

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST AREA  
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Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NO.:** 4-99-146

**APPLICANT:** Haim Saban, Trustee of Alpha Family Trust

**AGENTS:** Barsocchini & Associates

**PROJECT LOCATION:** 22360 and 22368 Pacific Coast Highway, Malibu; Los Angeles County.

**PROJECT DESCRIPTION:** Demolish an existing 5,755 sq. ft. single family residence and concrete bulkhead/retaining walls and construct a new 10,930 sq. ft., 28 ft. high, single family residence, a 1,150 sq. ft attached garage, a pool/spa, deck and a new septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the lot as measured from the dripline of the proposed deck to the mean high tide line and the construction of a 6 ft. wide public sidewalk between Pacific Coast Highway and the proposed development.

Lot area:	16,698	sq. ft.
Building coverage:	6,055	sq. ft.
Deck coverage:	6,800	sq. ft.
Ht. abv. ext. grade:	30	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:** Geotechnical Engineering Report by RJR Engineering Group dated 9/26/98; Geotechnical Engineering Response Letter by RJR Engineering Group dated 8/9/99; Wave Uprush Study by Pacific Engineering Group dated 8/5/98; and Wave Uprush Study Response Letter by Pacific Engineering Group dated 8/16/99.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends approval of the proposed project with ten (10) special conditions as outlined below and on pages 5-8 of the staff report. The project site is located on three separate beachfront parcels of land on Carbon Beach between Pacific Coast Highway and the ocean. The proposed project will include the demolition of an existing 5,755 sq. ft. residence located on one lot and the construction of a new larger 12,080 sq. ft. residential structure that will extend across all three lots. No shoreline protective device is proposed as part of the proposed development. A public vertical accessway is located less than ½ mile west (upcoast) of the project site and several existing and potential lateral public access easements are located on neighboring lots near the project site. A public lateral access easement, as measured 25 ft. landward of the mean high tide line, is located on the subject site.

An existing bulkhead and retaining wall are located on the project site. Shoreline protective devices can result in a number of adverse effects to the dynamic shoreline system. The applicant's coastal engineering consultant has indicated that no shoreline protective device is required to protect either the proposed residence or the septic system. In order to minimize adverse effects to coastal processes, Special Condition Five (5) has been required to ensure that the applicant's proposal to remove the existing bulkhead/retaining walls is carried out. In addition, to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition Ten (10) prohibits the construction of a future shoreline protective device to protect the proposed development.

The applicant's coastal engineering consultant has indicated that the proposed deck will be located at an insufficient elevation and, as proposed, will result in additional wave uprush and erosional effects on the beach as water passes under the low-lying deck structure. Therefore, Special Condition One (1) and Four (4) have been required to ensure that the proposed project is redesigned to minimize adverse effects to coastal processes by raising the elevation of the proposed deck and to ensure that all recommendations of the applicant's coastal engineering and geotechnical consultants have been incorporated into the final project plans. Special Condition Ten (10) requires the applicant to acknowledge the potential hazards on the project site and waive any claim of liability against the Commission for damage to life or property which may occur. Further, to ensure that adverse effects to the marine environment are minimized, Special Condition Three (3) requires the applicant to agree to implement construction practices that will reduce erosion on the project site.

The construction of contiguous or large individual residential structures extending over multiple lots, such as the proposed development, substantially reduce or block public views of the beach and ocean. To minimize adverse effects to public views from the proposed project and to enhance visual quality in an area where coastal visual resources have been degraded from past development, Special Condition Eight (8)

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). Special Condition One (1) requires the applicant to submit revised plans showing that the portion of the proposed deck/pool located within the public view corridor (as shown in Exhibit 5) and which obstructs public views of the ocean is deleted. Special Condition Two (2) requires the submittal of landscape plan to ensure that vegetation within the public view corridor will not block public coastal views.

As a means of controlling seaward encroachment of residential structures on a beach to ensure maximum public access and minimize wave hazards and adverse effects to coastal processes and shoreline sand supply, the Commission has, in past permit actions, developed the "stringline" policy. The stringline limits the seaward extension of a structure to a line drawn between the nearest corners of adjacent structures. In the case of this project, the development, as proposed, will be located seaward of the stringline and will result in the seaward encroachment of residential development on Carbon Beach. The applicant has submitted project plans which show an incorrectly drawn deck stringline which would allow for the project as proposed. The actual deck stringline, as drawn from the decks located on the neighboring properties, is located landward of the proposed deck location. Therefore, to ensure that the proposed development is located landward of the correct stringline, consistent with past Commission actions, Special Condition One (1) requires the applicant to submit revised project plans deleting all portions of the proposed deck that would be located seaward of the correct stringline as shown on Exhibit 4.

The occupation of sandy beach area by a structure, such as the proposed development, will result in potential adverse effects to shoreline sand supply and public access. The applicant is proposing to dedicate a new larger public lateral access easement from the dripline of the new deck to the mean high tide line and to construct a public sidewalk between the highway and the proposed development. To mitigate adverse effects to public access and ensure implementation of the applicant's proposal to dedicate the new larger public lateral access easement and to construct a public sidewalk between the residence and Pacific Coast Highway, Special Conditions Six (6) and Nine (9) have been required.

The applicant's representative has indicated that the applicant is not in agreement with Special Condition One (1), parts b and c which require the applicant to submit revised plans to delete that portion of the proposed deck located within the public view corridor and/or located seaward of the applicable stringline.

## **STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution:

### **I. Approval with Conditions.**

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

### **II. Standard Conditions.**

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

### **III. Special Conditions.**

#### **1. Revised Plans**

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised project plans which show that:

- (a) The bottom of the structural deck slab will be no lower than elevation +13.5 ft. MSL (mean sea level) and the bottom of the pool shell will be no lower than elevation +11.0 ft. MSL as consistent with the recommendations contained within the Wave Uprush Study Response Letter by Pacific Engineering Group dated 8/16/99.
- (b) As consistent with Special Condition Eight (8), proposed development (including a portion of the proposed deck and pool), located within the view corridor, as designated in Exhibit 5, is deleted. Fencing consisting of visually permeable designs and materials (e.g. wrought iron or non-tinted glass material) and low-lying vegetation consistent with Special Condition Two (2) shall be allowed.
- (c) All portions of the proposed deck that would be located seaward of the correct stringline as shown on Exhibit 4 [labeled "Deck Stringline (California Coastal Commission)"] are deleted.

