

CALIFORNIA COASTAL COMMISSION

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Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

APPLICATION NO.: 4-99-249

APPLICANT: Bill and Carol Mechanic

AGENTS: Barsocchini & Associates

PROJECT LOCATION: 22068 Pacific Coast Highway, Malibu; Los Angeles County.

PROJECT DESCRIPTION: Demolish a two-story, 2,611 sq. ft. single family residence and detached garage and construct a new 2-story, 28 ft. high, 3,165 sq. ft. single family residence with an attached 430 sq. ft. garage, new alternative sewage disposal system, 250 cu. yds. of overexcavation, and an offer to dedicate a lateral public access easement over the southern portion of the property as measured from the dripline of the proposed deck to the mean high tide line at 22068 Pacific Coast Highway, Malibu, Los Angeles County.

Lot area: 3,563 sq. ft.
Building coverage: 1,725 sq. ft.
Paved area: 400 sq. ft.
Ht. abv. ext. grade: 28 ft.

LOCAL APPROVALS RECEIVED: City of Malibu Planning Department Approval in Concept 11/05/99, City of Malibu Geology and Geotechnical Engineering Review Approval in Concept 9/17/99, City of Malibu Environmental Health Department Approval in Concept (Alternative Septic) 9/13/99.

SUBSTANTIVE FILE DOCUMENTS: Geotechnical Engineering Report by RJR Engineering Group dated 2/25/99; Geotechnical Engineering Report Addendum by RJR Engineering Group dated 8/23/99; Geotechnical Data Report Addendum for Sewage Disposal System by RJR Engineering Group dated 8/09/99; Wave Uprush Study by Pacific Engineering Group dated 2/15/99.

SUMMARY OF STAFF RECOMMENDATION

The applicants are proposing to demolish an existing single family residence and to construct a new 3,165 sq. ft. single family residence with an attached 430 sq. ft. garage. The project proposal also includes an offer to dedicate a lateral public access easement along the beach as measured from the dripline of the proposed deck seaward to the mean high tide line. The project site is located on a beachfront parcel of land on Carbon Beach between Pacific Coast Highway and the ocean. The proposed development will be located landward of the appropriate stringline and will not result in the seaward encroachment of residential development on Carbon Beach. No shoreline protective device is proposed as part of the development and the applicant's coastal engineering consultant has indicated that no such protection is required for the proposed residence or sewage disposal system. Original project plans submitted for the proposed project indicate that a retaining wall was proposed just seaward of the proposed septic system, however, the applicant's representative has indicated that no retaining walls are included in the project proposal.

Staff recommends approval of the proposed project with 10 Special Conditions in relation to (1) Revised plans, (2) Landscaping, (3) Construction Responsibilities and Debris Removal, (4) Geologic Recommendations, (5) Sidewalk, (6) Sign Restriction, (7) Public View Corridor, (8) Offer to Dedicate Lateral Public Access, (9) Assumption Risk/Shoreline Protection Device, and (10) Drainage and Polluted Runoff Control Plan.

The applicant's representative has indicated that the applicant is not in agreement with Special Condition One (1), which requires the applicant to submit revised plans indicating that no obstructions, (including the proposed side decks, gates, and water fountain), are located within the public view corridor. Special Condition Seven (7) would still allow for the construction a walkway at grade and landward of the wave uprush zone, and for construction of a 6 ft. high visually permeable fence/gate within the view corridor.

I. STAFF RECOMMENDATION

MOTION: *I move that the Commission approve Coastal Development Permit No. 4-99-249 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. **Compliance.** All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.
5. **Inspections.** The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Revised Plans

Prior to issuance of the Coastal Development Permit, the applicant shall submit revised project plans consistent with Special Condition Seven (7), for review and approval of the Executive Director, which show that no less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean and that all development located within the public view corridor, including the proposed side decking and water fountain, that will block public views to the beach and ocean is deleted, and that any gates, walls, fencing, landscaping etc. that may be located within the view corridor is designed to be consistent with the terms of Special Condition Seven (7).

Furthermore, the applicant shall submit, for the review and approval of the Executive Director, revised project plans which show that any notes with reference to proposed retaining walls within the project site have been deleted.

2. Landscaping Plan

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

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

- (b) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- (c) Consistent with Special Condition Seven (7), vegetation within the public view corridor shall be limited to low-lying vegetation of no more than 2 ft. in height.
- (d) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission-approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

Monitoring

Five years from the date of the receipt of the Certificate of Occupancy for the residence the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

3. Construction Responsibilities and Debris/Excavated Material Removal

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

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

4. Geologic Recommendations

All recommendations contained in the Geotechnical Engineering Report by RJR Engineering Group dated 2/25/99; Geotechnical Engineering Report Addendum by RJR Engineering Group dated 8/23/99; and the Wave Uprush Study by Pacific Engineering Group dated 2/15/99 shall be incorporated into all final design and construction including recommendations concerning foundation, drainage, and septic system. Project plans must be reviewed and approved by the consultants prior to commencement of development. Prior to issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director of the consultants' review and approval of all final design and construction plans.

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

5. Maintenance of Public Sidewalk

In order to implement the applicant's proposal to maintain the existing 7 ft. wide public sidewalk between the proposed development and Pacific Coast Highway, the applicant agrees that the existing sidewalk will remain as-built, and that no encroachments such as planters, vegetation, or other structures or obstacles, that would affect the public's ability to access the entire sidewalk area, shall be constructed or placed in the area of the existing sidewalk.

6. Sign Restriction

No signs shall be posted on the property subject to this permit which (a) explicitly or implicitly indicate that the portion of the beach on the subject site (Assessor's Parcel Number 4451-005-009) located seaward of the residence and deck permitted in this application 4-99-249 is private or (b) contain similar messages that attempt to prohibit public use of this portion of the beach. In no instance shall signs be posted which read "*Private Beach*" or "*Private Property*." In order to effectuate the above prohibitions, the permittee/landowner is required to submit to the Executive Director for review and approval prior to posting the content of any proposed signs.

7. Public View Corridor

Prior to the issuance of the Coastal Development Permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, which provides that:

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

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

8. Offer to Dedicate Lateral Public Access

In order to implement the applicant's proposal of an offer to dedicate an easement for lateral public access and passive recreational use along the shoreline as part of this project, the applicant agrees to complete the following prior to issuance of the permit: the landowner shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a public agency or private association approved by the Executive Director an easement for lateral public access and passive recreational use along the shoreline. The document shall provide that the offer of dedication shall not be used or construed to allow anyone, prior to acceptance of the offer, to interfere with any rights of public access acquired through use which may exist on the property. Such easement shall be located along the entire width of the property from the ambulatory mean high tide line landward to the deck stringline as

illustrated on the site plan prepared by Barsochinni & Associates dated November 22, 1999 (Exhibit 3).

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

9. Assumption of Risk/Shoreline Protection

- A. By acceptance of this permit, the applicant acknowledges and agrees to the following:
- (1) The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.
 - (2) The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.
 - (3) The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.
 - (4) The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
 - (5) No shoreline protective device shall be constructed, now or in the future, for the purpose of protecting the residential development approved pursuant to Coastal Development Permit 4-99-249 including, but not limited to, the residence, foundations, decks, driveway, or the septic system in the event that these structures are threatened with imminent damage or destruction from waves, erosion, storm conditions, or other natural hazards in the future and by acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

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

10. Drainage and Polluted Runoff Control Plan

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

- (a) Structural and/or non-structural Best Management Practices (BMPs) designed to capture, infiltrate or treat runoff from all roofs, parking areas, driveways and other impervious surfaces shall be identified and incorporated into final plans.
- (b) Selected BMPs shall, when implemented ensure that post-development peak runoff rate and average volume from the site, will be maintained at levels similar to pre-development conditions. The drainage system shall also be designed to convey and discharge runoff from the building site in non-erosive manner.

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

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing to demolish an existing 2,611 sq. ft. single family residence and detached garage and construct a new 3,165 sq. ft. single family residence with an attached 430 sq. ft garage, new alternative septic system, and 250 cu. yds. of overexcavation. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the dripline of the proposed deck to the mean high tide line. No shoreline protective device is proposed as part of the development.

