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

CALIFORNIA COASTAL COMMISSION
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Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-99-266

APPLICANT: Nancy M. Daly, Trustee of the Nancy M. Daly Living Trust

AGENTS: Barsocchini & Associates

PROJECT LOCATION: 22338 Pacific Coast Highway, Malibu; Los Angeles County.

PROJECT DESCRIPTION: Demolition of three existing single family residences and a 180 ft. long bulkhead and the construction of a new 14,210 sq. ft. single family residence with attached garage, two 104 ft. long return walls along the west and east property lines, pool/spa, and a septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck stringline to the mean high tide line and the reconstruction of an existing 8 ft. wide public sidewalk between Pacific Coast Highway and the proposed development.

Lot area:	23,400	sq. ft.
Building coverage:	6,915	sq. ft.
Deck coverage:	7,950	sq. ft.
Ht. abv. ext. grade:	28 ft.	

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

SUBSTANTIVE FILE DOCUMENTS: Wave Uprush Study Addendum by Pacific Engineering Group dated 2/15/00; Wave Uprush Study Addendum by Pacific Engineering Group dated 1/31/00; Wave Uprush Study by Pacific Engineering Group dated 4/19/99; Geotechnical Engineering Report Addendum by RJR Engineering Group dated 8/2/99; Geotechnical Engineering Report by RJR Engineering Group dated 11/25/98.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed project with thirteen (13) special conditions as outlined below and on pages 5-10 of the staff report. The project site is located on three separate beachfront parcels of land on Carbon Beach between Pacific Coast Highway and the ocean. The project includes the demolition of three existing single family residences and the construction of a new 14,210 sq. ft. single family residence with attached garage. The proposed project is located on Carbon Beach, approximately 2,600 ft. east (downcoast) of the nearest open public vertical coastal accessway and only approximately 1,000 ft. to the east (downcoast) and 1,100 ft. to the west (upcoast) of two vertical accessways which has been offered for dedication by the landowners for public use.

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. However, in order to remove the existing bulkhead on the subject site, the applicant's coastal engineering consultant has indicated that the construction of the two proposed return walls on the east and west property lines of the site are required to protect the existing residences on the neighboring properties. Construction of a shoreline protective device to protect the proposed development would result in potential adverse effects to coastal processes, shoreline sand supply, and public access. Therefore, in order to minimize adverse effects to coastal processes, Special Condition Seven (7) has been required to ensure that the applicant's proposal to remove the existing bulkhead is carried out. In addition, Special Condition Twelve (12) prohibits the construction of a future shoreline protective device to protect the proposed development.

As a means of controlling seaward encroachment of residential structures on a beach to ensure maximum public access and minimize wave hazards and adverse effects to coastal processes and shoreline sand supply, the Commission has, in past permit actions, developed the "stringline" policy. The stringline limits the seaward extension of a structure to a line drawn between the nearest corners of adjacent structures. In the case of this project, the development, as proposed, will be located seaward of the stringline and will result in the seaward encroachment of residential development on Carbon Beach. The applicant has submitted project plans which show an incorrectly drawn deck stringline which would allow for the project as proposed. The actual deck stringline, as drawn from the decks/patios located on the neighboring properties, is located landward of the proposed deck location. Therefore, to ensure that the proposed development is located landward of the correct stringline, consistent with past Commission actions, Special Condition One (1) requires the applicant to submit revised project plans deleting all portions of the proposed deck that would be located seaward of the correct stringline as shown on Exhibits 4 and 5.

The applicant's engineering consultants have indicated that the proposed development will ensure geologic and structural stability on site, provided all engineering recommendations are implemented. Therefore, to ensure structural and site stability, Special Condition Four (4) requires the applicant to submit project plans certified by all consulting geotechnical, geologic, and coastal engineering consultants as conforming to all recommendations. To ensure that adverse effects to the marine environment are minimized, Special Condition

Three (3) requires that no stockpiling of construction materials occur on the beach, erosion control measures shall be implemented, and no machinery shall be allowed in the intertidal zone during construction activities. Although the proposed development will be designed to ensure stability, the project site is located on a beachfront lot in the City of Malibu and will be subject to inherent potential hazards such as storm damage, landslides, flooding, and liquefaction. Therefore, Special Condition Eleven (11) requires the applicant to acknowledge the potential hazards on the project site and waive any claim of liability against the Commission.

In addition, construction of residential development along the coast can substantially reduce or block public views of the beach and ocean. In past permit actions, the Commission has required that large residential projects, such as the proposed project, be designed to provide for a public view corridor of no less than 20% of the width of the lineal frontage of the subject site to protect public views of the ocean and coast. Therefore, to ensure that adverse effects to public views from the proposed project are minimized, Special Condition Nine (9) requires the applicant to execute and record a deed restriction which provides that no less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor. Development within the public view corridor shall be limited to fencing of visually permeable designs and materials that minimize adverse effects to public views. Special Condition One (1) requires the applicant to submit revised plans to ensure that all proposed fencing/walls within the view corridor are consistent with Special Condition Nine (9). Further, Special Condition Two (2) requires the submittal of a landscape plan to ensure that vegetation within the public view corridor will not block public coastal views.

The occupation of sandy beach area by a structure, such as the proposed development, will result in potential adverse effects to shoreline sand supply and public access. The applicant is proposing to dedicate a public lateral access easement from the deck stringline to the mean high tide line. To mitigate adverse effects to public access, Special Condition Ten (10) has been required to ensure implementation of the applicant's proposal to dedicate the public lateral access easement. In addition, the applicant is proposing modifications to the existing sidewalk located between the proposed residence and the highway to allow for the construction of driveway improvements. Special Condition Six (6) has been required to ensure that the applicant's proposal to reconstruct a new sidewalk in the same location as the existing sidewalk is implemented. 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. Therefore, Special Condition Eight (8) has been required to prohibit such signs.

This application was originally scheduled to be heard at the Commission meeting of March 14, 2000, in Carmel and was postponed at the applicant's request. The applicant's representative has indicated that the applicant is not in agreement with Special Condition One (1), part a which requires the applicant to submit revised plans to delete that portion of the proposed deck located seaward of the applicable stringline.

I. STAFF RECOMMENDATION

MOTION: ***I move that the Commission approve Coastal Development Permit No. 4-99-266 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, for the review and approval of the Executive Director, revised project plans which show that:

(a) All portions of the proposed deck that would be located seaward of the correct stringline as shown on Exhibit 4 [labeled "Deck Stringline (California Coastal Commission)"] are deleted.

(b) All fencing/walls/gates located within public view corridor shall consist of visually permeable designs and materials (e.g. wrought iron or non-tinted glass material) consistent with Special Condition Nine (9).

(c) All proposed exterior lighting for the purpose of illuminating sandy beach areas on the subject site, including the "beach lighting" flood lamps shown on Sheet 3.2 of the project plans prepared by Giannetti Architecture Interiors dated 1/28/00, are 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 plan species which tend to supplant native species shall not be used.

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

(c) Vegetation within the public view corridor, as consistent with Special Condition Eight (8), shall be limited to low-lying vegetation of no more than 2 ft. in height.

