

**CALIFORNIA COASTAL COMMISSION**

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Commission Action:

**RECORD PACKET COPY****STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NO.:** 4-00-126

**APPLICANTS:** City of Malibu, California Department of Parks and Recreation

**PROJECT LOCATION:** Cliffside Drive, Point Dume Natural Preserve, Malibu, Los Angeles County.

**PROJECT DESCRIPTION:** Point Dume Natural Preserve Site Improvements Project. The proposed project involves development of public access improvements for Point Dume Natural Preserve including removal of boulders from the road easement and construction of 10 roadside parking spaces and a drop off zone on the seaward side of Cliffside Drive, replacement and relocation of boundary fencing, construction of a walking path, curbing, installation of appropriate signage, vegetation restoration, and 650 cu. yds. of cut grading to be exported offsite. The proposed project also includes implementation of a shuttle bus program to operate between the Westward Beach parking lot and the Natural Preserve and after-the-fact approval of previously installed No Parking/Tow Away signage in the public road easements of Cliffside Drive.

**SUBSTANTIVE FILE DOCUMENTS:** Settlement Agreement between Coastal Commission and City of Malibu, 3/15/00; Joint Project Agreement Between California Department of Parks and Recreation and City of Malibu, 3/30/00; Initial Study 6/7/00 and Proposed Negative Declaration for Point Dume Natural Preserve Site Improvements Project; City Council Agenda Report Executive Summary, City of Malibu, 7/12/00; Proposed Negative Declaration Public Review and Response to Comments, 7/25/00; Point Dume Headland's Preserve Visitor Survey, Interviews-Round One report.

### **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends **approval** of the proposed project with **5 Special Conditions** regarding 1) removal and disposal of excess grading material, 2) polluted run-off control plan, 3) removal and disposal of existing rock boulders, 4) commencement of shuttle services and scheduling, 5) signs.

The proposed project involves a joint application between the City of Malibu and the California Department of Parks and Recreation to construct site improvements at Cliffside Drive and Point Dume Natural Preserve in the City of Malibu (Exhibit 1). The project is a result of a Settlement Agreement between the Commission and the City, and a Joint Project Agreement between the City and State Parks to construct public access improvements for the Preserve. The project includes the removal of large boulders previously installed in the road easement along Cliffside Drive, replacement and relocation of Preserve boundary fencing, minor realignment and narrowing of Cliffside Drive to provide room for construction of 10 public parking spaces (8 standard, 2 handicap-accessible spaces) and a passenger car/bus loading zone on the seaward side of Cliffside Drive, construction of a walking path between Cliffside Drive and Preserve boundary fencing, road curbing, and a landscaped road island to be located between the newly constructed parking strip and Cliffside Drive (Exhibit 3). The proposed project will require approximately 650 cu. yds. of cut grading to be exported off site. The project proposal also includes restoration of disturbed areas with native vegetation, installation of appropriate signs to indicate parking limitations, Natural Preserve information and interpretation, shuttle bus operation information, and implementation of a shuttle bus program. The City of Malibu is also requesting after-the-fact approval of existing No Parking/Tow Away signage located in all of those areas along Cliffside Drive outside of the proposed improvements (Exhibit 6).

### **I. STAFF RECOMMENDATION**

**MOTION:**        *I move that the Commission approve Coastal Development Permit No. 4-00-126 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 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. **Removal of Excess Grading Material**

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 excavated material from the site. Should the disposal site be located in the Coastal Zone, a coastal development permit shall be required.

### 2. **Polluted Run-off 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 polluted runoff control plan designed by a licensed engineer which minimizes the volume, velocity, and pollutant load of stormwater leaving the developed site. The plan shall include but not be limited to the following criteria:

- (a) Runoff from the parking area and loading zone shall be collected and directed through a system of vegetated and/or gravel filter strips or other media filter devices. The filter elements shall be designed to 1) trap sediment, particulates, and other solids and 2) remove or mitigate contaminants through filtration and/or treatment. The plan shall also be designed to convey and discharge runoff from the project site in a non-erosive manner.

The plan shall include provisions for maintaining the filtration systems so that they are functional throughout the life of the approved development. Such maintenance shall include the following: (1) the filtration system shall be inspected, cleaned and repaired prior to the onset of the storm season, no later than September 30<sup>th</sup> each year and (2) should any of the project's surface or subsurface filtration structures fail the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the filtration system.

**3. Removal and Disposal of Existing Rock Boulders**

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 existing rock boulders from the site. The rock boulders shall be removed from the site no later than December 31, 2000, or by an extended period of time approved by the Executive Director. Should the disposal site be located in the Coastal Zone, a coastal development permit shall be required.

**4. Commencement of Shuttle Services and Scheduling**

The City shall operate and maintain a shuttle service between Point Dume Natural Preserve and the Westward Beach Parking lot (Exhibit 5). Commencement of the shuttle operation shall occur no later than the Friday before the Memorial Day Holiday of 2001, unless such deadline is extended by the Executive Director for good cause. The shuttle service shall operate 7 days a week from 11 a.m. to 7 p.m. during the summer season (Memorial Day-Labor Day) and on weekends and holidays from 11 a.m. to 6 p.m. during daylight savings, and 11 a.m. to 5 p.m. during standard time, for the remainder of the year. The shuttle service shall transport passengers between the Westward Beach parking lot and the Preserve every half hour.

On a quarterly basis, beginning with the date of commencement of the shuttle service, Commission staff and the City (a representative from the California Department of Parks and Recreation (State Parks) shall be invited to attend) will meet to assess the effectiveness of the shuttle service in providing public access to the Preserve and to determine whether adjustments to scheduling, signage, or marketing would be appropriate to meet visitor demand. In the event one or more of the participating agencies believes the shuttle service is not cost effective, the agencies may evaluate other means of access that may be available to meet visitor demand. Should the Commission and City concurrently agree that an adjustment to the shuttle service is required or that another means of providing public access to the preserve should replace the shuttle service, the City shall obtain an amendment to the subject coastal permit.

Should the City terminate the shuttle service prior to certification of the City's Local Coastal Plan or without obtaining an agreement to terminate the shuttle service from the Commission as described in the preceding paragraph, the City shall submit an application for construction of an additional 22 parking spaces in close proximity to the Preserve within sixty (60) days of the first day the service is terminated.

**5. Signs**

The City shall remove existing No Parking/Tow Away signs currently located in the area designated for the proposed parking improvements. The City may install signs at the project site which identify the proposed loading zone and time restrictions for the proposed parking spaces. The signs may indicate time restrictions of no less than 2 hours and no more than 4 hours for each parking space. The No Parking/Tow Away signage existing in the road easement of Cliffside Drive may remain in place (or may be replaced). The City shall not install any signs that create new parking restrictions along Cliffside Drive.

The City shall install informative signage at a visible location at the Preserve and at the Westward Beach parking lot which indicates the availability of the shuttle service including seasonal hours of operation and daily scheduling. Should the Commission and the City concurrently determine that the shuttle service shall be modified the City shall update the signs to reflect the change in shuttle service (consistent with the terms of an amendment to this permit concerning the change in shuttle service).

#### **IV. FINDINGS AND DECLARATIONS**

The Commission hereby finds and declares:

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

###### **Project Description**

The City of Malibu and California Department of Parks and Recreation are jointly proposing the development of site improvements for Point Dume Natural Preserve in the City of Malibu (Exhibit 1). The proposed project is intended to enhance public access opportunities to the Natural Preserve as described in the Settlement Agreement executed on March 15, 2000 between the Coastal Commission and the City of Malibu (Exhibit 6). The proposed improvements will be located entirely in the City right-of-way on the seaward side of Cliffside Drive adjacent to the Preserve, with the exception of portions of Preserve boundary fencing and interpretive signage which will be located within the Preserve. The project includes the removal of large boulders previously installed in the road easement along Cliffside Drive, replacement and relocation of Preserve boundary fencing, minor realignment and narrowing of Cliffside Drive to provide room for construction of 10 parking spaces (8 standard, 2 handicap-accessible spaces) and a passenger car/bus loading zone, construction of a walking path between Cliffside Drive and Preserve boundary fencing, road curbing, and a landscaped road island to be located between the newly constructed parking strip and Cliffside Drive (Exhibit 3). A minor amount of residential landscaping presently encroaching into the City's right-of-way along Cliffside Drive will have to be removed to construct the proposed improvements. The project proposal also includes restoration of disturbed areas with native vegetation, installation of appropriate signs to indicate parking limitations, Natural Preserve information and interpretation, and shuttle bus operation information, and implementation of a shuttle bus program. The City of Malibu is also requesting after-the-fact approval of existing No Parking/Tow Away signage previously installed in the road easements of Cliffside Drive. The City proposes to remove the existing No Parking/Tow Away signs along Cliffside Drive that are in those areas where new parking improvements will be installed.

The project site is located at Cliffside Drive and Point Dume Natural Preserve. The Preserve is a subunit of Point Dume State Beach operated by the California Department of Parks and Recreation. The Preserve is approximately 34 acres of undeveloped coastal terrace and bluffs located at the headlands of Point Dume in the City of Malibu. The Preserve is located on a south-facing promontory and is surrounded by residential development to the northwest and northeast and is bound by Cliffside Drive, a public street separating the Preserve and residential development, to the north. Point Dume State Beach and the ocean exist below the coastal bluffs of the Preserve to the south. The majority of the physical improvements of the proposed project will be located entirely in the City right-of-way on the seaward side of Cliffside Drive, adjacent to and directly north of the Preserve boundary, except those portions of new Preserve boundary fencing, vegetation restoration and signage which will be located within the Preserve.

As previously mentioned, the majority of the proposed physical development, removal of boulders, grading and paving, will be located in the road easement on the seaward side of Cliffside Drive. This area is primarily composed of bare dirt containing previously imported rock boulders, signs, and scattered non-native vegetation. Habitat within the northern area of the Preserve adjacent to Cliffside Drive is designated as a disturbed sensitive resource (DSR) and Habitat within the rest of the Preserve area is designated as an inland environmentally sensitive habitat area (ESHA). The disturbed sensitive resource area within the northern area of the Preserve adjacent to the proposed project site consists primarily of exotic grassland with isolated patches of coastal scrub and dune habitat established in the north-west area near the Preserve boundary (Exhibit 4). The California Department of Fish and Game's California Natural Diversity Database (Rarefind 2000) identifies nine sensitive plant species and seven sensitive animal species from the Point Dume U.S.G.S. 7.5' topographic quadrangle map. Potential impacts of the proposed project on these sensitive resources are further discussed in Section C. Sensitive Resources.

Point Dume Natural Preserve is a significant scenic area that provides views from within the Preserve to and along the ocean and coastline. Additionally, the Preserve's open space and natural coastal landscape provide highly scenic views from public streets in the Point Dume area. The proposed project will require approximately 650 cu. yds. of cut grading which is designed to follow the natural contours of the project site. Most of the grading is required to create a depressed area for the proposed parking strip and loading zone which will be approximately 4 ft. below the surface level of the surrounding environment. Additionally, a vegetated road island will be constructed between the depressed parking area and Cliffside Drive to minimize visual impacts to the Preserve.

### **Background Information**

The purpose of the proposed project is to develop site improvements and implement a shuttle bus program to enhance public access to the Preserve. The proposed project carries out a Settlement Agreement that resolves litigation between the Coastal Commission and the City of Malibu. The litigation involved the Commission's issuance of Cease and Desist Order CCC-97-CD-01 to the City. The order directed the City to apply for a permit to either retain or remove an unpermitted large boulder barrier and signs that prevented public parking in the road easement of Cliffside Drive and other nearby public streets. In order to resolve the issues giving rise to the Cease and Desist Order and the litigation, the Coastal Commission and the City of Malibu executed a Settlement Agreement in which the City agreed to remove the boulder barrier and install specific public access improvements (Exhibit 6). The City and State Parks

also executed a Joint Project Agreement detailing the proposed site improvements and a time line for their implementation (Exhibit 6). The Joint Project Agreement also specifies that a Management Plan and Access Study for the Preserve shall be completed. Information derived from the Management Plan and Access Study will be provided to the Commission for consideration in the course of the Commission's action on the City proposed LCP. Both agreements describe and set forth requirements of the participating agencies for the planning, design, permitting and construction of the proposed public access improvements for the Preserve.