The project site is located on a beachfront parcel of land approximately 3,563 sq. ft. in size on Carbon Beach between Pacific Coast Highway and the ocean (Exhibit 1). The subject parcel is bound by the Pacific Coast Highway along the north property boundary, by single family homes along the east and west property boundaries, and gently descends to the Pacific Ocean at an approximate gradient of 12:1. The area surrounding the project site is characterized as a built-out portion of Malibu consisting of residential development. The subject site has been previously developed with a two-story 2,611 sq. ft. single family residence and detached garage. The proposed project includes the demolition of all existing development on the subject site and the construction of a new larger residence and attached garage on a concrete friction pile foundation. Grading for the proposed development will be limited to 250 cu. yds. of overexcavation to remove existing pads and foundations and to remediate the site to a more natural condition for new construction.

The applicant has submitted evidence of review of the proposed project by the California State Lands Commission (CSLC) dated June 8, 1999, which indicates that the CSLC presently asserts no claims that the project is located on public tidelands although the CSLC reserves the right to any future assertion of state ownership or public rights should circumstances change (Exhibit 8).

The applicant is proposing to dedicate a lateral public access easement which would provide for public access along the entire beach under all tidal conditions as measured seaward from the dripline of the propose deck to the ambulatory mean high tide line. Project plans submitted by the applicants also indicate that the existing sidewalk along Pacific Coast Highway will remain as-built, and therefore, public access along PCH will not be affected by the proposed project.

B. Shoreline Processes and Seaward Encroachment

Section 30235 of the Coastal Act states:

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

Section 30251 of the Coastal Act states that:

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

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

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

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

public tideland areas. In order to accurately determine what adverse effects to coastal processes will result from the proposed project, it is necessary to analyze the proposed project in relation to characteristics of the project site shoreline, location of the development on the beach, and wave action.

Site Shoreline Characteristics

The proposed project site is located on Carbon Beach in the City of Malibu. Carbon Beach is characterized as a relatively narrow beach developed with numerous single family residences located to the east and west of the subject site. The Malibu/Los Angeles County Coastline Reconnaissance Study by the United States Army Corp of Engineers dated April 1994 indicates that residential development on Carbon Beach is exposed to recurring storm damage because of the absence of a sufficiently wide protective beach.

Stringline

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

In the case of this project, the proposed development will be located landward of the appropriate stringline (Exhibit 3) and will not result in the seaward encroachment of residential development on Carbon Beach. As such, the Commission finds that the proposed project will not result in the seaward encroachment of development on Carbon Beach and will serve to minimize adverse effects to coastal processes.

Wave Uprush and Mean High Tide Line

The Wave Uprush Study prepared by Pacific Engineering Group dated 2/15/99 includes an analysis for the location of the ambulatory mean high tide line on the subject site. The coastal engineering consultant for the project has indicated that the most landward measurement of the ambulatory mean high tide line on the project site occurred in October 1928 when the mean high tide line on site was located approximately 140 ft. seaward of the Pacific Coast Highway right-of-way line. The seaward most extension of the proposed development (the dripline of the proposed deck) will be located 88 ft.

seaward of the highway right-of-way line (approximately 52 ft. landward of the October 1928 mean high tide line). Based on the submitted information, the Commission notes that the proposed development will be located landward of the October 1928 mean high tide line and should not extend onto public tidelands under normal conditions.

Although the proposed structure will be located landward of the October 1928 mean high tide line, the Wave Uprush Study prepared by Pacific Engineering Group dated 2/15/99 indicates that the maximum wave uprush at the subject site will occur approximately 32 ft. seaward of the Pacific Coast Highway right-of-way line (landward of the proposed residence). As such, the Commission notes that the wave uprush limit, during high tide and storm events, will extend as far as 56 ft landward under the proposed structure (Exhibit 3). Although the foundation for the proposed residence will be subject to wave action, the applicant's engineering consultant has indicated that the residence will be constructed on a concrete friction pile foundation and will not require a shoreline protection device to ensure structural stability. The seaward extent of the septic system and leach field will be located approximately 20 ft. from the Pacific Coast Highway right-of-way line and approximately 12 ft. landward of the maximum wave uprush limit on the project site. The applicant's coastal engineering consultant has concluded that since the proposed septic system will be located landward of the maximum wave uprush limit, no shoreline protection device is required to protect any portion of the proposed system. The Wave Uprush Report dated 2/15/99 states that:

If the seaward edge of the septic system is located 27 feet from Pacific Coast Highway right-of-way line or less, no bulkhead is required for the protection of the sewage disposal system.

The applicant's coastal engineering consultant has made several other recommendations regarding the foundations of the residence, floor slab elevation, and the location of the septic system in order to minimize adverse effects to shoreline sand supply and to ensure the structural stability of the proposed development. To ensure that all recommendations by the coastal engineering consultant have been incorporated into the proposed development, Special Condition Four (4) requires the applicant to submit project plans certified by the consulting coastal engineer and geotechnical engineer as conforming to all recommendations contained in the Wave Uprush Study by Pacific Engineering Group dated 2/15/99, Geotechnical Engineering Report by RJR Engineering Group dated 2/25/99, and the Geotechnical Engineering Report Addendum by RJR Engineering Group dated 8/23/99 to ensure structural and site stability and that the proposed development will not result in adverse effects to shoreline processes. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

Future Shoreline Protective Devices

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

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

The adverse effects of shoreline protective devices are greater the more frequently that they are subject to wave action. In order to minimize adverse effects from shoreline protective devices, when such devices are found to be necessary to protect existing

development, the Commission has required applicants to locate such structures as far landward as is feasible. In addition, since shoreline protective devices are most often required to protect existing septic systems, the Commission has also required applicants to locate septic systems as far landward as feasible [4-97-191 (Kim)]. The Commission has also required the utilization of alternative technologies for sewage disposal such as bottomless sand filter systems because they are able to be designed to occupy less area on the beach and, therefore, be located further landward than a standard system. In the case of the proposed project, the proposed septic system will be of a bottomless sand filter design and will be located as landward as feasible. The Commission notes that the applicant is proposing to construct a residence that will extend further seaward than the existing residence. The applicant's coastal engineering consultant has confirmed that no shoreline protective device is required to protect the proposed residence (which will be constructed entirely on an engineered concrete friction pile foundation able to withstand wave action) nor to protect the septic system (which will be located approximately 12 ft. landward of the maximum wave uprush limit).

The Commission notes that Section 30235 of the Coastal Act allows for the construction of a shoreline protective device when necessary to protect existing development or to protect a coastal dependent use. The Commission further notes that the approval of a shoreline protective device to protect new residential development, such as the proposed project, would not be required by Section 30235 of the Coastal Act. The construction of a shoreline protective device to protect a new residential development would conflict with Section 30253 of the Coastal Act which states that new development shall neither create nor contribute to erosion or geologic instability of the project site or surrounding area. In addition, the construction of a shoreline protective device to protect new residential development would also conflict with Section 30251 of the Coastal Act which states that permitted development shall minimize the alteration of natural land forms, including sandy beach areas which would be subject to increased erosion from such a device. To ensure that the proposed project is consistent with Sections 30251 and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition Eleven (11) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residence, septic system, driveway, etc.

Conclusion

The proposed residence will be located landward of the October 1928 mean high tide line and will be designed to eliminate the necessity for a shoreline protective device. The septic system for the proposed residence will be located as landward as feasible, will not be subject to wave uprush, or require the construction of a shoreline protective device. As mentioned previously, plans submitted by the applicant indicate that a

retaining wall was to be constructed just seaward of the proposed septic system (exhibit 6), however, staff has confirmed with the applicant's representative that no retaining wall is included in the project proposal. Therefore, Special Condition One (1) requires the applicant to submit revised plans indicating that any note of reference to proposed retaining walls for the septic system are deleted from the project plans. Further, the proposed development will be located landward of the appropriate stringline and will not result in the seaward encroachment of residential development on Carbon Beach.

No shoreline protective device is proposed as part of the development. The applicant's coastal engineering consultant has confirmed that no shoreline protective device is required to protect either the proposed residence or the septic system. However, as previously discussed, areas of Carbon Beach have experienced extreme erosion and scour during severe storm events, such as El Nino storms. It is not possible to completely predict what conditions the proposed residence may be subject to in the future. As discussed in detail above, the construction of a shoreline protective device to protect new residential development would result in potential adverse effects to coastal processes, shoreline sand supply, and public access and would not be consistent with Sections 30235, 30251, or 30253 of the Coastal Act. Therefore, to ensure that the proposed project is consistent with Sections 30235, 30251, and 30253 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition Nine (9) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residence, septic system, driveway, etc. Further, to ensure structural and site stability, Special Condition Four (4) requires the applicant to submit project plans certified by the consulting coastal engineer and geotechnical engineer as conforming to all recommendations contained in the Wave Uprush Study by Pacific Engineering Group dated 2/15/99, Geotechnical Engineering Report by RJR Engineering Group dated 2/25/99, and Geotechnical Engineering Report Addendum by RJR Engineering Group dated 8/23/99.

