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STATE OF CALIFORNIA -- THE RESOURCES AGENCY GRAY DAVIS, *Governor*

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Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-00-016

APPLICANT: Michael Sitrick **AGENT:** Archwest Developments, Inc.

PROJECT LOCATION: 30962 Broad Beach Road, Malibu, Los Angeles County.

PROJECT DESCRIPTION: Demolition of an existing two-story single family residence and construction of a new two-story, 27.5 ft. high, 6,121 sq. ft. single family residence with an attached garage, new driveway, decks, spa, and alternative sewage disposal system. No grading is proposed. In addition, the project includes an offer to record an open space deed restriction over the portion of the site located between the deck stringline and the ambulatory seawardmost limit of dune vegetation, and restoration of the existing dune system

Lot area:	15,903 sq. ft.
Building coverage:	3,792 sq. ft.
Paved coverage:	1,650 sq. ft.
Landscaped/unimproved:	10,461 sq. ft.

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department Approval-In-Concept 1/13/00; City of Malibu Department of Environmental Health In-Concept Approval for alternative private sewage disposal system 12/27/99; City of Malibu Geology and Geotechnical Engineering Review Approval In-Concept 12/9/99; City of Malibu Coastal Engineering Review Sheet 1/7/00; City of Malibu Biological Review 12/10/99.

SUBSTANTIVE FILE DOCUMENTS: Coastal Engineering Report prepared by David C. Weiss dated 10/1/99; Soils and Engineering-Geologic Investigation prepared by GeoSystems dated 10/21/99; County of Los Angeles Malibu/Santa Monica Mountains Land Use Plan (LUP), Coastal Development Permit 4-99-153 (Ioki Partners).

STAFF NOTE: STAFF REPORT FINDINGS MAY BE REVISED FOLLOWING MAIL-OUT OF THIS REPORT.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed project with 8 Special Conditions regarding 1) Geologic Recommendations, 2) Drainage and Polluted Runoff Control, 3) Landscaping/Dune Restoration Plan, 4) Construction Responsibilities and Debris Removal, 5) Sign Restriction, 6) Assumption of Risk, 7) Open Space Deed Restriction, and 8) No Future Shoreline Protective Device.

The applicant is proposing to demolish an existing two-story single family residence and construction of a new two-story, 27.5 ft. high, 6,121 sq. ft. single family residence with an attached garage, new driveway, decks, spa, and alternative sewage disposal system. No grading is proposed. The project also includes an offer to record an open space deed restriction over the portion of the site located between the deck stringline and the ambulatory seawardmost limit of dune vegetation, and restoration of the existing dune system.

The project site is located on a 15,903 sq. ft. beachfront parcel of land on Broad Beach, between Broad Beach Road and the Pacific Ocean. The subject site is currently developed with a two-story single family residence, driveway, and beachfront patio extending from the residence over the sandy beach to an existing dune system. All existing development on site is to be demolished and a new two-story single family residence is to be constructed in the same general location at the site. A vegetated dune system is located along the southern beachfront portion of the subject site, which is designated as environmentally sensitive habitat area (ESHA) by the previously certified County of Los Angeles Malibu/Santa Monica Mountains Land Use Plan (LUP). The applicant is proposing an open space deed restriction over that portion of the site containing the dune system and restoration of the existing ESHA.

The proposed project will be constructed landward of the appropriate building and deck stringlines for the project site and therefore, the project will not result in seaward encroachment of development on Broad Beach. All proposed development including the residence, decks, and attached garage will be constructed on a caisson/grade beam foundation designed at an elevation above the maximum design wave profile between 14.0' M.S.L. and 14.5' M.S.L. No shoreline protective device is proposed as part of the development and the applicant's coastal engineering consultant has indicated that no such protection is required for the proposed residence or private sewage disposal system. Construction of a shoreline protective device would result in potential adverse effects to coastal processes, shoreline sand supply, and public access. Therefore, **Special Condition 8** prohibits the construction of a future shoreline protective device to protect the proposed development.

To ensure structural and site stability, **Special Condition 1** requires the applicant to submit project plans certified by the project's consulting geotechnical and coastal engineer as conforming to all recommendations. Although the proposed development will be designed to ensure stability, the project site is located on a beachfront parcel and will be subject to inherent potential hazards such as storm damage, flooding, and liquefaction. Therefore, **Special Condition 6** requires the applicant to acknowledge the potential hazards on the project site and waive any claim of liability against the Commission.

The proposed project will not result in the removal of dune habitat. However, development adjacent to environmentally sensitive habitat areas, such as the dune system located on site, results in potential adverse effects to those habitat areas. In order to mitigate adverse effects to the dune habitat on site from the proposed development, **Special Condition 3** requires, in part, that the applicant submit a dune habitat restoration program. In addition, in order to ensure that adverse effects to the dune habitat on the project site from new development are minimized, **Special Condition 7** requires that the applicant's proposal to record an open space deed restriction over the portion of the subject site between the deck dripline and the ambulatory seawardmost limit of dune vegetation is implemented.

Additionally, to ensure that adverse effects to the marine environment are minimized, **Special Condition 4** requires that no stockpiling of construction materials occur on the beach, erosion control measures shall be implemented, and no machinery shall be allowed in the intertidal zone during construction activities. **Special Condition 2** of the subject permit requires the applicant to prepare a drainage and polluted run-off control plan to ensure that contaminated run-off from the project site will be captured and filtered so as not to adversely impact water quality or the sensitive marine environment.

The project site is located approximately 800 ft. east (down coast) of the nearest vertical public accessway to Broad Beach and several lateral public access easements have been dedicated along Broad Beach in past coastal development permits. The applicant is not offering to dedicate a lateral public access easement along the beachfront portion of the subject property. The Commission notes that the proposed project will be constructed landward of existing development at the site (to be demolished) and will be constructed behind the defined stringlines for the subject property, and therefore, the project will not result in seaward encroachment of development. The Commission also notes that the existing physical characteristics of the project site, including the wide beach and established dune system separating the area of proposed development from the ambulatory mean high tideline, and site specific evidence relative to historic mean high tidelines, wave uprush, and foreshore slope oscillation, all indicate that the proposed project will not encroach onto public tidelands. The Commission further notes that the applicant is not proposing a shoreline protective device and is in agreement with **Special Condition 8**, No Future Shoreline Protection Device, therefore no shoreline protective device will be constructed at the project site which could potentially result in adverse impacts to shoreline processes and public access. In addition, the Commission notes that chronic unauthorized postings of signs illegally attempting to limit public access have occurred on beachfront private properties in the Malibu and Broad Beach area. Therefore, **Special Condition 5** has been required to prohibit such signs. Therefore, the Commission finds that the project will not impede public rights to access public tidelands below the mean high tide line or other public access easements along Broad Beach, and a condition requiring a lateral public access easement is not warranted for the subject coastal development permit.

I. STAFF RECOMMENDATION

MOTION: ***I move that the Commission approve Coastal Development Permit No. 4-00-016 pursuant to the staff recommendation.***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and 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. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

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. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.

4. **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.

5. **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. Geologic Recommendations

All recommendations contained in the Soils and Engineering-Geologic Investigation Report by GeoSystems dated 10/21/99; and the Coastal Engineering Report by David C. Weiss dated 10/01/99 shall be incorporated into all final design and construction including recommendations concerning foundation, drainage, and sewage disposal. Project 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 consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, drainage, and sewage disposal. 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.

2. Drainage and Polluted Runoff Control Plan

Prior to the issuance of the Coastal Development Permit, the applicant shall submit for the review and approval of the Executive Director, a drainage and polluted runoff control plan designed by a licensed engineer to minimize the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan is in conformance with the geologists' recommendations. The plan shall be subject to the following requirements, and shall at a minimum, include the following components:

(a) Structural and/or non-structural Best Management Practices (BMPs) designed to capture, infiltrate or treat runoff from all roofs, parking areas, driveways and other impervious surfaces shall be identified and incorporated into final plans.

(b) Selected BMPs shall, when implemented ensure that post-development peak runoff rate and average volume from the site, will be maintained at levels similar to pre-development conditions. The drainage system shall also be designed to convey and discharge runoff from the building site in non-erosive manner.

The plan shall include provisions for BMP maintenance. All structural and non-structural BMPs shall be maintained in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) all traps/separators and/or filters shall be inspected, cleaned and repaired prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

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

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

A. Landscaping Plan

(1) The portion of the subject site that is not sandy beach (or subject to wave action) shall be planted within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation, all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.

(2) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.

(3) All existing invasive plant species existing at the project site shall be removed and replaced with appropriate native plant species.

(4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission-approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

B. Dune Habitat Restoration Plan

All invasive and non-native plant species shall be removed from the dune habitat restoration area as generally shown on Exhibit 5. The dune habitat restoration area shall be revegetated with native plant species appropriate to beach dune vegetation communities. The restoration plan shall also clearly delineate a foot path of no more than 3 ft. in width (sand surface only) for beach access through the dune system by the applicant in order to minimize disturbance to the dune system. The plan shall specify the preferable time of year to carry out the restoration and describe the supplemental watering requirements that will be necessary. The plan shall also specify specific performance standards to judge the success of the enhancement effort. The

performance standards shall incorporate ground coverage and survival rates typical to dune vegetation habitat areas.

C. Monitoring

(1) The applicant shall submit, for the review and approval of the Executive Director, a five (5) year Landscape, Erosion Control, and Dune Habitat Restoration Monitoring Program, prepared by an environmental resource specialist, which outlines dune restoration performance standards to ensure that restoration efforts at the project site are successful. Successful site restoration shall be determined if the revegetation of native plant species on site is adequate to provide 90% coverage by the end of the five (5) year monitoring period and is able to survive without additional outside inputs, such as supplemental irrigation. The monitoring program shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) showing the area of the project site where restoration will occur prior to restoration.

(2) The applicant shall submit, on an annual basis for a period of five years (no later than December 31st each year) a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, evaluating the success or failure of the restoration project. The annual reports shall include further recommendations and requirements for additional restoration activities in order for the project to meet the criteria and performance standards specified in the proposed restoration plan. These reports shall also include photographs taken from pre-designated sites (annotated to a copy of the site plans) indicating the progress of recovery at each of the sites. During the monitoring period, all artificial inputs shall be removed except for the purposes of providing mid-course corrections or maintenance to ensure the long-term survival of the project site. If these inputs are required beyond the first four years, then the monitoring program shall be extended for an equal length of time so that the success and sustainability of the project sites is ensured. Restoration sites shall not be considered successful until they are able to survive without artificial inputs.

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

4. 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 and sand bags and/or ditches shall be used to prevent runoff and siltation; and, c) that measures to control erosion must be implemented at the end of each day's work. In addition, no machinery will be allowed in the intertidal zone at any time. The permittee shall remove from the beach any and all debris that result from the construction period.

Prior to the issuance of the coastal development permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all debris/excavated material from the site. Should the dump site be located in the Coastal Zone, a Coastal Development Permit shall be required.

5. Sign Restriction

No signs shall be installed or placed on the beach unless a coastal development permit is approved allowing for the sign or signs.

6. Assumption of Risk

A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, flooding, and wildfire; (ii) 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; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) 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.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

7. Open Space Deed Restriction

A. No development, as defined in section 30106 of the Coastal Act, with the exception of dune habitat restoration, shall occur within the area of the subject site located between the dripline of the deck and the ambulatory seawardmost limit of dune vegetation as generally shown on the site plan prepared by Archwest Developments, Inc. (Exhibit 5). It is recognized that the seaward limit of the dune system and dune vegetation on the subject site is ambulatory in nature and that, therefore, the seaward extent of the area subject to this deed restriction is also ambulatory in nature.

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development in the designated open space.