The Settlement Agreement provides that the City will remove existing boulders from the road easement; construct a total of 10 parking spaces and a loading zone on Cliffside Drive, a walking path, fencing, and curbing; restore disturbed areas with native vegetation; and install signs addressing the public access improvements. The Settlement Agreement describes parking improvements for the seaward side of Cliffside Drive to include 2 handicap accessible parking spaces and a loading zone, and parking improvements on the landward side of Cliffside Drive to include construction of 8 standard parking spaces (Exhibit 2). The proposed project, however, is for an alternative design (discussed in detail below) which allows for all proposed parking improvements, a total of 10 spaces (8 standard, 2 accessible), and the loading zone to be located on the seaward side of Cliffside Drive, directly adjacent to the Preserve boundary (Exhibit 3). The Commission, City of Malibu, and State Parks have concurred that the alternative design is acceptable and are processing an amendment to the Settlement Agreement to reflect this change.

### **Shuttle Service**

To further enhance public access opportunities to the Preserve, the Settlement Agreement requires that the City implement a shuttle bus service to transport Preserve visitors between the Westward Beach parking lot, located just west of the Point Dume Headlands, and the Preserve (Exhibit 5). The Settlement Agreement specifies that the shuttle bus will operate 7 days a week during the summer season (Memorial Day weekend through Labor Day) and on weekends and holidays during the rest of the year. The Settlement Agreement further requires that scheduling of services for the shuttle bus operation be determined by both the Commission and the City and that the schedule of service may be adjusted as necessary to meet visitor use demands of the Preserve. Commission staff and the City shall meet on a quarterly basis to investigate the effectiveness of the shuttle program for meeting visitor use demands. A representative of State Parks must be invited to attend this meeting. Should it be determined that the shuttle program is not cost effective or is not sufficiently meeting its intended use the Commission and the City will cooperate in exploring other means of enhancing public access opportunities to the Preserve. Additionally, the City is required to install appropriate signage, consistent with the provisions of the Settlement Agreement, to inform the public of shuttle availability.

Finally, the Settlement Agreement states that should the City terminate the shuttle service prior to the certification of the City's Local Coastal Plan or prior to an agreement between the Commission and the City to terminate and replace the shuttle program with another acceptable means for providing public access to the Preserve, the City is required to promptly submit a coastal development permit application for construction of an additional 22 parking spaces in a location in close proximity to the Preserve.

### **Parking Restrictions and After-the-Fact Approval of Existing Signage**

As part of the proposed project the City of Malibu is requesting after-the-fact approval for previously installed No Parking/Tow Away signs existing along the seaward and inland road easements of Cliffside Drive (outside of the areas of the proposed improvements). The Settlement Agreement provides that this existing signage may remain in place. Consistent with the Settlement Agreement the City may install appropriate signs to identify the proposed loading zone and to enforce time limitations (2-4 hours limit) for the proposed public parking spaces.

### **Alternative Designs and Environmental Review**

As mentioned, the Settlement Agreement executed between the Commission and the City describes the development of access improvements for Point Dume Natural Preserve which includes construction of a total of 10 public parking spaces and a loading zone, a walking path, and implementation of a shuttle bus service. The settlement agreement anticipated that the parking configuration would be established with 2 accessible parking spaces and the loading zone located on the seaward side of Cliffside Drive and 8 standard parking spaces located on the landward side of Cliffside Drive (Exhibit 2). In response to comments from a public forum held by the City for the proposed project an alternative configuration was developed for locating all 10 of the proposed parking spaces and loading zone on the seaward side of Cliffside Drive (Exhibit 3). Commission staff, the City, and State Parks have all concurred that the alternative design in which all the proposed parking would be located on the seaward side of Cliffside Drive adjacent to the Preserve is a preferable alternative and meets the full intent of the agreements between the participating agencies.

In accordance with the requirements of the California Environmental Quality Act, State Parks completed an Initial Study of the proposed site improvements for both design alternatives discussed above. The Initial Study addressed potential environmental impacts for both design alternatives on land use and planning, population and housing, geology, water, air quality, transportation/circulation, biological resources, energy and mineral resources, public services, utilities and services, noise, visual and cultural resources, and recreation. The Initial Study concluded that regardless of which design alternative was constructed the proposed project would not have a significant impact on the environment. Based on the conclusions of the Initial Study and Proposed Negative Declaration and Public Review and Response to Comments, a Negative Declaration was prepared for the proposed project and was subsequently adopted by the City and State Parks.

### **B. Geology**

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/Santa Monica Mountains coastline, an area that is generally considered to be subject to an unusually high amount of natural



hazards. Geologic hazards common to the Malibu/Santa Monica Mountains coastline include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. The Commission notes, however, that in the case of the proposed project no flammable structures are proposed which would be subject to fire hazard.

Section 30253 of the Coastal Act mandates that new development be sited and designed to provide geologic stability and structural integrity, and minimize risks to life and property in areas of high geologic, flood, and fire hazard. The project site is located approximately 350-500 ft. from the coastal bluff edge and grading and paving for the proposed project will be located in the road easement of Cliffside Drive which is a relatively flat, bare dirt area. The proposed project will require the removal of existing large boulders and approximately 650 cu. yds. of cut grading within the road easement which will potentially expose the disturbed areas to erosion. The proposed project will also involve placement of impervious surfaces for the proposed parking strip and loading zone in an area currently unpaved and available for percolation of rainwater, which will potentially increase run-off from these surfaces and erosion at the site.

The Commission finds that minimizing site erosion will aid in maintaining the geologic stability of the project site, and that erosion will be minimized by incorporating adequate drainage, erosion control, and appropriate landscaping into the proposed development. As stated in the Proposed Negative Declaration Public Review and Response to Comments dated 7/25/00, the proposed project will result in grading of approximately 650 cu. yds. and in an increase of impervious surfaces of approximately 7,525 sq. ft. The document further identifies that run-off from the proposed impervious surfaces (parking area and loading zone) will be collected and channeled to an existing AC drainage ditch at the site and the increase in discharge resulting from the proposed project into the drainage will be on the order of only 2%. Therefore, the Commission finds that the project, as proposed will not result in a significant increase of run-off at the site and will ensure that run-off from the project site is diverted in a non-erosive manner to minimize erosion at the site.

The Commission notes that the quantity of cut grading required for construction of the proposed residence is more than the quantity of fill required for construction resulting in an excess of 650 cu. yds. of graded earth material. Stockpiles of dirt are subject to increased erosion and, if retained onsite, may lead to additional landform alteration. Therefore, **Special Condition 1** requires the applicants to export all excess grading material from the project site to an appropriate site for disposal and provide evidence to the Executive Director of the location of the disposal site prior to issuance of a coastal development permit.

The Commission further finds that appropriate landscaping of graded or disturbed areas on the project site will serve to reduce the potential for erosion and maintain the geologic stability of the site. As detailed in the Joint Project Agreement between the City and State Parks and in the project description submitted for the subject coastal development permit application, State Parks will restore those areas disturbed by the proposed project and portions of the road easement presently void of vegetation with appropriate native plant species. Therefore, the Commission finds that the project, as proposed, will ensure that the site shall be landscaped with appropriate native plant species and will therefore aid in minimizing erosion.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with section **30253** of the Coastal Act.

## C. 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, and that proposed development adjacent to ESHA and parks shall be designed to prevent adverse impacts to those areas and be compatible with their continuance.

The proposed project will be located directly adjacent to Point Dume Natural Preserve, just along the northern boundary of the Preserve in an area designated as a disturbed sensitive resource (DSR). The disturbed sensitive resource area within the northern boundary of the Preserve consists primarily of exotic grassland and coastal scrub and dune habitat exist in the northwest area near the boundary (Exhibit 4). As previously mentioned, the majority of the proposed physical development, removal of boulders, grading and paving, will be located in the road easement of Cliffside Drive. This area is primarily composed of bare dirt with previously imported rock boulders, signs, and scattered residential landscaping and other non-native vegetation. Habitat within the rest of the Preserve is designated as an inland environmentally sensitive habitat area (ESHA) however no part of the proposed project will encroach into the designated ESHA (Exhibit \*).

The Commission notes that the most environmentally intrusive elements of the proposed project, such as the removal of large boulders from the road easement, grading and paving, will occur entirely outside of the Preserve boundary in a highly disturbed area composed of bare dirt and non-native vegetation. Additionally, the Commission notes that the location of the proposed parking improvements is near existing trailheads on the north east end of the Preserve such that impacts to coastal scrub and dune habitat existing to the west will be minimized. Improvements at the northwest boundary of the Preserve which will encroach into coastal scrub and dune habitat include only the replacement and relocation of boundary fencing away from the sensitive habitat. Currently the existing fence is located approximately 20 ft. within the Preserve boundary and it will be replaced and relocated up to the boundary or further within the City right-of-way. Relocation of the fencing will actually result in approximately 10,550 sq. ft. of additional habitat within the Preserve. Disturbed areas and that area of the Preserve expanded by relocation of the boundary fence will be restored with native vegetation. Therefore the Commission finds that given the location of the proposed site improvements primarily outside sensitive habitat areas and the potential benefits of expanding the area of the Preserve and restoration of disturbed areas, the proposed project will not have an adverse impacts to designated sensitive habitat areas at the site.

The California Department of Fish and Game's California Natural Diversity Database (Rarefind 2000) identifies nine sensitive plant species and seven sensitive animal species from the Point Dume U.S.G.S. 7.5' topographic quadrangle map. The Initial Study prepared by State Parks for

the proposed project indicates that there are no known populations of any of the sensitive plant taxa within the Preserve or the project site and that the identified plants have not been observed on the site. The Initial Study further indicates that of the sensitive animal species identified only the San Diego Horned Lizard, Silvery Legless Lizard, and Coastal Whiptail have the potential to occur on the site, however, neither the Horned Lizard nor Coastal Whiptail have been documented on the site since 1966. The Study does state, however, that the Silvery Legless Lizard is an inhabitant of the preserve and that grading operations may potentially impact individuals of the species. However the Commission notes that as discussed in the Initial Study, the proposed project is located such that there will be no impact to prime habitat of the sensitive species and that the species will benefit from an increase of protected prime habitat, which will result from relocating the boundary fencing toward Cliffside Drive and restoration of the previously disturbed area. Therefore, the Commission finds that the proposed project will not have a significant adverse impact on sensitive animal species at the site.

For the reasons set forth above, the Commission finds that the project, as proposed, will not have a significant impact on sensitive plant or animal species, as is therefore consistent with Section 30240 of the Coastal Act.

#### **D. Water Quality**

The Commission recognizes that development of parking areas has the potential to adversely impact coastal water quality through the removal of vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, and introduction of pollutants from automobile fluids into water courses.

Section 30231 of the Coastal Act states that:

***The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.***

The proposed project includes grading and paving primarily to construct a new parking area and loading zone. The proposed project will result in an increase of approximately 7,525 sq. ft. of impervious surface at the project site. Placement of impervious surfaces allows for less infiltration of rainwater into the soil of the site, thereby increasing the rate and volume of runoff, causing increased erosion and sedimentation. Infiltration of precipitation into the soil 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, development of impervious surfaces such as that proposed, particularly for a hardscape parking area, can cause cumulative impacts to the hydrologic cycle of an area by increasing and concentrating runoff and pollutants.