#### **2. Revised Landscaping Plan**

Prior to issuance of a coastal development permit, the applicant shall submit a revised landscaping plan, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

- (a) The portion of the subject site that is not sandy beach (or subject to wave action) located within the public view corridor and the portion of the site between the proposed residence and Pacific Coast Highway shall be planted within (60) days of receipt of the certificate of occupancy for the residence. Any portion of the site that is subject to wave action shall be maintained as sandy beach area. 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.
- (b) 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.

- (c) Vegetation within the public view corridor, as consistent with Special Condition Eight (8), shall be limited to low-lying vegetation of no more than 2 ft. in height.
- (d) The plan shall include vertical elements within the area between Pacific Coast Highway and the residence to screen and soften the adverse visual effects of the proposed development to public views from the highway.

### 3. Construction Responsibilities and Debris Removal

The applicant shall, by accepting this permit, agree: a) that no stockpiling of dirt shall occur on the beach; b) that all grading shall be properly covered, sand-bagged, and ditched 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 and seawall area any and all debris that result from the construction period.

### 4. Geology

All recommendations contained in the Geotechnical Engineering Report by RJR Engineering Group dated 9/26/98; Geotechnical Engineering Response Letter by RJR Engineering Group dated 8/9/99; Wave Uprush Study by Pacific Engineering Group dated 8/5/98; and the Wave Uprush Study Response Letter by Pacific Engineering Group dated 8/16/99, 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. Removal of Existing Bulkhead and Concrete Walls

The applicant shall remove the existing concrete bulkhead and concrete walls located on the subject site prior to the construction of the proposed residence.

### 6. Construction of Sidewalk

In order to implement the applicant's proposal to construct a 6 ft. wide public sidewalk between the proposed development and Pacific Coast Highway, the applicant agrees that prior to the issuance of the coastal development permit, the applicant shall submit revised plans for the construction of a six (6) ft. wide sidewalk between Pacific Coast Highway and the proposed development. The applicant shall construct the sidewalk improvements no later than 60 days after the issuance of the certificate of occupancy. No encroachments, such as planters, vegetation, or other structures or obstacles, that would affect the public's ability to use the entire sidewalk area shall be constructed or placed.

## **7. 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 4452-001-004, 005, and 015) located seaward of the residence and deck permitted in this application 4-99-075 is private or (b) contain similar messages that attempt to prohibit public use of this portion of the beach. 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.

## **8. 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 (with the exception of the drainage pipe located within the drainage easement for the California Department of Transportation) which result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted within the public view corridor as shown on Exhibit 5.
- (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).
- (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.

## **9. Offer to Dedicate Lateral Public Access**

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

dripline of the approved decks as illustrated on the site plan prepared by Landry Design Group, Inc. dated June 23, 1999. Development allowed within the lateral public access easement shall be limited to those drainage improvements necessary to maintain the approved stormdrain pipe located within the drainage easement held the California Department of Transportation

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.

#### **10. Assumption of Risk/Shoreline Protection**

Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that:

- (a) The applicant acknowledges and agrees that the site may be subject to hazards from waves, flooding, liquefaction, erosion, and wildfire.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) The applicant agrees that any adverse effects to property caused by the permitted project shall be fully the responsibility of the landowner.
- (f) The applicant shall not construct, now or in the future, any shoreline protective device(s) for the purpose of protecting the residential development approved pursuant to coastal development permit 4-99-146 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 any rights to construct such devices that may exist under Public Resources Code Section 30235.

The document 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 Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.



#### **IV. Findings and Declarations**

The Commission hereby finds and declares:

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

The applicant is proposing to demolish an existing 5,755 sq. ft. single family residence and concrete bulkhead/retaining walls and construct a new 10,930 sq. ft., 28 ft. high, single family residence, a 1,150 sq. ft. attached garage, deck, a pool/spa, and a new septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern portion of the lot as measured from the dripline of the proposed deck to the mean high tide line and the construction of a 6 ft. wide public sidewalk between Pacific Coast Highway and the proposed development. No shoreline protective device is proposed as part of the development.

The project site is located on three separate beachfront parcels of land approximately 16,198 sq. ft. in combined size on Carbon Beach between Pacific Coast Highway and the ocean. The area surrounding the project site is characterized as a built-out portion of Malibu consisting of residential development. The subject site has been previously developed on the westernmost parcel with a 5,755 sq. ft. single family residence and concrete bulkhead/retaining walls. The central and easternmost parcel have been previously developed with a concrete bulkhead, retaining and privacy walls, deck, and landscaping associated with the residence. An existing drainage pipe within an easement held by the California Department of Transportation (Caltrans) is also located on the central and easternmost parcels. The proposed project includes the demolition of all existing development on the subject site (with the exception of the Caltrans drainage pipe and easement which will be replaced/moved to the easternmost portion of the project site subject to the related Coastal Development Permit Application 4-98-246 which is also scheduled to be heard at the September Commission Hearing) and the construction of a new larger residence on a friction pile foundation which will extend across all three subject parcels.

The applicant has submitted evidence of review of the proposed project by the California State Lands Commission (CSLC) dated May 27, 1999, 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 (Exhibit 8).

The Commission notes that the project site has been subject to past Commission action. Coastal Development Permit 75-4252 was issued by the Commission in 1975 for the construction of a single family residence with a special condition requiring the recordation of an easement for lateral public access across the southern beachfront portion of the property as measured 25 ft. landward of the mean high tide line. The applicant is proposing to dedicate a new larger public lateral access easement which would supersede and replace the previous dedication and provide for public access

along the entire beach under all tidal conditions as measured seaward from the dripline of the proposed deck.

## **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 Carbon Beach in the City of Malibu. Carbon Beach is characterized as a relatively narrow beach which has been developed with numerous single family residences located to the east and west of the subject site. The Malibu/Los Angeles County Coastline Reconnaissance Study by the United States Army Corp of Engineers dated April 1994 indicates that residential development on Carbon Beach is exposed to recurring storm damage because of the absence of a sufficiently wide protective beach. The applicant's coastal engineering consultant has indicated that Carbon Beach is an oscillating (equilibrium) beach which experiences seasonal erosion and recovery. The Wave Uprush Study by Pacific Engineering Group dated 8/5/98 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 80 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 proposed development will be located seaward of the appropriate stringline and will result in the seaward encroachment of residential development on Carbon Beach. Staff notes that the applicant has submitted project plans which show an incorrectly drawn deck stringline which would allow for the project as proposed. Although the structural stringline for the proposed residence has been correctly drawn from the nearest corners of the neighboring structures located immediately upcoast (west) and downcoast (east) of the project site, staff notes that the deck stringline, as drawn on the project plans submitted by the applicant, has been incorrectly drawn from the corner of the existing deck located on the neighboring property immediately upcoast (west) of the project site to the east corner of the existing bulkhead to be demolished (located on the project site) rather than to the correct corner of the deck located on the downcoast (east) neighboring property. The deck located on the downcoast neighboring property to the east of the subject site is actually located approximately 12 ft. further landward of the "stringline" drawn by the applicant (Exhibit 4). The correct deck stringline, as drawn from the nearest corner of the decks on the properties located immediately upcoast and downcoast of the subject site is shown on Exhibit 4 for reference. The portion of the proposed deck which extends seaward of the