The deed restriction shall include legal descriptions and a map of both the applicant's entire parcel and the open space area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

8. **No Future Shoreline Protective Device**

A. By acceptance of the permit, the applicant agrees, on behalf of itself and all successors and assignees, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit 4-00-016 including, but not limited to, the construction of the residence, garage, driveway/patios, septic system and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, landslides, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including but not limited to, the residence, garage, driveway/patio areas, septic system, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

C. Prior to issuance Coastal Development Permit 4-00-016, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director which reflects the above restrictions on development. The deed restriction shall include a legal description of the applicant's entire parcel(s). The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing the demolition of an existing two-story single family residence and construction of a new two-story, 27.5 ft. high, 6,121 sq. ft. single family residence with an attached garage, new driveway, decks, spa, and alternative sewage disposal system (Exhibit 5).

No grading is proposed. In addition, the proposed project includes an offer to record an open space deed restriction over the portion of the site located between the deck stringline and the ambulatory seawardmost limit of dune vegetation, and the restoration of an existing dune system.

The project site is a 15,903 sq. ft. beachfront parcel located on Broad Beach, between Broad Beach Road and the Pacific Ocean (Exhibit 1,2). The project site is accessed from Broad Beach Road via a private driveway approximately 0.3 miles west of the intersection of Broad Beach Road with Pacific Coast Highway. The subject parcel is currently developed with a two-story single family residence with an attached garage, driveway, and beachfront patio, all to be demolished (Exhibit 4). The project site gently descends south from Broad Beach Road approximately 18 ft. to the Pacific Ocean, however the location for the proposed residence occurs in a local depression of the subject property between Broad Beach Road and a natural dune system on the beach. All proposed development including the residence, decks, and garage will be constructed entirely on a caisson/grade beam foundation designed at an elevation above the maximum design wave profile between 14.0' M.S.L. and 14.5' M.S.L. and no shoreline protective device is proposed.

A vegetated dune system extends across the beachfront portion of the site and is designated as environmentally sensitive habitat area (ESHA) by the previously certified County of Los Angeles Malibu/Santa Monica Mountains Land Use Plan (LUP). The proposed project will not result in the removal of dune habitat. However, development adjacent to environmentally sensitive habitat areas, such as the dune system located on site, results in potential adverse effects to those habitat areas. In order to mitigate adverse effects to the dune habitat on site from the proposed development the applicant is proposing to restore and maintain the dune system and record an open space deed restriction over the dunes on the site located between the deck stringline and the ambulatory seawardmost limit of dune vegetation.

The area surrounding the project site is characterized as a built-out portion of Malibu consisting of numerous single family residences. The proposed project will be consistent with the scale and character of neighboring development and will be constructed at an elevation approximately 55 ft. below Pacific Coast Highway. The proposed residence is to be constructed in a location currently occupied by an existing residence (to be demolished), therefore, the project will not adversely impact previously unobstructed public views to the ocean. In addition, the applicant is proposing to restore and maintain the existing sand dune system at the project site, which will enhance visual resources along the beach and serve to partially screen the proposed development from the beach area. Therefore, the project will not be visible from Pacific Coast Highway nor will the project significantly obstruct public views to or along the beach, and will therefore have no significant impact on visual resources.

The applicant has submitted evidence of review of the proposed project by the California State Lands Commission (CSLC) which indicates that the CSLC presently asserts no claims that the project is located on public tidelands, although the CSLC reserves the right to any future assertion of state ownership or public rights should circumstances change (Exhibit 11). The project site is located approximately 800 ft. east (down coast) of the nearest vertical public accessway to Broad Beach and several lateral public access easements exists along the beach (Exhibit 3). In the case of the proposed project the applicant is not offering to dedicate a lateral public access easement.

On January 21, 2000 Commission staff received application materials for the proposed project and staff determined that additional information was necessary to aid in staff's analysis of the proposed project. On May 8th, in order to expedite completion and filing of the application so that it may be scheduled for a Commission hearing, staff received all requested information and materials along with a revised project description detailing a proposed dune habitat restoration plan and offer to dedicate an open space deed restriction over the dune habitat, and an offer to dedicate a lateral public access easement over the southern portion of the property along the beach. The revised project description submitted on May 8, which included the offer to dedicate a lateral public access easement, eliminated the need for staff to complete an extensive analysis of potential impacts to public access along the beach which may result from the proposed project. As such, the application was filed on May 17, 2000 and scheduled for the June Commission hearing.

Staff completed a Staff Report that included findings in support of a staff recommendation for approval of the proposed project, with conditions, based on the information and materials contained in the file, and the revised project description submitted to staff on May 8th. On June 12, 2000 staff received written notice stating that the applicant was not in agreement with Special Condition 6, Offer to Dedicate Lateral Public Access and Declaration of Restrictions, of the subject permit and per the applicant's request the item was postponed from the June Commission hearing. The significant change made to the project description after the project application was filed and scheduled for the June Commission hearing caused staff to spend additional time to reevaluate and complete an analysis of the proposed project.

To determine with absolute certainty what impacts may occur to shoreline processes and public access from beachfront development projects, which do not include an offer to dedicate lateral public access along the beach, requires a thorough and site specific analysis of shoreline processes including historic mean high tideline surveys, erosional trends, sand transport, and anticipated sea level rise. In the case of the proposed project, the application was filed with a project description that included an offer to dedicate lateral public access eliminating the need for staff to engage in an extensive analysis of potential impacts on shoreline processes and public access. After the offer to dedicate lateral access was withdrawn subsequent to filing of the application, staff requested additional information from the applicant relative to shoreline processes and anticipated sea level rise etc. however, the applicant failed to submit the additional information. Therefore, staff has reevaluated available data and information relative to the project site and completed a new analysis of potential impacts on shoreline processes and public access. Though all the above mentioned site specific information is not available for staff's analysis of the project's potential impacts on shoreline processes and public access, staff has determined that the data and information obtained by staff is sufficient to complete an analysis of potential impacts on public access, absent an offer to dedicate a lateral public access easement along the beach (discussed in detail under Section D. Public Access).

B. Shoreline Processes and Seaward Encroachment

Section **30235** of the Coastal Act states:

> ***Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when***

required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section **30251** of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

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

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

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

Site Shoreline Characteristics

The proposed project site is located on Broad Beach in the City of Malibu. Broad Beach is characterized as a relatively wide beach which has been developed with numerous single family residences. A well developed, but disturbed, dune system is located along Broad Beach seaward of existing residential development. The Malibu/Los Angeles County Coastline Reconnaissance Study by the United States Army Corp of Engineers dated April 1994 indicates that residential development on Broad Beach is generally protected by the wide nature of the beach and the presence of the existing dune field. However, the report also states that Broad Beach is subject to periodic episodes of beach recession and recovery that expose development along Broad Beach to potential storm damage and flooding from severe storm events. The applicant's coastal engineering consultant has also indicated that Broad Beach is

an oscillating (equilibrium) beach which experiences seasonal erosion and recovery. The Coastal Engineering Report prepared by David C. Weiss dated 10/1/99 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 40 ft. landward from the most landward mean high tide line measured in August of 1951. A 40 ft. seasonal foreshore slope oscillation places the foreshore (beach area extending from low water mark to highest point of normal hightide wave wash) approximately 179 ft. seaward of the most seaward extent of the proposed development.

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 development 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 landward of the appropriate stringline and will not result in the seaward encroachment of residential development on Broad Beach (Exhibit 5). Therefore, the Commission finds that the proposed project, as conditioned to require dune restoration and an open space deed restriction, will not result in the seaward encroachment of development on Broad Beach and will serve to minimize adverse effects to coastal processes, public access and visual resources.

Wave Uprush and Mean High Tide Line

The applicant's coastal engineering consultant has previously submitted information regarding the location of the mean high tide line on the subject site as measured during several different summer and winter months between 1951 and 1999. The applicant's coastal engineering consultant has further asserted that the most landward measurement of the ambulatory mean high tide line on the project site occurred in August 1951 when the mean high tide line on site was located approximately 354 ft. seaward of the Broad Beach Road right-of way line. The seaward most extension of the proposed development (the dripline of the proposed deck) will be located 135 ft. seaward of the Broad Beach right-of-way line (approximately 219 ft. landward of the August 1951 mean high tide line). Additionally, the Coastal Engineering Report prepared by David C. Weiss dated 10/1/99 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 40 ft. landward from the mean high tideline measured in August of 1951. Given a seasonal foreshore slope oscillation of 40 ft., the foreshore (which indicates the highest point of wave wash at high tide) remains approximately 179 ft. seaward of the proposed development during normal winter and summer tidal conditions.

Although the proposed structure will be located landward of the seasonally oscillating foreshore. the Coastal Engineering Report prepared by David C. Weiss dated 10/1/99 indicates that the

maximum wave uprush at the subject site is expected to occur approximately 175 ft. seaward of the Broad Beach right-of-way line (approximately 40 ft. seaward of the proposed deck dripline). The Commission notes that the proposed residence will be located approximately 40 ft. landward of the wave uprush limit and will not be subject to wave uprush under normal tidal conditions. However, recent winter storms including the El Nino Event of 1998 resulted in severe erosion of the beach and caused damage to several residences located in the Broad Beach area. The applicant's coastal engineering consultant has indicated that the proposed residence will be constructed above the sandy beach on a caisson/grade beam foundation and if constructed in compliance with the recommendations contained in the Coastal Engineering Report dated 10/1/99, no overtopping of the residence floors by ocean wave action will occur in the event that the proposed development is exposed to wave action during storm events. As such, no shoreline protection device is required or proposed to protect any portion of the proposed residence. Furthermore, the seaward extent of the alternative septic system and sand filter area will be located approximately 92 ft. from the Broad Beach Road right-of-way line (approximately 83 ft. landward of the maximum wave uprush limit). The applicant's coastal engineering consultant has concluded that because the proposed septic system will be located landward of the maximum wave uprush limit, no shoreline protection device is required to protect any portion of the proposed system. The Coastal Engineering Report dated 10/1/99 states:

> ***If the onsite sewage disposal system is located 200 ft. or less from the Broad Beach Road right of way line, no wall will be needed to protect the system from ocean wave damage.***

The applicant's coastal and geologic engineering consultants have made several other recommendations regarding the foundations of the residence, floor slab elevation, and the location of the septic system in order to minimize adverse effects to shoreline sand supply and to ensure the structural stability of the proposed development. To ensure that all recommendations of the engineering consultants have been incorporated into the proposed development, **Special Condition 1** requires the applicant to submit project plans certified by the consulting coastal engineer and geotechnical engineer as conforming to all recommendations contained in the Coastal Engineering Report by David C. Weiss dated 10/1/99 and the Soils and Engineering-Geologic Investigation Report by GeoSystems dated 10/21/99, to ensure structural and site stability, and to ensure the proposed development will not result in adverse effects to shoreline processes. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

Future Shoreline Protective Devices

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

Interference of shoreline processes 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 beach 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 publicly owned property. The second effect on access is through a progressive loss of sand as shore material is contained behind the protective device and not available to nourish the offshore bar. In turn, the lack of an effective bar can allow such high wave energy on the shoreline that beach materials may be washed far offshore where they are no longer available to nourish the beach. This effects public access again through a loss of beach 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 eventually affect the profile of a public beach. As set forth in earlier discussion, Broad Beach is currently characterized as a wide oscillating beach. However, the applicant's consultant has also indicated that seasonal foreshore slope movement on the subject site can be as much as 40 ft. landward of the most landward mean high tideline. The Commission notes that if a seasonally 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 Commissionalso notes that many studies performed on both oscillating and eroding beacheshave 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 utilization of alternative technologies for sewage disposal such as bottomless sand filter systems because they may 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 well landward (83 ft.) of the maximum wave uprush limit at the project site. The applicant's coastal engineering consultant has confirmed that no shoreline protective device is required to protect the proposed development, (the residence and garage will be constructed entirely on an engineered caisson/grade beam foundation able to withstand wave action), or to protect the septic system (which will be located 83 ft. landward of the maximum wave uprush limit).

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. A stated previously, the project's consulting coastal engineer has indicated in the Coastal Engineering Report dated 10/1/99 that no shoreline protective device will be required to protect the proposed development from wave action. 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 or public access, **Special Condition 8** requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residence, septic system, etc.