Such cumulative impacts can be minimized through the implementation of 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 be filtered of pollutants

before it is conveyed off site to a major drainage course. Methods such as vegetated filter strips, gravel filters, and other media filter devices allow for filtration of runoff from the site before it reaches coastal waters. The proposed project is designed to convey runoff from the proposed parking area in a non-erosive manner and to channel runoff to an existing AC drainage ditch at the site, therefore, the project will not cause increased erosion or sedimentation to coastal waters. 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 filter or treat the runoff from the site. This plan is required by **Special Condition 2**, the Polluted Runoff Control Plan. The plan will allow for the filtering of runoff from the developed parking area 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 applicants 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.

The Commission finds that the proposed project, as conditioned to incorporate and maintain a polluted runoff control plan, is consistent with Section 30231 of the Coastal Act.

## **E. Visual Resources**

Section 30251 of the Coastal Act states:

***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 reservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.***

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. Point Dume Natural Preserve is a significant scenic area that provides views from within the Preserve to and along the ocean and coastline. Additionally, the Preserve's open space and natural coastal landscape provide highly scenic views from public streets in the Point Dume area. Due to its location just north of and outside of the Preserve boundary the proposed project will not impact public views to and along the coast from within the Preserve. The proposed project will be located along the northern boundary of the Preserve and will involve removal of roadside boulders, grading and paving, replacement and relocation of fencing, and vegetation restoration. Upon completion of the proposed project passenger cars and intermittent stops made by the shuttle bus adjacent to the preserve may potentially impact views to the Preserve from public streets in the Point Dume area.

In designing the proposed project the City and State Parks have considered potential impacts on views to the open space land within the Preserve and the promontory. As such, the proposed project will require approximately 650 cu. yds. of cut grading which is designed to follow the natural contours of the project site. Most of the grading will be required to create a depressed area for the proposed parking spaces and loading zone which will be approximately

4 ft. below the surface level of the surrounding environment. This design will minimize the impact of parked cars and the shuttle bus on views to the Preserve. Though the proposed grading will serve to minimize visual impacts of the proposed project, the Commission notes that the quantity of cut grading required for construction of the proposed residence is more than the quantity of fill required for construction resulting in an excess of 650 cu. yds. of graded earth material. If retained onsite stockpiles of dirt may lead to additional landform alteration and visual impacts. Therefore, **Special Condition 1** requires the applicants to export all excess grading material from the project site to an appropriate site for disposal and provide evidence to the Executive Director of the location of the disposal site prior to issuance of a coastal development permit.

Additionally, a vegetated road island will be constructed between the depressed parking area and Cliffside Drive to further minimize visual impacts to the Preserve. Furthermore, existing chain link fencing at the project site will be replaced with a more aesthetically pleasing type of fencing (woodcrete split rail) and timely vegetation restoration of disturbed and bare dirt areas with native plant species will result in a more blended and natural looking environment. Finally, the Commission notes that the removal of the large rock boulders from the road easement of Cliffside Drive by December of 2000, as required by the executed Settlement Agreement between the Commission and the City, will serve to alleviate a significant visual impact existing at the project site and other areas along Cliffside Drive. Though the City has verbally informed Commission staff that the boulders will be removed and transported outside the Coastal Zone to the Agoura Landfill for disposal the Commission finds it necessary to ensure that the large boulders are disposed of appropriately. Therefore, **Special Condition 3** requires the applicants to export the boulders from the site and provide evidence to the Executive Director of the location of the disposal site prior to issuance of the coastal development permit.

The Commission finds that the proposed project, as conditioned, will have no significant impact in visual resources and is consistent with Section **30251** of the Coastal Act.

## **F. Public Access**

The Coastal Act mandates the provision of maximum public access and recreational opportunities 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.**

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, Coastal Act Section 30212, in part, mandates that public access shall be provided to the shoreline and along the coast except where it would be inconsistent with public safety, military security, and protection of fragile resources or agricultural use, or where adequate public access exists nearby. 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.

Point Dume Natural Preserve is managed by State Parks as public land which provides recreational opportunities for hikers, surfers, and sightseers. Due to the Preserve's open space values and natural landscape with significant native habitat the Preserve also offers vast educational opportunities for the public. The proposed project will serve to enhance public access opportunities to Point Dume Natural Preserve.

The Commission notes that the proposed project is a result of a Settlement Agreement between the Commission and the City intended to resolve issues relating to impacts on public access to the Preserve. The Settlement Agreement and the Joint Project Agreement between the City and State Parks detail site improvements to be carried out by the City in cooperation with State Parks that will enhance public access to the Preserve.

The City's proposed improvements at the Preserve include removal of the existing boulders from the road easement, construction of a total of 10 parking spaces and a loading zone on the seaward side of Cliffside Drive, a walking path, relocation and replacement of fencing, curbing, a vegetated road island, restoration of disturbed areas with native vegetation, and installation of signs concerning the public access improvements. As discussed previously, the proposed project is for an alternative design, from that described in the Settlement Agreement, which allows for all 10 parking spaces to be constructed on the seaward side of Cliffside Drive. The Commission, City of Malibu, and State Parks have concurred that the alternative design is acceptable. The newly constructed parking area will provide 10 public parking spaces at the main entry and trailhead of the Preserve where no parking is currently available. Therefore, the Commission finds that construction of the proposed parking strip will enhance public access to the Preserve.

The Commission notes that the large boulders previously installed in the road easement of Cliffside Drive currently obstruct public access to the preserve by displacing public parking and also result in a visual impact at the site. In accordance with the terms of the Settlement Agreement, and **Special Condition 3** of the subject permit, the City shall remove the boulders from the road easement no later than December 31, 2000, at which time the first phase of construction for the proposed project will commence, unless this date is extended by the Executive Director.

## Shuttle Program

To further enhance public access opportunities to the Preserve the City proposes to implement a shuttle bus service to transport Preserve visitors between the Westward Beach parking lot, located just west of the Point Dume Headlands, and the Preserve (Exhibit 5). The City has informed Commission staff that an 18 passenger Ford van, operated by compressed natural gas, has been selected to provide the proposed shuttle service and that the City will obtain the van in March of 2001. Based on this information the Commission notes that the proposed shuttle service should be available for the summer season of 2001 and therefore finds that the shuttle operation shall commence no later than the Friday before the Memorial Day Holiday 2001, as required by **Special Condition 4**, unless this time period is extended by the Executive Director for good cause. The City proposes to operate the shuttle bus 7 days a week during the summer season (Memorial Day weekend through Labor Day) and on weekends and holidays during the rest of the year. The shuttle service will operate 7 days a week, 8 hours a day from 11 a.m. to 7 p.m. during the summer season, and will operate on weekends and holidays, 7 hours a day from 11 a.m. to 6 p.m. during daylight savings time, and 6 hours a day 11 a.m. to 5 p.m. during standard time, for the remainder of the year. The shuttle service will transport passengers between the Preserve and Westward Beach parking lot every half hour.

The Commission notes that the described shuttle service schedule has considered maximum expected visitor use patterns and available daylight hours for summer months, holidays, and off-season visits in determining the proposed schedule. The Commission further notes that the proposed shuttle service operating every half hour between the Preserve and Westward Beach parking lot will maximize availability of the shuttle service for public use. Therefore, the Commission finds that the proposed schedule is an adequate approach to meeting visitor use demands and therefore imposes **Special Condition 4**, which requires the City to commence with the shuttle service schedule as described. Additionally, the City proposes to install signage, consistent with the provisions of the Settlement Agreement, to inform the public of shuttle availability. Therefore, the Commission finds it necessary to impose **Special Condition 5** to require the City to install appropriate informative signage at the Preserve and the Westward Beach parking lot which indicate the availability of the shuttle service, it's seasonal hours of operation and daily scheduling. Should it be determined by the Commission, City, and State Parks that the shuttle schedule should be modified, the shuttle informative signs will be updated to reflect the change in shuttle service (consistent with the terms of an amendment to this permit concerning the change in shuttle service).

The shuttle service schedule shall be determined by both the Commission and the City and the service schedule may be adjusted as necessary to meet visitor use demands for the Preserve. Per the Joint Project Agreement between the City and State Parks, the City has agreed to pay for an independently conducted Access Study for the Preserve. When completed, the Access Study will evaluate traffic counts, parking, and surveys of recreational and park uses to assess the adequacy of public access improvements for the Preserve. The Access Study will be made available to the Commission, City and State Parks to aid in determining whether or not modifications should be made to the schedule, signage, or marketing for the shuttle program and whether it is an adequate alternative to additional street parking at the Preserve. Commission staff and the City shall meet on a quarterly basis to evaluate the effectiveness of the shuttle program for meeting visitor use demands. Should it be determined that the shuttle program is not cost effective or is not sufficiently meeting it's intended use, the Commission and the City will cooperate in exploring other means for enhancing public access opportunities to

the Preserve. Should the Commission and City concurrently agree that the shuttle service schedule be modified or that the shuttle should be replaced with an alternative means for providing public access an amendment to the subject permit or a new coastal development permit shall be required as described in **Special Condition 4**. The Commission finds that implementation, maintenance, and adequacy monitoring of the shuttle service will serve to enhance public access to the Preserve.

The Commission notes that in the absence of the previously installed large boulder barrier and No Parking/Tow Away signs, the road easement of Cliffside Drive would easily provide room for approximately 30-40 parked vehicles near the Preserve. The Commission further notes that the proposed project will formally install 10 public parking spaces and that implementation of the shuttle service is intended to mitigate the loss of additional public parking on Cliffside Drive. Therefore, should the City terminate the shuttle service prior to Commission approval and implementation of additional public access improvements allowed pursuant to an amendment of this coastal permit, public access opportunities to the Preserve would be inadequate, which would be inconsistent with the public access policies of the Coastal Act. Therefore, the Commission finds that should the shuttle service be terminated prior to certification of the City's Local Coastal Plan or prior to an agreement between the Commission and the City to terminate and replace the shuttle service with another acceptable means of providing for public access to the Preserve, the City shall be required to promptly submit a coastal development permit application for construction of an additional 22 parking spaces in a location in close proximity to the Preserve. The Commission finds that construction of 22 additional parking spaces in close proximity to the Preserve will sufficiently mitigate the loss of public access opportunities if the shuttle service is terminated and not replaced with an alternative means of access agreed upon by the Commission and City. Therefore **Special Condition 4** of the subject permit requires the City to submit an application for a coastal development permit to construct an additional 22 public parking spaces in close proximity to the Preserve within sixty (60) days of the first day the service is terminated as described above.

#### **Parking Restrictions and After-the-Fact Approval of Existing Signage**

The City of Malibu is also requesting after-the-fact approval for existing No parking/Tow Away signs installed in the road easements of Cliffside Drive. The Commission notes that only those signs located in the area of the proposed improvements will be removed and that the remaining parking restriction signs on Cliffside Drive will remain place. As previously mentioned, in the absence or enforced parking restrictions along Cliffside Drive, the road easement of the public street would provide space for 30-40 parked vehicles near the Preserve. The proposed project includes development of public access improvements for the Preserve to mitigate the loss of additional public parking along Cliffside Drive including construction of 10 formal public parking spaces and a loading zone, a walkway, and implementation of a shuttle bus service between the Preserve and the Westward Beach parking lot. The Commission notes that the Westward Beach parking lot is located at the base of the headlands of the Preserve and is a large lot with approximately 365 available public parking spaces. Given the relative short distance (approximately 1-2 miles) between the Preserve and Westward Beach parking lot, ample available parking in the lot, and a shuttle service readily providing transport to the Preserve every half hour, the Commission finds that the proposed site improvements in conjunction with the shuttle service will sufficiently provide adequate public access to the Preserve and mitigate the loss of public parking on Cliffside Drive enforced by the existing signs.