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

C. Hazards and Geologic Stability

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

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of***

protective devices that would substantially alter natural landforms along bluffs and cliffs.

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

The applicants have submitted a Geotechnical Engineering Report by RJR Engineering Group dated 2/25/99, Geotechnical Engineering Report Addendum by RJR Engineering Group dated 8/23/99, and Wave Uprush Study by Pacific Engineering Group dated 2/15/99 which evaluate geologic stability of the project site in relation to the proposed development. The consultants have determined that the proposed development will serve to ensure geologic and structural stability on the subject site. The Geotechnical Engineering Report by RJR Engineering Group dated 2/25/99 concludes that:

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

The Geotechnical Engineering Report by RJR Engineering Group dated 2/25/99, Geotechnical Engineering Report Addendum by RJR Engineering Group dated 8/23/99, and Wave Uprush Study by Pacific Engineering Group dated 2/15/99 include a number of geotechnical and engineering recommendations to ensure the stability and geotechnical safety of the site. To ensure that the recommendations of the geotechnical and coastal engineering consultants have been incorporated into all proposed development, Special Condition Four (4) requires the applicant to submit project plans certified by both the consulting geotechnical and geologic engineer and the coastal engineering consultant as conforming to all recommendations to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

The Commission notes that the applicant's engineering consultants have indicated that the proposed development will serve to ensure relative geologic and structural stability on the subject site. However, the Commission also notes that the Geotechnical Engineering Report by RJR Engineering Group dated 2/25/99 indicates that, although no landslides are known to extend onto the project site, landslides are mapped on the bluff slopes on the opposite side north of Pacific Coast Highway. In response to questions raised by the City of Malibu Geologist relating to potential hazards which may result from the mapped landslides north of the project site, the geotechnical consultant has provided a specific finding stating that the mapped landslides north of Pacific Coast Highway do not create potential hazards to the proposed project.

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

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

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

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

The Commission finds that due to the possibility of liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire, the applicant shall assume these risks as conditions of approval. Because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant's assumption of risk, as required by Special Condition Nine (9), when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the proposed development.

In addition, the Commission notes that the proposed development includes the demolition an existing residence and the construction of a new larger residence. The proposed project will also include approximately 250 cu. yds. of overexcavation to remove the existing fill pad/foundations for the existing residence on site and to prepare the site for construction of the new residence. The Commission further notes that construction/demolition activity on a sandy beach, such as the proposed project, will result in the potential generation of debris and or presence of equipment and materials that could be subject to tidal action. The presence of construction equipment, building materials, and excavated materials on the subject site could pose hazards to beachgoers or swimmers if construction site materials were discharged into the marine environment or left inappropriately/unsafely exposed on the project site. In addition, such discharge to the marine environment would result in adverse effects to offshore habitat from increased turbidity caused by erosion and siltation of coastal waters. Further, any excavated materials that are placed in stockpiles are subject to increased erosion. The Commission also notes that additional landform alteration would result if the excavated material were to be retained on site. To ensure that landform alteration and adverse effects to the marine environment are minimized, Special Condition Three (3), requires the applicant to ensure that stockpiling of dirt or materials shall not occur on the beach, that no machinery will be allowed in the intertidal zone at any time, all debris resulting from the construction period is promptly removed from the sandy beach area, all grading shall be properly covered, and that sand bags and/or ditches shall be used to prevent runoff and siltation. Special Condition Three (3) also requires the applicant to provide evidence to the Executive Director of the location of the disposal site for all debris material. Should the dump site be located in the Coastal Zone, a coastal development permit shall be required.

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

D. Public Access

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

Coastal Act Section 30210 states that:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211 states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

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

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

(2) adequate access exists nearby, or,

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

Section 30220 of the Coastal Act states that:

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

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

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

The major access issue in this permit application is the occupation of sandy beach area by a structure and potential effects on shoreline sand supply and public access in contradiction of Coastal Act policies 30211 and 30221. As stated previously, no shoreline protective device is required or proposed to protect the proposed development. The proposed project is located on Carbon Beach where there are several existing and potential lateral public access easements across several lots near the project site.

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

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

Consequently, the position of the mean high tide line fluctuates seasonally as high wave energy (usually but not necessarily) in the winter months causes the mean high tide line to move landward through erosion, and as milder wave conditions (generally associated with the summer) cause the mean high tide line to move seaward through accretion. In addition to ordinary seasonal changes, the location of the mean high tide

line is affected by long term changes such as sea level rise and diminution of sand supply.

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

Even structures located above the mean high tide line, however, may have an adverse effect on shoreline processes as wave energy reflected by those structures contributes to erosion and steepening of the shore profile, and ultimately to the extent and availability of tidelands. That is why the Commission also must consider whether a project will have indirect effects on public ownership and public use of shorelands. The applicants seek Commission approval of a new beachfront residence supported on friction pile foundation. As previously discussed in detail, although the proposed project will not include the construction of any shoreline protection device, the direct occupation of sandy area by the proposed residence, will result in potential adverse effects to public access along the sandy beach.

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

beach area that will not only be unavailable during high tide and severe storm events but also potentially throughout the winter season.

As previously discussed in detail, the applicant's coastal engineering consultant has indicated that no shoreline protective device is required to protect either the proposed residence (which will be constructed on a friction pile foundation) or the septic system (which will be located landward of the maximum wave uprush limit). Therefore, to ensure that the proposed project does not result in future adverse effects to public access, Special Condition Nine (9) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residence, deck, septic system, driveway, etc.

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

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

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

In past permit actions, the Commission has required that all new development on a beach, including new single family residences, provide for lateral public access along the beach in order to minimize any adverse effects to public access. In order to conclude with absolute certainty what adverse effects would result from the proposed project in relation to shoreline processes and the adequacy of the existing lateral access easement, a historical shoreline analysis based on site-specific studies would be necessary. Although this level of analysis has not been submitted by the applicant, the Commission notes that the applicant has proposed as part of the project an offer to dedicate a new lateral public access easement along the entire southern portion of the lot, as measured from the dripline of the proposed deck seaward to the ambulatory mean high tide line. Therefore, it has not been necessary for Commission staff to engage in an extensive analysis as to whether the imposition of a new offer to dedicate would be required here absent the applicant's proposal. As such, Special Condition Eight (8) has been required in order to ensure that the applicant's offer to dedicate a new lateral public access easement is transmitted prior to the issuance of the Coastal Development Permit. The lateral public access easement will include the entire beach under all tidal conditions as measured seaward from the deck dripline and will extend across the parcel of the subject site.

In addition, the Commission notes that chronic unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties in the Malibu area. These signs have an adverse effect on the ability of the public to access public trust lands. The Commission has determined, therefore, that to ensure that applicants clearly understand that such postings are not permitted without a separate Coastal Development Permit, it is necessary to impose Special Condition Six (6) to ensure that such signs are not posted on or near the proposed project site. The Commission finds that if implemented, Special Condition Six (6) will protect the public's right of access to the sandy beach within the dedicated lateral public access easement and below the MHTL.

The Commission notes that members of the public must utilize the shoulder areas of Pacific Coast Highway in order to reach many public vertical beach access ways and that new residential development, fences, walls, landscaping, and use of the road shoulder for residential parking results in potential adverse impacts to public beach access. The applicant has indicated that a 7 ft. wide public sidewalk existing between Pacific Coast Highway and the residence will remain as-built and be maintained as a public walkway to mitigate any adverse effects to public access from the proposed development. The Commission notes that the proposed development will be located seaward of the existing sidewalk, but finds it necessary to ensure that no development associated with the proposed project, such as planters, vegetation, fences, or other obstacles, shall be constructed which encroach into and preclude pedestrian access along the existing public walkway. As such, Special Condition Five (5) has been required in order to ensure implementation of applicant's offer to maintain the existing 7 ft. wide public sidewalk as-built and free of obstacles that may impede public access.