Sea Level Rise

Sea level has been rising slightly for many years. In the Santa Monica Bay area, the historic rate of sea level rise has been 1.8 mm/yr. or about 7 inches per century[1]. Sea level rise is expected to increase by 8 to 12 inches in the 21st century.[2] There is a growing body of evidence that there has been a slight increase in global temperature and that an accelerated rate of sea level rise can be expected to accompany this increase in temperature. Mean water level affects shoreline erosion in several ways and an increase in the average sea level will exacerbate all these conditions.

On the California coast the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore. On a relatively flat beach, with a slope of 40:1, every inch of sea level rise will result in a 40-inch landward movement of the ocean/beach interface. For fixed structures on the shoreline, such as a single family residence, pilings, or seawalls, an increase in sea level will increase the extent and frequency of wave action and future inundation of the structure. More of the structure will be inundated or underwater than are inundated now and the portions of the structure that are now underwater part of the time will be underwater more frequently.

Accompanying this rise in sea level will be increased wave heights and wave energy. Along much of the California coast, ocean bottom depth controls nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of the wave height, a small increase in wave height can cause a significant increase in wave energy and

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[1] Lyles, S.D., L.E. Hickman and H.A. Debaugh (1988) Sea Level Variations for the United States 1855 – 1986. Rockville, MD: National Ocean Service.

[2] Field et. al., Union of Concerned Scientists and the Ecological Society of America (November 1999) Confronting Climate Change in California, www.ucsusa.org.

wave damage. So, combined with a physical increase in water elevation, a small rise in sea level can expose previously protected back shore development to both inundation and wave attack, and those areas that are already exposed to wave attack will be exposed to more frequent wave attack with higher wave forces. Structures that are adequate for current storm conditions may not be adequately constructed to withstand storm conditions in the future.

A second concern with global warming and sea level rise is that climatic changes could cause changes to storm patterns and wave climate for the entire coast. As water elevations change, the transformation of waves from deep water will be altered and points of energy convergence and divergence could shift. The new locations of energy convergence would become the new erosion "hot spots" while the divergence points may experience accretion or stability. It is highly likely that portions of the coast will experience more frequent storms and the historic "100-year storm" may occur every 10 to 25 years. For most of California the 1982/83 ElNiño event has been considered the "100-year storm." Certain areas may be exposed to storms comparable to the 1982/83 El Niño storms every few decades. In an attempt to ensure stability under such conditions, the Commission has required that all new shoreline development be designed to withstand either a 100-year storm event, or a storm event comparable to the 1982/83 El Niño.

Therefore, if new development along the shoreline is to be found consistent with the Coastal Act, the most landward location must be explored to minimize wave attack with higher wave forces as the level of the sea rises over time. Shoreline protective devices must also be located as far landward as feasible to protect public access along the beach as discussed further below. In the case of this project, the proposed development will be located as landward as feasible and will not require construction of a shoreline protection device.

Conclusion

The proposed residence will be located landward of the winter and summer oscillating foreshore slope, and wave uprush limit line and will be designed to eliminate the necessity for a shoreline protective device. The septic system for the proposed residence will also be located landward of the wave uprush limit line, and therefore, will not be subject to wave uprush, or require the construction of a shoreline protective device. Further, the proposed development will be located landward of the appropriate stringlines and will not result in seaward encroachment of residential development on Broad Beach.

In addition, no shoreline protective device is proposed as part of the development. The applicant's coastal engineering consultant has confirmed that no shoreline protective device is required to protect any portion of the proposed development. However, as previously discussed, areas of Broad Beach have experienced extreme erosion and scour during severe storm events, such as El Nino storms. It is not possible to completely predict what conditions the proposed residence may be subject to in the future given the occurrence of severe storm events and anticipated sea level rise. As discussed in detail above, the construction of a shoreline protective device to protect new residential development would result in potential adverse effects to coastal processes, shoreline sand supply, and public access and would not be consistent with Sections 30235, 30251, or 30253 of the Coastal Act. Therefore, to ensure that the proposed project is consistent with Sections 30235, 30251, and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes and public access, Special Condition 8 requires the applicant to record a deed

restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any portion of the development proposed as part of this application including the residence, septic system, driveway, etc. Further, to ensure structural and site stability, Special Condition 1 requires the applicant to submit project plans certified by the consulting coastal engineer and geotechnical engineer as conforming to all recommendations contained in the Coastal Engineering Report by David C. Weiss dated 10/1/99 and the Soils and Engineering-Geologic Investigation Report by GeoSystems dated 10/21/99.

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

C. Hazards and Geologic Stability

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

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

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

The applicant has submitted a Coastal Engineering Report prepared by David C. Weiss dated 10/1/99 and a Soils and Engineering-Geologic Investigation Report prepared by GeoSystems dated 10/21/99 which evaluate the safety and stability of the project site in relation to the proposed development. The consultants have determined that the proposed development will serve to ensure geologic and structural stability on the subject site. The Soils and Engineering-Geologic Investigation Report by GeoSystems dated 10/21/99 concludes that:

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

The Coastal Engineering Report prepared by David C. Weiss dated 10/1/99 and a Soils and Engineering-Geologic Investigation Report prepared by GeoSystems dated 10/21/99 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 1** requires the applicant to submit project plans certified by both the consulting

geotechnical engineer and the coastal engineering consultant as conforming to all their recommendations to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

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

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

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

Thus, ample evidence exists that all beachfront development in the Malibu area is subject to an unusually high degree of risk due to storm waves and surges, high surf conditions, erosion, and flooding. The proposed development will continue to be subject to the high degree of risk posed by the hazards of oceanfront development in the future. The Coastal Act recognizes that development, even as designed and constructed to incorporate all recommendations of the consulting coastal and geotechnical engineers, 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, flooding, and wildfire, the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, as required by **Special Condition 6**, when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards associated with development of the site, and that may adversely affect the stability or safety of the proposed development.

In addition, the Commission notes that construction activity on a sandy beach, such as the proposed project, will result in the potential generation of debris and or presence of equipment and materials that could be subject to tidal action. The presence of construction equipment, building materials, and excavated materials on the subject site could pose hazards to beachgoers or swimmers if construction site materials were discharged into the marine environment or left inappropriately/unsafely exposed on the project site. In addition, such discharge to the marine environment would result in adverse effects to offshore habitat from increased turbidity caused by erosion and siltation of coastal waters. To ensure that adverse effects to the marine environment are minimized, **Special Condition 4** requires the applicant to ensure that stockpiling of construction materials shall not occur on the beach, that no machinery will be allowed in the intertidal zone at any time, all debris resulting from the construction period is promptly removed from the sandy beach area, all grading shall be properly covered, and that sand bags and/or ditches shall be used to prevent runoff and siltation.

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, consistent with the need to protect public safety, private property and natural resources, 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.

The subject site is located on Broad Beach, approximately 800 ft. east of an existing vertical public accessway to Broad Beach. In addition to the vertical public accessway near the project site, there are several lateral public accessways along shorefront property on Broad Beach which provide areas for public access up and down the coast along the shoreline. The Commission notes that many beachgoers who access the beach via the vertical public accessways from Broad Beach Road often walk along the shoreline up and down the coast between Lechuza Point and public recreation areas such as Zuma Beach County Park and Point Dume (Exhibit 1). In the case of the proposed project, the applicant is not offering to dedicate a lateral public access easement along the beachfront portion of the subject property.

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

Where development is proposed that may impair public use and ownership of tidelands, the Commission must consider where the development will be located in relation to tidelands. The legal boundary between public tidelands and private uplands is relative 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 with profile changes resulting from 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. In order to determine the location of the mean high tideline with absolute certainty, and therefore analyze potential impacts on shoreline processes, public access and tidelands, a site specific analysis of shoreline processes including historic mean high tide line surveys, erosional trends, sand transport, and anticipated sea level rise would be necessary. As mentioned, the subject application was originally filed with a project description that included an offer to dedicate a lateral public access easement eliminating the need for staff to engage in an extensive analysis of potential adverse impacts to public access, however the offer to dedicate was subsequently withdrawn. As such, staff has not had the opportunity or resources to complete an analysis of all the site specific shoreline processes information and characteristics at the project site as described above.

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.

The project site is located on Broad Beach in the City of Malibu. Broad Beach is identified as a wide oscillating beach with a well established vegetated dune system located between the existing residential neighborhood and the ocean. The proposed project will be located on the north end of the beachfront parcel adjacent to Broad Beach Road and will be constructed landward of the existing dune system. The proposed project will also be constructed landward of existing development at the site, and of the established stringline for the project site. Therefore, the Commission finds that the proposed project will not result in seaward encroachment of development onto the sandy beach. Also, because the proposed project involves demolition of an existing residence and construction of a new residence in the same location, which does encroach onto the sandy beach, the Commission finds that the proposed project will not occupy sandy beach area previously open for public access or viewing to the ocean.

Site specific evidence provided by the project's consulting coastal engineer indicates the proposed development will be located well landward (219 ft.) of the most landward measured mean high tideline recorded in August of 1951. Furthermore, staff has received evidence from the coastal engineering consultant that the location of the proposed residence will also remain landward (approximately 179 ft.) of the seasonally migrating foreshore slope, as it oscillates between normal winter and summer tidal conditions. Finally, the proposed residence will also be located landward (40 ft.) of the maximum wave uprush limit established at the site by the coastal engineer. Based on this evidence the Commission notes that under normal winter and summer tidal conditions, and during storm conditions with maximum expected wave uprush, the proposed project will be located landward of the expected high water mark. Additionally, the beach located between the proposed building site and the Pacific Ocean is a relatively wide beach with a well established sand dune formation. The Commission notes the presence of the existing dune system at the site indicates that under normal tidal conditions the mean high tide line is consistently located seaward of the sand dune system, opposite the location of the

proposed development. Due to the fact that the proposed residence will be located far landward of the most landward recorded mean high tide line, the seasonally oscillating foreshore slope, and wave uprush, and the physical characteristics of the project site (the wide beach and existing sand dunes), the Commission finds that the project, as proposed, will not adversely affect public access to the beach.

However, even structures located above the mean high tide line 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 tidelands. The applicants seek Commission approval of a new beachfront residence supported on a caisson and grade beam foundation. As previously discussed in detail, although the proposed project will not include the construction of a shoreline protection device, any direct occupation of sandy beach area by the proposed residence may potentially result in adverse effects to public access along the sandy beach.

Though no shoreline protective device is proposed as part of this project, the Commission notes that interference of shoreline processes by a shoreline protective device would have a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. The effects of shoreline protective devices on shoreline processes that maintain public tideland areas are well documented. First, changes in the shoreline profile, particularly changes in the slope of the profile, which results from reduced beach width, alter usable beach 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 contained behind the protective device and not available to nourish the offshore bar. The lack of an effective offshore bar can allow such high wave energy on the shoreline that beach material may be washed far offshore where it is no longer available to nourish the beach. The effect of this on the public is again a loss of beach 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's energy. Finally, revetments and bulkheads interfere directly with public access by their occupation of beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

As previously discussed in detail, the applicant's coastal engineering consultant has indicated that no shoreline protective device is required to protect either the proposed residence (which will be constructed above the beach on a caisson/grade beam foundation) or the septic system (which will be located landward of the maximum wave uprush limit). However, the Commission notes that though the proposed project is designed so as not to require a shoreline protective device, any future construction of a protective device in response to uncertain ocean hazards and potential sea level rise would result in potential adverse impacts to shoreline processes and public access. Therefore, to ensure that the proposed project does not result in future adverse impacts to shoreline process and public access, **Special Condition 8** requires the applicant to

record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residence, garage, septic system, driveway, etc.

