notes that the existing dune system on the subject site is highly degraded and has been partially colonized by invasive plant species (primarily ice plant)

as a result of past residential development along Broad Beach. The proposed project includes the demolition of an existing single family residence and associated landscaping and the construction of a new residence in the same general location on the subject site. All new development will be located in the previously disturbed portion of the subject site and will not result in the removal of any existing dune vegetation habitat. However, in past permit actions, the Commission has found that new development located immediately adjacent to environmentally sensitive habitat areas, such as the dune system located along Broad Beach, results in potential adverse effects to those habitat areas. Specifically, the Commission has found that residential development on Broad Beach results in adverse effects to the existing dune system from increased erosion from foot traffic to the beach through the dune system by homeowners, septic effluent, introduction of non-native and invasive plant species used for landscaping, disturbance to wildlife, and loss of plant and animal habitat. Therefore, in order to mitigate any adverse effects to the dune vegetation habitat that result from the proposed development, Special Condition Two (2) requires, in part, that the applicant submit a dune habitat restoration program that would provide for the removal of all invasive and non-native plant species from the existing dune system on site and revegetate with native plant species appropriate for dune habitat. Special Condition Two (2) also requires the applicant to submit, on an annual basis for a period of five years (no later than December 31st each year), a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, indicating the success or failure of the restoration project. At the end of a five year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental program to compensate for those portions of the original program which were not successful. The revised, or supplemental dune restoration program shall be processed as an amendment to this Coastal Development Permit.

In addition, the Commission notes that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Direct adverse effects from such landscaping result from the direct occupation or displacement of native plant community habitat by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant species habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area and the adjacent environmentally sensitive dune habitat, Special Condition Number Two (2) also requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used. Special Condition Two (2) also requires that

the existing invasive plant species located on the project site (including the invasive *Myoporum* located between the existing access road and Pacific Coast Highway) be removed.

Therefore, for the reasons discussed above, the Commission finds that the proposed amendment, as conditioned, is consistent with Section 30240 of the Coastal Act.

F. 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 subordinated to the character of its setting.

Coastal Act Section 30251 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. In addition, to assist in the determination of whether a project is consistent with Section 30251 of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. The LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. For instance, in concert with Section 30251 of the Coastal Act, Policy 138 of the LUP provides that "buildings located on the ocean side of and fronting Pacific Coast Highway shall occupy no more than 80% of the lineal frontage of the site." Policy 141 of the LUP provides that "fencing or walls to be erected on the property shall be designed and constructed to allow for view retention from scenic roadways."

The project site is located on Broad Beach, a built-out area of Malibu primarily consisting of residential development. The Commission notes that the visual quality of the Broad Beach area in relation to public views from Pacific Coast Highway have been significantly degraded from past residential development. Pacific Coast Highway is a major coastal access route, not only utilized by local residents, but also heavily used by tourists and visitors to access several public beaches located in the surrounding area which are only accessible from Pacific Coast Highway. Public views of the beach and water from Pacific Coast Highway have been substantially reduced, or completely blocked, in many areas by the construction of single family residences, privacy walls, fencing, landscaping, and other residential related development between Pacific Coast

Highway and the ocean. Specifically, the Commission notes that when residential structures are located immediately adjacent to each other, or when large individual residential structures are constructed across several contiguous lots, such development creates a wall-like effect when viewed from Pacific Coast Highway. This type of development limits the public's ability to view the coast or ocean to only those few parcels which have not yet been developed. The Commission notes that the construction of individual beachfront residences, when viewed on a regional basis, results in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

The subject site has been previously developed with an existing residential structure, privacy wall, and landscaping which blocks public views of the coastline from Pacific Coast Highway. The proposed project will include the demolition of all existing development on the subject site and the construction of a new larger single family residence. As stated above, Coastal Act Section 30251 requires that new development be sited and designed to protect views to and along the ocean and scenic coastal areas and, where feasible, to restore and enhance visual quality in visually degraded areas. The Commission notes that the demolition of existing development and the construction of new residential development on the same parcel provides for the opportunity to enhance public views, where such views have been significantly degraded by past development, through the creation and maintenance of public view corridors, consistent with Section 30251 of the Coastal Act. In addition, Policy 138 of the LUP, as consistent with Section 30251 of the Coastal Act, provides that new development on a beachfront property located on the seaward side of Pacific Coast Highway, such as the subject site, should reserve 20% of the linear frontage of the lot as visually open area to provide and maintain adequate public coastal views. Further, in past permit actions, in order to protect public views of the ocean from public viewing areas and to enhance visual quality along the coast, the Commission has required that new residential projects, such as the proposed project, be designed to provide for a public view corridor of no less than 20% of the width of the lineal frontage of the subject site to provide for views of the beach and ocean from Pacific Coast Highway [Saban (4-99-146), Broad (4-99-185)].