correct deck stringline is approximately 720 sq. ft. in size. The Commission notes that the deck, as proposed, will extend further seaward than existing neighboring development, will reduce the area of sandy beach available for public use, and will result in adverse effects to public views from the beach. Therefore, to ensure that the proposed development is located landward of the correct stringline, consistent with past Commission actions, Special Condition One (1) requires the applicant to submit revised project plans deleting all portions of the proposed deck that would be located seaward of the correct stringline as shown on Exhibit 4. The Commission notes that this restriction (in addition to the portion of the proposed deck located within the public view corridor which would be deleted by Special Condition One, Part B) will still allow for the construction of the remaining approximately 3,950 sq. ft. portion of the proposed deck located directly seaward of the residence. As such, the Commission finds that the proposed project, only as conditioned to revise the location of the proposed deck, will not result in the seaward encroachment of development on Carbon Beach and will serve to minimize adverse effects to coastal processes.

#### **Wave Uprush and Mean High Tide Line**

The Wave Uprush Study prepared by Pacific Engineering Group dated 8/5/98 indicates that the ambulatory mean high tide line is located approximately 188 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 136 ft. seaward of the highway right-of-way line. Based on the submitted information, the Commission notes that the proposed development will be located landward of the mean high tide line and should not extend onto public tidelands under normal conditions.

Although the proposed structure will be located landward of the mean high tide line, the Wave Uprush Study prepared by Pacific Engineering Group dated 8/5/98 indicates that the maximum wave uprush at the subject site will occur approximately 73 ft. seaward of the Pacific Coast Highway right-of-way line (landward of the proposed residence). As such, the Commission notes that the wave uprush limit, during high tide and storm events, will extend as far as 63 ft. landward under the proposed structure. The applicant's engineering consultant has indicated that although the foundation for the proposed residence will be subject to wave action, the residence will be constructed on a friction pile foundation and will not require a shoreline protection device to ensure structural stability. The seaward extent of the septic system and leach field will be located approximately 18 ft. from the Pacific Coast Highway right-of-way line and approximately 55 ft. landward of the maximum wave uprush limit on the project site. 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 Response Letter dated 8/16/99 states that:

***Since the entire residence, pool, and decks are supported on a concrete friction pile, and since the septic system is to be located landward of the wave uprush zone, a bulkhead, retaining wall, or seawall is not required to protect the proposed residence.***

Although the proposed development will not require the construction of a shoreline protective device, the Commission notes that the project, as proposed, will still result in adverse effects to coastal processes and shoreline sand supply. The applicant's coastal engineering consultant has indicated that the proposed deck will be located at an insufficient elevation and, as proposed, will result in additional wave uprush and erosional effects on the beach as water passes under the low-lying deck structure. The Wave Uprush Report by Pacific Engineering Group dated 8/5/98 states that the structural slab for the proposed residence must be supported on a concrete friction pile foundation and the bottom of the structural slab should be no lower than elevation +15.0 ft. MSL. The Commission notes, however, that although the proposed project plans indicate that the bottom of the structural slab for the residence will be located at elevation +15.25 ft. MSL, consistent with the recommendations within the Wave Uprush Study, the bottom of the structural slab for the "conversation pit" and pool to be incorporated into the design of the proposed deck will only be located at elevation +12.25 ft. MSL and 9.25 MSL. As designed, the proposed deck, at the proposed elevations, will be subject to normal wave action and will result in additional wave uprush and erosional effects on the beach as water passes under the low-lying deck structure. The Wave Uprush Report Response Letter dated 8/16/99 also states that:

***Given the above circumstances...wave uprush extent would increase 20 feet landward to a location 53 feet from the Pacific Coast Highway right-of-way line. This increase is due to the increase in velocity head of the wave uprush caused by the constraint of the lower concrete structures above. The lower concrete slab would force the same amount of uprush into a smaller cross-sectional areas producing higher uprush velocities. Velocity head (Vh) would increase 1.37 feet producing a 20-foot movement landward in the wave uprush limit compared to uprush flowing unrestrained. The end result is that the pool and deck slab at the elevations indicated will produce a more landward uprush extent on the eastern side of the property compare to if these structures were placed above the wave uprush water profiles.***

***Analysis presented in this report indicates that lowest elevation for the bottom of the concrete structural slab should not be lower than elevation 13.5 Ft. MSL-NGVD29 datum. When the bottom of the structural slab is located at elevation +13.5 Ft. MSL or higher there is a negligible effect on design wave uprush.***

***Analysis of the pool location indicates that the bottom of the pool will have a negligible effect on wave uprush forces provided that the bottom of the pool be no lower than elevation +11.0 Ft. MSL-NGVD datum and the shell is supported directly by the concrete piles with no concrete grade beams extending below +11.0 Ft. MSL. This is due to the pool's limited cross-section and the pool bottom is at the same elevation as the breaking wave elevation of the critical wave at this location.***

Therefore, in order to ensure that adverse effects to coastal processes and shoreline sand supply are minimized and to ensure structural stability, Special Condition One (1) specifically requires the applicant to submit revised project plans which show that the

bottom of the structural deck slab will be constructed no lower than elevation +13.5 ft. MSL and the bottom of the pool shell will be constructed no lower than elevation +11.0 ft. MSL, as consistent with the recommendations of the applicant's coastal engineering consultant. In addition, the applicant's 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 other 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 8/5/98; Wave Uprush Study Response Letter by Pacific Engineering Group dated 8/16/99; Geotechnical Engineering Report by RJR Engineering Group dated 9/26/98; and the Geotechnical Engineering Response Letter by RJR Engineering Group dated 8/9/99; 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.

#### **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 Carbon 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, Carbon Beach is a narrow oscillating beach. The applicant's consultant has also indicated that seasonal foreshore slope movement can be as much as 80 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. In addition, 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 55 ft. landward of the maximum wave uprush limit).