3. Construction Responsibilities and Debris Removal

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

4. Geology

All recommendations contained in the Wave Uprush Study Addendum by Pacific Engineering Group dated 2/15/00; Wave Uprush Study Addendum by Pacific Engineering Group dated 1/31/00; Wave Uprush Study by Pacific Engineering Group dated 4/19/99; Geotechnical Engineering Report Addendum by RJR Engineering Group dated 8/2/99; Geotechnical Engineering Report by RJR Engineering Group dated 11/25/98, shall be incorporated into all final design and construction plans including recommendations concerning foundation and septic system plans must be reviewed and approved by the consultants prior to commencement of development. Prior to issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director of the consultants' review and approval of all final design and construction plans.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to the foundation and septic system. 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. Required Approvals

Prior to issuance of a coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, evidence of all necessary approvals from the California Department of Transportation for the proposed modifications to the existing sidewalk, or evidence that such approvals are not required.

6. Construction of Sidewalk

In order to implement the applicant's proposal to reconstruct a 8 ft. wide public sidewalk between the proposed development and Pacific Coast Highway, the applicant agrees to

construct the eight (8) ft. wide sidewalk between Pacific Coast Highway and the proposed development shown on the proposed project plans no later than 60 days after the issuance of the certificate of occupancy. No encroachments, such as planters, vegetation, or other structures or obstacles, that would affect the public's ability to use the entire sidewalk area shall be constructed or placed.

7. Removal of Existing Bulkhead

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

8. Sign Restriction

No signs shall be posted on the property subject to this permit which (a) explicitly or implicitly indicate that the portion of the beach on the subject site (Assessor's Parcel Numbers 4452-001-008, 009 & 010) located seaward of the residence and deck permitted in this application 4-99-266 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.

9. Public View Corridor

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

(a) No less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor from Pacific Coast Highway to the Pacific Ocean.

(b) As consistent with Special Condition One, no structures, vegetation, or obstacles (with the exception of the drainage pipe located within the drainage easement for the California Department of Transportation) which result in an obstruction of public views of the ocean from Pacific Coast Highway shall be permitted within the public view corridor as shown on Exhibits 3 and 4.

(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, 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.

or

Obtain an amendment to the coastal development permit to be reviewed and approved by the Commission that provides for offsite mitigation of the public view corridor condition by provision of an offsite public view corridor, of the same or greater width than the view corridor required on ~~the subject site~~, and an offer to dedicate a vertical public access way in the vicinity of Carbon Beach.

10. 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 approved deck stringline.

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.

11. Assumption of Risk

A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from liquefaction, landslides, storm waves, surges, erosion, flooding, and wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

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

12. No Future Bluff or Shoreline Protective Device

A. By acceptance of the permit, the applicant agrees, on behalf of itself and all successors and assignees, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit 4-99-266 including, but not limited to, the construction of the residence, garage, uncovered parking area, septic system and any other future improvements in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this permit, including but not limited to, the residence, garage, uncovered parking area, septic system, if any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above. In the event that portions of the development fall to the beach before they are removed, the landowner shall remove all recoverable debris associated with

the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

C. Prior to issuance Coastal Development Permit 4-99-266, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director which reflects the above restrictions on development. The deed restriction shall include a legal description of the applicant's entire parcel(s). The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

13. 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 form 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.

(c) 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 the demolition of three existing single family residences and a 180 ft. long bulkhead and the construction of a new 14,210 sq. ft. single family residence with attached garage, two 104 ft. long return walls along the west and east property lines, pool/spa, and a septic system. In addition, the project also includes an offer to dedicate a lateral public access easement over the southern beachfront portion of the site as measured from the deck stringline to the mean high tide line and the reconstruction of an existing 8 ft. wide public sidewalk between Pacific Coast Highway and the proposed development. The proposed return walls along the west and east property lines are necessary to prevent damage to the neighboring properties (which are currently protected by an existing continuous seawall across the subject site and neighboring properties) after the existing bulkhead is removed on the subject site. The proposed development will be constructed entirely on a caisson/grade beam foundation and no shoreline protective device is required or proposed to protect the proposed development.

The project site is located on three separate beachfront parcels of land approximately 23,400 sq. ft. in combined size on Carbon Beach between Pacific Coast Highway and the ocean (Exhibits 1 & 2). 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 three existing single family residences each approximately 3,500 sq. ft. in size. In addition, an existing 490 ft. long continuous wooden bulkhead extends across the entire project site (180 ft. in length) as well as the two neighboring properties to the west and east of the subject site which have also been developed with existing single family residences. The proposed project includes the demolition of all existing development on the subject site, including the 180 ft. long portion of the existing wooden bulkhead located on the subject site, and the construction of a new larger residence which will extend across all three parcels. The proposed residence will be constructed entirely on a caisson/grade beam foundation and will not require any form of shoreline protection; however, removal of the existing bulkhead on the subject site will necessitate the construction of return walls along the east and west property lines to protect the existing development on the neighboring properties.

The applicant has submitted evidence of review of the proposed project by the California State Lands Commission (CSLC) dated December 21, 1999, which indicates that the CSLC presently asserts no claims that the project is located on public tidelands although the CSLC reserves the right to any future assertion of state ownership or public rights should circumstances change (Exhibit 8).

The Commission notes that all three separate parcels on the project site have been subject to past Commission action. Coastal Development Permit 80-6516 was approved by the Commission in 1980 for an addition to an existing single family residence at 22338 Pacific Coast Highway with a special condition requiring the recordation of an offer to dedicate an easement for lateral public access across the southern beachfront portion of the property as measured 25 ft. landward of the mean high tide line. In addition, Coastal Development Permits 5-83-644 and 5-83-341 were approved by the Commission in 1983 for the construction of a bulkhead at 22328 and 22336 Pacific Coast Highway with special conditions requiring the recordation of an offer to dedicate an easement for lateral public access as measured from the toe of the approved bulkhead seaward to the mean high tide line. The applicant is proposing to dedicate a new public lateral access easement which would supersede the previous dedication and provide for public access along the entire beach under all tidal conditions as measured seaward from the dripline of the approved deck across all three parcels.

B. Shoreline Processes and Seaward Encroachment

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

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

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

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

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

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

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

Site Shoreline Characteristics

The proposed project site is located on Carbon Beach in the City of Malibu. Carbon Beach is characterized as a relatively narrow beach which has been developed with numerous single family residences located to the east and west of the subject site. The Malibu/Los Angeles County Coastline Reconnaissance Study by the United States Army Corp of Engineers dated April 1994 indicates that residential development on Carbon Beach is exposed to recurring storm damage because of the absence of a sufficiently wide protective beach. The applicant's coastal engineering consultant has indicated that Carbon Beach is an oscillating (equilibrium) beach which experiences seasonal erosion and recovery. The Wave Uprush Study by Pacific Engineering Group dated 4/19/99 further indicates that the width of the beach changes seasonally and that the subject beach experiences a seasonal foreshore slope movement (oscillation) by as much as 80 ft.

Stringline

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

In the case of this project, the proposed development will be located seaward of the appropriate stringline and will result in the seaward encroachment of residential development on Carbon Beach. Staff notes that the applicant has submitted project plans which show an incorrectly drawn deck stringline which would allow for the project

as proposed. Although the structural stringline for the proposed residence has been correctly drawn from the appropriate corners of the neighboring structures located immediately upcoast (west) and downcoast (east) of the project site, staff notes that the deck stringline, as drawn on the project plans submitted by the applicant, has been incorrectly drawn from the corners of the existing bulkheads located on the neighboring properties rather than from the corners of the existing decks/patios located on the neighboring properties (Exhibits 4 & 5).