The Commission also finds it necessary to ensure that the City does not impose additional parking restrictions in the area, other than the parking restrictions currently enforced and as allowed pursuant to the Settlement Agreement and the subject permit. The proposed project is only intended to mitigate the loss of parking in those areas presently restricted along Cliffside Drive. The Commission finds that additional parking restrictions imposed in the area would cause an adverse impact on public access and would not be consistent with the public access policies of the Coastal Act. Therefore, the Commission requires **Special Condition 5** to ensure that the City does not impose additional parking restrictions in the area other than those restrictions currently enforced and approved by this permit.

Pursuant to the Special Conditions the City may install appropriate signs in the area designated for the proposed parking improvements to identify the proposed loading zone and to enforce time restrictions (2-4 hour limit) for the proposed public parking spaces as specified by **Special Condition 5** of the subject permit. The Commission finds that limiting parking to a designated time period in the proposed spaces will allow for maximum utilization of the proposed improvements.

The Commission finds that the proposed project will provide public access opportunities to Point Dume Natural Preserve and therefore, will not have an adverse impact on public access. As such, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30210, 30211, and 30212 of the Coastal Act.

## **G. Violation**

The installation of large rock boulders and no parking/tow away signs restricting public parking in the road easement of Cliffside Drive has taken place prior to submission of this permit application. Any additional work or improvements at the project site shall not occur until the applicant has received an approved Coastal Development Permit for the proposed improvements.

The Commission finds that the applicant has taken the necessary steps to bring the unpermitted development into compliance through the subject application, and that the project will have no significant adverse impacts on public access, public views, or coastal resources and is consistent with all applicable Chapter 3 policies of the Coastal Act.

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon Chapter 3 policies of the Coastal Act. Approval of the permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a Coastal Development Permit.

## **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.

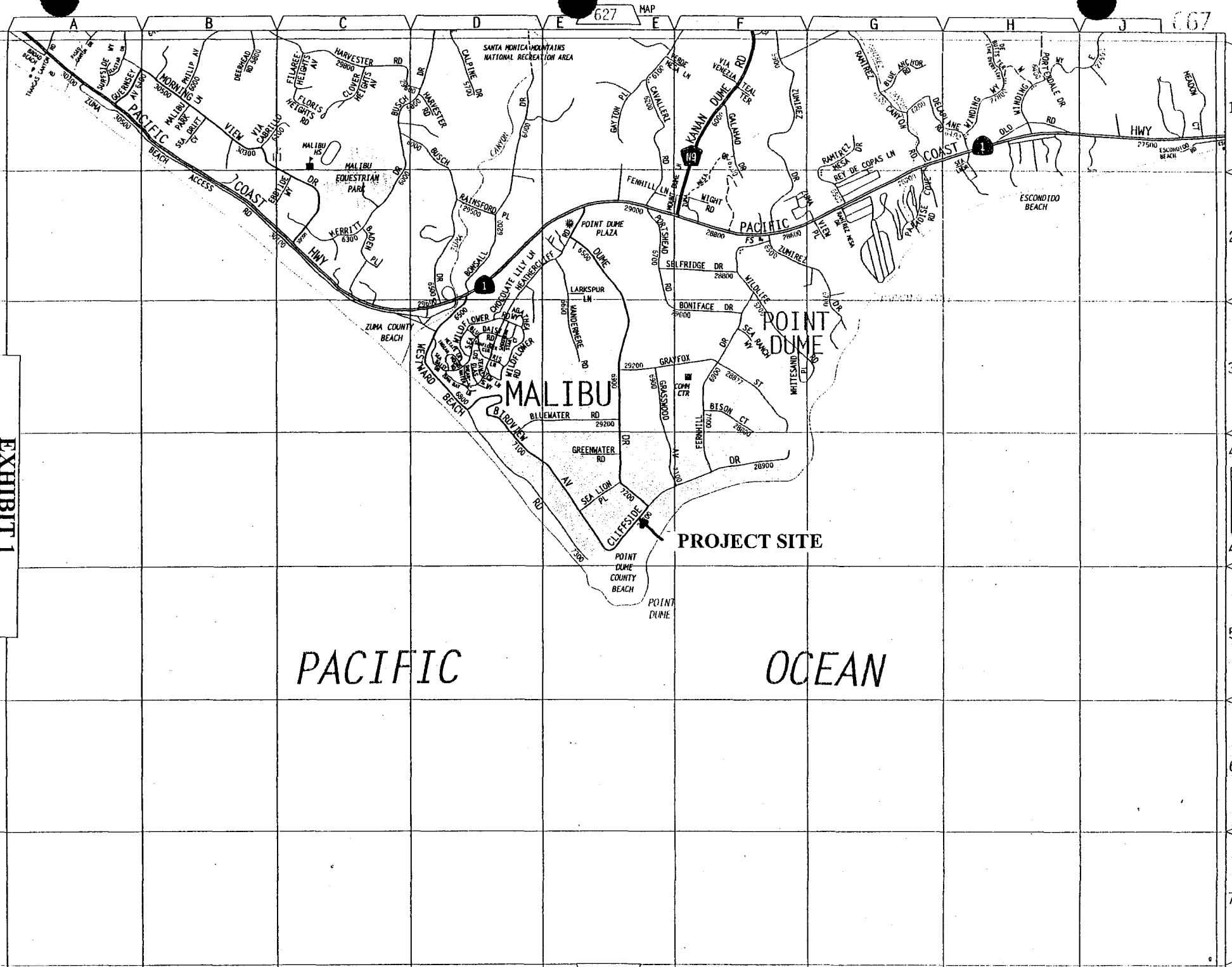
The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be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