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

E. Visual Resources

Section 30251 of the Coastal Act states that:

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

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

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

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

As stated above, Coastal Act Section 30251 requires that new development be sited and designed to protect views to and along the ocean and scenic coastal areas and, where feasible, to restore and enhance visual quality in visually degraded areas. The Commission notes that the construction of a new residential development, in an area where public views to and along the coast are seriously degraded, provides for the opportunity to enhance public views through the creation and maintenance of public view corridors, consistent with Section 30251 of the Coastal Act. In addition, Policy 138 of the LUP, as consistent with Section 30251 of the Coastal Act, provides that new development on a beachfront property located on the seaward side of Pacific Coast Highway, such as the subject site, should reserve 20% of the linear frontage of the lot as visually open area to provide and maintain adequate public coastal views. The Commission notes that along Pacific Coast Highway in the area of the proposed project several of the beachfront parcels are relatively narrow and that application of a view corridor policy resulting in 20% of open lineal footage for public coastal views will provide small view corridors in comparison to those view corridors previously required by the Commission in past permit actions [4-99-146 (Saban), 4-99-249 (Ioki), 4-99-185 (Broad)]. Nevertheless, the Commission finds that by requiring public coastal view corridors for new development, on all parcel sizes, in areas where public views to and along the coast are degraded or completely obstructed by existing development, permitting new development with view corridors in areas such as that surrounding the project site will result in a cumulative effect of visually open space to the ocean and will aid in enhancing public coastal views.

Currently, the subject parcel is developed with a single family residence and detached garage, privacy wall, and landscaping which block public views of the coastline from Pacific Coast Highway. Additionally, the adjacent property located west of the subject site is developed with a residence constructed up to the property line between the two lots forming a solid wall of development that blocks public views to the ocean from Pacific Coast Highway. The side yards between the subject site and adjacent property to the east would provide some view of the ocean from Pacific Coast Highway, however, this view is obstructed by walls and landscaping associated with the two developments. The proposed project will include the demolition of all existing

development on the subject parcel and the construction of a new 2-story, 28 ft. high, 3,165 sq. ft. residential structure with an attached garage.

In the case of the proposed project, the Commission notes that the subject site is 40 ft. in width and that a public view corridor of no less than 20% of the width of the site's lineal frontage would be 8 ft. in width. The applicant has submitted project plans which indicate that 20% of the subject site (a 4 ft. corridor located on each side of the residence between the residential structure and east and west property boundary) is designated as public view corridor (Exhibit 5). However, Staff notes that a portion of the proposed development will extend into the proposed area designated for the public view corridor. Project plans submitted for the proposed development indicate that two decks, one on each side of the residence with a gate, a water fountain, and 6 ft. walls with a 2-3 ½ ft. solid base and glass top, are to be constructed within the view corridor. The Commission notes that although the proposed walls are primarily constructed of glass, the 2-3 ½ ft. solid portion of the walls will result in some adverse effects to public views and lessen the intent of Policy 138 of the LUP and past Commission action regarding the provision of a public view corridor for new development on the beach. The Commission further notes that the proposed 6 ft. high walls and gates, should they be constructed in the view corridor, could be easily designed to eliminate a wall-like obstruction within the public view corridor and still allow for the construction of walls and gates as described in Special Condition Seven (7).

In addition, the Commission notes that the proposed project includes the construction of a 4 ft. wide deck along each side of the proposed residence with a gate, and a water fountain on the west side of the residence which would obstruct public views to the ocean and beach and would not be consistent with Policy 138 of the LUP nor with past Commission action regarding the provision of a public view corridor for new development on beachfront lots. The representative for the applicants asserts that construction of at least one deck along the side of the proposed residence will be necessary for fire department access to the structure. However, Staff has received no notice or evidence at this time indicating that access to a beachfront residence must be provided by a deck constructed along the entire length of the residence. The Commission notes that the subject parcel is a relatively narrow lot and that, with the size of the proposed residence, access around and along the length of the residence is limited. However, the Commission further notes that the subject site is relatively flat, with a 12:1 descending slope gradient toward the ocean, and that feasible alternatives exists, (such as walkways placed at grade and landward of the wave uprush zone), to construction of a deck which is elevated from the natural grade of the project site having the potential to adversely impact public views.

In order to ensure that adverse effects to public views of the ocean from the highway are minimized, Special Condition One (1) requires the applicants to submit, for the review and approval of the Executive Director, revised project plans which show that, as consistent with Special Condition Seven (7), the side decks and water fountain located within the public view corridor are deleted, and that any gates, walls, and vegetation

that may be located in the view corridor is designed to be consistent with the terms of Special Condition Seven (7). The Commission notes that Special Condition One (1) will still allow the applicant to submit revised plans, for the review and approval of the Executive Director, which would allow for the construction of a fence/gate within the public view corridor, provided that such a fence is of a design that is (1) consistent with the requirements of Special Condition Seven, (2) of a visually permeable design and material (e.g. wrought iron or non-tinted glass material); (3) no more than 6 ft. in height; and (4) all bars, beams, or other non-visually permeable materials used in the construction of the proposed fence are no more than 1 inch in thickness/width and placed no less than 12 inches in distance apart. Alternative designs may be allowed only if the Executive Director determines that such designs are consistent with the intent of this condition and serve to minimize adverse effects to public views.

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

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

F. Water Quality

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

Section 30231 of the Coastal Act states that:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water

supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.

As described above, the proposed project includes the demolition of an existing residence and construction of a single family residence with an attached garage, a new alternative septic system and with 250 cu. yds. of overexcavation. Additionally, the development will include impervious structures such as a new driveway and decks. Use of the site for residential purposes will introduce potential sources of pollutants such as petroleum, household cleaners and pesticides, as well as other accumulated pollutants from rooftops and other impervious surfaces.

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

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

As described above, the project is conditioned to implement and maintain a drainage plan designed to ensure that runoff rates and volumes after development do not exceed pre-development levels and that drainage is conveyed in a non-erosive manner. This drainage plan is required in order to ensure that risks from geologic hazard, erosion and sedimentation, and polluted runoff to coastal waters is minimized. In order to further ensure that adverse impacts to coastal water quality do not result from the proposed project, the Commission finds it necessary to require the applicant to incorporate filter elements that intercept and infiltrate or treat the runoff from the site. This plan is required by Special Condition Ten (10), the Drainage and Polluted Runoff Control Plan. Such a plan will allow for the infiltration and filtering of runoff from the developed areas of the site, most importantly capturing the initial, "first flush" flows that occur as a result

of the first storms of the season. This flow carries with it the highest concentration of pollutants that have been deposited on impervious surfaces during the dry season. Additionally, the applicant must monitor and maintain the drainage and polluted runoff control system to ensure that it continues to function as intended throughout the life of the development.

Finally, the proposed development includes the installation of a new septic system which includes a 2,000 gallon septic tank and a leachfield located no further than 20 ft. seaward of the Pacific Coast Highway right-of-way line. In order to reduce the size of the required leachfield for the proposed septic system and to allow the system to be located as far landward as possible, the applicant is proposing to install a bottomless sand filter septic system which is designed to produce treated effluent with reduced levels of organics, biochemical oxygen demand (BOD) and total suspended solids (TSS) while occupying only 50 percent of the area required for a conventional septic system and leachfield. As proposed, the septic system will be located as landward as possible. The applicants' geologic consultants has performed percolation tests and evaluated the proposed septic system. The report concludes that the site is suitable for the alternative septic system and there would be no adverse impact to the site or surrounding areas from the use of a septic system. Finally, the City of Malibu Environmental Health Department has given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources. Therefore, the Commission finds that the proposed project, as conditioned to incorporate and maintain a drainage and polluted runoff control plan, is consistent with Section 30231 of the Coastal Act.