Therefore, in order to ensure that the applicant's proposal to remove the existing bulkhead and retaining walls on the subject site is carried out and to ensure that proposed project will not result in any adverse effects to coastal processes, shoreline supply, and public access, Special Condition Five (5) requires the applicant to remove the existing bulkhead and concrete walls located on the subject site prior to the construction of the proposed residence.

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 Ten (10) 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.

### **Conclusion**

The proposed residence will be located landward of the 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. In addition, the applicant is proposing to remove the existing concrete bulkhead and retaining walls located on site. In order to ensure that the applicant's proposal to remove the existing bulkhead and retaining walls on the subject site is carried out and to ensure that the proposed project will not result in any adverse effects to coastal processes, shoreline supply, and public access, Special Condition Five (5) requires the applicant to remove the existing bulkhead and concrete walls located on the subject site prior to the construction of the proposed residence. In addition, to ensure that the proposed project is consistent with Section 30235 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition Ten (10) 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.

In addition, the applicant's coastal engineering consultant has indicated that the proposed deck will be located at an insufficient elevation and, as proposed, will result in additional wave uprush and erosional effects on the beach as water passes under the low-lying deck structure. Therefore, in order to ensure that the proposed project is redesigned to minimize adverse effects to coastal processes by raising the elevation of the proposed deck, consistent with the recommendations of the applicant's coastal engineering consultant, Special Condition One (1) requires the applicant to submit revised project plans. 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 8/5/98; Wave Uprush Study Response Letter by Pacific Engineering Group dated 8/16/99; Geotechnical Engineering Report by RJR Engineering Group dated 9/26/98; and the Geotechnical Engineering Response Letter by RJR Engineering Group dated 8/9/99.

Further, the applicant has submitted project plans which show an incorrectly drawn deck stringline which would allow for the project as proposed. The actual deck stringline, as drawn from the nearest corners of the decks located on the neighboring properties, is located landward of the proposed deck location. Therefore, to ensure that the proposed development is located landward of the correct stringline, consistent with past Commission actions, Special Condition One (1) requires the applicant to submit revised project plans deleting all portions of the proposed deck that would be located seaward of the correct stringline as shown on Exhibit 4.

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

### **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 in the Santa Monica Mountains, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. 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 subject to flooding and erosion from storm waves.

The applicant has submitted a Geotechnical Engineering Report by RJR Engineering Group dated 9/26/98; Geotechnical Engineering Response Letter by RJR Engineering Group dated 8/9/99; Wave Uprush Study by Pacific Engineering Group dated 8/5/98; and Wave Uprush Study Response Letter by Pacific Engineering Group dated 8/16/99. The consultants have determined that the project site is appropriate for the proposed development. The Geotechnical Engineering Report by RJR Engineering Group dated 9/26/98 concludes that:

***Based upon our review of the site and the available data the proposed improvements are feasible from a geologic and geotechnical standpoint, and should be free of landslides, slumping and excess settlement as described in this report, assuming the recommendations presented in this report and implemented during the design and construction of the project. In addition, the stability of the site and surrounding areas will not be adversely affected by a proposed residence...based upon our analysis and proposed design.***

The Geotechnical Engineering Report by RJR Engineering Group dated 9/26/98; Geotechnical Engineering Response Letter by RJR Engineering Group dated 8/9/99; Wave Uprush Study by Pacific Engineering Group dated 8/5/98; and Wave Uprush Study Response Letter by Pacific Engineering Group dated 8/16/99 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.

However, the Commission further notes that the proposed development is located on a beachfront lot in the City of Malibu. 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 existing development on site, even after the completion of the remedial repair work, will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future, as will the existing single family residence that the bulkhead helps to protect. The Coastal Act recognizes that development, such as the new underpinning to the seawall, 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, and flooding, 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 Ten (10), 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 construction activity on the sandy beach and 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 and 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 and that the construction phase of the proposed project poses no hazards, Special Condition Three (3), requires the applicant to ensure that stockpiling of dirt or materials shall not occur on the beach, that no machinery will be allowed in the intertidal zone at any time, and that all debris resulting from the construction period is promptly removed from the beach and seawall area.

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. As stated previously, no shoreline protective device is required, or proposed, to protect the proposed residence. The proposed project is located on Carbon Beach, less than ½ mile east (downcoast) of the nearest open public vertical coastal accessway and only 600 ft. to the east of a vertical accessway which has been offered for dedication by the landowner for public use. Further, there are several existing and potential lateral public access easements across several lots near the project site.

The State owns tidelands, which are those lands below 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 (Exhibit 8).

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 proposed development will not require a shoreline protective device to protect either the proposed residence or septic system to ensure structural stability. Therefore, in order to ensure that the applicant's proposal to remove the existing bulkhead and retaining walls on the subject site is carried out and to ensure that the proposed project will not result in any adverse effects to coastal processes, shoreline supply, and public access, Special Condition Five (5) requires the applicant to remove the existing bulkhead and concrete walls located on the subject site prior to the construction of the proposed residence. In addition, 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 well 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 Ten (10) 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.

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. The Commission notes that a dedication for lateral public access was previously recorded for the subject site as a condition of Coastal Development Permit 75-4252 which was issued by the Commission in 1975 for the construction of a single family residence. The applicant is aware of the existence of the original dedication and has proposed to dedicate a new larger easement which would supersede and replace the previous dedication. The applicant's offer to dedicate lateral access will differ from the original easement in that the original 1975 easement provided for an area of only 25 ft. in width as measured

landward from the mean high tide line. However, the new lateral access easement, which the applicant has proposed to offer as part of this project, will not be fixed at a 25 ft. width but will include the entire beach under all tidal conditions as measured seaward from the dripline of the proposed deck. The new lateral access easement which the applicant has offered to dedicate as part of this project will more accurately describe the ambulatory nature of the easement's width in relation to the mean high tide line and will be more consistent with other lateral access easements which have been recorded on properties along Carbon Beach and the Malibu area.

In order to conclude with absolute certainty what adverse effects would result from the proposed project in relation to shoreline processes and the adequacy of the existing lateral access easement, 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 new lateral 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 the adequacy of the original easement or whether the imposition of a new offer to dedicate would be required here absent the applicant's proposal. As such, Special Condition Nine (9) has been required in order to ensure that the applicant's offer to dedicate a new lateral public access easement is transmitted prior to the issuance of the coastal development permit.

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. 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 Seven (7) to ensure that similar signs are not posted on or near the proposed project site. The Commission finds that if implemented, Special Condition Seven (7) will protect the public's right of access to the sandy beach below the MHTL.