The Commission notes that although landscaping improvements, such as the placement of fill and landscaping vegetation, have occurred landward of the existing bulkheads (and seaward of the existing decks/patios) on the neighboring properties; the correct deck stringline is from the correct corners of the existing decks/patios on the properties located immediately upcoast and downcoast of the subject site and not from the nearest corners of the bulkheads on the neighboring properties. In addition, the Commission notes that Coastal Development Permit 4-94-176 (Beiser/Semel) was issued for the demolition of an existing ~~residence and~~ construction of a new residence on the neighboring property immediately east (downcoast) of the subject site in 1994 consistent with structural and deck stringlines drawn between the nearest corners of adjacent structures and not from the existing bulkhead on the adjacent sites.

The applicant has asserted to staff in conversation that they believe that a structural deck extends to the location of the existing bulkhead (possibly below the visible lawn or that the bulkhead itself constitutes a deck structure) on the neighboring property immediately west (upcoast) of the subject site and that; therefore, the deck/patio stringline should be drawn from the alleged "bulkhead/deck," rather than from the visible concrete patio improvements located further landward. However, staff notes that the existing bulkhead located immediately west of the subject site does not constitute a deck or patio and that the applicant has not submitted any evidence regarding the existence of the alleged structural (cantilevered, caisson or pile supported) deck improvements located landward of, or at, the existing bulkhead (and seaward of the visible concrete patio improvements used by staff to determine the correct location for the deck/patio stringline on the subject site). Further, Coastal Development Permit 5-90-698 (Katzenberg) was issued in 1990 for the demolition/reconstruction of an existing residence and demolition/reconstruction of a vertical bulkhead in the same location on the property immediately west (upcoast) of the subject site. The project plans approved by the Commission for Coastal Permit 5-90-698 (Katzenberg) allowed only for the construction of a new caisson supported vertical bulkhead in the same location as the previously existing bulkhead on the subject site. The Commission notes that the bulkhead approved pursuant to Coastal Permit 5-90-698 (Katzenberg) does not constitute a deck. With the exception of the concrete patio improvements (constructed on a standard foundation/footing in the fill behind the bulkhead) shown on Exhibit 4, no other structural deck improvements (such as a caisson supported deck or cantilevered deck) was approved by the Commission. As such, the Commission further notes that even if some form of structural deck (constructed on a cantilever, caisson, or pile foundation and located at or below grade) did exist on the neighboring parcel as

asserted by the applicant (other than the previously approved cement patio areas shown in Exhibit 4) then such development would have been constructed without the required coastal development permit. Therefore, the Commission notes that the correct deck stringline for the subject proposal is from the corners of the previously approved decks/patios on the properties located immediately upcoast and downcoast of the subject site as shown on Exhibit 4.

The deck stringline proposed by the applicant, as drawn from the neighboring bulkheads rather from the neighboring decks/patios, would allow for development on the subject site to extend between 14 ft. to 21 ft. further seaward than otherwise allowed. The total size of the proposed deck is approximately 7,950 sq. ft.. The portion of the proposed deck which extends seaward of the correct deck stringline is approximately 2,520 sq. ft. in size. The Commission notes that the deck, as proposed, will extend further seaward than existing neighboring decks/patios, will reduce the area of sandy beach available for public use, and will result in adverse effects to public views from the beach. Therefore, to ensure that the proposed development is located landward of the correct stringline, consistent with past Commission actions, Special Condition One (1) requires the applicant to submit revised project plans deleting all portions of the proposed deck that would be located seaward of the correct stringline as shown on Exhibits 4 and 5. The Commission notes that this restriction will still allow for the construction of the remaining approximately 5,430 sq. ft. portion of the proposed deck. As such, the Commission finds that the proposed project, only as conditioned to revise the location of the proposed deck, will not result in the seaward encroachment of development on Carbon Beach and will serve to minimize adverse effects to coastal processes.

Wave Uprush and Mean High Tide Line

The Wave Uprush Study prepared by Pacific Engineering Group dated 4/19/99 includes analysis of several different measurements of the location of the ambulatory mean high tide line on the subject site between 1928 and 1999. The report represents that the most landward measurement of the ambulatory mean high tide line on the project site occurred in June 1944 when the mean high tide line on site was located approximately 145 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 124 ft. seaward of the highway right-of-way line (approximately 21 ft. landward of the June 1944 mean high tide line). Based on the submitted information, the Commission notes that the proposed development will be located landward of the June 1944 mean high tide line and should not extend onto public tidelands under normal conditions.

Although the proposed structure will be located landward of the January 1966 mean high tide line, the Wave Uprush Study prepared by Pacific Engineering Group dated 4/19/99 indicates that the maximum wave uprush at the subject site will occur approximately 31 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 93 ft landward under the structure as proposed. The applicant's engineering consultant has indicated that although the foundation for the proposed residence will be subject to wave action, the residence will be constructed on a friction pile foundation and will not require a shoreline protection device to ensure structural stability. The seaward extent of the septic system and leach field will be located approximately 12 ft. from the Pacific Coast Highway right-of-way line and approximately 19 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 4/19/99 states that:

> ***The new sewage disposal system, leach field, tank, and ground lines, should be installed landward of the wave uprush zone and no further than 31 feet seaward of the Pacific Coast Highway right-of-way line. At this location no protective structure would be required for the protection of the 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 Addendum by Pacific Engineering Group dated 2/15/00; Wave Uprush Study Addendum by Pacific Engineering Group dated 1/31/00; Wave Uprush Study by Pacific Engineering Group dated 4/19/99; Geotechnical Engineering Report Addendum by RJR Engineering Group dated 8/2/99; and the Geotechnical Engineering Report by RJR Engineering Group dated 11/25/98 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 this project, the proposed residence will be constructed entirely on a caisson/grade beam foundation and the septic system will be located landward of the maximum wave uprush limit; therefore, no shoreline protective device is required or proposed to protect the proposed development. In addition, the proposed project includes the removal of the existing bulkhead located on the subject site. However, the Commission notes that the existing bulkhead on the subject site forms the central

segment (approximately 180 ft. in length) of an existing continuous bulkhead which extends across a total of six parcels including the subject site (approximately 490 ft. in total length). Removal of the existing bulkhead on the subject site will necessitate the construction of the two proposed 120 ft. long return walls along the east and west property lines in order to ensure that the existing residences on the neighboring properties (which are currently protected by the existing continuous seawall which extends across the subject site and neighboring properties) are not adversely impacted or undermined by wave uprush.

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

Interference by shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in the shoreline profile, particularly changes in the slope of the profile which results from a reduced beach berm width, alter the usable area under public ownership. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This reduces the actual area in which the public can pass on their own property. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. This effects public access again through a loss of area between the mean high water line and the actual water. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. As set forth in earlier discussion, Carbon Beach is a narrow oscillating beach. The applicant's consultant has also indicated that seasonal foreshore slope movement on the subject site can be as much as 80 ft. The Commission notes that if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. The Commission also notes that many studies performed on both oscillating and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device exists. Fourth, if not sited landward in a location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy. Finally, revetments, bulkheads, and seawalls interfere directly with public access by their occupation of beach area that will not only be

unavailable during high tide and severe storm events but also potentially throughout the winter season.