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EXHIBIT 1

CDP #4-00-126

Vicinity Map



PACIFIC

OCEAN

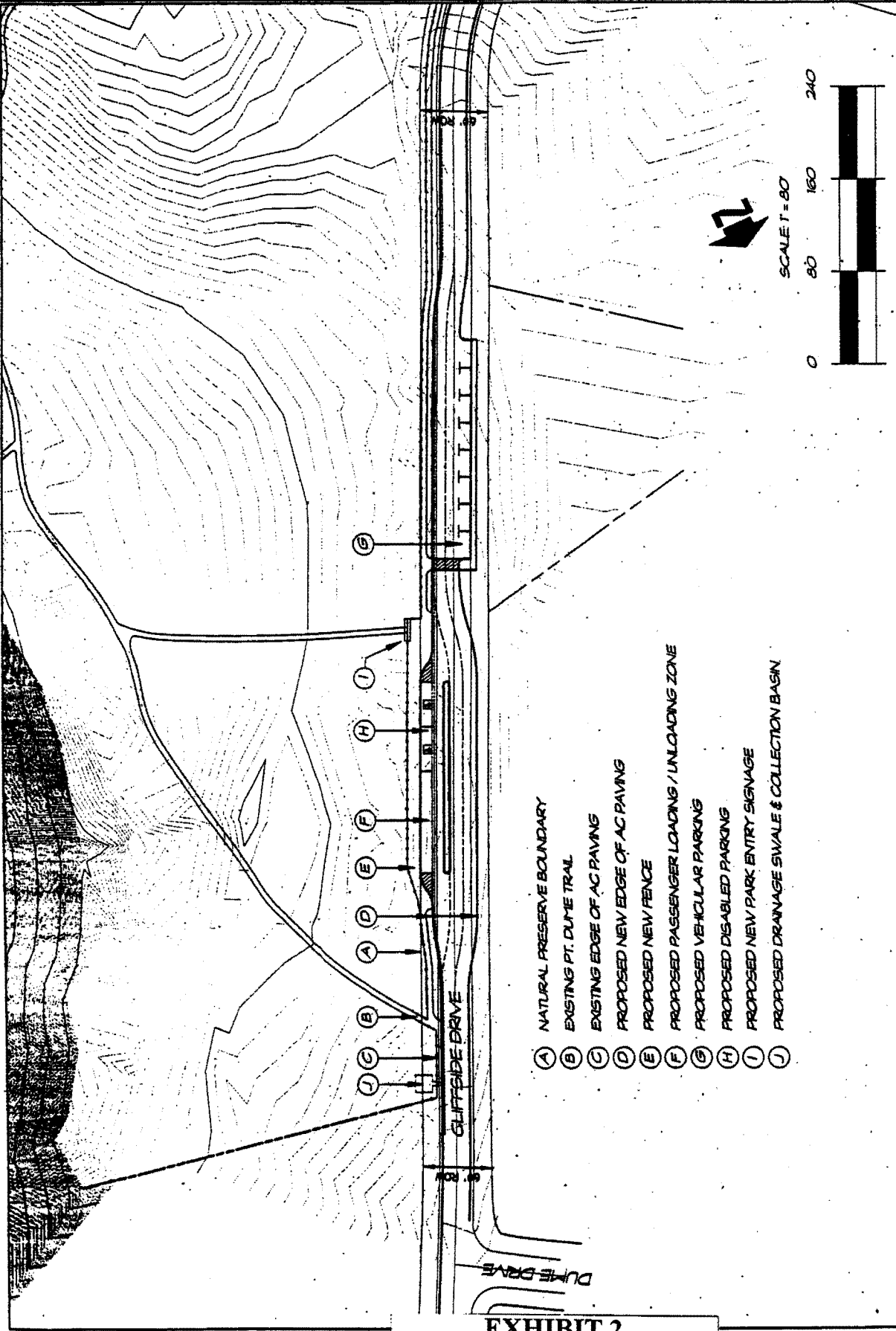
MALIBU

POINT DUME

PROJECT SITE

627

667



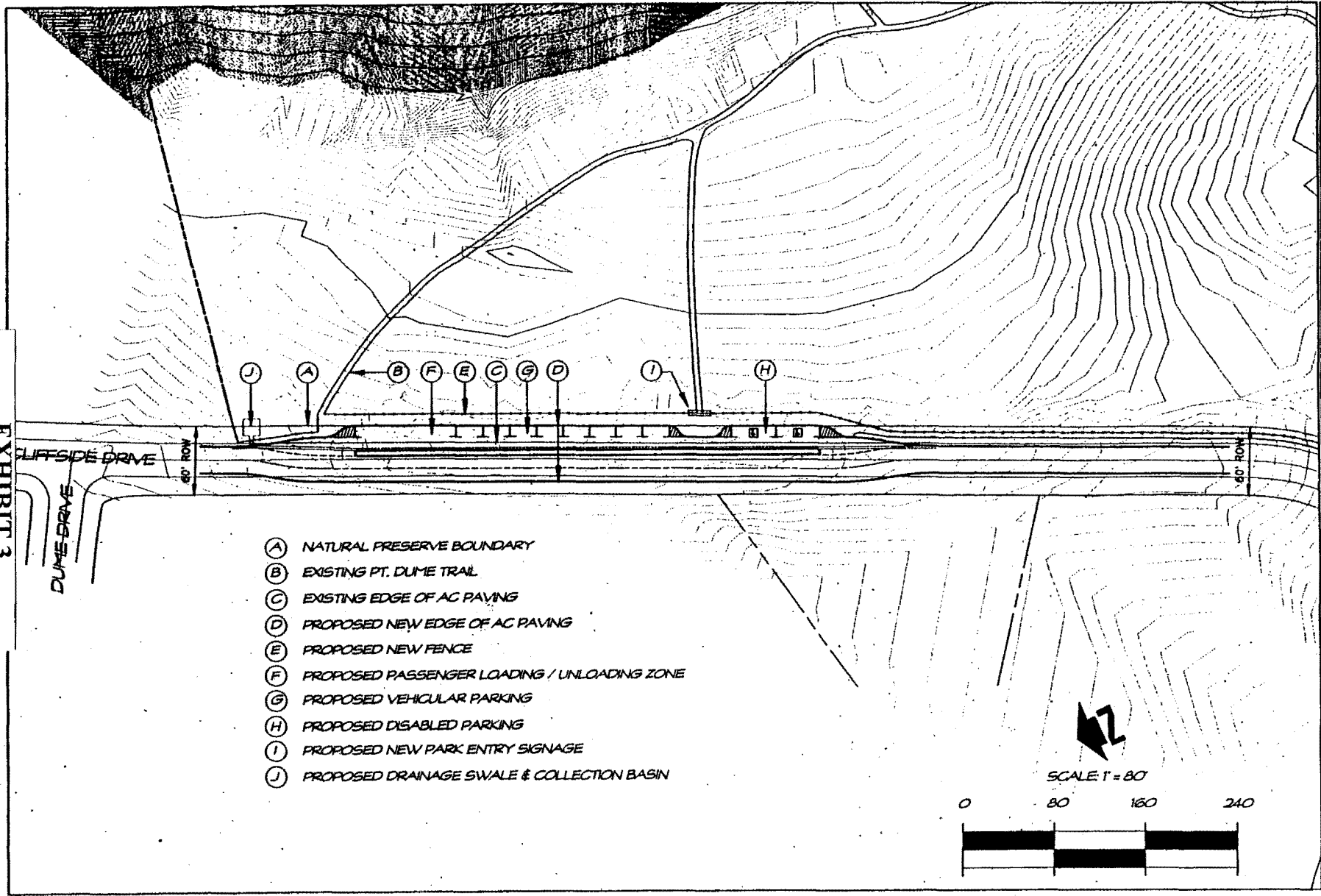
- (A) NATURAL RESERVE BOUNDARY
- (B) EXISTING PT. DUME TRAIL
- (C) EXISTING EDGE OF AC PAVING
- (D) PROPOSED NEW EDGE OF AC PAVING
- (E) PROPOSED NEW FENCE
- (F) PROPOSED PASSENGER LOADING / UNLOADING ZONE
- (G) PROPOSED VEHICULAR PARKING
- (H) PROPOSED DISABLED PARKING
- (I) PROPOSED NEW PARK ENTRY SIGNAGE
- (J) PROPOSED DRAINAGE SWALE & COLLECTION BASIN

**EXHIBIT 2**  
**CDP # 4-00-126**  
**Site Improvements**  
**Pursuant to Agreement**

Proposed Alternative Site Improvements

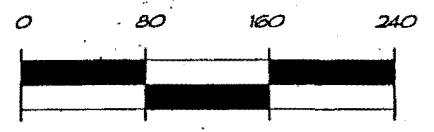
CDP # 4-00-126

EXHIBIT 3



- (A) NATURAL PRESERVE BOUNDARY
- (B) EXISTING PT. DUNE TRAIL
- (C) EXISTING EDGE OF AC PAVING
- (D) PROPOSED NEW EDGE OF AC PAVING
- (E) PROPOSED NEW FENCE
- (F) PROPOSED PASSENGER LOADING / UNLOADING ZONE
- (G) PROPOSED VEHICULAR PARKING
- (H) PROPOSED DISABLED PARKING
- (I) PROPOSED NEW PARK ENTRY SIGNAGE
- (J) PROPOSED DRAINAGE SWALE & COLLECTION BASIN

SCALE 1" = 80'



|   |   |            |             |
|---|---|------------|-------------|
| DATE  | DESIGNED BY                             | CHECKED BY | APPROVED BY |
|   |   |            |             |
| REGIONAL PROJECT OFFICER<br>DEPARTMENT OF PARKS AND RECREATION<br>SOUTHERN SERVICE CENTER |   |            |             |
| PROJECT NO.   | POINT DUNE STATE BEACH NATURAL PRESERVE |            |             |
| DRAWING NO.   | CONCEPT PLAN - ALT. 2                   |            |             |
| SHEET NO.   | 1                                       |            |             |
|   | 1                                       |            |             |

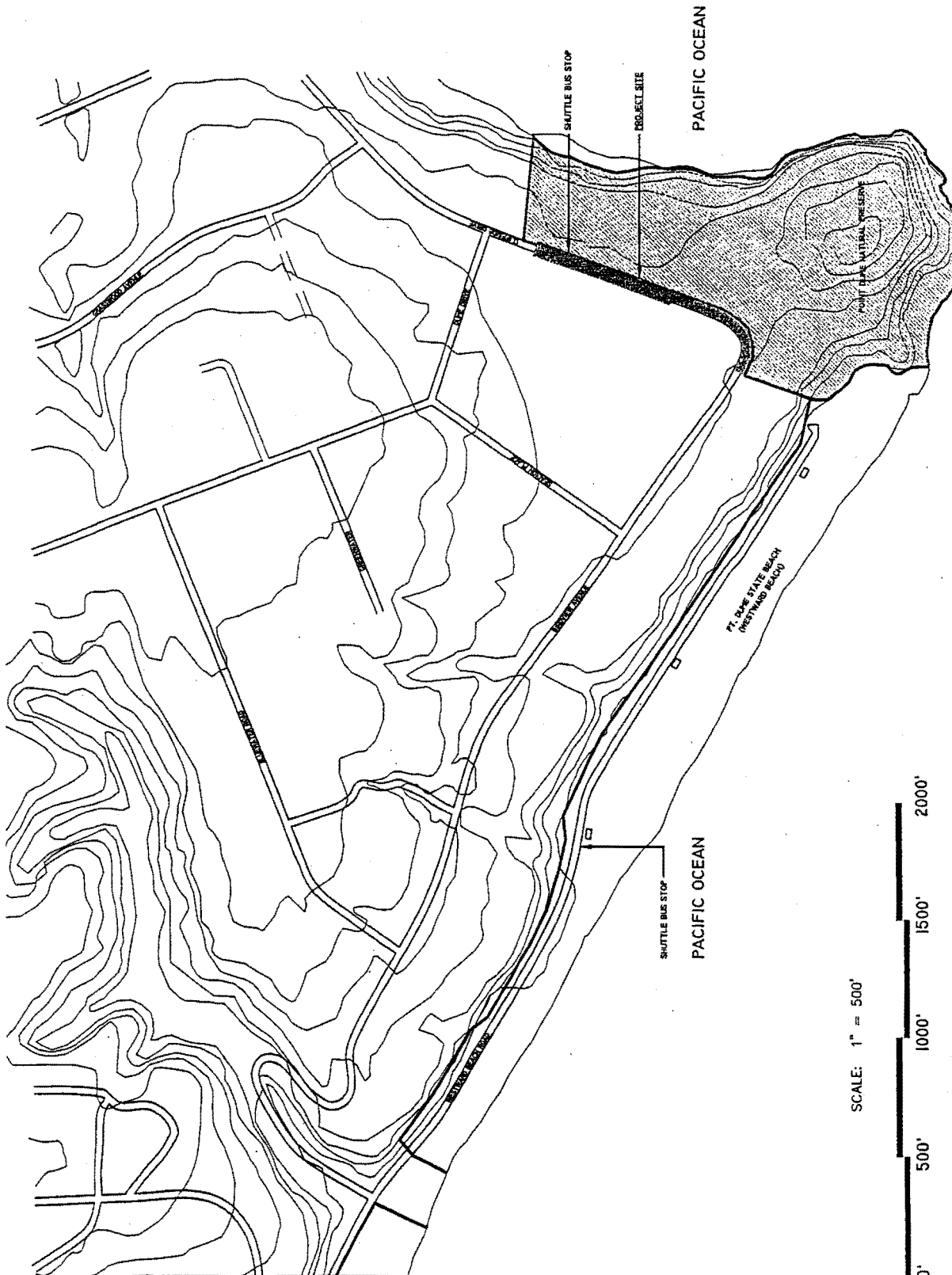
Figure 1. Vegetation of Point Dume Natural Preserve  
1994 Imagery



EXHIBIT 4

CDP # 4-00-126

Coastal Resource Map



**EXHIBIT 5**

**CDP # 4-00-126**

**Location Map for Shuttle Service**

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into as of March 15, 2000 by and among the City of Malibu ("City"), a municipal corporation, and the California Coastal Commission ("Commission"), an agency of the State of California, referred to collectively in the Agreement as the "parties."

### RECITALS

A. The City is in the coastal zone established by the California Coastal Act of 1976 (the "Act"). As defined in the Act, "development" in the coastal zone requires the issuance of a coastal development permit by the Commission, unless the development is subject to one of the exemptions provided in the Act or the Commission's regulations.

B. In August 1995 the Commission staff received information indicating that the City had placed signs restricting parking and boulders in the 18-foot wide shoulder along the south side of Cliffside Drive between Birdview Avenue and Dume Drive, in the City, adjacent to Point Dume Natural Preserve ("Preserve"). The Commission staff visited the site, determined that signs and boulders had been placed in this area, and thereafter opened violation file V-4-97-002.

C. The Commission staff recommended that the City should obtain approval for either an after-the-fact permit for this development or for a permit regulating the removal of the boulders and signs, and providing for restoration of the property. The City, however, maintained that no permit should be required for several reasons, including the contention that signs restricting parking had existed on the property since before the City had incorporated, and indeed had been installed in the area adjacent to Point Dume at least 14 years earlier by the County of Los Angeles.

D. In May 1997 the Commission staff sent a Notice of Intent to commence Cease and Desist Order proceedings and a Statement of Defense form to the City. In June 1997 the City submitted a Statement of Defense, to which the Commission staff responded in a report dated July 31, 1997, and an addendum dated August 8, 1997.

ATTACHMENT

EXHIBIT 6

CDP # 4-00-126

Settlement Agreement  
and Joint Project



E. After a public hearing held on August 13, 1997, the Commission voted to issue Cease and Desist Order No. CCC-97-CD-01 ("Cease and Desist Order" or "Order") and adopted the findings prepared by the staff in support of this order. The Cease and Desist Order was issued to the City on August 15, 1997.

F. Among other things, the Cease and Desist Order directed the City to refrain from engaging in any development on the property without first obtaining a coastal permit. The Order also required the City to submit a coastal permit application within 60 days after the date of the order for either (1) removal of all parking restrictions, signs and boulders, and restoration of the property to its pre-violation state; or (2) after-the-fact authorization of the development. The Cease and Desist Order provided that the time for compliance with the Order could be extended by the Executive Director for good cause.

G. On October 10, 1997, the City filed a petition for a writ of mandate challenging the issuance of the Cease and Desist Order (the "Litigation").

H. The City and Commission entered into a stipulation which was approved by the Court on October 20, 1997, staying the Cease and Desist Order from October 14, 1997 to November 13, 1997. By a second stipulation which was approved by the Court on November 21, 1997, the stay of the Cease and Desist order was extended from November 14, 1997 to January 13, 1998. Finally a third stay of the Cease and Desist Order was approved by the Court on January 22, 1998, extending the stay of the Cease and Desist Order from January 14 to March 16, 1998.

I. During the period of the Court-approved stays the City and the Commission undertook efforts to settle their dispute through mediation. They retained the services of a professional mediator, who met separately and jointly with representatives of the City and Commission in December 1997 and January 1998.

J. In addition to the parking restrictions within the area covered by the Order, the City enforces parking restrictions on additional public streets in the Point Dume area, including all or portions of Sea Lion Place, Dume Drive, Grasswood Avenue and Fernhill

Drive ("Additional Parking Restrictions"). During the course of the mediation it was determined that the City has erected signs enforcing the parking restrictions on the aforementioned streets. The City and Commission disagree as to whether a coastal development permit is required for the erection of these signs.