The applicant has also included the construction of a 6 ft. wide public sidewalk between Pacific Coast Highway and the residence as part of the proposed project. The Commission notes that members of the public must utilize the shoulder areas of Pacific Coast Highway in order to reach many public vertical beach accessways. In past permit actions, the Commission has found 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 the case of the proposed project, the applicant is proposing the construction of a public sidewalk between the residence and Pacific Coast Highway to mitigate any adverse effects to public access from the proposed development. As such, Special Condition Six (6) has been required in order to ensure that the



applicant's offer to construct a 6 ft. wide public sidewalk between the proposed development and Pacific Coast Highway is implemented.

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. 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 Carbon Beach, a built-out area of Malibu primarily consisting of residential development. The Commission notes that the visual quality of the Carbon 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 the 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.

In this case, the proposed project will involve the construction of a single large structure over three separate parcels. Currently, two of the three parcels are vacant with the exception of a large privacy wall (which effectively blocks all public views of the beach and ocean from Pacific Coast Highway), landscaping, and a bulkhead. The third lot has been previously developed with a single family residence. The proposed project will include the demolition of the existing 5,755 sq. ft. single family residence located on one lot and the construction of a new larger 12,080 sq. ft residential structure that will extend across all three lots. The Commission notes that the construction of large individual residences or other structures across multiple contiguous beach front lots serves to exacerbate the wall-like effect created by the existing residential development located between Pacific Coast Highway and Carbon Beach. In addition, Staff notes that the construction of large individual residential structures extending across multiple beachfront parcels, similar to the proposed project, is becoming increasingly common in the Malibu area and that several applications for similar development have recently been submitted. As such, the Commission notes that such development, when viewed on a regional basis, will result in potential cumulative adverse effects to public views and to the visual quality of coastal areas. 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.

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. 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 large residential projects, such as the proposed project, be designed to provide for public views of the ocean [Hicks(A-6-LJS-96-162)]. The Commission notes that the construction of an individual large structure which extends across two or more parcels, such as the proposed project, will result in greater potential adverse effects to public views than the construction of one or more smaller structures on the same number of parcels due to the larger continuous frontage area along Pacific Coast Highway where public views of the coast will be blocked by development. The Commission further notes that the construction of larger individual residences which extend over multiple lots also 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.

The Commission notes that 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. In the case of this project, the Commission notes that although the proposed residential structure will only occupy 80% of the lineal frontage of the lot, a portion (approximately 2,400 sq. ft. in size) of the large 6,800 sq. ft. deck is located adjacent to the proposed residence and, as proposed, will serve to obstruct public views of the ocean from Pacific Coast Highway over the remaining 20% of the lineal frontage of the lot (Exhibit 4). An approximate site line analysis showing the view that will be available to the public if the project is constructed as originally proposed is included as Exhibit 6. The site line analysis indicates that if the proposed deck structure is constructed within the 20% view corridor area, then public views will be reduced primarily to views of sky with only some possibility of limited views of water near the horizon line.

Therefore, in order to provide for unobstructed public views of the ocean from the highway and to enhance visual quality in an area where coastal visual resources have been degraded from past development, Special Condition One (1) requires the applicant to submit revised project plans which delete that portion of the proposed deck/pool which is located within the view corridor as designated on Exhibit 5. The Commission notes that this restriction (in addition to the portion of the proposed deck to be deleted to ensure consistency with the deck stringline as required by Special Condition One, Part C) will still allow for the construction of the remaining approximately 3,950 sq. ft. portion of the proposed deck located directly seaward of the residence. In addition, to ensure that public coastal views will be protected, Special Condition Eight (8) 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 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, the applicant has previously submitted a landscape plan for the proposed project site. However, the Commission notes that the proposed landscape plan would serve to obstruct public views within the designated public view corridor. Therefore, Special Condition Two (2), as consistent with Special Condition Eight (8), has been required to ensure that the applicant submit a revised landscape 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. Further, to minimize adverse effects to public views, Special Condition Two (2) also requires that the revised landscape plan incorporate sufficient vertical elements (trees and shrubbery) to screen or soften the appearance of the proposed residence from Pacific Coast Highway.

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

## **F. 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 5,000 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.

## **G. 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).

## **H. 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/saban report



4452

1

SCALE 1" = 50'