The adverse effects of shoreline protective devices are greater the more frequently that they are subject to wave action. In order to minimize adverse effects from shoreline protective devices, when such devices are found to be necessary to protect existing development, the Commission has required applicants to locate such structures as far landward as is feasible. In addition, since shoreline protective devices are most often required to protect existing septic systems, the Commission has also required applicants to locate septic systems as far landward as feasible [4-97-191 (Kim)]. The Commission has also required the utilization of alternative technologies for sewage disposal such as bottomless sand filter systems because they are able to be designed to occupy less area on the beach and, therefore, be located further landward than a standard system. In the case of the proposed project, the proposed septic system will be of a bottomless sand filter design and will be located as landward as feasible. The Commission notes that the applicant is proposing to construct a large residence that will extend further seaward than a smaller residence would. The applicant's coastal engineering consultant has confirmed that no shoreline protective device is required to protect either the proposed residence (which will be constructed entirely on an engineered caisson/grade beam foundation able to withstand wave action) or to protect the septic system (which will be located approximately 19 ft. landward of the maximum wave uprush limit).

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. As such, the Commission notes that the construction of the proposed return walls to protect the existing residences located on the neighboring properties west and east of the subject site will serve to protect existing development and is consistent with the intent of Section 30235 of the Coastal Act. The Wave Uprush Study Addendum by Pacific Engineering Group dated 1/31/00 states:

> ***The subject property has been protected by an existing timber bulkhead (seawall) for some time now. This bulkhead connects to the Semel Bulkhead on the east, and the Katzenberg Bulkhead on the west, forming the center section of a continuous bulkhead protecting six properties...Removing the existing bulkhead on the subject property will expose the adjacent properties to flanking wave action if those properties if those properties are not already protected by return walls.***

The Commission notes that removal of the existing bulkhead, as proposed, will serve to minimize adverse effects to shoreline sand supply and coastal processes. The Commission further notes that the approval of a shoreline protective device to protect new residential development, such as the proposed residence, would not be required by Section 30235 of the Coastal Act. Specifically, the construction of a shoreline protective device to protect 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. Therefore, in order to ensure that the applicant's proposal to remove the existing bulkhead on the subject site is carried out and to ensure that proposed project will minimize adverse effects to coastal processes, shoreline supply, and public access, Special Condition Seven (7) requires the applicant to remove the portion of the existing bulkhead located on the subject site prior to the construction of the proposed residence. In addition, 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 Twelve (12) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residence, septic system, driveway, etc.

Conclusion

The proposed residence will be located landward of the mean high tide line and be designed to eliminate the necessity for a shoreline protective device. The septic system for the proposed residence will be located as landward as feasible, will not be subject to wave uprush, or require the construction of a shoreline protective device. In addition, the applicant is proposing to remove the existing wooden bulkhead located on site. In order to ensure that the applicant's proposal to remove the existing bulkhead on the subject site is carried out and to ensure that the proposed project will minimize any adverse effects to coastal processes, shoreline supply, and public access, Special Condition Seven (7) requires the applicant to remove the existing bulkhead prior to the construction of the proposed residence. In addition, to ensure that the proposed project is consistent with Section 30235 of the Coastal Act, and to ensure that the proposed project does not result in future adverse effects to coastal processes, Special Condition Twelve (12) 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.

As discussed above, the proposed project includes the removal of the existing wooden bulkhead located on the subject site. However, the Commission notes that the existing bulkhead on the subject site to be removed forms the central segment (approximately 180 ft. in length) of an existing continuous bulkhead which extends across a total of six parcels including the subject site (approximately 490 ft. in total length). Removal of the existing bulkhead on the subject site will necessitate the construction of the two proposed 120 ft. long return walls along the east and west property lines in order to ensure that the existing residences on the neighboring properties (which are currently

protected by the existing continuous seawall which extends across the subject site and neighboring properties) are not adversely impacted or undermined by wave uprush.

In addition, 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 Addendum by Pacific Engineering Group dated 2/15/00; Wave Uprush Study Addendum by Pacific Engineering Group dated 1/31/00; Wave Uprush Study by Pacific Engineering Group dated 4/19/99; Geotechnical Engineering Report Addendum by RJR Engineering Group dated 8/2/99; and the Geotechnical Engineering Report by RJR Engineering Group dated 11/25/98 to ensure structural and site stability and that the proposed development will not result in adverse effects to shoreline processes.

Further, the applicant has submitted project plans which show an incorrectly drawn deck stringline which would allow for the project as proposed (construction of a 7,950 sq. ft. deck). The actual deck stringline, as drawn from the nearest corners of the decks/patios located on the neighboring properties, is located landward of the proposed deck location. Therefore, to ensure that the proposed development is located landward of the correct stringline, consistent with past Commission actions, Special Condition One (1) requires the applicant to submit revised project plans deleting all portions of the proposed deck that would be located seaward of the correct stringline as shown on Exhibit 4 and 5. The Commission notes that the portion of the proposed deck which extends seaward of the correct deck stringline is approximately 2,520 sq. ft. in size and that Special Condition One (1) will still allow for the construction of the remaining approximately 5,430 sq. ft. portion of the proposed deck.

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

C. Hazards and Geologic Stability

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

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

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

The applicant has submitted a Wave Uprush Study Addendum by Pacific Engineering Group dated 2/15/00; Wave Uprush Study Addendum by Pacific Engineering Group dated 1/31/00; Wave Uprush Study by Pacific Engineering Group dated 4/19/99; Geotechnical Engineering Report Addendum by RJR Engineering Group dated 8/2/99; Geotechnical Engineering Report by RJR Engineering Group dated 11/25/98. 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 11/25/98 concludes that:

> ***Based upon our review of the site and the available data the proposed improvements are feasible from a geologic and geotechnical standpoint, and should be free of landslides, slumping and excess settlement as described in this report, assuming the recommendations presented in this report 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 Wave Uprush Study Addendum by Pacific Engineering Group dated 2/15/00; Wave Uprush Study Addendum by Pacific Engineering Group dated 1/31/00; Wave Uprush Study by Pacific Engineering Group dated 4/19/99; Geotechnical Engineering Report Addendum by RJR Engineering Group dated 8/2/99; Geotechnical Engineering Report by RJR Engineering Group dated 11/25/98 include a number of geotechnical and engineering recommendations to ensure the stability and geotechnical safety of the site. To ensure that the recommendations of the geotechnical and coastal engineering consultants have been incorporated into all proposed development, Special Condition Four (4) requires the applicant to submit project plans certified by both the consulting geotechnical and geologic engineer and the coastal engineering consultant as conforming to all recommendations to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

As discussed above, the Commission notes that the applicant's engineering consultants have indicated that the proposed development will serve to ensure relative geologic and structural stability on the subject site. However, the Commission also notes that the

Geotechnical Engineering Report Addendum by RJR Engineering Group dated 8/2/99 indicates that, although no landslides are located on the project site itself, an existing landslide complex is located on the steep bluff slopes on the opposite (north) side of Pacific Coast Highway. Further, although the geotechnical report addendum indicates that the proposed development will not be affected by the offsite landslide, the Commission notes that there remains some inherent risk in building on sites underlain or located adjacent to or downslope from an identified landslide.

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 Eleven (11), when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the proposed development.

In addition, the Commission notes that the proposed development includes the demolition of three existing residences and a bulkhead and the construction of a new larger residence on a caisson/grade beam foundation. 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. o ensure that 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, and that sand bags and/or ditches shall be used to prevent runoff and siltation.