In permitting new beachfront development 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. As noted, in the case of the proposed project, the proposed development will not encroach onto public tidelands and the project does not involve construction of a shoreline protection device, which would adversely affect shoreline processes and the availability of public tidelands. In addition, Special Condition 8, the No Future Shoreline Protection Device condition, will ensure that the proposed project will not significantly alter shoreline processes at the site which would affect the availability of sand or the profile of the sandy beach necessary to maintain public tidelands. Therefore, the Commission finds that that the proposed project will not directly or indirectly affect the public's right to access publicly owned tidelands below the ordinary mean high tide line. Additionally, the proposed project will not occupy an area of sandy beach which has previously provided unobstructed public access or public views to the coast. The proposed project will replace an existing single family residence, constructed prior to 1973, with a new residence to be located landward of existing development and landward of the established stringline at the project site. Therefore, the Commission finds that the proposed project will not impede any rights of the public acquired under the doctrine of implied dedication, as the new development will not occupy any area of the beach previously used as a means of public access to or along the beach.

In addition, the Commission finds that it is necessary to require an open space deed restriction to protect the vegetated dune system (ESHA) located seaward of the proposed residence. Therefore, the portion of the beach seaward of the residence containing the vegetated dune system is not an appropriate area for public lateral access along the beach. The proposed project includes a dune restoration plan which will restore the native plant community on the

dunes and will therefore provide a more natural and scenic dune community on the property. The proposed project, as described above, will not have any impacts on public use of the beach below the mean high tide line, seaward of the dunes.

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, which in turn may inhibit the ability of the public to access existing lateral access easements acquired along the beach. In fact, staff notes that more conflicts between private property owners and public beachgoers have been documented along Broad Beach than along any other beach in the Malibu area and that a "Private Beach Patrol" has been used by the Broad Beach Homeowner's Association in past years to patrol Broad Beach and enforce a "No Trespassing" policy. Staff has received numerous complaints, particularly during summer months, from beachgoers who have stated that private residents, or the Beach Patrol, have inhibited public access along Broad Beach. The Commission has determined, therefore, that to ensure that the applicants clearly understand that such postings are not permitted without first obtaining a coastal permit it is necessary to impose **Special Condition 5** to ensure that similar signs are not posted on or near the proposed project site prior to review and approval by the Commission. The Commission finds that if implemented, Special Condition 5 will protect the public's right of access to the sandy beach below the mean high tide line as well as those lateral public access easements acquired through offers to dedicate along Broad Beach.

As described above, the proposed project will not result in encroachment of development onto the sandy beach or onto public tidelands, will not result in adverse impacts to shoreline processes which sustain public tidelands, will not occupy any beach area previously used for public access, and will not impede the right of the public to access the sandy beach below the mean high tide line or existing vertical and lateral public accessways. The Commission finds that the proposed project will not interfere with public access to the sea and therefore, a condition requiring a lateral public access easement at the project site is not warranted for the subject coastal development permit.

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

E. Environmentally Sensitive Resources

Section **30240** states:

> ***(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***
>
> ***(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

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

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

The Commission notes that the existing dune system on the subject site is highly degraded and has been partially colonized by invasive plant species as a result of past residential development along Broad Beach. The proposed development will be located immediately landward of the existing dune vegetation habitat and will not result in the direct removal of dune vegetation. However, in past permit actions, the Commission has found that new development located immediately adjacent to environmentally sensitive habitat areas, such as the dune system located along Broad Beach, results in potential adverse effects to those habitat areas. Specifically, the Commission has found that residential development on Broad Beach results in adverse effects to the existing dune system from increased erosion resulting from foot traffic to the beach through the dune system by homeowners, septic effluent, and introduction of non-native and invasive plant species used for landscaping. The adverse effects to the existing dune system further cause loss of plant and animal habitat and disturbance to wildlife. In order to mitigate any potential adverse impacts to the dune vegetation habitat that result from the proposed development, **Special Condition 3** requires, in part, that the applicant submit a dune habitat restoration program that would provide for the removal of all invasive and non-native plant species from the existing dune system on site and revegetation of the system with native plant species appropriate for dune habitat. Special Condition 3 also requires the applicant to submit, on an annual basis for a period of five years (no later than December 31st each year), a written report, for the review and approval of the Executive Director, prepared by an environmental resource specialist, indicating the success or failure of the restoration project. At the end of a five year period, a final detailed report shall be submitted for the review and

approval of the Executive Director. If the report indicates that the restoration project has in part, or in whole, been unsuccessful, based on the approved performance standards, the applicant shall be required to submit a revised or supplemental program to compensate for those portions of the original program which were not successful. The revised or supplemental dune restoration program shall be processed as an amendment to this Coastal Development Permit.

In addition, the Commission notes that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Direct adverse effects from such landscaping result from the direct occupation or displacement of native plant community habitat by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant species habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area and the adjacent environmentally sensitive dune habitat, Special Condition 3 also requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used. Special Condition 3 also requires that the existing invasive plant species located on the project site be removed.

Further, in order to ensure that adverse effects to the dune habitat on the project site from new development are minimized, **Special Condition 7** requires that the applicant's proposal to record an open space deed restriction over the portion of the subject site between the deck dripline and the ambulatory seawardmost limit of dune vegetation is implemented. It is recognized that the seaward limit of the dune system and dune vegetation on the subject site is ambulatory in nature and that, therefore, the seaward extent of the area subject to this deed restriction is also ambulatory in nature.

The Commission finds that, as conditioned, the proposed project is consistent with Section 30240 of the Coastal Act.

F. Visual Resources

Section **30251** of the Coastal Act states that:

> ***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinated to the character of its setting.***

Section 30251 of the Coastal Act requires public views to and along the ocean and scenic coastal areas to be considered and protected when siting new development. The proposed

project includes the demolition of an existing two-story single family residence and construction of a new two-story, 27 ½ ft. high, single family residence. As previously mentioned, the proposed project is located on Broad Beach between Broad Beach Road and the ocean. The proposed project will be constructed at an elevation approximately 55 ft. below Pacific Coast Highway, therefore, the project will not obstruct scenic views from Pacific Coast Highway to and along the coastline. Additionally, the proposed project will be consistent with the character and scale of existing development around the project site and all proposed development will be constructed landward of the appropriate building and deck stringlines established at the project site so as not to obstruct visual resources along the shoreline. Finally, the applicant is proposing to restore and maintain the existing sand dune system at the project site, which will enhance the visual resources along the beach and serve to partially screen the proposed development. Therefore, the Commission finds that the project, as proposed, will not significantly impact public views to or along the beach and is consistent with Section 30251 of the Coastal Act.

G. Water Quality

The Commission recognizes that development of beachfront lots in Malibu has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems.

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.***

As described above, the proposed project includes the demolition of an existing residence and construction of a new single family residence and a new alternative sewage disposal system. Additionally, the development will include impervious structures such as a new driveway and decks. Use of the site for residential purposes will introduce potential sources of pollutants such as petroleum, household cleaners and pesticides, as well as other accumulated pollutants from rooftops and other impervious surfaces.

The placement of impervious surfaces allows for less infiltration of rainwater into the soil and sand of the site, thereby increasing the rate and volume of runoff, causing increased erosion and sedimentation. Additionally, the infiltration of precipitation into the soil and sand of the site allows for the natural filtration of pollutants. When infiltration is prevented by impervious surfaces, pollutants in runoff are quickly conveyed to coastal streams and directly to the ocean. Thus, new development can cause cumulative impacts to the hydrologic cycle of an area by increasing and concentrating runoff, leading to stream channel destabilization, increased flood potential, increased concentration of pollutants, and reduced groundwater levels.

Such cumulative impacts can be minimized through the implementation of drainage and polluted runoff control measures. In addition to ensuring that runoff is conveyed from the site in a non-erosive manner, such measures should also include opportunities for runoff to infiltrate into the ground. Methods such as vegetated filter strips, gravel filters, and other media filter devices allow for infiltration. Because much of the runoff from the site would be allowed to return to the soil and beach, overall runoff volume is reduced and more water is available to replenish groundwater and maintain stream flow. The slow flow of runoff allows sediment and other pollutants to settle into the ground where they can be filtered. The reduced volume of runoff takes longer to reach coastal streams and the ocean and its pollutant load will be greatly reduced.

As described above, the project is conditioned to implement and maintain a drainage plan designed to ensure that runoff rates and volumes after development do not exceed pre-development levels and that drainage is conveyed in a non-erosive manner. This drainage plan is required in order to ensure that risks from geologic hazard, erosion and sedimentation, and polluted runoff to coastal waters is minimized. In order to further ensure that adverse impacts to coastal water quality do not result from the proposed project, the Commission finds it necessary to require the applicant to incorporate filter elements that intercept and infiltrate or treat the runoff from the site. This plan is required by **Special Condition 2**, the Drainage and Polluted Runoff Control Plan. The plan will allow for the infiltration and filtering of runoff from the developed areas of the site, most importantly capturing the initial, "first flush" flows that occur as a result of the first storms of the season. This flow carries with it the highest concentration of pollutants that have been deposited on impervious surfaces during the dry season. Additionally, the applicant must monitor and maintain the drainage and polluted runoff control system to ensure that it continues to function as intended throughout the life of the development.

Finally, the proposed development includes installation of a new alternative septic system utilizing a 2,500 gallon septic tank. In order to reduce the size of the required leachfield for the proposed septic system 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 83 ft. landward of the wave uprush limit line. The applicants' geologic consultants have performed percolation tests and evaluated the proposed septic system. The report concludes that the site is suitable for the alternative septic system and there will be no adverse impact to the site or surrounding areas from the use of a septic system. Finally, the City of Malibu Environmental Health Department has given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources. Therefore, the Commission finds that the proposed project, as conditioned to incorporate and maintain a drainage and polluted runoff control plan, is consistent with Section 30231 of the Coastal Act.

H. Local Coastal Program

Section 30604 of the Coastal Act states that:

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

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

I. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

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

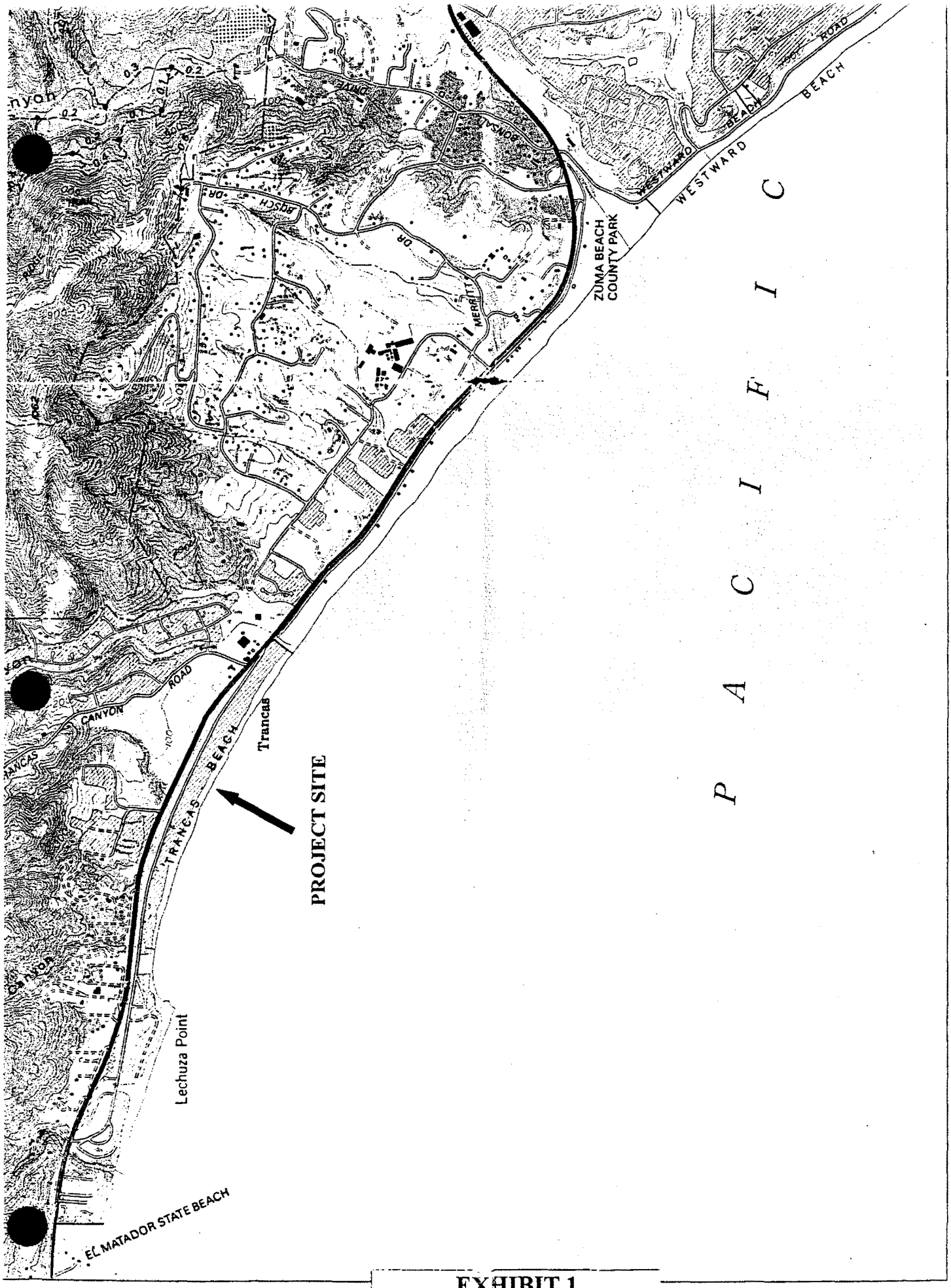


EXHIBIT 1

CDP #4-00-016

VICINITY MAP

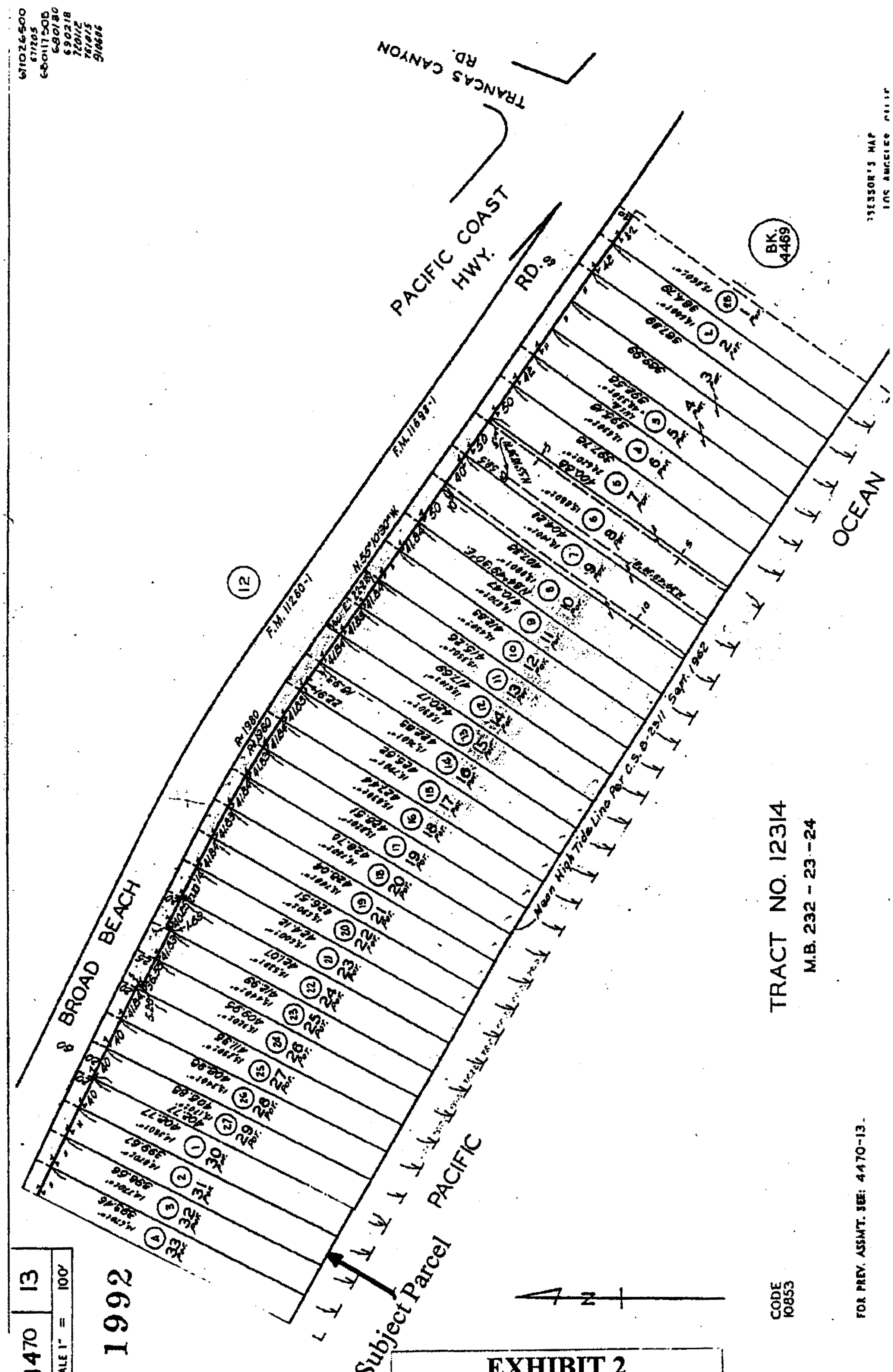


EXHIBIT 2

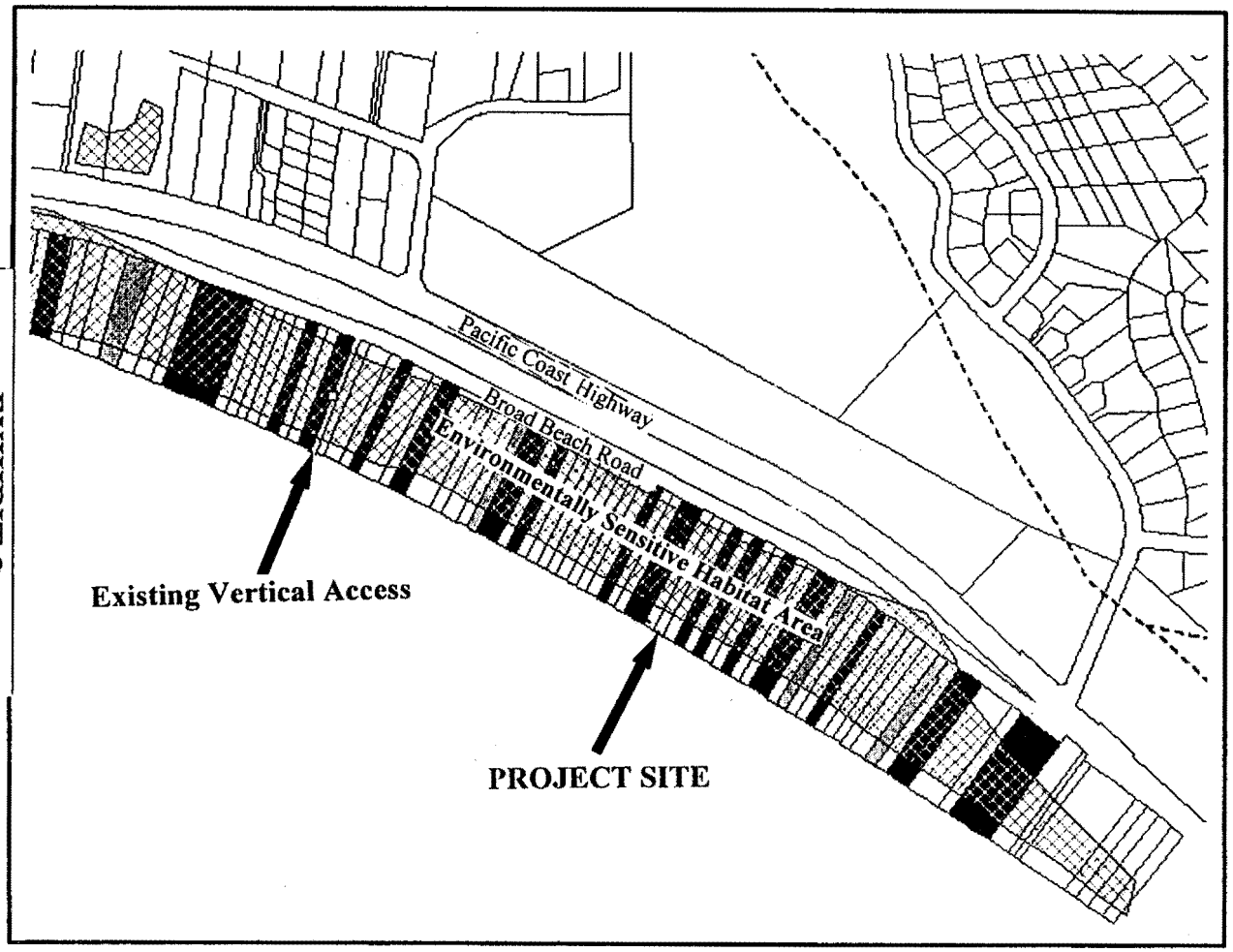
CDP # 4-00-016

PARCEL MAP

A 1993-94 - Map: 4470-013

ESRI ArcExplorer 1.1

4-00-016 (Sitrick)