24

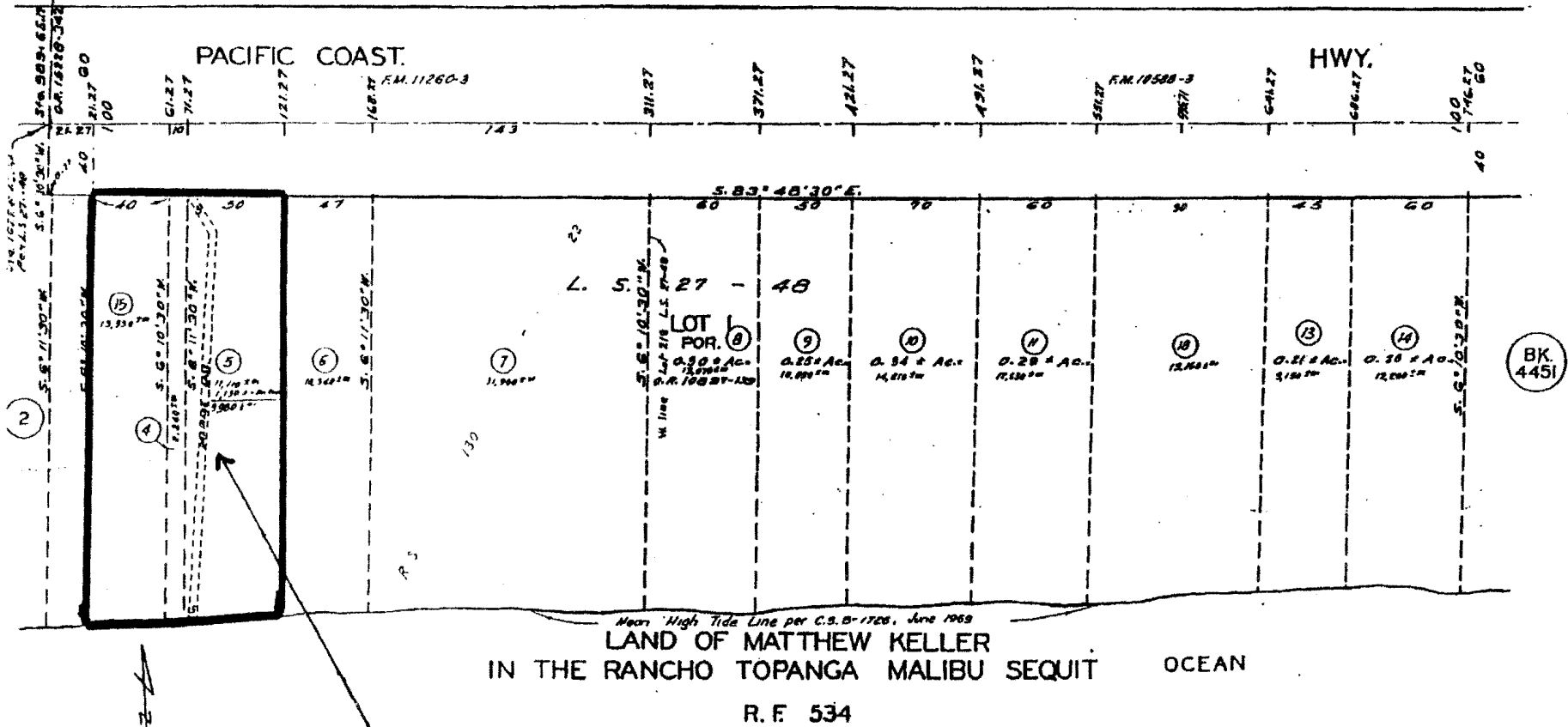
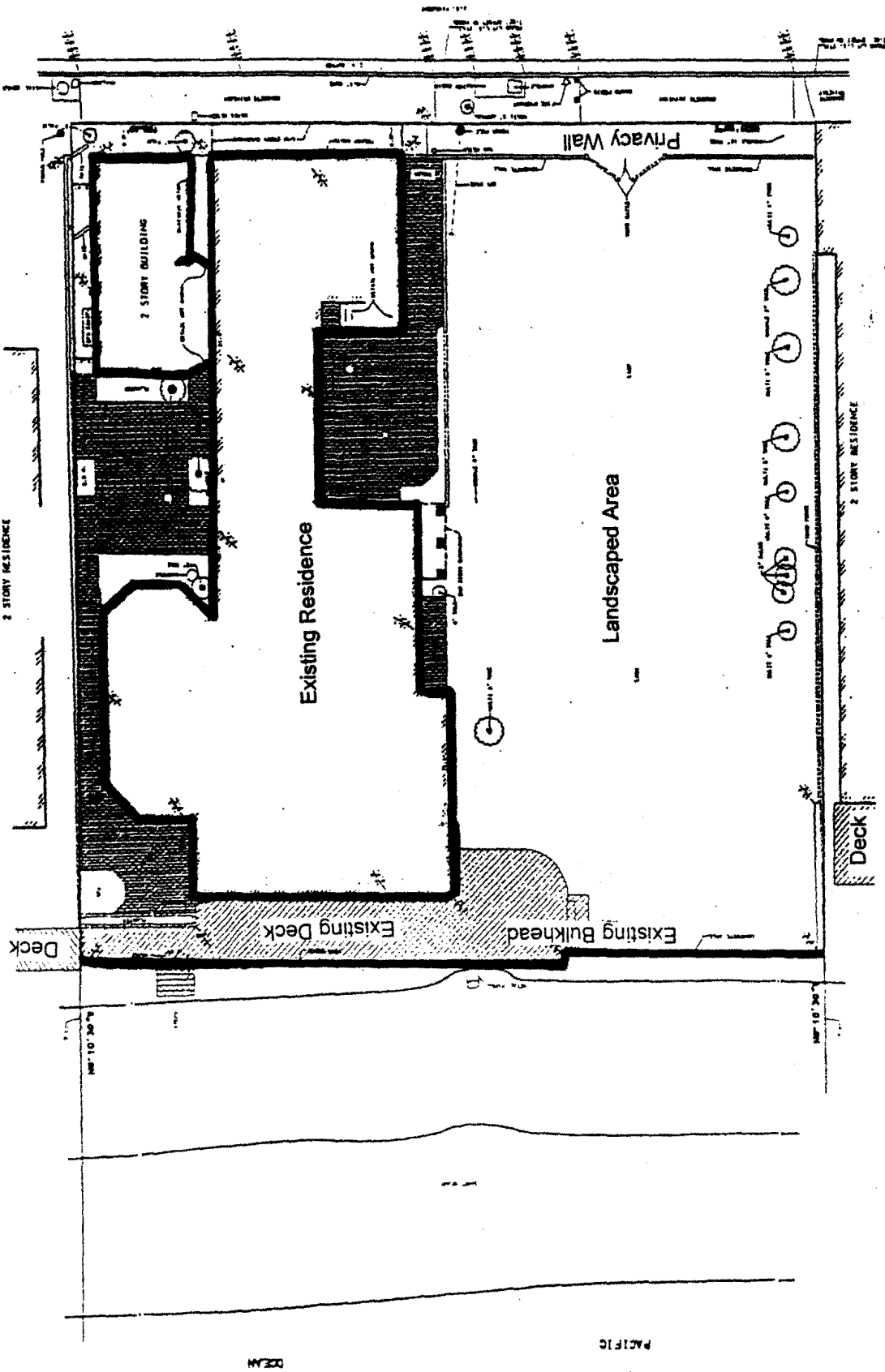