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

D. Public Access

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

Coastal Act Section **30210** states that:

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

Coastal Act Section **30211** states:

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

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

> ***(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.***
>
> ***(2) adequate access exists nearby, or,***
>
> ***(3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.***

Section **30220** of the Coastal Act states that:

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

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

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

The major access issue in this permit application is the occupation of sandy beach area by a structure and potential effects on shoreline sand supply and public access in contradiction of Coastal Act policies 30211 and 30221. As stated previously, no shoreline protective device is required, or proposed, to protect the proposed development. The proposed project is located on Carbon Beach, approximately 2,600 ft. east (downcoast) of the nearest open public vertical coastal accessway and only approximately 1,000 ft. to the east (downcoast) and 1,100 ft. to the west (upcoast) of two vertical accessways which has been offered for dedication by the landowners for public use. Further, there are several existing and potential lateral public access easements across several lots near the project site.

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

State to alienate these sovereign lands into private ownership and use free of the public trust. Consequently, the Commission must avoid decisions that improperly compromise public ownership and use of sovereign tidelands.

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

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

The Commission must consider a project's direct and indirect effect on public tidelands. To protect public tidelands when beachfront development is proposed, the Commission must consider (1) whether the development or some portion of it will encroach on public tidelands (i.e., will the development be located below the mean high tide line as it may exist at some point throughout the year) and (2) if not located on tidelands, whether the development will indirectly affect tidelands by causing physical impacts to tidelands. In the case of the proposed project, the State Lands Commission presently does not assert a claim that the project intrudes onto sovereign lands (Exhibit 8).

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

Although no shoreline protective device is proposed as part of this project, the Commission notes that interference by a shoreline protective device has a number of adverse effects on the dynamic shoreline system and the public's beach ownership interests. First, changes in

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

As previously discussed in detail, the 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 caisson/grade beam 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 Twelve (12) requires the applicant to record a deed restriction that would prohibit the applicant, or future land owner, from constructing a shoreline protective device for the purpose of protecting any of the development proposed as part of this application including the residence, garage/guesthouse, septic system, driveway, etc. In addition, in order to ensure that the applicant's proposal to remove the existing bulkhead on the subject site is carried out, Special Condition Seven (7) requires the applicant to remove the portion of the existing bulkhead located on the subject site prior to the construction of the proposed residence.

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

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

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

In past permit actions, the Commission has required that all new development on a beach, including new single family residences, provide for lateral public access along the beach in order to minimize any adverse effects to public access. The Commission notes that dedications for lateral public access were previously recorded on all three of the parcels of the subject site as a condition of previously approved coastal development permits. Coastal Development Permit 80-6516 was approved by the Commission in 1980 for an addition to an existing single family residence at 22338 Pacific Coast Highway with a special condition requiring the recordation of an offer to dedicate an easement for lateral public access across the southern beachfront portion of the property as measured 25 ft. landward of the mean high tide line. In addition, Coastal Development Permits 5-83-644 and 5-83-341 were approved by the Commission in 1983 for the construction of a bulkhead at 22328 and 22336 Pacific Coast Highway with special conditions requiring the recordation of an offer to dedicate an easement for lateral public access as measured from the toe of the approved bulkhead seaward to the mean high tide line.

The applicant is aware of the existence of the original dedications and has proposed to dedicate a new easement which would supersede and replace the previous dedications. The applicant's offer to dedicate lateral access will differ from the original easements in that the original 1980 easement on one of the parcels provided for an area of only 25 ft. in width as measured landward from the mean high tide line on the westernmost parcel. However, the new lateral access easement, which the applicant has proposed to offer as part of this project, will not be fixed at a 25 ft. width but will include the entire beach under all tidal conditions as measured seaward from the approved deck stringline and will extend across all three parcels of the subject site. In addition, the new lateral access easement, which the applicant has offered to dedicate as part of this project, will reflect the removal of the existing bulkhead, the approved deck stringline, will more accurately describe the ambulatory nature of the easement's width in relation to the mean high tide line, and will be more consistent with other lateral

access easements which have been recorded on properties along Carbon Beach and the Malibu area.

In order to conclude with absolute certainty what adverse effects would result from the proposed project in relation to shoreline processes and the adequacy of the existing lateral access easement, a historical shoreline analysis based on site-specific studies would be necessary. Although this level of analysis has not been submitted by the applicant, the Commission notes that because the applicant has proposed as part of the project an offer to dedicate a new lateral access easement along the entire southern portion of the lot, as measured from the dripline of the approved deck, it has not been necessary for Commission staff to engage in an extensive analysis as to the adequacy of the original easement or whether the imposition of a new offer to dedicate would be required here absent the applicant's proposal. As such, Special Condition Ten (10) has been required in order to ensure that the applicant's offer to dedicate a new lateral public access easement is transmitted prior to the issuance of the coastal development permit.

In addition, the Commission notes that chronic unauthorized postings of signs illegally attempting to limit, or erroneously noticing restrictions on, public access have occurred on beachfront private properties in the Malibu area. These signs have an adverse effect on the ability of the public to access public trust lands. The Commission has determined, therefore, that to ensure that applicants clearly understand that such postings are not permitted without a separate coastal development permit, it is necessary to impose Special Condition Eight (8) to ensure that similar signs are not posted on or near the proposed project site. The Commission finds that if implemented, Special Condition Eight (8) will protect the public's right of access to the sandy beach below the MHTL.

An existing 8 ft. wide public sidewalk is located in the road easement between the proposed development and Pacific Coast Highway. The proposed project includes modifications to the existing sidewalk to provide for adequate driveway improvements. As such, the applicant has included the reconstruction of an 8 ft. wide public sidewalk between Pacific Coast Highway and the residence as part of the proposed project. The Commission notes that members of the public must utilize the shoulder areas of Pacific Coast Highway in order to reach many public vertical beach accessways. In past permit actions, the Commission has found that new residential development, fences, walls, and landscaping, in addition to use of the road shoulder for residential parking, results in potential adverse effects to public beach access when such development is located along the shoulder of Pacific Coast Highway in a manner which precludes a pedestrian's ability to utilize the road shoulder where no sidewalk is located. In the case of the proposed project, the applicant is proposing the construction of a public sidewalk between the residence and Pacific Coast Highway to mitigate any adverse effects to public access from the proposed development. As such, Special Condition Six (6) has been required in order to ensure that the applicant's offer to reconstruct the

existing 8 ft. wide public sidewalk between the proposed development and Pacific Coast Highway is implemented. All proposed sidewalk improvements will be located within the Pacific Coast Highway easement and are subject to review and approval by the California Department of Transportation. Therefore, Special Condition Five (5) requires the applicant to submit, for the review and approval of the Executive Director, evidence of all necessary approvals from the California Department of Transportation for the proposed modifications to the existing sidewalk, or evidence that such approvals are not required.

In addition, the Commission notes that the proposed project plans indicate that "beach lighting" flood lamps will be installed on the sides of the deck for the purpose of illuminating sandy beach areas on the subject site (Exhibit 7). In past permit actions regarding new development on the sandy beach, the Commission has typically allowed exterior lighting for the purpose of illuminating deck and other outdoor structural areas. However, the Commission notes that the proposed "beach lighting" flood lamps would be incorporated into the exterior sides of the deck for the sole purpose of illuminating the sandy beach and not for illumination of the actual deck. The Commission further notes that flood lamps directed towards the public portion of the sandy beach from a private residence results in adverse effects to public views to beachgoers during evening hours. Further, the Commission also notes that flood lamp lighting intentionally directed towards the public portion of the sandy beach from a private residence also results in potential adverse effects to public access along the beach due to the creation of the appearance of an exclusive private use area seaward of the actual residence. Therefore, in order to ensure that adverse effects to public access along the beach are minimized, Special Condition One (1) requires the submittal of revised plans which show that all proposed exterior lighting for the purpose of illuminating sandy beach areas on the subject site, including the "beach lighting" flood lamps shown on Sheet 3.2 of the project plans prepared by Giannetti Architecture Interiors dated 1/28/00, are deleted.