G. Local Coastal Program

Section 30604 of the Coastal Act states that:

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

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are

incorporated into the project and accepted by the applicant. As conditioned, the proposed development will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

H. CEQA

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

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

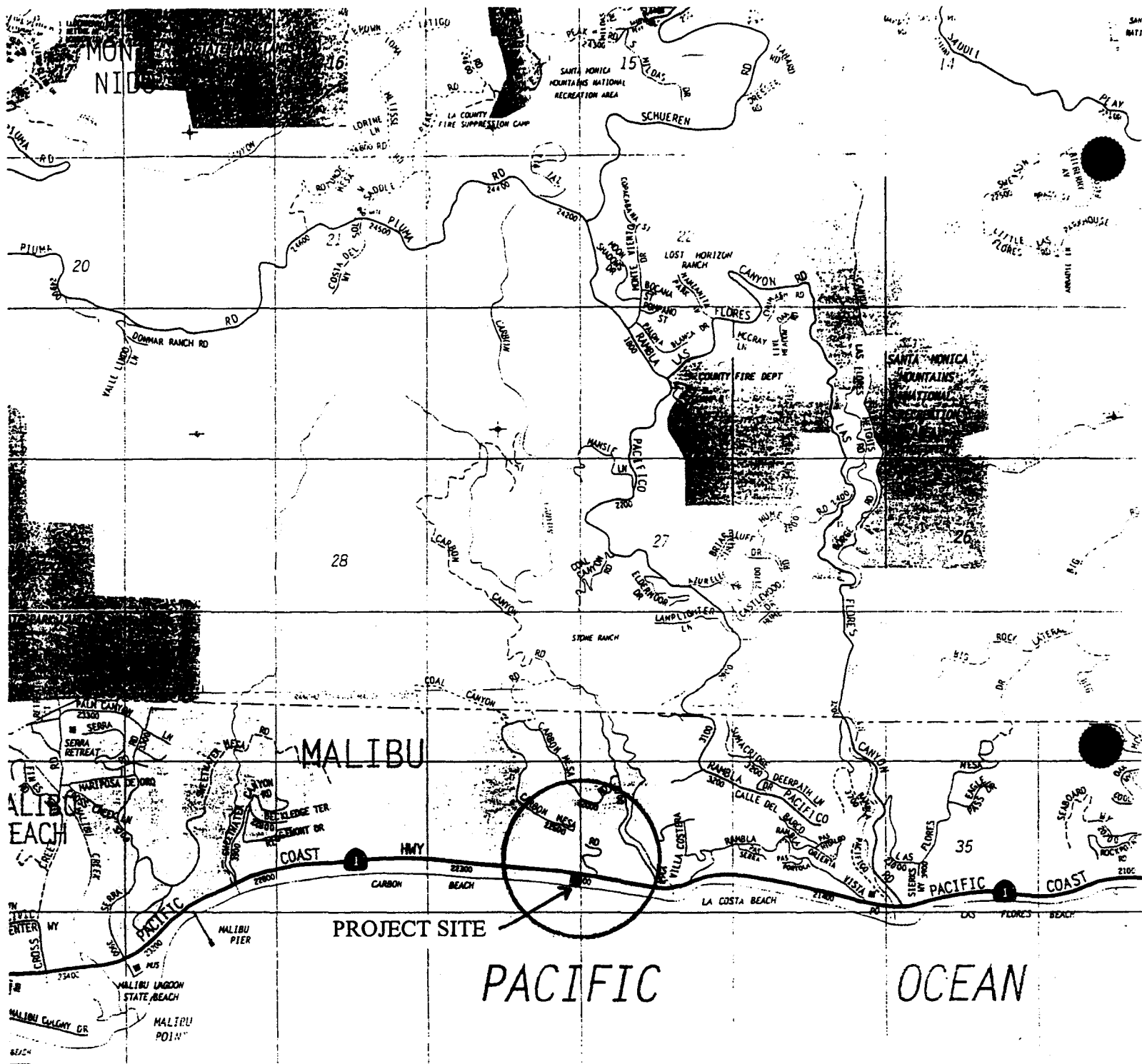
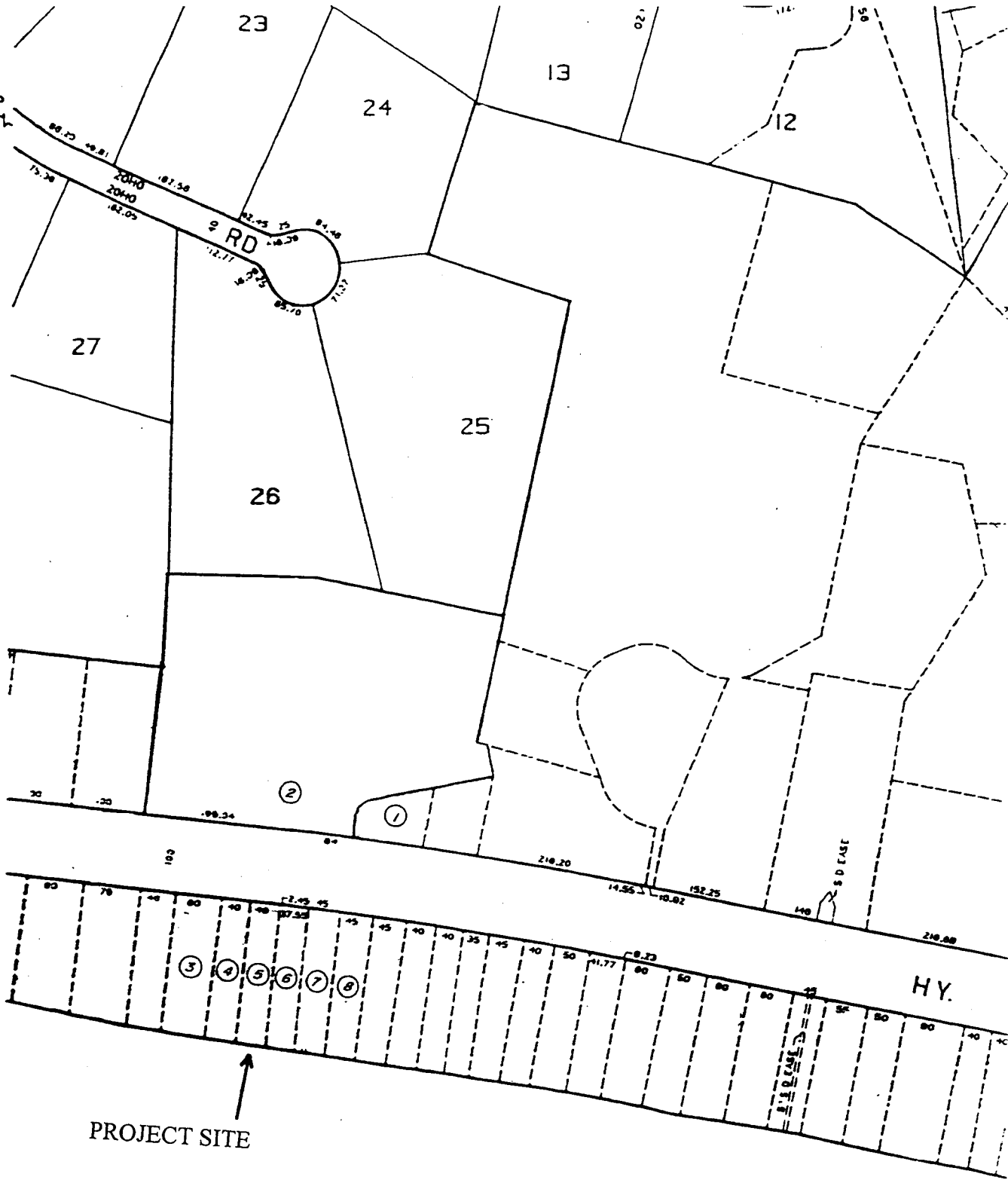