EXHIBIT 2
CDP 4-99-146 (Saban)
Parcel Map



<p><b>EXHIBIT 3</b></p> <p><b>CDP 4-99-146 (Saban)</b></p> <p><b>Existing Development on Site</b></p>
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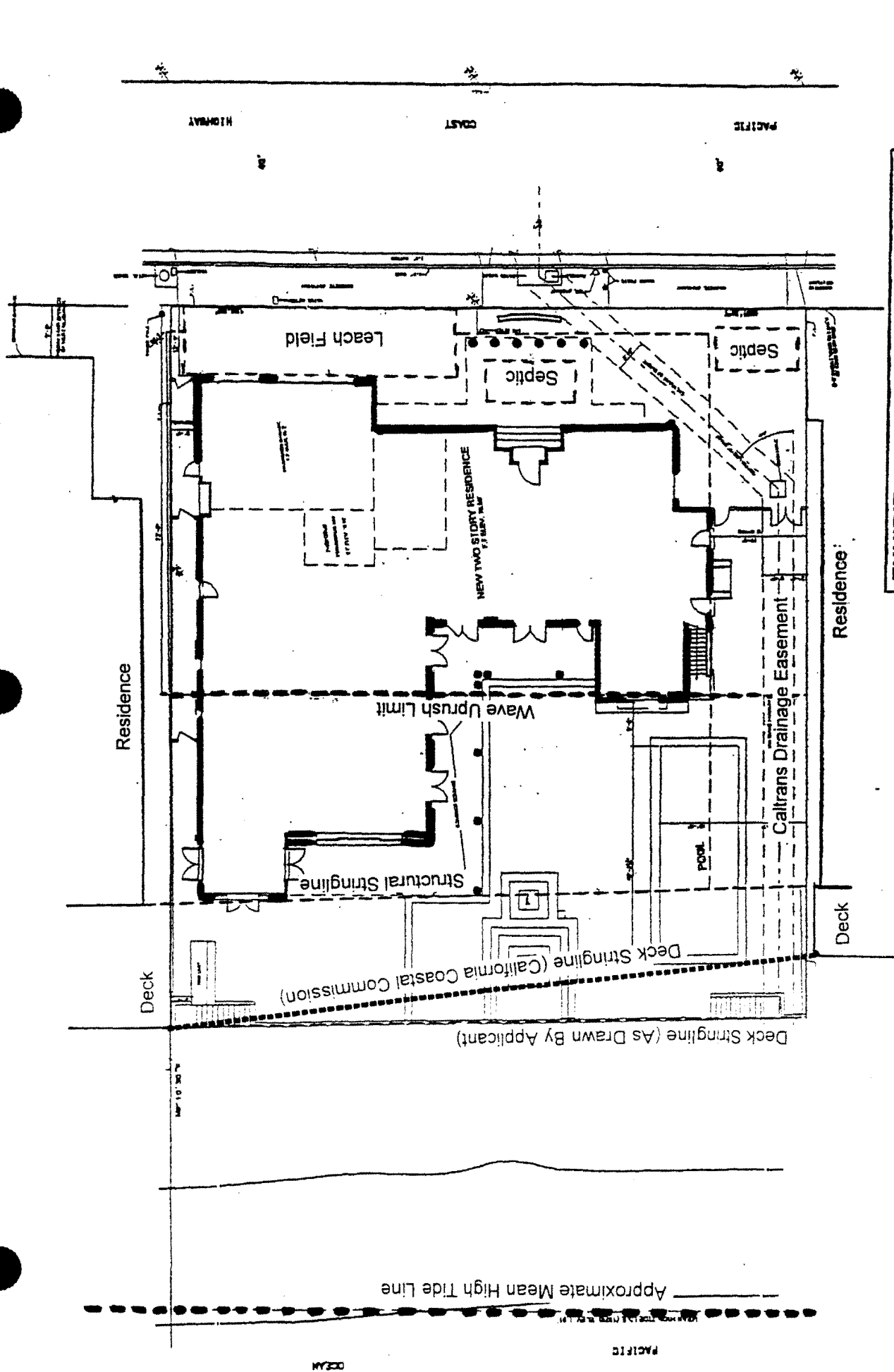
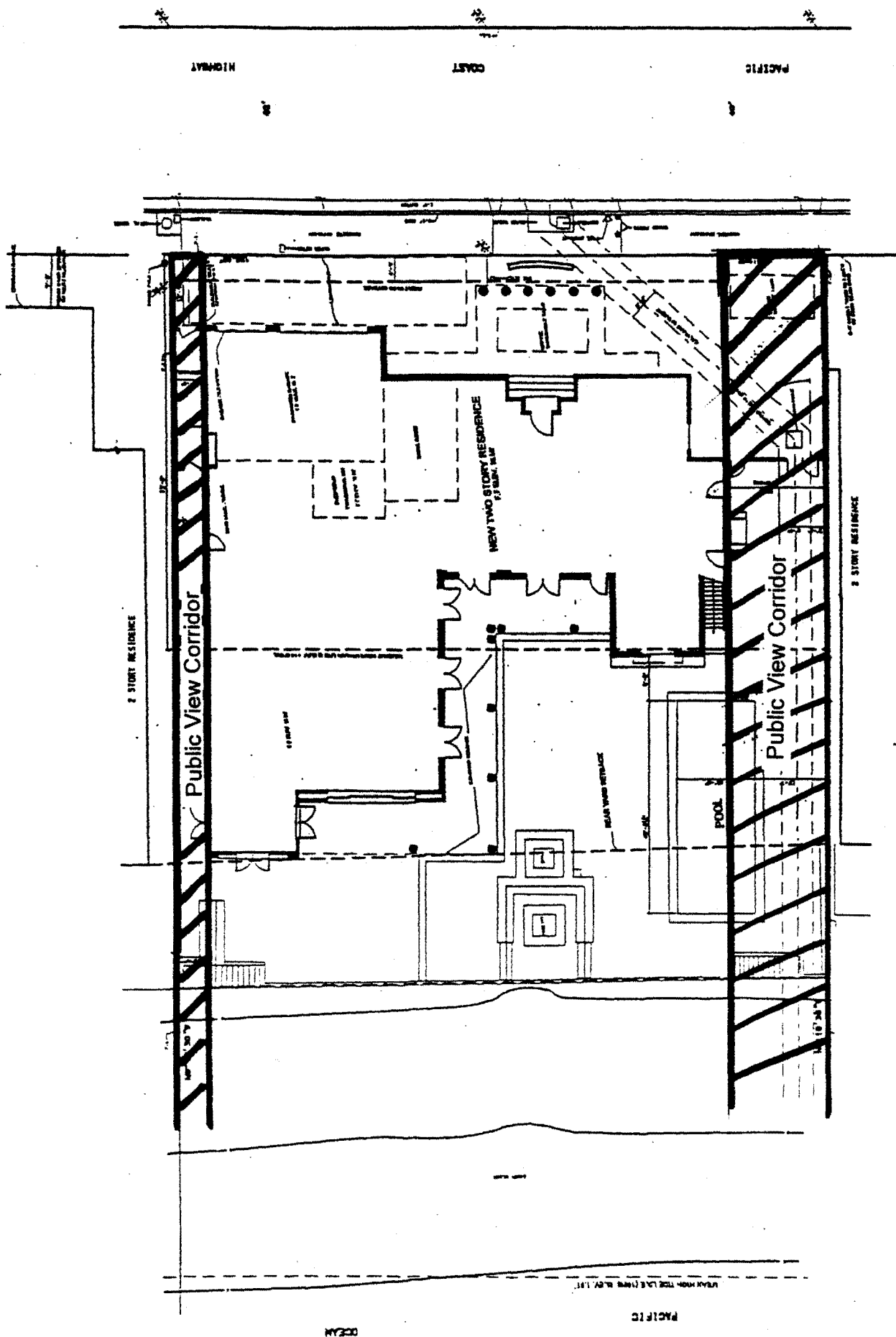
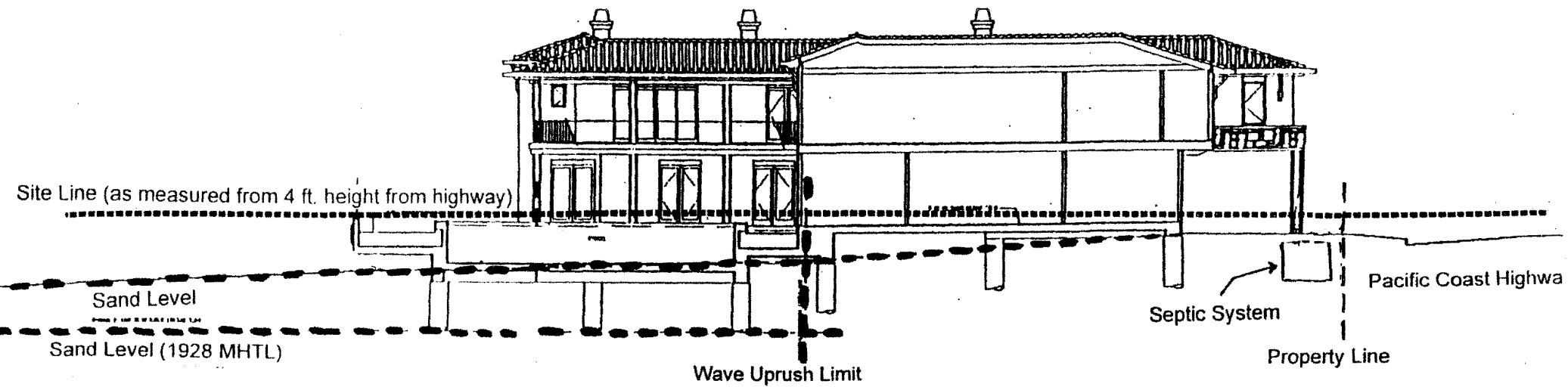