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 previously certified Los Angeles County 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 the construction of large individual residential structures, or large residential projects including one or more structures, extending across multiple beachfront parcels, similar to the proposed project, is becoming increasingly common in the Malibu area and that several applications for similar development have recently been submitted. As such, the Commission notes that such development, when viewed on a regional basis, will result in potential cumulative adverse effects to public views and to the visual quality of coastal areas.

In this case, the proposed project will involve the construction of a new large residential structure on three separate parcels. Currently, all three parcels on the subject site are developed with residential development which blocks public views of the coastline from

Pacific Coast Highway. The proposed project will include the demolition of all existing development on all three parcels and the construction of a new 14,210 sq. ft. residential structure. 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 new residential development which extends over multiple lots also provides for the opportunity to enhance public views, where such views have been significantly degraded by past development, through the creation and maintenance of public view corridors, consistent with Section 30251 of the Coastal Act. In addition, Policy 138 of the LUP, as consistent with Section 30251 of the Coastal Act, provides that new development on a beachfront property located on the seaward side of Pacific Coast Highway, such as the subject site, should reserve 20% of the linear frontage of the lot as visually open area to provide and maintain adequate public coastal views. Further, in past permit actions, in order to protect public views of the ocean from public viewing areas and to enhance visual quality along the coast, the Commission has required that new residential development, such as the proposed project, be designed to provide for a public view corridor of no less than 20% of the width of the lineal frontage of the subject site to provide for views of the beach and ocean from Pacific Coast Highway [Saban (4-99-146), Broad (4-99-185), Montanaro (4-99-154), and Ioki (4-99-153 and 155)].

In the case of the proposed project, the Commission notes that the subject site is 180 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 36 ft. in width. Consistent with the provision a public view corridor no less than 20% of the lineal frontage of the subject site, the proposed project plans provide for a 36 ft. wide public view corridor on the eastern portion of the subject site (Exhibits 4 & 5). To ensure that public coastal views will be protected, Special Condition Nine (9) requires the applicant to execute and record a deed restriction which provides that no less than 20% of the lineal frontage of the project site shall be maintained as a public view corridor. Development within the public view corridor shall be limited to fencing of visually permeable designs and materials (e.g. wrought iron or non-tinted glass materials). In addition, the Commission also notes that the proposed site plan indicates that a glass wall/gate will be constructed within the public view corridor; however, details of the proposed wall/gate have not been submitted as part of this application. The Commission notes that certain types of visually permeable fencing (including certain types of glass walls) may be allowed within a public view corridor if such structures do not interfere with public views of the beach and ocean from Pacific Coast Highway. Therefore, in order to ensure the provision of unobstructed public views of the ocean from the highway and to enhance visual quality in an area where coastal visual resources have been degraded from past development, Special Condition One (1) requires the applicant to submit detailed plans adequate to show that all fencing/walls/gates within the proposed 36 ft. wide public view corridor are consistent with Special Condition Nine (9). In addition, Special Condition Two (2), as consistent with Special Condition Nine (9), 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.

In addition, the Commission notes that the proposed project plans indicate that "beach lighting" flood lamps will be installed on the sides of the deck for the purpose of illuminating sandy beach areas on the subject site (Exhibit 7). In past permit actions regarding new development on the sandy beach, the Commission has typically allowed exterior lighting for the purpose of illuminating deck and other outdoor structural areas. However, the Commission notes that the proposed "beach lighting" flood lamps would be incorporated into the exterior sides of the deck for the sole purpose of illuminating the sandy beach and not for illumination of the actual deck. The Commission further notes that flood lamps directed towards the public portion of the sandy beach from a private residence results in adverse effects to public views to beachgoers during evening hours. In addition, the Commission also notes that flood lamp lighting intentionally directed towards the public portion of the sandy beach from a private residence also results in potential adverse effects to public access along the beach due to the creation of the appearance of an exclusive private use area seaward of the actual residence. Therefore, in order to ensure that adverse effects to public views along the beach are minimized, Special Condition One (1) requires the submittal of revised plans which show that all proposed exterior lighting for the purpose of illuminating sandy beach areas on the subject site, including the "beach lighting" flood lamps shown on Sheet 3.2 of the project plans prepared by Giannetti Architecture Interiors dated 1/28/00, are deleted.

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 new development in the Santa Monica Mountains 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 construction of a single family residence and septic system. The proposed development will result increased impervious surface on the subject site. Further, 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 construction of impervious surfaces, such as the proposed residential development, allows for less infiltration of rainwater into the soil, thereby increasing the rate and volume of runoff, causing increased erosion and sedimentation. Additionally, the infiltration of precipitation into the soil allows for the natural filtration of pollutants. When infiltration is prevented by impervious surfaces in beachfront areas, pollutants in runoff are quickly conveyed to the ocean. Thus, new development can cause cumulative impacts to the coastal water quality by increasing and concentrating runoff and pollutants.

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. In order to ensure that adverse effects 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 Thirteen (13). 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 5,000 gallon septic tank and a leachfield which will be located no further than 12 ft. seaward of the Pacific Coast Highway right-of-way line. In order to reduce the size of the required leachfield for the proposed septic system and to allow the system to be located as far landward as possible, the applicant is proposing to install a bottomless sand filter septic system which is designed to produce treated effluent with reduced levels of organics, biochemical oxygen demand (BOD) and total suspended solids (TSS) while occupying only 50 percent of the area required for a conventional septic system and leachfield. As proposed, the septic system will be located as landward as possible.

The applicant has submitted approval from the City of Malibu Environmental Health Department stating that the proposed septic system is in conformance with the minimum requirements of the City of Malibu Uniform Plumbing Code. The City of Malibu's minimum

health code standards for septic systems have been found protective of coastal resources and take into consideration the percolation capacity of soils along the coastline, the depth to groundwater, etc. Therefore, the Commission finds that the proposed project, 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.