EXHIBIT 1
CDP #4-99-249
VICINITY MAP

W CARBON MESA

LOT 1

PACIFIC COAST



Heron Maps

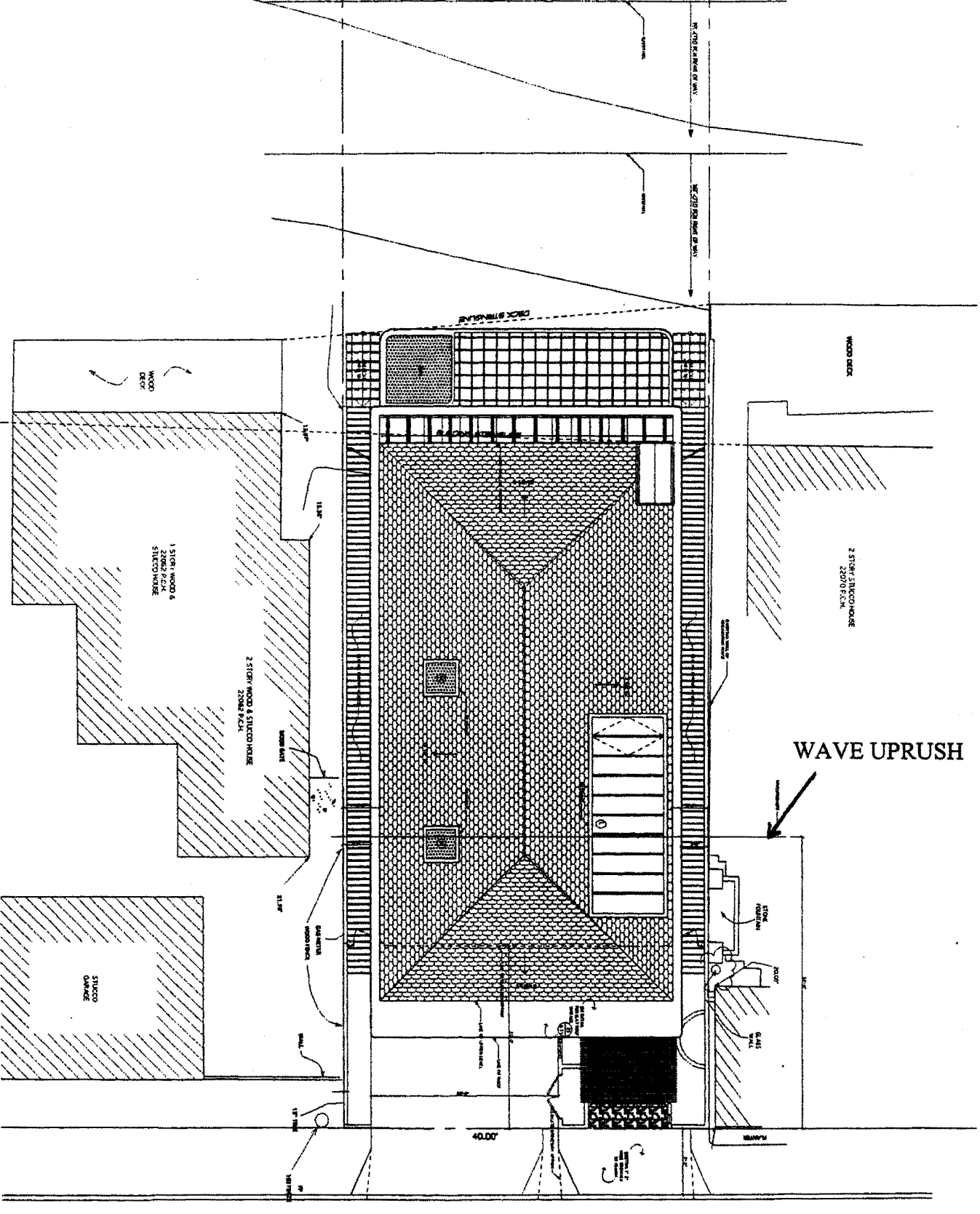
(310) 317-1515
 20756 Seaboard Road
 Malibu CA 90265