K. As a result of the mediation, the City and Commission reached a tentative settlement of the issues covered by the Cease and Desist Order. On March 16, 1998, the Executive Director of the Commission stayed the time for compliance with the Cease and Desist Order in order to provide time for the preparation of a final settlement agreement. This stay may be rescinded by the Executive Director at any time, upon 30 days written notice to the City.

L. The City subsequently asked for modifications to the tentative settlement and also entered into discussions with the California Department of Parks and Recreation ("State Parks") concerning certain public access improvements on and in the vicinity of the Preserve. These discussions culminated in an agreement under which the City and State Parks will cooperate in the planning, design, permitting and construction of public access improvements. State Parks also has proposed to prepare and implement a management plan for the Preserve. The Commission has been apprised of these developments, participated in discussions with the City and State Parks, and shares the City's intention to resolve the issues giving rise to the Cease and Desist Order through a settlement agreement providing for public access improvements at Point Dume.

M. The City and the Commission are both government entities and therefore their actions are subject to state laws requiring them to hold public hearings when taking certain actions and regulating the manner in which they exercise their authority under the police power.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and conditions contained in this Agreement the City and Commission agree that:

**I. AGREEMENT TO UNDERTAKE ACCESS IMPROVEMENTS.** The

City agrees to undertake activities to improve access to the Preserve as set forth in this Agreement ("the Improvements"). The Improvements are described and a timeline for their implementation are contained in a Joint Project Agreement between State Parks and the City (City/Parks Agreement), a copy of which is set forth at Exhibit A to this Agreement and incorporated herein. The Improvements include physical improvements to both sides of Cliffside Drive in the vicinity of the Preserve (including a total of ten parking spaces as described below), implementation of a shuttle bus between Westward Beach and the Preserve, and improved signage. Although the City and State Parks will be separately responsible for implementation of certain of these Improvements, the planning, design, permitting, and construction of the Improvements will be undertaken in a coordinated manner as described in the City/Parks Agreement. Implementation of the Improvements shall be carried out in accordance with and subject to the following:

**A. Preserve Improvements.** Subject to compliance with regulatory requirements, including the provisions of the California Environmental Quality Act ("CEQA"), the City will issue an encroachment permit to State Parks to allow construction of the Improvements on the Preserve side of Cliffside Drive as set forth in the City/Parks Agreement, including removal of boulders; construction of a loading zone, walking path, fence, and curbing at the edge of pavement; construction, if determined to be appropriate as set forth in the City/Parks Agreement, of two accessible parking spaces; placement of parking enforcement signs in accordance with Section I.D of this Agreement; restoration of native vegetation; and installation of Preserve entry and interpretive signs; and

**B. Inland Side of Cliffside Drive Improvements.** Subject to compliance with regulatory requirements, including the provisions of the CEQA, the City will install eight standard, parallel parking spaces in the public right of way at 29317 Cliffside Drive. Two of the eight parking spaces will be designated for accessible use if so determined as set forth in the City/Parks Agreement, in which case two additional

public parking spaces will be provided in close proximity to the Preserve in a location agreed to by the City and Commission. The City will also install parking enforcement signs at this location in accordance with the provisions of Section I.D of this Agreement.

**C. Shuttle Bus Service.**

1. Subject to compliance with regulatory requirements, including the provisions of CEQA, the City will initiate and operate a shuttle bus service between the Westward Beach parking lot and the Preserve. The shuttle will be available without restriction, except for reasons of health or safety, to provide transportation to the Preserve for members of the general public who park at Westward Beach. The shuttle program will operate seven days a week during the summer season (e.g., from Memorial Day to Labor Day) and on weekends and holidays during the rest of the year. The City with the concurrence of the Commission will adopt and adjust as necessary a schedule of service, including hours of daily operation, in order to appropriately serve visitors to the Preserve as set forth in the City/Parks Agreement. The City will install appropriate signage to inform the public of the availability of the shuttle.
2. Promptly following certification by the City of the environmental document prepared pursuant to CEQA assessing the environmental impacts of the Improvements and issuance of a coastal development permit authorizing the shuttle service, if required, the City will solicit proposals from qualified entities and, upon consideration of the responses, select an entity to provide the shuttle bus service. The City anticipates that the cost of providing the shuttle bus service contemplated by this Agreement will not exceed approximately \$50,000.00 per year. The shuttle bus service shall commence promptly following the selection of the provider or at such other time

as the City and Commission shall determine in consultation with State Parks.

3. Representatives of the City and Commission shall meet on a quarterly basis following commencement of the shuttle service, or more frequently if requested by one of the parties, to assess the effectiveness of the shuttle service in providing access to the Preserve and to determine whether adjustments to scheduling, signage, or marketing would be appropriate to better meet demand. The parties shall request that a representative of State Parks participate in these meetings. In the event that one or more of the participating agencies believes that the shuttle has not proved cost effective, the participating agencies may investigate whether other means of access are or could be made available to meet the identified demand. The participating agencies shall consult regarding the implementation of such other identified means of access.
4. If the City terminates the shuttle service (a) prior to LCP certification or such longer period as the parties may determine pursuant to Section III.E of this Agreement and (b) without obtaining the agreement to such termination pursuant to Section C.3 above, the City shall promptly thereafter process an application for a coastal development permit to construct an additional 22 parking spaces within close proximity to the Preserve and, promptly following receipt of such permit, undertake the steps necessary to install the additional parking spaces.

**D. Implementation of Parking Restrictions.**

1. Except for the provision of the passenger loading zone and possible installation of accessible parking spaces on the Preserve side of

Cliffside Drive as set forth in the City/Parks Agreement, the City's current parking regulations on the Preserve side of Cliffside Drive will remain in place. The City may install parking enforcement signs limiting use of the passenger loading zones and accessible parking spaces for the specified purposes. The City may replace existing no parking/ towing signs following installation of the Improvements on the remaining portion of the Preserve side of Cliffside Drive.

2. Except for the parking spaces to be installed at 29317 Cliffside Drive as set forth in the City/Parks Agreement, the City's current parking regulations on the inland side of Cliffside Drive will remain in place. The City may time-limit use of the parking spaces to be installed at 29317 Cliffside Drive for no less than two, but not more than four, hour limits per vehicle. The City may prohibit parking in these parking spaces between sunset and sunrise daily.
3. The City will not impose any public parking restrictions within the area of the Additional Parking Restrictions beyond those in effect as of the effective date of this Agreement except as specifically authorized by this Agreement. The foregoing prohibition shall remain in effect until the certification by the Commission of the Local Coastal Plan (LCP) for the City.

## **II. IMPLEMENTATION OF IMPROVEMENTS.**

**A. Timeline for Improvements.** The parties acknowledge that the timeline for the implementation of the Improvements set forth in the City/Parks Agreement is tentative and subject to refinement as the planning, design, and permitting for the Improvements proceed. Notwithstanding the foregoing, the City acknowledges that December 2000 is a firm deadline for the commencement of construction of the Improvements, which shall include removal of the existing boulders on the Preserve side of Cliffside Drive during the first phase of construction. The foregoing deadline may be extended by the Executive

Director of the Commission upon a determination that the City has exercised good faith diligence in seeking to implement the Improvements and that delay in commencement of construction is due to circumstances beyond the City's control.

**B. Coastal Development Permit.**

1. In cooperation with State Parks, the City shall apply for and diligently pursue a coastal development permit for the Improvements specified in Section I, above, and as described in the City/Parks Agreement. Subject to compliance with regulatory requirements, the Commission shall diligently and promptly process the application for action by the Commission. The parties acknowledge that the City's obligation to implement the Improvements in cooperation with State Parks is subject to issuance by the Commission of a coastal development permit authorizing the construction and/or placement of the Improvements. Provided that the Commission staff determines that the application for a coastal development permit is complete and otherwise conforms to the requirements of this Agreement, the staff will promptly process the application for consideration by the Commission. Failure by the Commission to act affirmatively on the application at its first meeting held more than 40 days following submission of a complete application for reasons other than the failure of the application to conform to the provision of this Agreement shall extend the deadline for commencing construction of the Improvements as set forth in subsection II.A, above, from the date of such meeting until the date the Commission approves the application.
2. Following issuance of a coastal development permit for the Improvements, the City in cooperation with State Parks will diligently proceed with bidding and construction of the

Improvements as set forth in the City/State Parks Agreement.

C. Funding for Construction. The Commission agrees that it will provide funds to the City for the construction of the portion of the Improvements identified as City elements in Attachment 3 to the City/State Parks Agreement ("authorized expenses"). Notwithstanding the foregoing, the Commission shall have no responsibility to provide funding for the planning or operation of the shuttle service. The Commission will reimburse the City within 60 days following submission of invoices for authorized expenses incurred by the City to a maximum of \$40,000.00. To the extent that authorized expenses reasonably incurred by the City exceed \$40,000.00, the Commission will undertake good faith efforts to allocate or secure additional funds to reimburse City for such additional authorized expenses, provided that the total expended by the Commission in no event shall exceed \$100,000.00.

D. Commission Cooperation. The Commission agrees the Commission staff will cooperate by reviewing and commenting on the scoping, design and implementation of the Management Plan, Point Dume Preserve Access Study, and Site Improvements to be carried out by the City and/or State Parks pursuant to the City/State Parks Agreement. The Commission further agrees to consider the data, contents and conclusions contained in and derived from the Management Plan and Point Dume Preserve Access Study in the course of the Commission's consideration of and action upon the proposed LCP for the City.

### III. DISPOSITION OF PROCEEDINGS AND FUTURE ACTIONS.

A. Termination of the Cease and Desist Order. Upon the effectiveness of this Agreement the Commission shall schedule a hearing to be held no later than the April 2000 Commission meeting to consider modification or termination of the Cease and Desist Order pursuant to the procedures established in the Commission's regulations. It is understood by the parties that the Commission may modify the Cease and Desist Order to provide that the Order will terminate and have no further force and effect upon the



determination of the Executive Director of the Commission that the Improvements have been constructed in accordance with this Agreement and made available for public use, including commencement of the shuttle service. The City's obligation to approve and implement the Improvements in accordance with this Agreement is subject to prior action by the Commission terminating the Order or modifying the Order as set forth in the previous sentence.

B. Dismissal of the Litigation. The City shall dismiss with prejudice the petition for writ of mandate filed by the City in City of Malibu v. California Coastal Commission, Los Angeles Superior Court Case No. BS047627, upon receipt by the City of written confirmation from the Executive Director of the Commission that the Cease and Desist Order has been terminated and will have no further force and effect.

C. Settlement of all Claims. Upon (1) termination by the Commission of the Cease and Desist Order and (2) dismissal of the Litigation with prejudice by the City, each party shall release the other from all claims, demands, and causes of action, whether known or unknown, arising out of the Cease and Desist Order and the Litigation.

D. Resolution of Disputes. If one party believes that the other party has breached the terms of this Agreement or otherwise has failed to fulfill all of its obligations contained herein, it shall provide written notification to the other party of such alleged breach or failure. In such an event, the parties shall promptly meet in an effort to resolve and/or remedy the alleged breach or failure. The parties may reactivate proceedings under the Litigation and/or Cease and Desist Order only after undertaking all reasonable efforts to resolve and/or remedy the alleged breach or failure.

E. Additional Parking Restrictions and Local Coastal Plan.

1. This Agreement does not resolve the dispute between the parties concerning the legality of the Additional Parking Restrictions. The Commission agrees that it will not initiate or pursue any enforcement action with respect to the Additional Parking Restrictions so long as

the City (a) is in substantial compliance with the terms of this Agreement, and (b) continues to make progress toward submission and certification of an LCP for the City within a reasonable period of time. The parties agree that a reasonable period of time for certification of an LCP by the City is three years from the effective date of this Agreement; provided, however, that this time period will be extended if an LCP has not been certified but the City is making ongoing good faith efforts to complete and obtain certification of its LCP. The parties anticipate that the LCP will address the sufficiency of access to the Preserve, including the Improvements to be implemented pursuant to this Agreement.