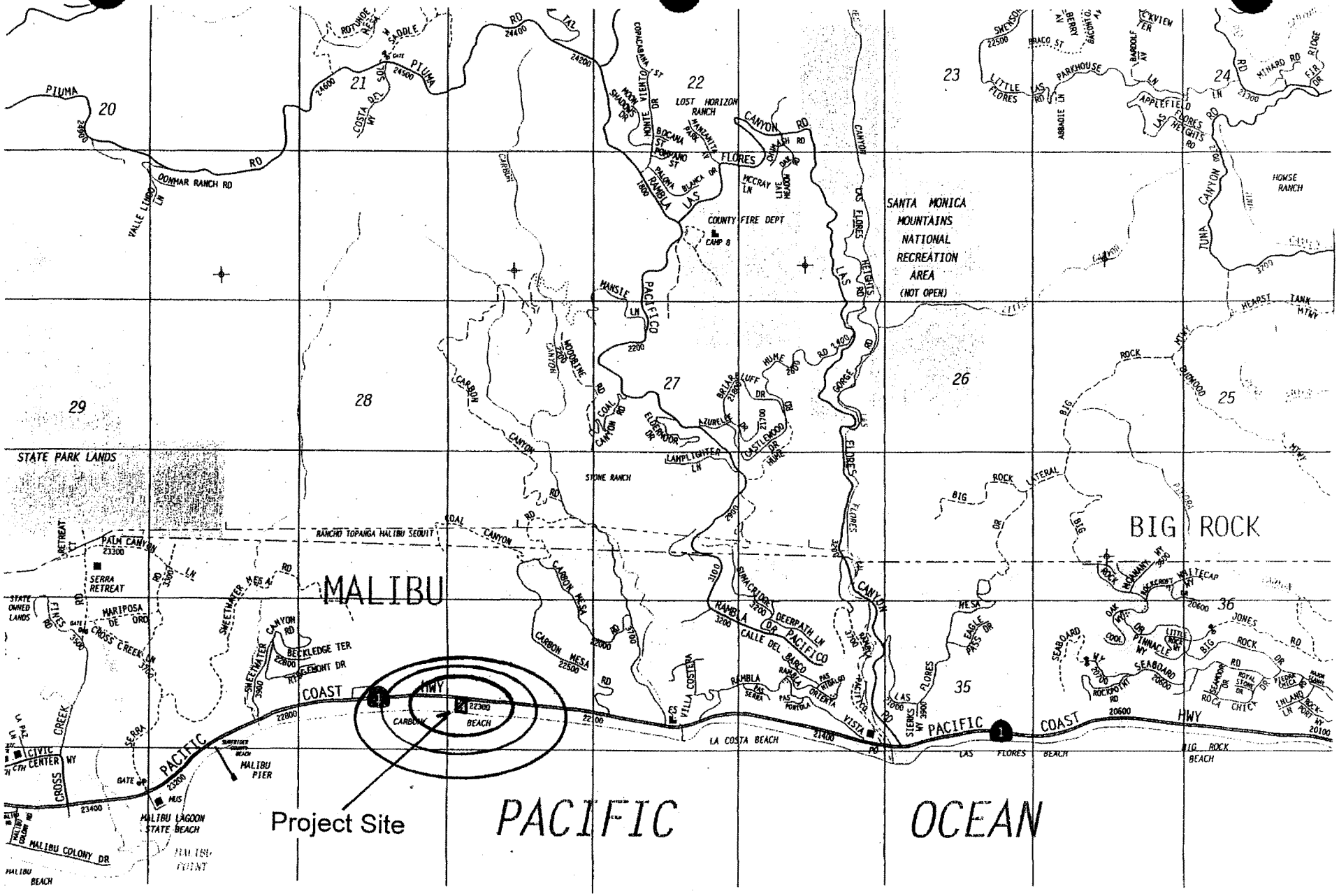


EXHIBIT 1
CDP 4-99-266 (Daly)
Location Map

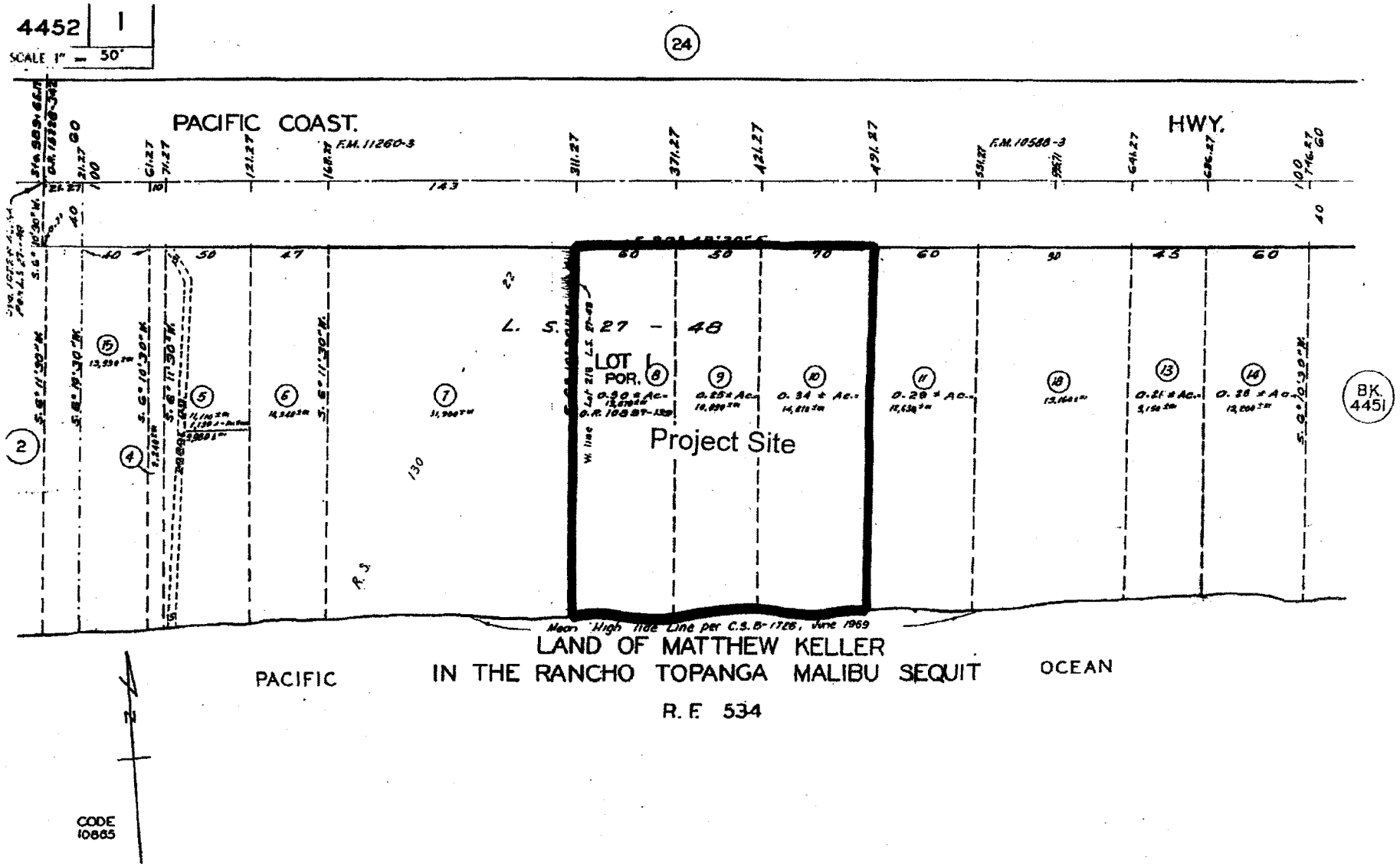


EXHIBIT 2
CDP 4-99-266 (Daly)
Parcel Map