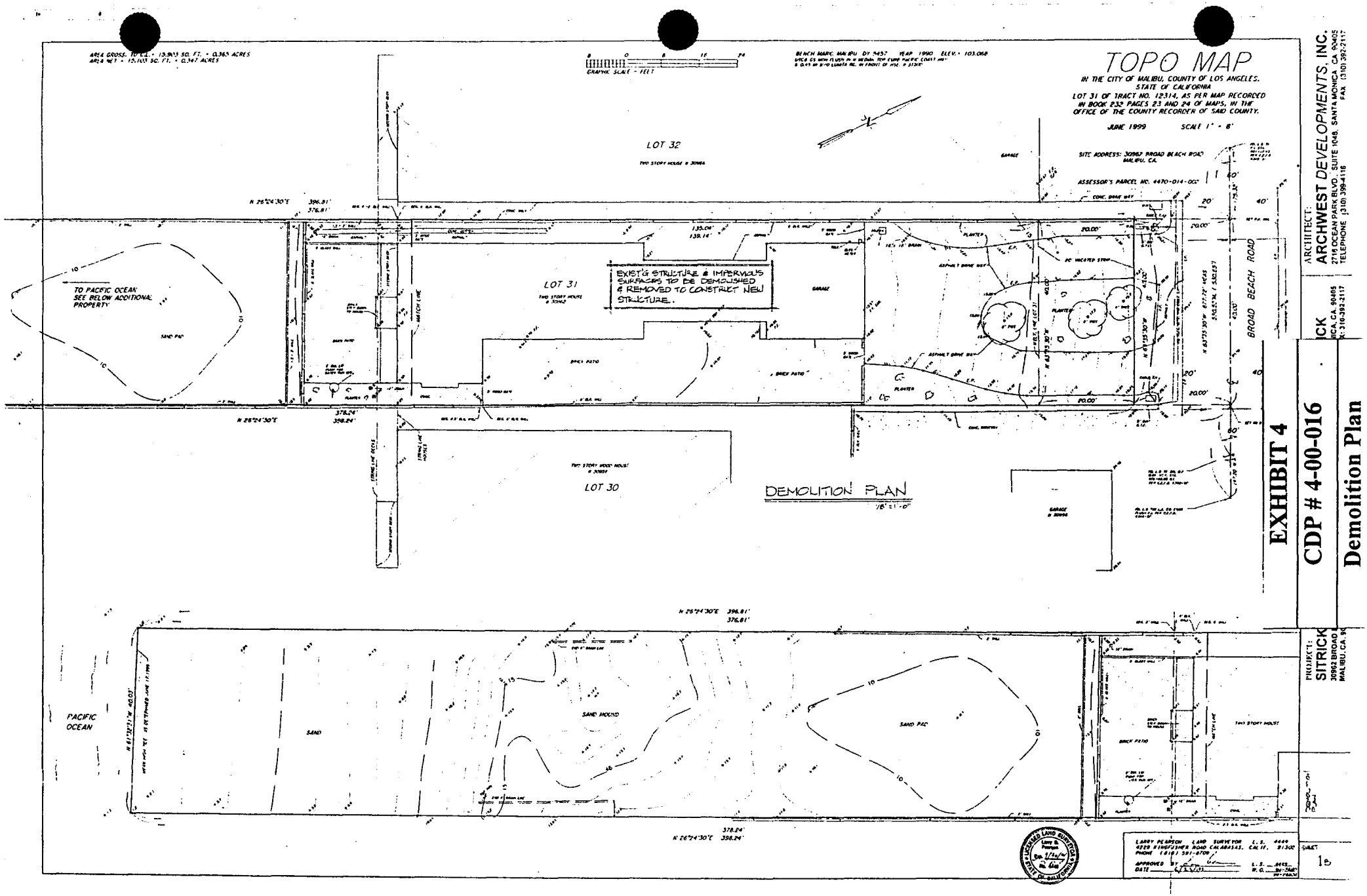


vertaccessexisting
trailslacoplan
laprcls
esha
latsopen
latopps
czbdy

N

Thursday, Aug 24 2000

EXHIBIT 3
CDP # 4-00-016
Resource Map


TOPO MAP
IN THE CITY OF MALIBU, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA
LOT 31 OF TRACT NO. 12314, AS PER MAP RECORDED IN BOOK 233 PAGES 23 AND 24 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.
JUNE 1999 SCALE 1" = 8'
SITE ADDRESS: 30962 BROAD BEACH ROAD MALIBU, CA.
ASSESSOR'S PARCEL NO. 4470-014-002
LOT 32
LOT 31
LOT 30
EXIST'G STRUCTURE & IMPERVIOUS SURFACES TO BE DEMOLISHED & REMOVED TO CONSTRUCT NEW STRUCTURE.
TO PACIFIC OCEAN SEE BELOW ADDITIONAL PROPERTY
BROAD BEACH ROAD
DEMOLITION PLAN
1/8" = 1'-0"
PACIFIC OCEAN
SAND
SAND MOUND
SAND PAD
BRICK PATIO
TWO STORY HOUSE
GARAGE
N 26°24'30"E 396.81' 376.81'
N 26°24'30"E 378.24' 398.24'
EXHIBIT 4
CDP # 4-00-016
Demolition Plan
ARCHITECT:
ARCHWEST DEVELOPMENTS, INC.
2716 OCEAN PARK BLVD., SUITE 1048, SANTA MONICA, CA 90405
TELEPHONE (310) 399-4116 FAX (310) 392-2117
PROJECT:
SITRICK
30962 BROAD B
MALIBU, CA. 9
LARRY PEARSON LAND SURVEYOR L.S. 4449
4228 KINGFISHER ROAD CALABASAS, CALIF. 91302
PHONE (818) 591-8709
APPROVED BY
DATE 6/14/99
L.S. 4449
W.O. 99-7687
SHEET 1B

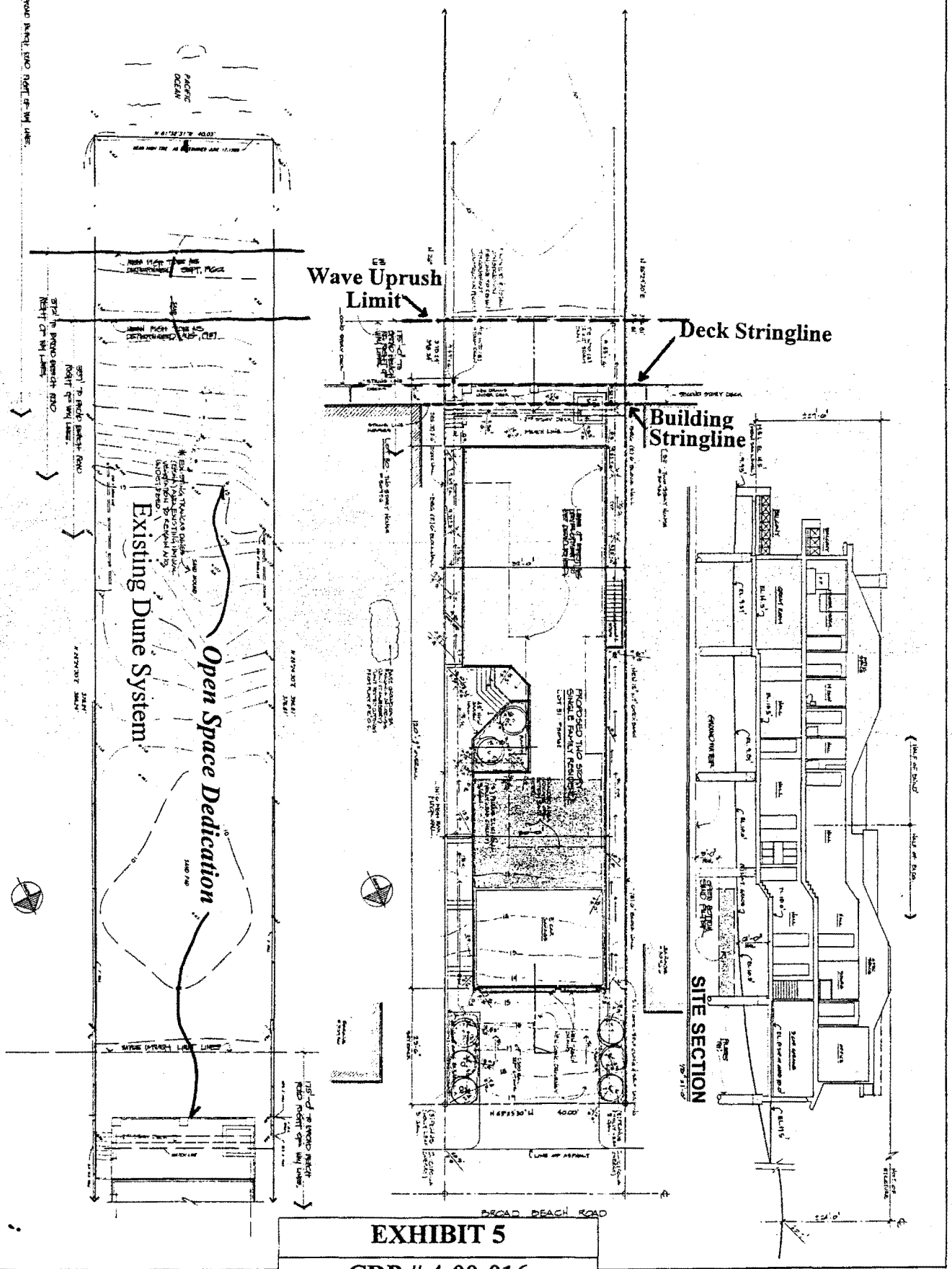


EXHIBIT 5

CDP # 4-00-016

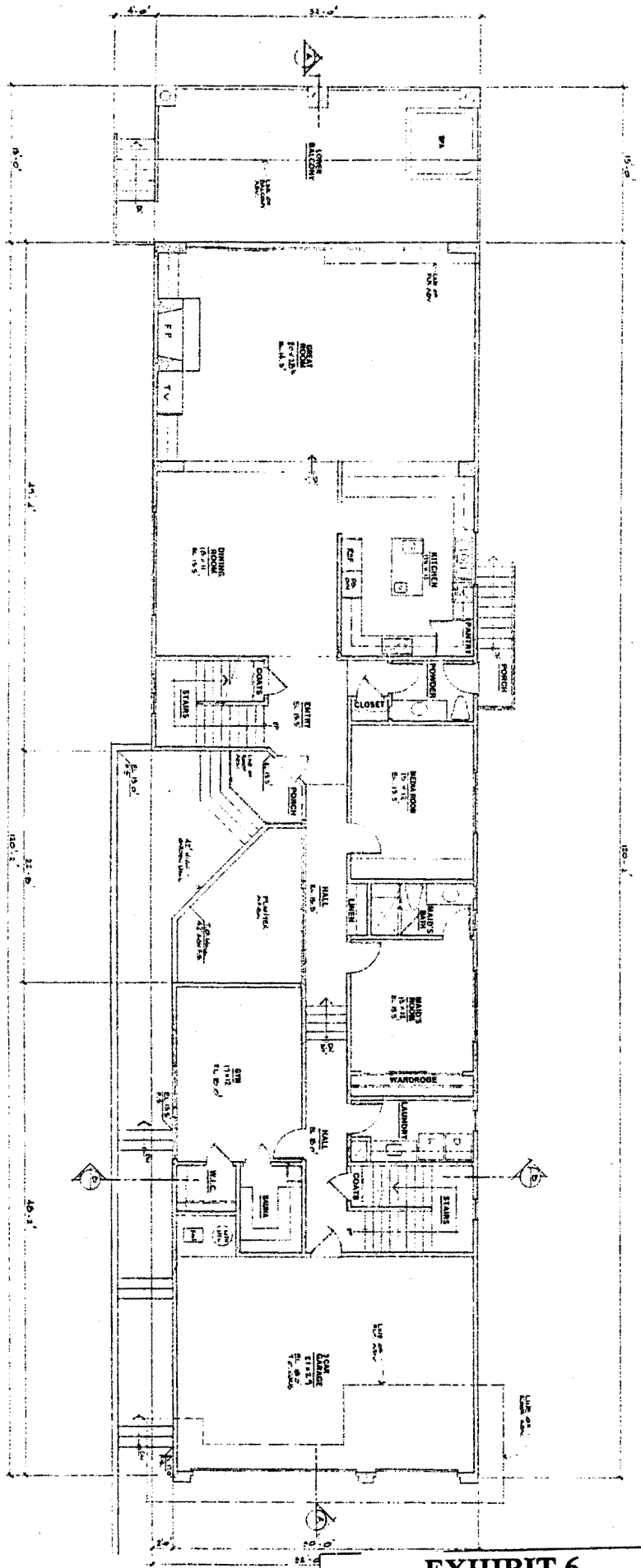
Site Plan

Drainage/Landscaping

SITE - GRADING/ DRAINAGE PLAN

PROJECT:
SITRICK RESIDENCE
30962 BROAD BEACH ROAD,
MALIBU, CA. 90265

ARCHITECT:
ARCHWEST *DEVELOPMENTS*, INC.
2716 OCEAN PARK BLVD., SUITE 1046, SANTA MONICA, CA 90405
TELEPHONE: (310) 399-4119 FAX: (310) 392-2117