2. In the event that the Commission believes that the City is not in substantial compliance with the terms of this Agreement, and before initiating any enforcement action with respect to the Additional Parking Restrictions, the Commission shall first utilize the process set forth in Section III.D. of this Agreement in an effort to resolve or otherwise cure the alleged noncompliance.
3. In the event that the Commission initiates an enforcement action with respect to the Additional Parking Restrictions under the circumstances authorized by this Section III.E, the City shall not assert that the time between the effective date of this Agreement and the date of commencing such enforcement action constitutes a bar or defense to the maintenance of such action.

#### **IV. OTHER PROVISIONS.**

**A. Cooperation in the Defense of Challenge.** In the event that a legal action is filed challenging approval or implementation of the Improvements, or any portion thereof, the parties desire to cooperate in the defense of the action. Accordingly:

1. In the event that both parties are named as defendants, respondents

and/or real parties in interest in such an action, each party shall participate in the defense of the action by providing legal counsel of its choosing and at its expense. The parties shall allocate between them responsibilities in the defense of the action based upon the nature of the claims and other relevant factors so as, so far as is practicable, to avoid duplication of effort.

2. In the event that the City but not the Commission is named as a defendant, respondent and/or real party in interest in such an action, the Commission agrees to assist the City in the defense of the action. Such assistance may include, but not be limited to, the filing of an amicus brief in support of the City explaining the significant public access purposes advanced by this Agreement and by the implementation of the Improvements, or such other assistance as the Commission determines is appropriate in consultation with the City.
3. The parties shall consult regarding any proposed settlement or other disposition of the action and, if both Commission and City are parties to the action, any such settlement or disposition is subject to approval of both parties.

**B. Litigation Costs.** The City and Commission shall bear their own costs and attorney fees relating to the Order and the Litigation.

**C. Modification.** No modification, amendment or alteration of the Agreement shall be valid unless it is in writing and signed by the parties.

**D. Governmental Powers.** Nothing in this Agreement shall limit or restrict the exercise of authorized statutory and/or police powers by the parties.

**E. No Effect on Other Governmental Jurisdiction.** This Agreement has no effect on the regulatory, environmental, administrative, or other jurisdiction of any federal state, local or other government entity.

F. Counterparts. This Agreement may be executed in any number of counterparts and each executed counterpart shall have the same force and effect as an original instrument.

G. Agreement Binding on Successors and Assigns. All the terms, provisions, and conditions of the Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties.

H. Effective Date. This Agreement shall become effective upon full execution by the parties.

I. Construction of the Agreement. This Agreement has been prepared pursuant to the mutual direction of the parties and their respective counsel, and all rules with respect to the construction of agreements, instruments or documents against the drafter are expressly waived.

J. Headings. The title headings of the paragraphs of this agreement are inserted for convenience only and shall not be considered in construing this agreement.

K. Subsequent Agreement. In the event this Agreement ceases to have any force and effect, or if prior to complete implementation this Agreement is ever found by the final, nonappealable judgment of a court of competent jurisdiction to be invalid, the parties shall confer with the purpose of entering into a subsequent agreement that will implement to the maximum degree feasible the provisions of this Agreement. In the event that the parties do not reach a subsequent agreement within 60 days following such judgment, or such additional time as the parties may agree, the City may proceed with the litigation of the petition for writ of mandate filed by the City in City of Malibu v. California Coastal Commission, Los Angeles Superior Court Case No. BS047627, and the Commission may take such measures as are necessary to enforce Cease and Desist Order No. CCC-97-CD-01, provided, however, that the time period during which this Agreement was in effect shall not be considered in (1) computing penalties for violation of the Coastal Act; or (2) establishing a defense to any violation action brought by the

Commission, including, but not limited to a defense based on laches, estoppel or a statute of limitations. In any such litigation, the terms and recitals of this Agreement shall not to be used as admissions by either of the parties or any other person or entity.

L. Further Assurances. So long as authorized by other applicable laws, the parties will perform such acts and execute, acknowledge, and deliver all instruments, applications and notices that may be necessary to implement this Agreement.

M. Enforcement of the Agreement. This Agreement is made and entered into in the State of California and shall be governed by, interpreted, enforced, and construed in all respects in accordance with the laws of the State of California. This Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

N. Representation by Counsel. The parties represent and acknowledge that each of them has been represented by counsel with respect to this Agreement and all matters covered by or related to such Agreement. Each party has been fully advised with respect to all rights which are affected by the Agreement. Each party warrants and represents that they have read this Agreement and they have had the terms used in this Agreement and their consequences explained to them by their respective attorneys; and that they have not relied on any inducement, promise, or representation made by any party or any party's representative or attorney, or any other person, except for those expressly stated in this Agreement.

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Dated: March 15, 2000

Carolyn Van Horn  
Carolyn Van Horn  
Mayor, City of Malibu

Attest:

Virginia Bloom  
Virginia Bloom, City Clerk  
(seal)

Dated: 3/8/00

Peter Douglas  
Peter Douglas,  
Executive Director,  
California Coastal Commission

Approved as to Form:

Dated: 2/28/00

Mark I. Weinberger  
Mark I. Weinberger  
Shute, Mihaly & Weinberger LLP  
Attorneys for City of Malibu

Dated: 3/9/00

J. Matthew Rodriguez  
J. Matthew Rodriguez, Assistant Attorney  
General  
Office of the Attorney General  
Attorneys for California Coastal  
Commission

FINAL

**Joint Project Agreement Between  
California Department of Parks and Recreation  
and City of Malibu**

**Point Dume Natural Preserve  
Management, Parking and Transportation Improvements**

This Joint Project Agreement ("Agreement") is entered into as of March 30, 2000, between the California Department of Parks and Recreation ("Department") and the City of Malibu ("City") relating to implementation of management, parking and transportation improvements for Point Dume Natural Preserve ("Preserve"), which is owned by the Department and is located in the City

**RECITALS**

- A. Both the Department and the City have vital interests in the protection and enhancement of the Preserve.
- B. The City and the California Coastal Commission are involved in litigation ("Litigation") concerning the legality of certain restrictions currently enforced by the City on vehicle parking on City streets in the vicinity of the Preserve.
- C. The Department proposes to prepare and implement a management plan for the Preserve. The City supports the Department's proposal.
- D. The Department and the City each propose to implement certain access improvements on and in the vicinity of the Preserve which will enhance public access to the Preserve (Site Improvements). The Department and City wish to cooperate in the, planning (including environmental review under the California Environmental Quality Act ["CEQA"]), design, permitting and construction of the Site Improvements.
- E. The Department and City anticipate that the City's agreement to implement the Site Improvements as set forth in this Agreement will become an element of the settlement of the Litigation.

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**EXHIBIT A TO SETTLEMENT  
AGREEMENT**

## AGREEMENT

1. Effective Date. This Agreement shall be dated as of the date upon which both parties have executed this Agreement. This Agreement shall become effective upon the effective date of a settlement agreement between the City and the Commission.
2. Preserve Staffing and Visitor Services. The Department will provide a staff person to support its management goals at Point Dume. It will immediately seek out a qualified individual to support the development of a volunteer docent program, and provide on site presence to insure public safety and protect the fragile resources of the Preserve. The Department will provide the funding for staff support as described in this paragraph.

In addition to the paid staff person provided for in this section, the Department will develop a volunteer docent program to provide interpretive support for visitors to the Preserve.

3. Management Plan. The Department will initiate preparation of a Management Plan for the Preserve that will provide the direction for restoration, renovation and enhancement of the Preserve. The plan will emphasize strategies to sustain and protect the diverse resources that make up the Preserve. The carrying capacity of the Preserve will be addressed as part of the implementation of the management plan. In preparing and implementing the Management Plan, public access will be provided in a manner consistent with the Department's goals for resource protection and preservation reflecting the designation of the area as a Preserve. A tentative outline and timeline for the Management Plan prepared by the Department is set forth at Attachment 1, which is incorporated into this Agreement. The Department shall consult with the City periodically during the scoping and preparation of the Management Plan.
4. Point Dume Preserve Access Study. Utilizing information developed during the preparation of the Management Plan, the City shall commission and pay for an independently conducted Point Dume Preserve Access Study ("Study") to assess overall Preserve transportation access, including parking needs. The scope of the Study will require consultant expertise in the fields of (1) traffic and parking and (2) user surveys for recreational and park users. A tentative scope for the Study is set forth at Attachment 2, which is incorporated into this Agreement by this reference. The firm(s) retained by the City to conduct the Study and the scope of work shall be agreed to by the Department. The City shall include the Department and the Commission in review of the Study methodology, results and conclusions and consider their input, comments and concerns in the Study outcomes. The Study will



identify all currently available public parking spaces providing access to the Preserve, identify other available means of access, and review available data concerning Preserve usage patterns. The Study will assess the adequacy of access to the Preserve through available means, including by foot, bus, bicycle and automobile, and including the Site Improvements specified in this Agreement.

The results of the Study will be submitted to the Commission and the Department as a tool (i) to assess the sufficiency of access to the Preserve by available means, including the sufficiency of parking in the vicinity, and (ii) to identify options for revising access consistent with the Preserve's carrying capacity.

While the City's request for certification of its Local Coastal Plan ("LCP") is pending with the Commission, the City agrees that, except for the Site Improvements, it will not alter "on street" parking on Point Dume for non-residents and that it will submit a current inventory of "on street" parking with its LCP submittal.

5. Site Improvements. The Department and the City will undertake the planning for (including compliance with CEQA), design, permitting and construction of certain improvements to access to the Preserve in the manner specified in this Agreement. The Department will prepare a concept plan for the Site Improvements. The elements of the Site Improvements, the responsibility for the costs of each element, and a projected timeline for implementation of the Site Improvements is set forth in Attachment 3, which is incorporated into this Agreement. The Site Improvements are also subject to the following:

- A. Improvements Adjacent to Preserve. Subject to completion of environmental review pursuant to CEQA, the City will provide an encroachment permit to the State to allow for the relocation of the existing fence line at the Preserve adjacent to Cliffside Drive. The fence will be placed in the City's right of way as an alternative to the existing boulders that presently occupy the shoulder of the road. The Department will pay all costs associated with the relocation of the fence, including removal of the existing chain link fence and construction of a more aesthetically pleasing fence. As provided for in Section 6 (C), the removal, relocation, and construction of the fence will be carried out as part of the City's contract for the Site Improvements. Once the contract is let and the contractor is prepared to install the fence, the City will move the existing boulders, but not later than December 2000 or such other date as may be established pursuant to the settlement agreement between the City and the Commission. The Department will revegetate the reclaimed road shoulder with native species to enhance the resources of the Preserve as needed. The new fence line will be laid out to allow for establishment of a passenger loading zone to be constructed by the City. The Department will provide a walking path between the edge of the pavement and the

fence to the entrance of the Preserve from the passenger loading zone. Curbing will be constructed at the edge of the pavement to deter illegal parking on the road shoulder adjoining the Preserve. Except for the provision of the passenger loading zone and accessible parking spaces as provided for elsewhere in this Agreement, the City's current parking regulations on the Preserve side of Cliffside Drive will remain in place and replacement signs will be installed by City as needed. The replacement of parking control signs, if or as needed, will be subject to concurrence by the Department, which shall not be unreasonably withheld so long as the appearance and placement of the parking control signs both (1) satisfy regulatory standards for enforcement signs and (2) minimize visual impacts upon the overall appearance of the new fence and entrance facilities to be planned and constructed at the Preserve.