EXHIBIT 2
CDP # 4-99-249
PARCEL MAP



PACIFIC OCEAN

SITE PLAN / ROOF PLAN



PACIFIC COAST HIGHWAY

EXHIBIT 3

CDP # 4-99-249

SITE PLAN

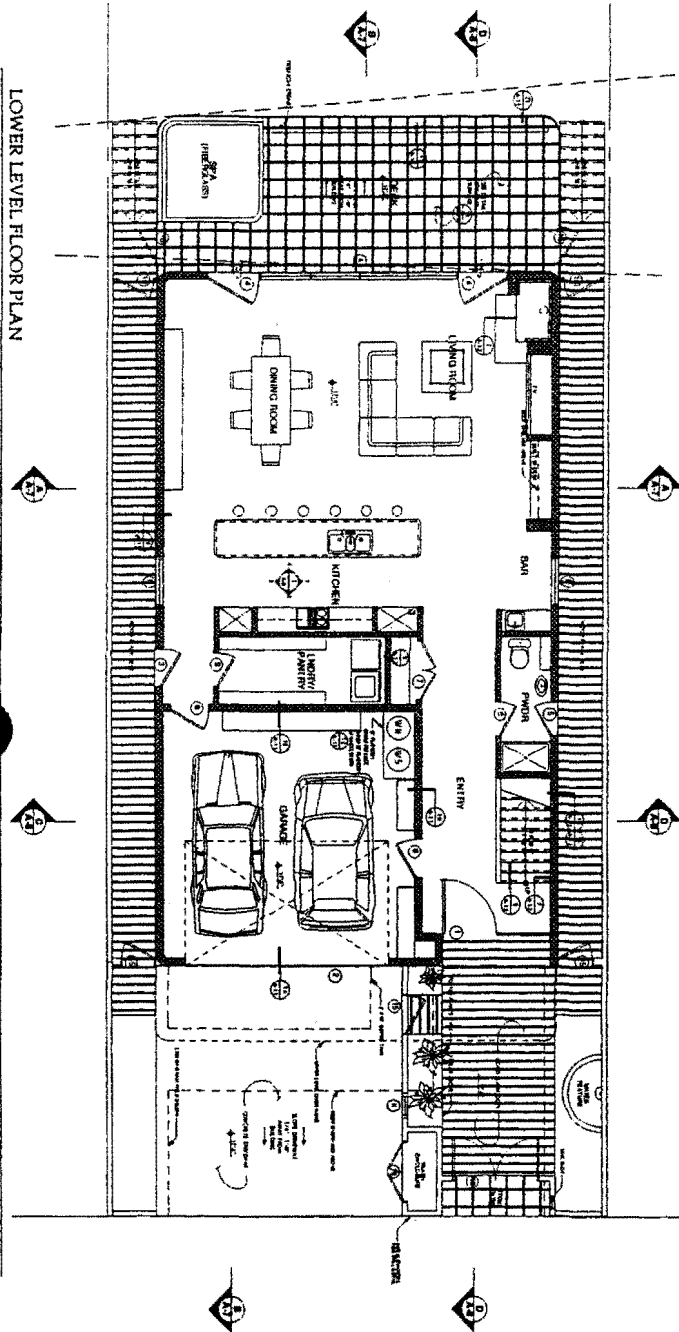
SITE PLAN / ROOF PLAN

BARSOCCHINI & ARCHITECTS
MICHAEL E. BARSOCCHINI
3801 COAST VIEW DRIVE

MANIC RESIDENCE
PACIFIC COAST HIGHWAY
ALIBU, CA 90265

A-2

LOWER LEVEL FLOOR PLAN



UPPER LEVEL FLOOR PLAN

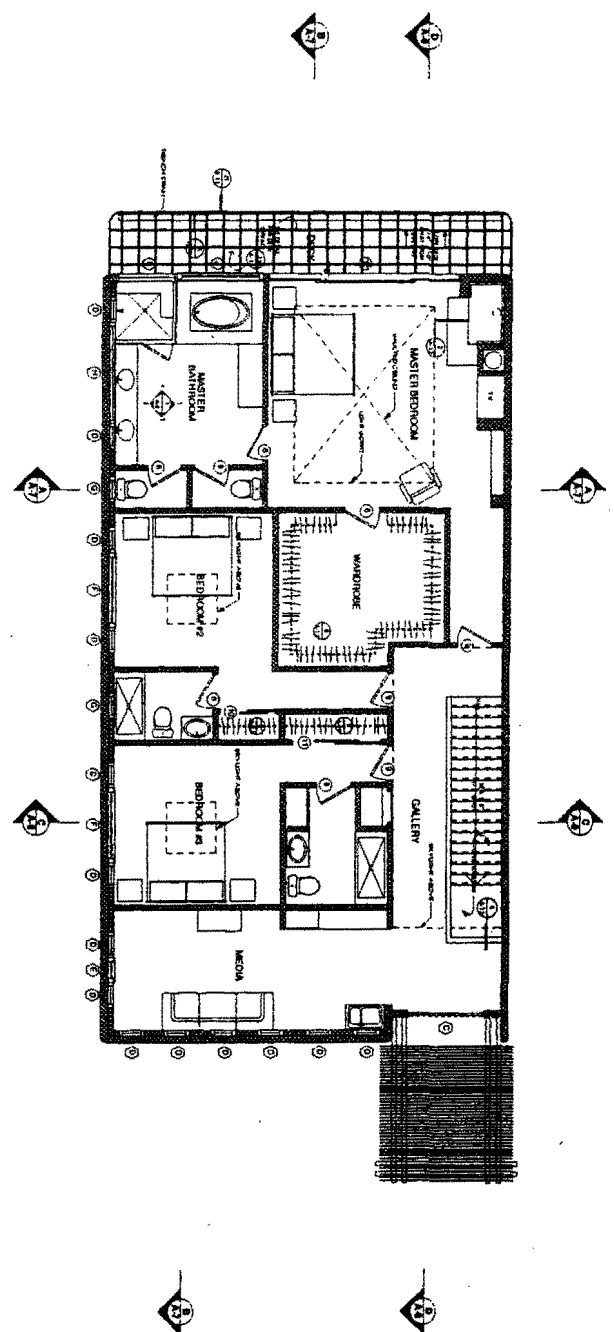


EXHIBIT 4

CDP # 4-99-249

FLOOR PLANS

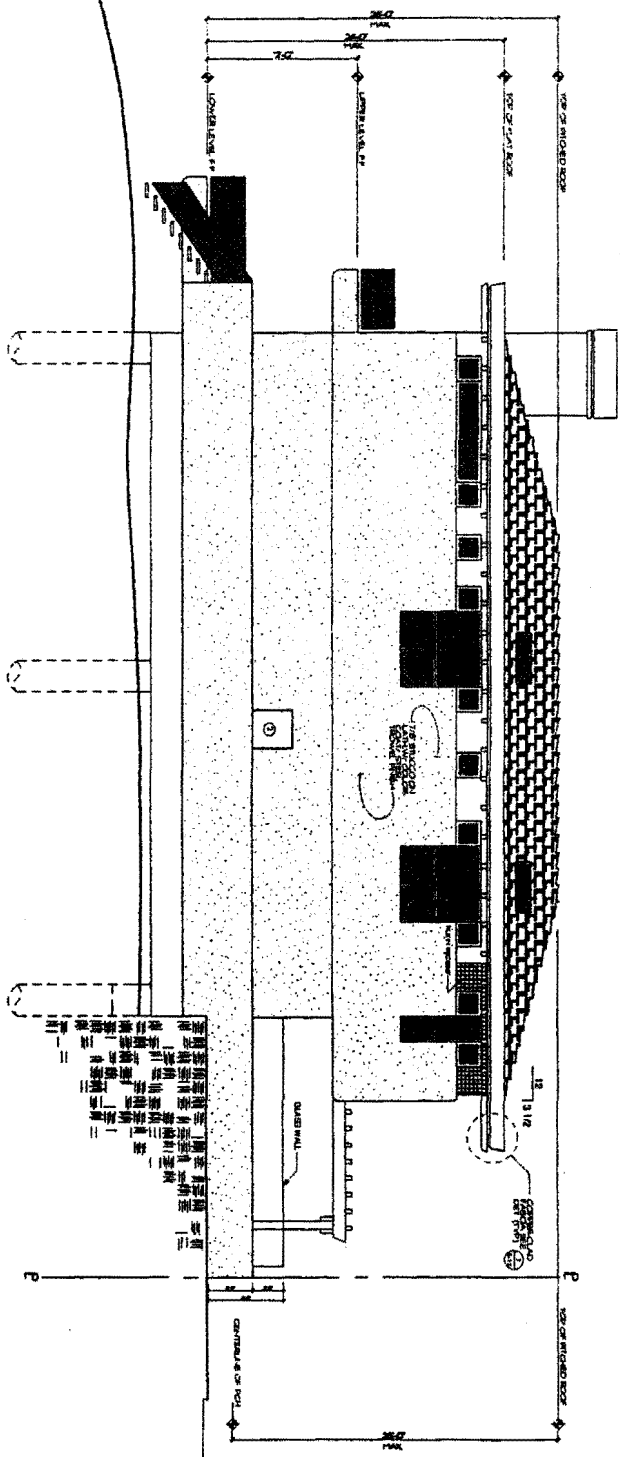
BARSOCCINI & ARCHI
MICHAEL E. BARSOCCI
3502 COAST VIEW DR.

ANIC RESIDENCE
FIC COAST HIGHWAY
LIBU, CA 90265

FLOOR PLANS

A3

EAST ELEVATION



NORTH ELEVATION

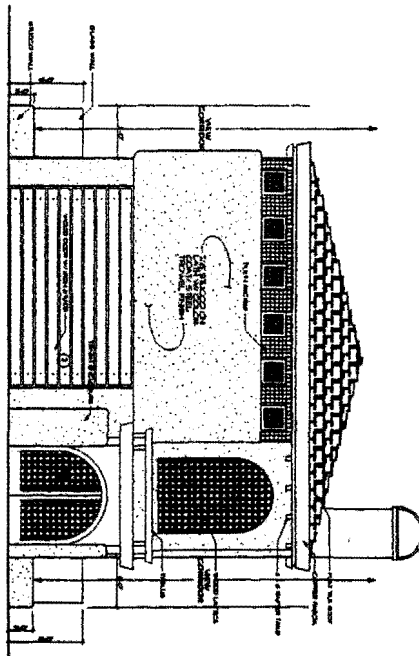


EXHIBIT 5

CDP # 4-99-249

ELEVATIONS

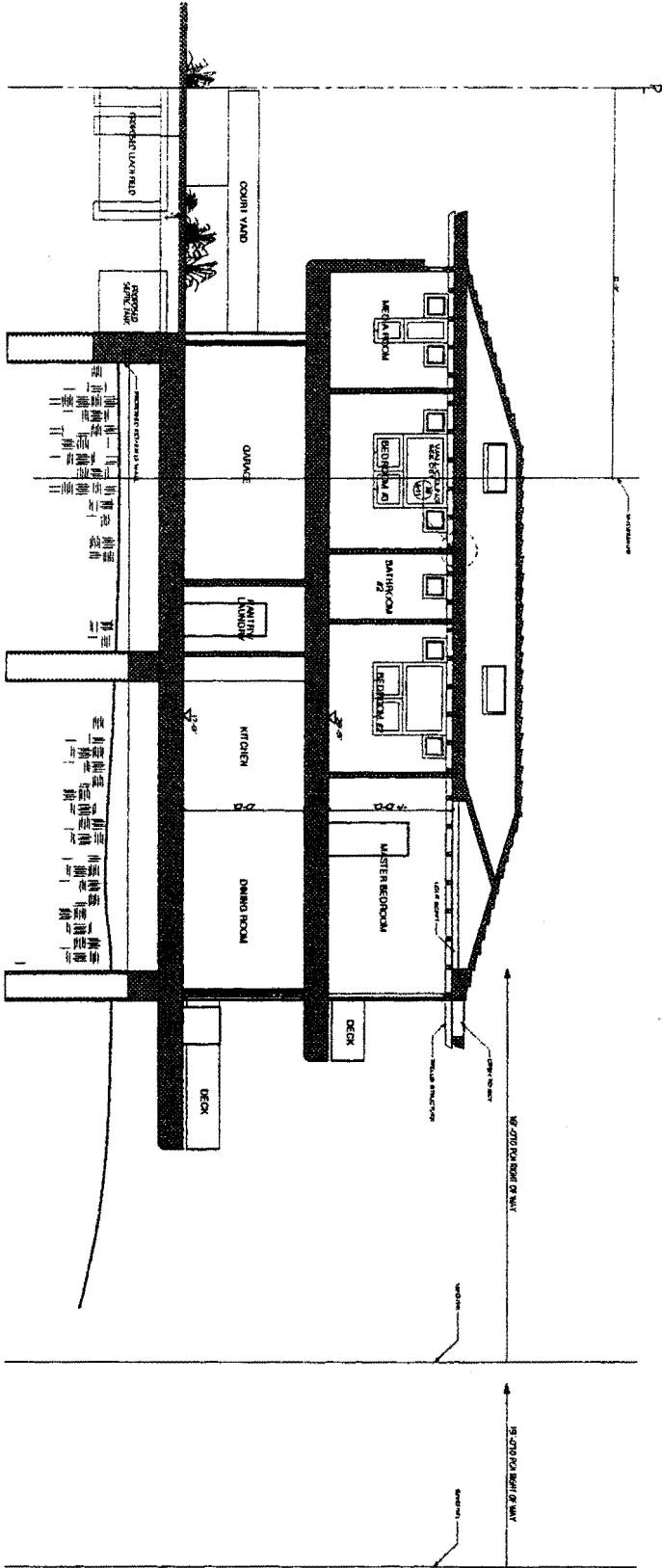
BARSOCCINI ARCH
MICHAEL E. BARSOCCINI
328 COAST VIEW DR