FIRST FLOOR PLAN

FIRST FLOOR PLAN

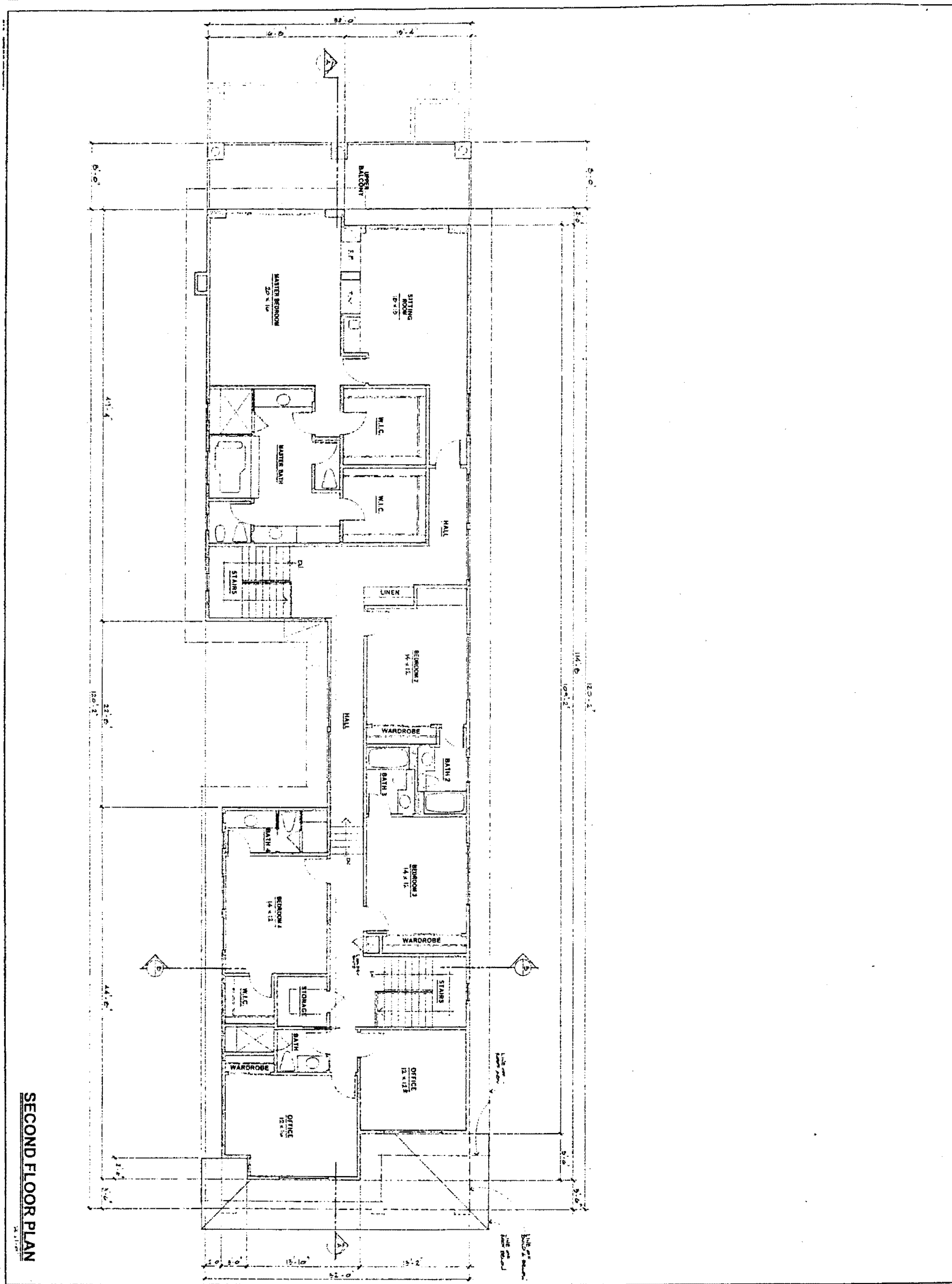
PROJECT:
SITRICK RESIDENCE
30942 BROAD BEACH ROAD.
MALIBU, CA. 90405

ARCHITECT:
ARCHWEST *DEVELOPMENTS*, INC.
2716 OCEAN PARK BLVD., SUITE 1045 SANTA MONICA, CA 90405
TELEPHONE (310) 399-4116 FAX (310) 392-2117

EXHIBIT 6

CDP # 4-00-016

1st Floor Plan



SECOND FLOOR PLAN

PROJECT:
SITRICK RESIDEN
30962 BROAD BEACH ROAD
MALIBU, CA. 90405

EXHIBIT 7

CDP # 4-00-016

2^{nd} Floor Plan

ARCHITECT:
ARCHWEST *DEVELOPMENTS*, INC.
2718 OCEAN PARK BLVD SUITE 1048 SANTA MONICA CA 90405
TELEPHONE (310) 399-4116 FAX (310) 392-2117

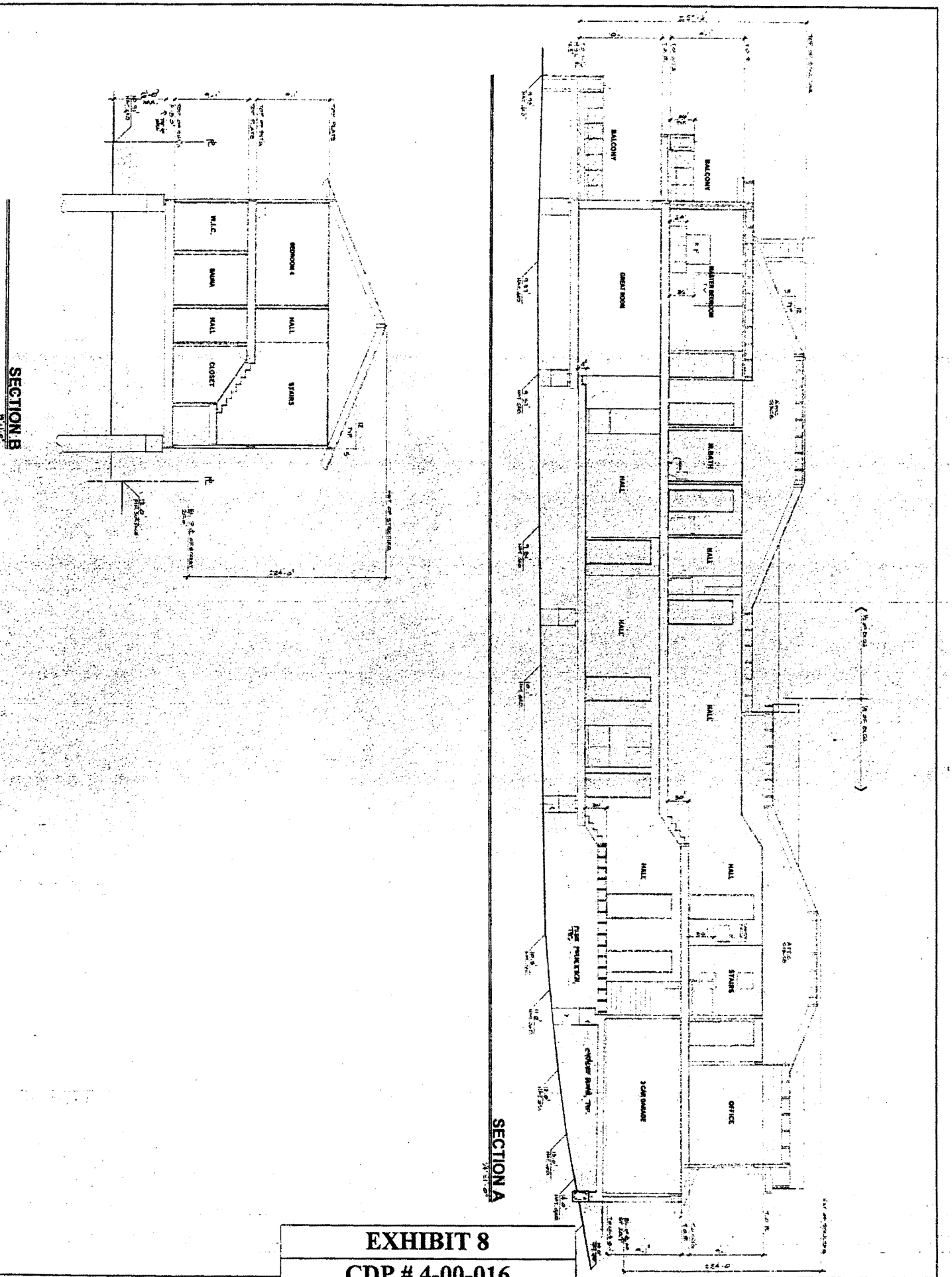


EXHIBIT 8

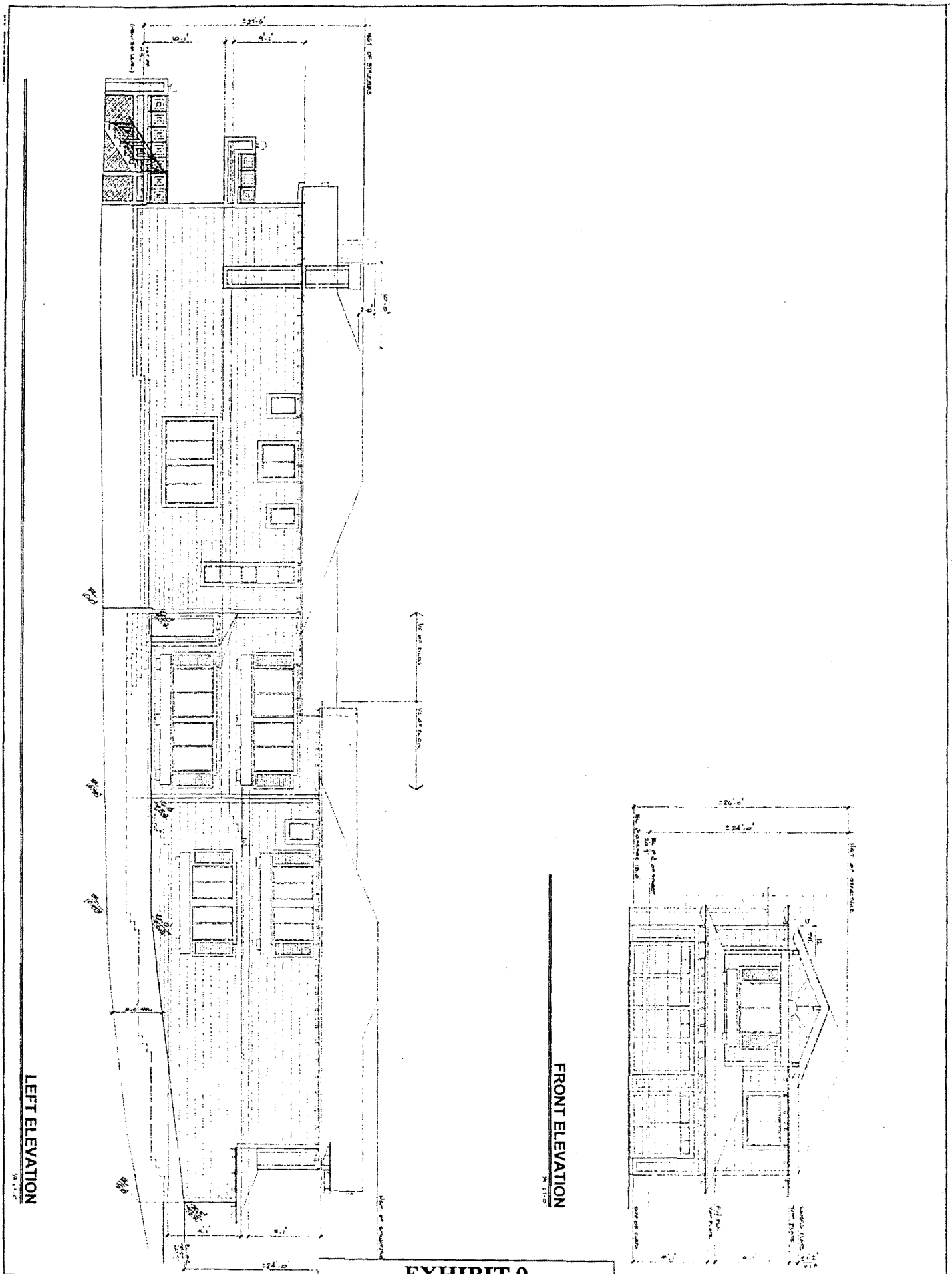
CDP # 4-00-016

Sections

SECTIONS

PROJECT:
SITRICK RES
30942 BROAD BEACH RO
MALIBU, CA. 90465

ARCHITECT:
ARCHWEST DEVELOPMENTS, INC.
2716 OCEAN PARK BLVD., SUITE 1045, SANTA MONICA, CA. 90405
TELEPHONE: (310) 399-4116 FAX: (310) 392-2117



EXTERIOR ELEVATIONS

PROJECT:
SITRICK RESIDEN
30992 BROAD BEACH ROAD,
MALIBU, CA. 90405

ARCHITECT:
ARCHWEST DEVELOPMENTS, INC.
2716 OCEAN PARK BLVD., SUITE 1044, SANTA MONICA, CA. 90405
TELEPHONE (310) 399-4116 FAX (310) 392-2117

EXHIBIT 9

CDP # 4-00-016

Elevations

EXHIBIT 10

CDP # 4-00-016

Elevations

STATE OF CALIFORNIA GRAY DAVIS, *Governor*

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

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

April 6, 2000

File Ref: SD 00-02-29.8

Bill Crawford
Archwest Developments, Inc.
2716 Ocean Park Blvd., #1048
Santa Monica CA 90405

Dear Mr. Crawford:

SUBJECT: Coastal Development Project Review for Demolition of Existing Single Family Residence and Construction of a New Residence at 30962 Broad Beach Road, Malibu

This is in response to your request on behalf of your clients, Michael and Nancy Sitrick 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 clients' project, as we understand them, are these:

Your clients propose to demolish an existing single family residence and construct a new two-story single family residence/patio with second story deck at 30962 Broad Beach Road in Malibu. Based on the June 23, 1999 site survey you have submitted, the proposed residence/patio appear to be in conformance with the string lines established by the residences/patios on either side. This is a wide beach characterized by dune vegetation and well-developed with numerous residences both up and down coast.