- B. Accessible Parking Spaces. As part of the preparation of the concept plan for the Site Improvements, the Department will evaluate the appropriate location for two accessible parking spaces in compliance with the Americans with Disabilities Act of 1990 ("ADA") and related and/or comparable state law. In evaluating alternative locations for the two accessible parking spaces, the Department will consider ADA and accessibility guidelines, traffic safety, environmental impact (including any cut, fill, retaining structures, and impacts on views), and cost.

The Department will evaluate locating the two accessible parking spaces in the public right of way on the Preserve side of Cliffside Drive. If accessible parking is determined in the manner set forth in the next paragraph not to be appropriate on the Preserve side of Cliffside Drive, the accessible parking spaces shall be placed on the inland side of Cliffside Drive pursuant to Section 5 (C), below. In the event this location is selected, the City agrees to install all necessary traffic control and otherwise conform to all other requirements required by the ADA and state law and accessibility guidelines.

The Department, with the concurrence of the City, shall determine the proposed location for the two accessible parking spaces for inclusion in the concept plan and further processing in accordance with this Agreement. City will not unreasonably withhold its concurrence with Department's determination as to the plan for locating the accessible parking spaces so long as the Department's concept plan is safe, conforms with applicable accessibility law and guidelines, is environmentally acceptable, and is feasible from a construction viewpoint.

- C. Inland Side of Cliffside Drive. The City will develop standard, parallel parking spaces in the public right of way along the entire frontage of the property at 29317 Cliffside Drive consistent with the proposed driveway location in the current site plan for the property and with uses on the adjoining property. A previous analysis

by the City concluded that eight standard parking spaces can be accommodated at this location. If determined to be placed at this location pursuant to Section 5 (B), above, two of the eight parking spaces will be designated as accessible parking spaces only and will meet all applicable accessibility guidelines for such parking spaces, in which case two additional public parking spaces will be provided in close proximity to the Preserve, in a location agreed to by the City and the Commission.

- D. Shuttle Bus Service. The City will provide a shuttle bus service referred to as the "nature bus." This service will be used to provide transportation for members of the general public from the Westward Beach parking lot to the Preserve. The City will plan, schedule and operate the "nature bus" program to supplement the Department's visitor and interpretive program at the Preserve as contemplated by this Agreement. The "nature bus" service would be provided seven days per week during the summer months and on weekends and holidays the remainder of the year. The City with the concurrence of the Commission will adopt and adjust as necessary a schedule of service in order to appropriately serve visitors to the Preserve and, where appropriate, coordinate with scheduled interpretive programs at the Preserve. Appropriate and adequate signing and other public outreach regarding the service will be provided by the City. The City has estimated that the cost of providing the shuttle service would not exceed \$50,000 per year to meet expected demand. Operation of the "nature bus" is expected to commence in June 2000 or as soon thereafter as possible pending environmental clearance and any permit requirements from regulatory agencies.

6. Implementation of Site Improvements.

- A. CEQA Review. Because the Site Improvements constitute a joint project, by agreement of the City and the Department, the Department shall serve as the Lead Agency and the City shall serve as a Responsible Agency for purposes of compliance with CEQA. Consistent with the provisions of law applicable to the duties of the Lead Agency, (i) the Department and the City will cooperate in the analysis and documentation of the environmental impacts associated with the proposed Site Improvements, (ii) the Department will provide staff and funding for assessment of environmental impacts on the Preserve associated with the Site Improvements, and (iii) the City will provide staff and funding, including any private consultants (for transportation analysis or otherwise) for assessment of environmental impacts off-site from the Preserve, including the inland side of Cliffside Drive and impacts related to the operation of the nature bus shuttle service, associated with the Site Improvements.

- B. Permitting Process. The Department and the City will coordinate to the maximum degree feasible the public review of concept plans and analysis and permitting of the Site Improvements. The parties will jointly sponsor a public meeting to review the concept plans and a public meeting during consideration of the environmental document and proposed Site Improvements.
- C. Bidding and Construction. Following receipt of necessary permits for the Site Improvements, the Department will prepare detailed specifications for the fence, pathways, revegetation, and entry sign and interpretive panels and the City will prepare specifications for all other Site Improvements to be carried out pursuant to this Agreement. The City will take lead responsibility for preparing bid materials (including, without limitation, working drawings and other construction contract documents), conducting the bidding process and, subject to concurrence by the Department, selection of contractors to undertake the physical improvements. Bids will be itemized for each element of the Site Improvements to allow the costs to be allocated between the City and the Department as specified in Attachment 2 to this Agreement. Department will reimburse City within 90 days following submittal of an invoice for all costs incurred which are the obligation of the Department, unless the Department notifies the City within 15 days following submittal of the invoice that the Department believes that the work has not been satisfactorily completed, in which case the Department will reimburse City within 90 days following the Department's acceptance of the work. Unpaid invoices after such 90 day period as is applicable shall accrue interest at the rate of one percent per month until paid by the Department. The City will provide supervision and inspection of construction with assistance from the Department as regards conformance with the specifications for the fence, pathways, revegetation, and entry sign and interpretive panels. City will require that indemnity and insurance requirements for any construction contracts contain provision for naming Department as an indemnitee or additional named insured at no added cost to the Department.

In no event shall Department's approval, concurrence, or inspections for conformance with conceptual plans relieve City from responsibility for accurate and complete working drawings and other construction documents and for proper supervision and completion of the work. City shall make the final determination as to the contents of working drawings, construction specifications and other construction documents, and shall carry out the construction functions in accordance with law pertaining to City in such activities. City agrees to protect, hold harmless, indemnify and defend Department from and against liability, losses or damages in connection with the construction and other activities carried out by the City under this Agreement. Conversely, the Department agrees to protect, hold harmless, indemnify and defend the City from and against liability, losses or

damages in connection with the activities carried out by the Department under this Agreement.

The City shall be responsible for the bid, selection, operation, and contract for the operator of the shuttle service.

7. Submission to Commission. If the Management Plan, Point Dume Preserve Access Study, or other relevant information developed pursuant to this Agreement are available during the processing of the City's LCP, the City and Department will cooperate to make the information available to the Commission for consideration during review of the LCP.
  
8. Cooperation in the Defense of Challenge. The City and the Department recognize that the Site Improvements constitute coordinated and interrelated activities in the form of a joint project, which will be carried out cooperatively by the agencies. In the event that a legal action is filed challenging compliance with CEQA, the implementation of the Site Improvements, or any portion thereof, the parties desire to cooperate in the defense of the action. Accordingly, in the event that both parties are named as defendants, respondents and/or real parties in interest in such an action, each party shall participate in the defense of the action by providing legal counsel of its choosing and at its expense. The parties shall allocate between them responsibilities in the defense of the action based upon the nature of the claims, the portions of the Site Improvements that have been challenged, and other relevant factors so as, so far as is practicable, to avoid duplication of effort. If only one of the parties is named as a respondent, defendant and/or real party in interest, and if the nature of the action affects the interests of the unnamed party, the unnamed party shall provide legal assistance in the defense of the action through provision of legal counsel to assist in defense of the action or through financial contribution, with the objective of equalizing, so far as is practicable, the expenditure of funds and effort between the parties. If the unnamed party determines that it is appropriate under the circumstances, it may seek to intervene or otherwise participate in the defense of the action, and the named party shall support the application for intervention. The parties shall consult regarding any proposed settlement or other disposition of the action and, if both Department and City are parties to the action, any such settlement or disposition is subject to approval of both parties.

Except for claims for which a party has indemnified the other party, each party shall bear its own costs of defense of any personal injury or contract claims. The parties shall cooperate in the defense of such action and shall allocate between them responsibilities in the defense of the action based upon the nature of the claims, the extent of potential liability for each party, and other relevant factors so as, so far as is practicable, to avoid duplication of effort. Each party with potential liability shall

approve any settlement or other disposition of the action. In the event that such claims are settled or otherwise determined to be payable by the parties, the claims shall be allocated in accordance with the negligence of the parties as determined by the court or, as regards contract claims, the share of the costs of or claims attributable to the Site Improvements borne by each of the parties according to this Agreement.

9. Mutual Commitment. It is understood that the City's commitments set forth in this proposal are contingent on the Department's continued fulfillment of all of its obligations contained herein. Likewise, the Department's commitments are contingent on the City's continued fulfillment of all its obligations contained herein. The failure by either party to continue to fulfill its obligations in any material way will relieve the other party of any obligations to continue to honor its commitments as set forth above.

If one party believes that the other party may fail or has failed to fulfill all of its obligations contained herein, it shall provide written notification to the other party of such failure. In such an event, the parties shall promptly meet in an effort to resolve the alleged failure such that both parties agree to continue to fulfill all of their obligations contained herein. In addition, both party's commitments set forth in this Agreement are contingent on agreement between the City and the Commission settling the Litigation.

10. This Agreement contains the complete agreement of the City and Department as regards the subject matter of this Agreement and there are no other agreements, oral or written except as are included within the terms of this Agreement. Any amendments or clarifications must be in writing executed by both parties.
11. Should any provision of this Agreement be found to be void or unenforceable, it shall be severable from the rest of the Agreement and the remaining terms shall be enforced as if the unenforceable term had not existed.
12. The Agreement shall be deemed to have been drafted by both parties, with each having equal say and status. In no event shall any term be interpreted more favorably as to one party or the other.
13. Each party warrants that it has the authority to execute this agreement, but with the condition that the Agreement is subject to the approval of the California Department of General Services before it is binding on Department.
14. The term of this Agreement shall be ten years from the effective date except upon earlier termination by mutual written agreement of the parties. In the event a party believes that the other party has failed to perform all of its obligations hereunder, and following compliance with the procedures in Section 9, above, the other party may, on

for such period of time as statutes of limitations have not expired on any possible pending claims. Further, if executory contracts exist for which a party is obligated to reimburse the other party, such reimbursement obligation shall survive termination to the extent of work or services performed up to the date of termination.

15. Time is of the essence in the performance of the activities contemplated by this Agreement.
16. Except as specified in this Agreement, nothing in this Agreement shall be construed as giving either the City or the Department to right or ability to bind the other or create any joint liability as regards the activities under the Agreement.

CITY OF MALIBU

Dated: March 15, 2000

Carolyn Van Horn  
Carolyn Van Horn, Mayor

Attest:

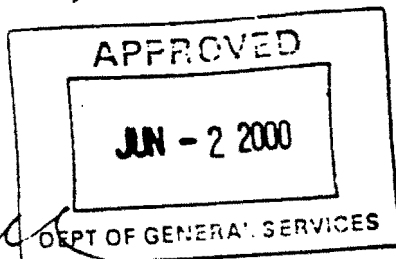
Virginia Bloom  
Virginia Bloom, City Clerk  
(seal)

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION

Dated: March 30, 2000

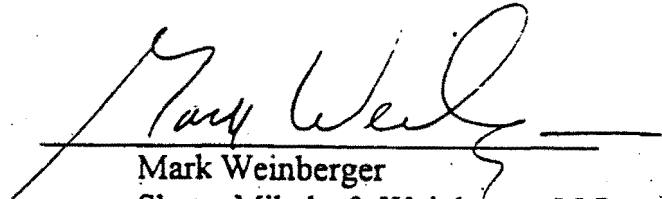
Rusty Areias  
Rusty Areias, Director

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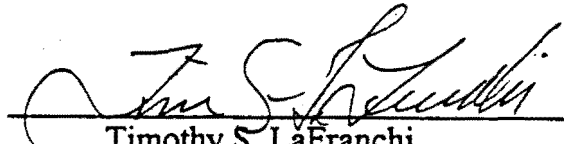


Approved as to Form:

Dated: 3/15/00

  
Mark Weinberger  
Shute, Mihaly & Weinberger LLP  
Attorneys for City of Malibu

Dated: 3/29/00

  
Timothy S. LaFranchi  
Chief Counsel  
Attorney for California  
Department of Parks and  
Recreation