In the case of the proposed project, the Commission notes that the subject site is 50 ft. in width and that a public view corridor of no less than 20% of the width of the site's lineal frontage would be 10 ft. in width. Although the public view corridor on the subject site would be relatively small, Staff notes that coastal development permit applications have recently been submitted for the construction of three other new single family residences on neighboring parcels immediately east and west of the subject site. As such, the Commission notes that the provision of even a 10 ft. wide view corridor on the subject site, when viewed on a cumulative basis, will serve to enhance public views of the coast. Thus, it is critical that an adverse precedent is not established by the subject proposal and that adverse effects to coastal views from public viewing areas, such as Pacific Coast Highway, are minimized.

The applicant is not proposing to include a public view corridor as part of this project. However, the Commission notes that the project plans, as proposed, provide for a 5 ft. setback from either side of the lot for the proposed residence and that such setbacks would be sufficient to provide for an adequate public view corridor (10 ft. in width) provided that any ancillary development located within the setback areas does not obstruct public views from Pacific Coast Highway. Approximately 120 sq. ft. of the proposed deck will be located within the setback area/potential public view corridor. However, the Commission notes that the proposed deck will be constructed at a sufficiently low elevation below Pacific Coast Highway so that the portion of the deck located within the setback area/potential public view corridor will not result in the loss of any public views of the beach, dune system, or ocean. However, the proposed development also includes the construction of two 34.5 ft. high chimneys on the eastern side of the residence which will extend approximately 2 ft. into the setback area/potential public view corridor. The Commission notes that the proposed chimneys, unlike the low-lying deck, would reduce public views of the beach and ocean from Pacific Coast Highway within the setback area and lessen the intent of Policy 138 of the LUP and with past Commission action regarding the provision of a public view corridor for new development on the beach. The Commission further notes that the proposed outcropping chimneys could easily be recessed into the proposed structure in order to eliminate adverse effects to public views. Therefore, in order to ensure that adverse effects to public views of the ocean from the highway are minimized, Special Condition One (1) requires the applicant to submit revised project plans which show that no less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean and that all development located within the public view corridor that will block public views of the beach and ocean is deleted. The Commission notes that Special Condition One will allow the applicant to either (1) construct the project as proposed, with the exception that the two chimneys located on the eastern side of the residence would be deleted or reconfigured to eliminate adverse effects to public views, or (2) reconfigure the proposed development to provide for a 10 ft. wide public view corridor at another location on the subject site.

An existing approximately 3 ft. high concrete retaining wall is located between Pacific Coast Highway and the existing private access road/driveway. Coastal Development Permit Waiver 4-95-100 was issued by the Commission in 1995 for the construction of the concrete retaining wall and private access road/driveway. The Commission notes that although a portion of the existing retaining wall is located within the view corridor, due to the low elevation of the retaining wall in relation to Pacific Coast Highway, the existing wall will not block public views of the beach, dune system, or ocean from Pacific Coast Highway. However, the Commission also notes that landscaping was planted between the low-lying retaining wall and Pacific Coast Highway after the wall was constructed. The landscaping, approximately 12-15 ft. in height, consists of bushy non-native and invasive plant species (including *Myoporum*) which serve to completely obscure any public view of the beach or ocean from Pacific Coast Highway. The Commission notes that retention of the existing invasive vegetation located between the

proposed development and Pacific Coast Highway would diminish the public's ability to utilize the public view corridor to view the ocean and beach and would not be consistent with either Policy 138 of the LUP or with past Commission action regarding the provision of a public view corridor for new development on beachfront lots. Therefore Special Condition Two (2) requires the applicant to submit a landscaping plan, consistent with Special Condition Seven (7), which would provide for the removal of all non-native and invasive plant species between the private access road and Pacific Coast Highway (including all Myoporum) and ensure that all landscaping within the public view corridor is low-lying in nature (no more than 2 ft. in height) to ensure that adverse effects to public views of the ocean from the highway are minimized.

Further, to ensure that public coastal views will be protected, Special Condition Seven (7) requires the applicant to execute and record a deed restriction which provides that no less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor. Development within the public view corridor shall be limited to fencing of visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials). Vegetation and landscaping within the public view corridor, as consistent with Special Condition Two (2), shall be limited to low-lying vegetation of no more than 2 ft. in height. In addition, Special Condition Two (2), has been required to ensure that the applicant submit a landscaping plan which limits vegetation within the public view corridor to low-lying vegetation of no more than 2 ft. in height in order to preserve public coastal views.

Therefore, the Commission finds that the proposed project, as conditioned above, is consistent with Section 30251 of the Coastal Act.

G. Septic System

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.

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.