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. This conclusion is based on the location of the property, the character and history of the adjacent development, and the minimal potential benefit to the public, even if such an inquiry

EXHIBIT 11
CDP # 4-00-016
State Lands Commission Letter

were to reveal the basis for the assertion of public claims and those claims were to be pursued to an ultimate resolution in the state's favor through litigation or otherwise.

Accordingly, the CSLC presently asserts no claims that the project intrudes onto sovereign lands or that it would lit in an area that is subject to the public easement in navigable waters. 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,

Robert L. Lynch, Chief
Division of Land Management

cc: Craig Ewing, City of Malibu

MR. AND MRS. MICHAEL SITRICK
1436 Via Cresta
Pacific Palisades, California 90272

June 20, 2000

Mr. Gary Timm
Mr. Jack Ainsworth
California Coastal Commission
89 South California St., #200
Ventura, California 93001

Re: Coastal Development Permit Application No. 4-00-016
30962 Broad Beach Road, Malibu CA

Dear Sirs:

I am the owner of the above-referenced property. My application for a Coastal Development Permit was initially calendared for hearing as Item No. 23.d. of the Coastal Commission's agenda for its June 13, 2000 meeting. I requested a continuance of that hearing because the Staff Report contained a condition to provide a lateral access easement across my property which, I am advised, cannot be required for issuance of a coastal permit for my limited project. If after reading this letter you agree that the lateral condition can be deleted with a Staff recommendation for approval, then I would appreciate staff's modification of the Staff Report to reflect that change in time for the August Commission meeting. If you do not agree with my request, I would like to meet with you to discuss the situation further.

On June 8, 2000 upon reviewing the Coastal Commission Staff Report to get ready for the meeting, I discovered that the Staff Report included a lateral offer to dedicated an easement for public access along th entire width of the property, from ambulatory mean high tide line landward to the ambulatory seaward most limit of dune vegetation of my property. I never authorized any such "offer to dedicate." My architect informed me that the Coastal planner assigned to our project, Ms. April Verbanac, indicated that the project would not be approved without the lateral access easement, and that he should revise the application to include an offer to dedicate this easement if we wanted to get a Staff recommendation for approval. We believe this assessment to be in error for reasons listed below, which is why I asked for a continuance.

As indicated by our plans and our application, we are not building a seawall. Thus, there is no adverse impact on the beach ecology system by a seawall or anything else we are doing. We are willing and planning to do restoration to the dune to fulfill whatever requirements are necessary. Our new home has no impact on public access. There is already a structure there. We are not building further toward the ocean, but rather the land side of the property. We are removing the existing septic system from the beach side of the house and moving it to under the structure. We

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are installing a "fast" septic system, which is much more environmentally friendly than the one there now. We are within all the guidelines; height, string line, etc. and are not asking for any special privileges or variances.

Given the above, I am requesting that item number 6 (offer to Dedicate Lateral Public Access and Declaration of Restrictions) be deleted from the Staff Report.

As I am sure you are well aware, in 1987 the United States Supreme Court reviewed the Coastal Commission's requirement that the property owner convey an offer to dedicate a lateral public access easement in order to obtain a coastal permit to rebuild his house. Nollan v. California Coastal Commission (1987) 483 U.S. 825. The Supreme Court held that such a permit condition was unconstitutional, and therefore, invalid because there was no "nexus" between the potential impact of the building project and the Commission's attempt to obtain a coastal access easement across the landowner's property.

Under Nollan, it is the Commission's burden to establish a nexus between any requirement that a lateral access easement be offered and the proposed project's impact. In the case of my permit application, there is no conceivable way that the project could impact public access so as to justify requiring me to offer to dedicate a lateral access easement.

I have attached a new permit application (which is actually our original application) that does not include an offer to dedicate the lateral access easement. I hope this will not affect the timely processing of my application as it is clear the offer was mistakenly included in the application, and could not be required of me under Nollan and its sister case, Dolan v. City of Tigard (1994) 512 U.S. 374, which requires building permit conditions be directly proportional to the potential impacts of the project.

If you have any questions, would like additional information, or disagree with our assessment, I would very much like an opportunity to meet with you in person. We are currently on the August calendar. My wife and I have tried very hard to meet or exceed all of the requirements of both the Coastal Commission and the City of Malibu in the design of our home.

You can reach me via phone at (310) 788-2850. I look forward to hearing from you soon.

Sincerely,

Michael Sitrick

MR. AND MRS. MICHAEL SITRICK
1436 Via Cresta
Pacific Palisades, California 90272

August 7, 2000

Ms. April Verbanac
Coastal Program Analyst
California Coastal Commission
89 South California St., #200
Ventura, California, 93001

Re: Coastal Development Permit Application No. 4-00-016 (Sitrick)
30962 Broad Beach Road, Malibu, Los Angeles County

Dear Ms. Verbanac:

I am in receipt of your August 3, 2000 letter. In that letter, you state, "The revised project description submitted on May 8, 2000, which included the offer to dedicate for later public access, eliminated the need for staff to complete an extensive analysis of potential impacts to public access along the beach which may result from your proposed project...Staff completed a Staff Report that included findings in support of a staff recommendation for approval of your project, with conditions, based on the information submitted to our office on May 8, 2000. On June 12, 2000 staff received written notice from your representatives stating that you were not in agreement with Special Condition 6, Offer to Dedicate Lateral Public Access and Declaration of Restrictions, of the subject permit and per your request the item was postponed from the June Commission hearing." (Actually the written notice was from me, not my representatives.)

You then request we have our "coastal engineer provide detailed information relative to potential future impacts of sea level rise at the project site using a range of probabilities for sea level rise as estimated by the EPA for the Malibu/Santa Monica region over the design life of the proposed development" including:

(1) "Anticipated design still water level at the project over the life of the proposed structure, due to sea level rise and global warming, including methodology used to establish water level.
(2) "Anticipated wave uprush at the project site over the life of the proposed structure, due to sea level rise and global warming, including methodology used to establish wave uprush, and discussion of possible damage to proposed structures and septic system given future wave uprush projects."

The letter continues, "The analysis should utilize the referenced EPA estimates and approach in determining the projected probabilities for the subject site. For your reference the EPA has estimated sea level rise for the Santa Monica area through Year 2100, with the probability that the threshold will be met or exceeded as follows:" (and then you list data for the years 2025,2050,2075,2100.)

Before this project is further stalled and I go to the expense of getting another study, I would like to know how this information has anything to do with potential impacts to public access along the beach which might result from my proposed project.

As I stated in previous letters, there is already a structure there. We are not building further toward the ocean, but rather the land side of the property. We are not in any respect intensifying the use of the property. Additionally, we are removing the existing septic system from the beach side of the house and moving it to under the structure. We are installing a "fast" septic system, which is much more environmentally friendly than the one there now. We are within all the guidelines; height, stringline, etc. and are not asking for any special privileges or variances.

All studies, including the wave uprush study which were submitted along with the application were deemed satisfactory prior to the June meeting. No environmental or other issues were raised.

The Commission's handling of my permit raises serious questions whether the Commission has a pattern and practice of stalling projects where the applicant, pursuant to the Nollan decision, refuses to acquiesce in an unlawful demand that he make a coastal access easement dedication. Stalling a project in this manner, where a project unquestionably falls within the precedent established in Nollan, appears to be a calculated effort to evade the U.S. Supreme Court's holding that a private property owner has a right to build or re-build a single family residence without being forced to dedicate coastal access easements to the public. The United States Supreme Court has already held that, for project like my own, easement dedications cannot, as a matter of law, be justified as having an adequate nexus to the project's adverse impacts. Therefore, it is incumbent on the Commission to identify now, without any further delay, how my project differs from the Nollans' project so as to take it outside the scope of the U.S. Supreme Court's holding.

I look forward to hearing from you soon.

Sincerely,

Michael S. Sitrick

Cc: Gary Timm
Jack Ainsworth
Honorable Herb Wesson, Jr.

MR. AND MRS. MICHAEL SITRICK
1436 Via Cresta
Pacific Palisades, California 90272

August 2, 2000

Mr. Gary Timm
Mr. Jack Ainsworth
California Coastal Commission
89 South California St., #200
Ventura, California, 93001

Re: Coastal Development Permit Application No. 4-00-016
30962 Broad Beach Road, Malibu CA

Dear Sirs:

I am the owner of the above-referenced property. This letter is being written in follow up to a June 20, 2000 letter (which is attached) and numerous phone calls since.

My application for a Coastal Development Permit was initially calendared for hearing as Item No. 23.d. of the Coastal Commission's agenda for its June 13, 2000 meeting. This letter is a formal request that my application be put on the consent calendar for the next formal meeting of the Coastal Commission.

As the Staff Report prepared for the June 13 meeting indicated, and as is detailed by our plans and our application (as well as my June 20 letter) there is no adverse impact on either public access or the beach ecology system by anything we are proposing. We are willing and planning to do restoration to the dune to fulfill whatever requirements are necessary. Our new home has no impact on public access. (There is already a structure there. We are not building further toward the ocean, but rather the land side of the property. We are not in any respect intensifying the use of the property.) We are removing the existing septic system from the beach side of the house and moving it to under the structure. We are installing a "fast" septic system, which is much more environmentally friendly than the one there now. We are within all the guidelines; height, stringline, etc. and are not asking for any special privileges or variances.

As indicated previously, I requested a continuance of the June13 hearing because the Staff Report contained a condition to provide a lateral access easement across my property which, I am advised cannot be required for issuance of a coastal permit for my limited project. Citing the absence of any impact on public access from the project and Nollan v. California Coastal Commission (1987) 483 U.S. 825, I instructed that item number 6 (offer to Dedicate Lateral Public Access and Declaration of Restrictions) be deleted from the Staff Report.

Mr. Gary Timm
Mr. Jack Ainsworth

August 2, 2000

I attached to my June 20, 2000 letter a new permit application (which was actually our original application) that does not include an offer to dedicate the lateral coastal access easement. I had hoped that this would help to expedite the timely processing of my application.

When I called on June 29, you told me that you believed you would have more definitive information for me within a week. When I called back on Thursday, July 6, you said that you expected to have information on my application within another week or so. When I called July 25, I was told that a planner would call me back. I never received such a call.

I do not think any further delay is justified. The Nollan decision makes it unequivocally clear that a coastal access easement cannot be exacted from the mere re-building of a single family home. As the U.S. Supreme Court noted in Nollan, such a project has no conceivable impact on public access, as is required to support the easement exaction. I do not believe any further study of the issue is justified both because of the clarity of the Nollan case and the fact that the Staff Report, in failing to identify any adverse impacts on either the environment or on public access, implicitly acknowledged the project did not impact either the environment or public access.

My wife and I have tried very hard to meet or exceed all of the requirements of both the Coastal Commission and the City of Malibu in the design of our home. We would like to get on with the building of our house.

I would appreciate hearing from you soon. You can reach me at my office at 310-7988-2850 or via mail at the address listed on the letterhead on the first page of this letter.

Sincerely,

Michael Sitrick