EXHIBIT 4
CDP 4-99-146 (Saban)
Site Plan (Proposed Development)



<b>EXHIBIT 5</b>
<b>CDP 4-99-146 (Saban)</b>
<b>Public View Corridor</b>



**EXHIBIT 6**

**CDP 4-99-146 (Saban)**

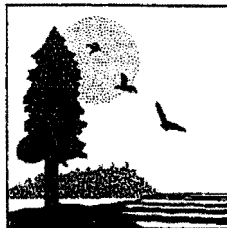
**Cross Section/Site Line Analysis**



## CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

**RECEIVED**  
JUN 28 1999



CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

May 27, 1999

PAUL D. THAYER, *Executive Officer*

*California Relay Service From TDD Phone 1-800-735-2922*

*from Voice Phone 1-800-735-2929*

*Contact Phone: (916) 574-1892*

*Contact FAX: (916) 574-1925*

File Ref: SD 98-08-13.4

SD 98-12-14.2

Wayne Chevalier  
Barsocchini & Associates  
3502 Coast View Drive  
Malibu CA 90265

Dear Mr. Chevalier:

**SUBJECT:** Coastal Development Project Review for Proposed Demolition of  
an Existing Single Family Residence and Construction of a New  
Single Family Residence at 22364/22368 Pacific Coast Highway,  
Malibu

This is in response to your request on behalf of your client, the Sabans, for a determination by the California State Lands Commission (CSLC) whether it asserts a sovereign title interest in the property that the subject project will occupy and whether it asserts that the project will intrude into an area that is subject to the public easement in navigable waters.

The facts pertaining to your client's project, as we understand them, are these:

Your client proposes to demolish an existing single family residence at 22368 and construct a new single family residence built on pilings across 22364/22368 Pacific Coast Highway in Malibu. The new residence will be located approximately 24' landward of the existing concrete wall/fence as shown on your August 3, 1998 site plan. It is my understanding based on conversation with your office and the Coastal Commission, that the existing wall/fence will be removed as part of the project. Based on the site plan, the proposed residence appears to be in conformance with the string lines established by the residences on either side. This is a developed stretch of beach with numerous residences both up and down coast.

We note language in a 1930 Deed that provided for an "... easement or right of way unto the owner or owners of any parcel or parcels in said tract, their heirs, successors, assigns, agents, ... and invited guests ..., over, along and across that

**EXHIBIT 8**

**CDP 4-99-146 (Saban)**

**State Lands Letter of Determination**

May 27, 1999

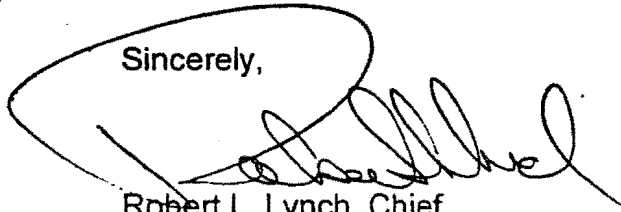
portion of said Realty adjacent to the Pacific Ocean and lying between the low tide mark and 25 feet above the ordinary or average high tide line."

Our files also reflect a 1975 Deed Restriction, recorded February 7, 1975 as Document No. 2567, that affects the properties. This Deed Restriction was required by the California Coastal Commission in conjunction with the issuance of Coastal Development Permit P-10-28-74-4252 and gives "... the public the privilege and right to pass and repass over a strip of Dedicator's said real property twenty-five (25) feet in width measured landward from the line of mean high tide of the Pacific Ocean ...". We anticipate the effect, if any, of this project on the Deed Restriction will be addressed by the California Coastal Commission in their consideration of your application for a coastal development permit.

We do not at this time have sufficient information to determine whether this project will intrude upon state sovereign lands. Development of information sufficient to make such a determination would be expensive and time-consuming. We do not think such an expenditure of time, effort and money is warranted in this situation, given the limited resources of this agency and the circumstances set forth above. Accordingly, the CSLC presently asserts no claims that the project intrudes onto sovereign lands. This conclusion is without prejudice to any future assertion of state ownership or public rights, should circumstances change, or should additional information come to our attention.

If you have any questions, please contact Jane E. Smith, Public Land Management Specialist, at (916) 574-1892.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Lynch", is written over a large, loopy oval-shaped flourish.

Robert L. Lynch, Chief  
Division of Land Management

cc: Craig Ewing, City of Malibu