The applicant proposes to install a new septic system which includes a 2,000 gallon septic tank and a leachfield which will be located no further than 18 ft. seaward of the

Pacific Coast Highway right-of-way line. In order to reduce the size of the required leachfield for the proposed septic system and to allow the system to be located as far landward as possible, the applicant is proposing to install a bottomless sand filter septic system which is designed to produce treated effluent with reduced levels of organics, biochemical oxygen demand (BOD) and total suspended solids (TSS) while occupying only 50 percent of the area required for a conventional septic system and leachfield. As proposed, the septic system will be located as landward as possible.

The applicant has submitted approval from the City of Malibu Environmental Health Department stating that the proposed septic system is in conformance with the minimum requirements of the City of Malibu Uniform Plumbing Code. The City of Malibu's minimum health code standards for septic systems have been found protective of coastal resources and take into consideration the percolation capacity of soils along the coastline, the depth to groundwater, etc. Therefore, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

H. 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).

I. 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/regular/4-99-154 Montanaro report

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SCALE 1" = 100'

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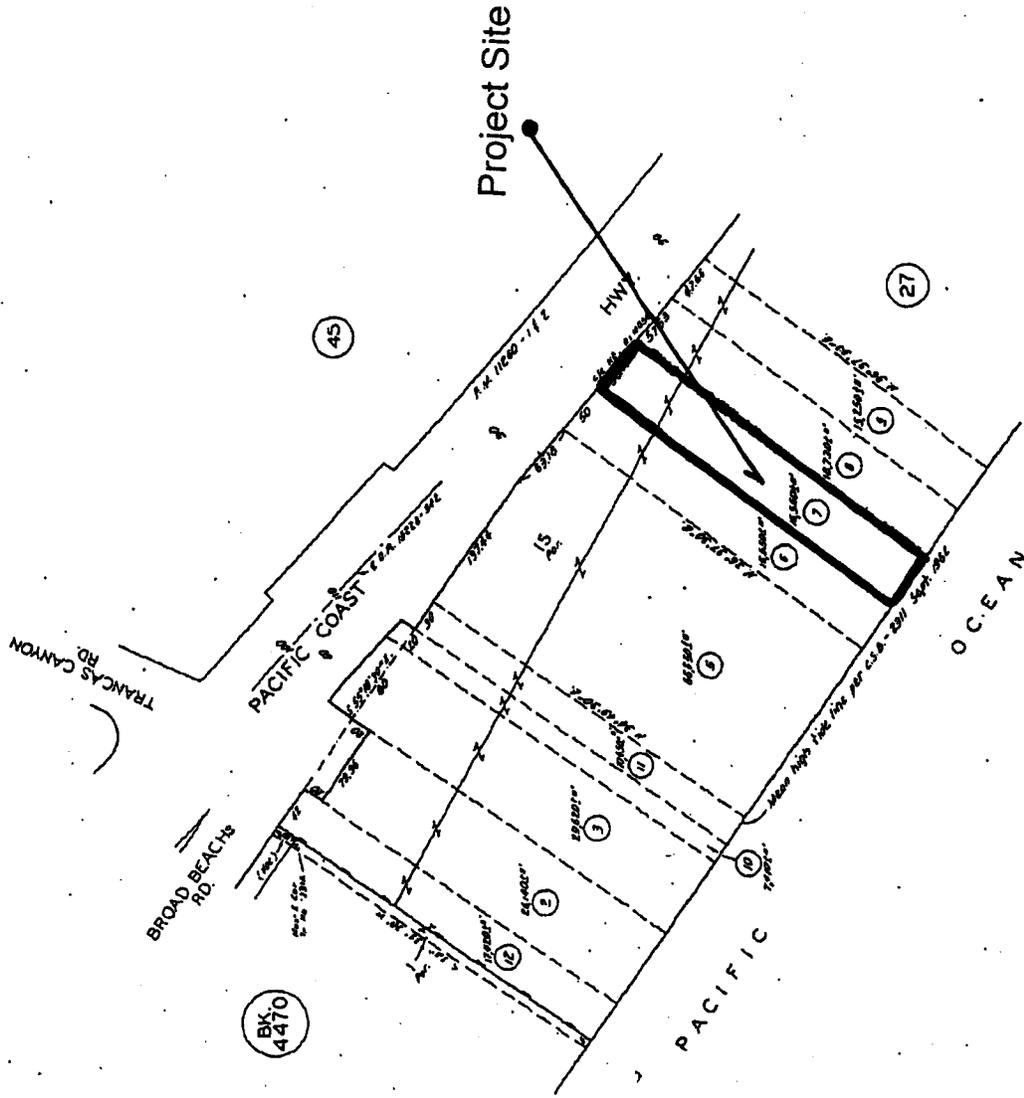


EXHIBIT 2
CDP 4-99-154 (Montanaro)
Parcel Map



SITE PLAN

EXHIBIT 3

CDP 4-99-154 (Montanaro)

Site Plan