MANIC RESIDENCE
CIFIC COAST HIGHWAY
ALIBU, CA 90285

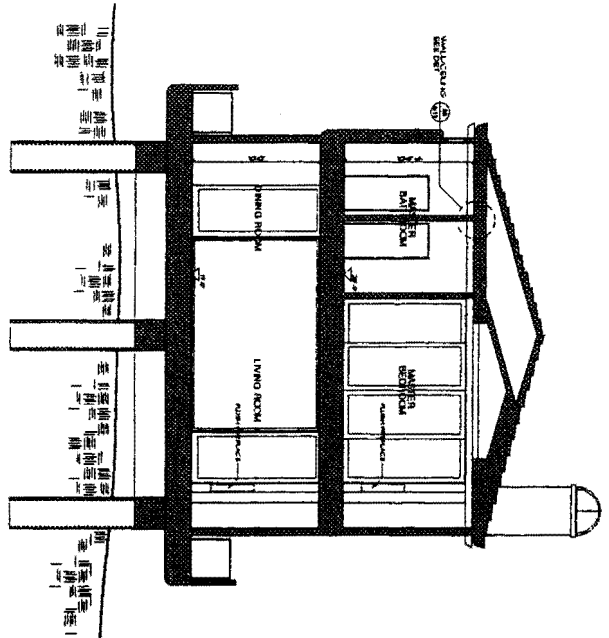
ELEVATIONS

A-5

LONGITUDINAL SECTION B-B



CROSS SECTION A-A



RECEIVED

DEC 17 1995

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

EXHIBIT 6

CDP # 4-99-249

SECTIONS

BARSOCCHINI & ARCHITECTS
MICHAEL E. BARSOCCHINI
3302 COAST VIEW DRIVE

RESIDENCE
3302 COAST HIGHWAY
SAN LUIS OBISPO, CA 95025

SECTIONS

A-7

NO.	DATE	REVISIONS

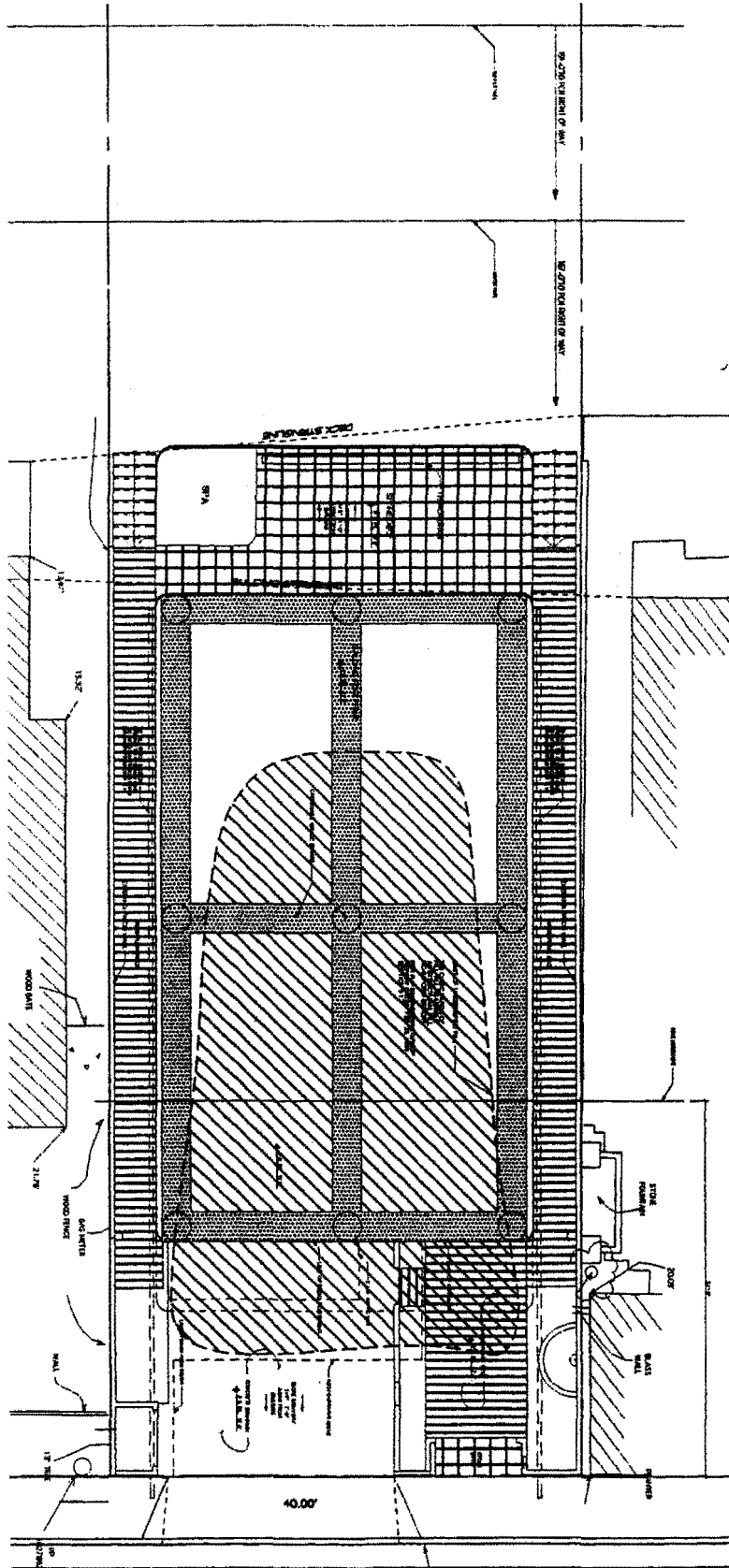
PACIFIC OCEAN

GRADING / DRAINAGE PLAN

RECEIVED

DEC 17 1999

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT



PACIFIC COAST HIGHWAY

EXHIBIT 7

**GRADING/
DRAINAGE PLAN**

BARSOCCHINI & ASS
ARCHIT
MICHAEL E. BARSOCCHINI,
2802 COAST VIEW DRIVE

CDP # 4-99-249

RESIDENCE
COAST HIGHWAY
CA 90265

GRADING/DRAINAGE

DATE	SCALE	SHEET NO.	TOTAL SHEETS
12/17/99	AS SHOWN	10	10

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMITTING	12/17/99
2	ISSUED FOR CONSTRUCTION	

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



ROBERT C. HIGHT, Executive Officer
 California Relay Service From TDD Phone 1-800-735-2922
 from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1892
 Contact FAX: (916) 574-1925

February 10, 1999

File Ref: SD 99-01-22.7

Chris Sorensen
 Project Manager
 Barsocchini & Associates
 3502 Coast View Drive
 Malibu CA 90265

RECEIVED
 NOV 08 1999
 CALIFORNIA
 COASTAL COMMISSION
 SOUTH CENTRAL COAST DISTRICT

Dear Mr. Sorensen:

SUBJECT: Coastal Development Project Review for Demolition of Existing Residence and Construction of a New Residence at 22068 Pacific Coast Highway, Malibu

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

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

Your clients are proposing to demolish an existing single family residence and construct a new single family residence/deck at 22068 Pacific Coast Highway in the Carbon Beach area of Malibu. From the December 23, 1998 plans you submitted, the new residence/deck appears to be in conformance with the string lines established by the residences/decks on either side. This is a well-developed stretch of beach with numerous residences both up and down coast.

We do not at this time have sufficient information to determine whether this project will intrude upon state sovereign lands or interfere with other public rights. Development of information sufficient to make such a determination would be expensive and time-consuming. We do not think such an expenditure of time, effort and money is warranted in this situation, given the limited resources of this agency and the circumstances set forth above. This conclusion is based on the size and location of the property, the character and history of the adjacent development, and the minimal

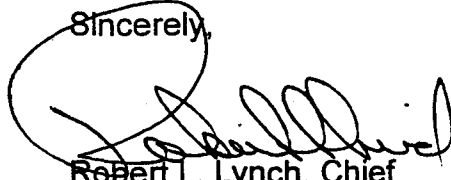
EXHIBIT 8
CDP # 4-99-249
CALIFORNIA STATE LANDS COMMISSION LETTER

potential benefit to the public, even if such an inquiry were to reveal the basis for the assertion of public claims and those claims were to be pursued to an ultimate resolution in the state's favor through litigation or otherwise.

Accordingly, the CSLC presently asserts no claims that the project intrudes onto sovereign lands or that it would lie in an area that is subject to the public easement in navigable waters. This conclusion is without prejudice to any future assertion of state ownership or public rights, should circumstances change, or should additional information come to our attention.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Lynch", is written over a circular stamp or mark.

Robert L. Lynch, Chief
Division of Land Management

cc: Craig Ewing, City of Malibu