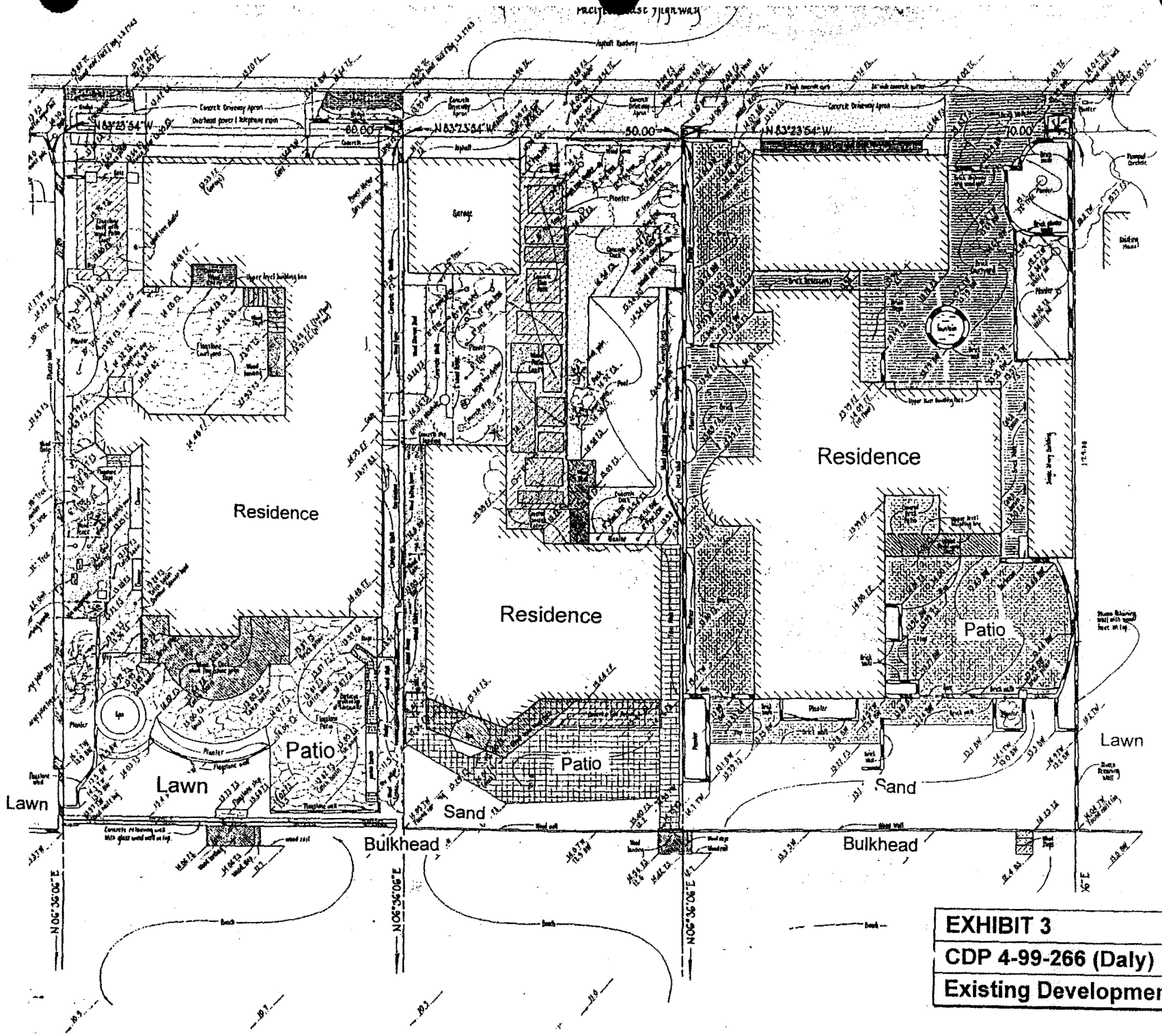


EXHIBIT 3
CDP 4-99-266 (Daly)
Existing Development on Site

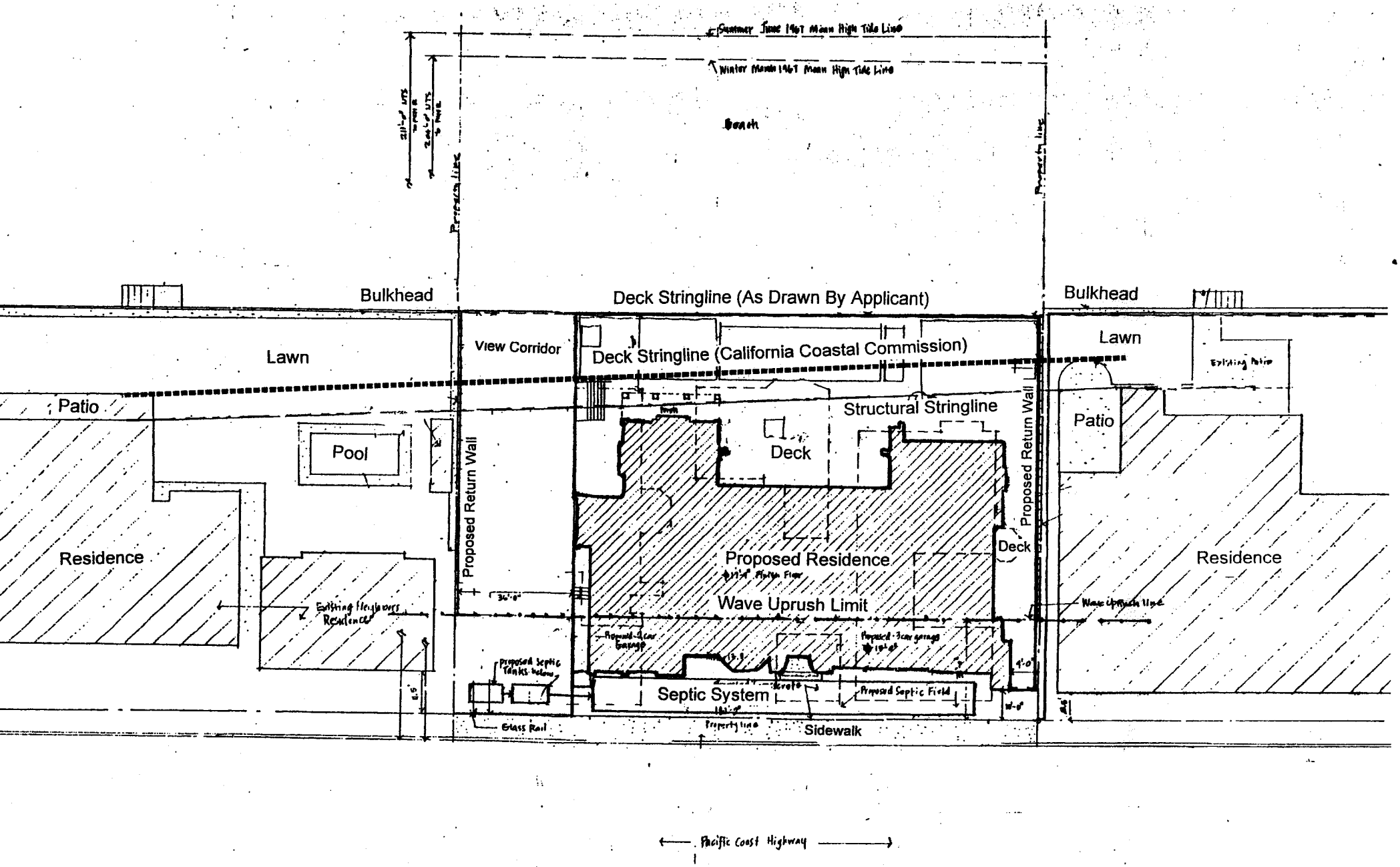


EXHIBIT 4
CDP 4-99-266 (Daly)
Site Plan

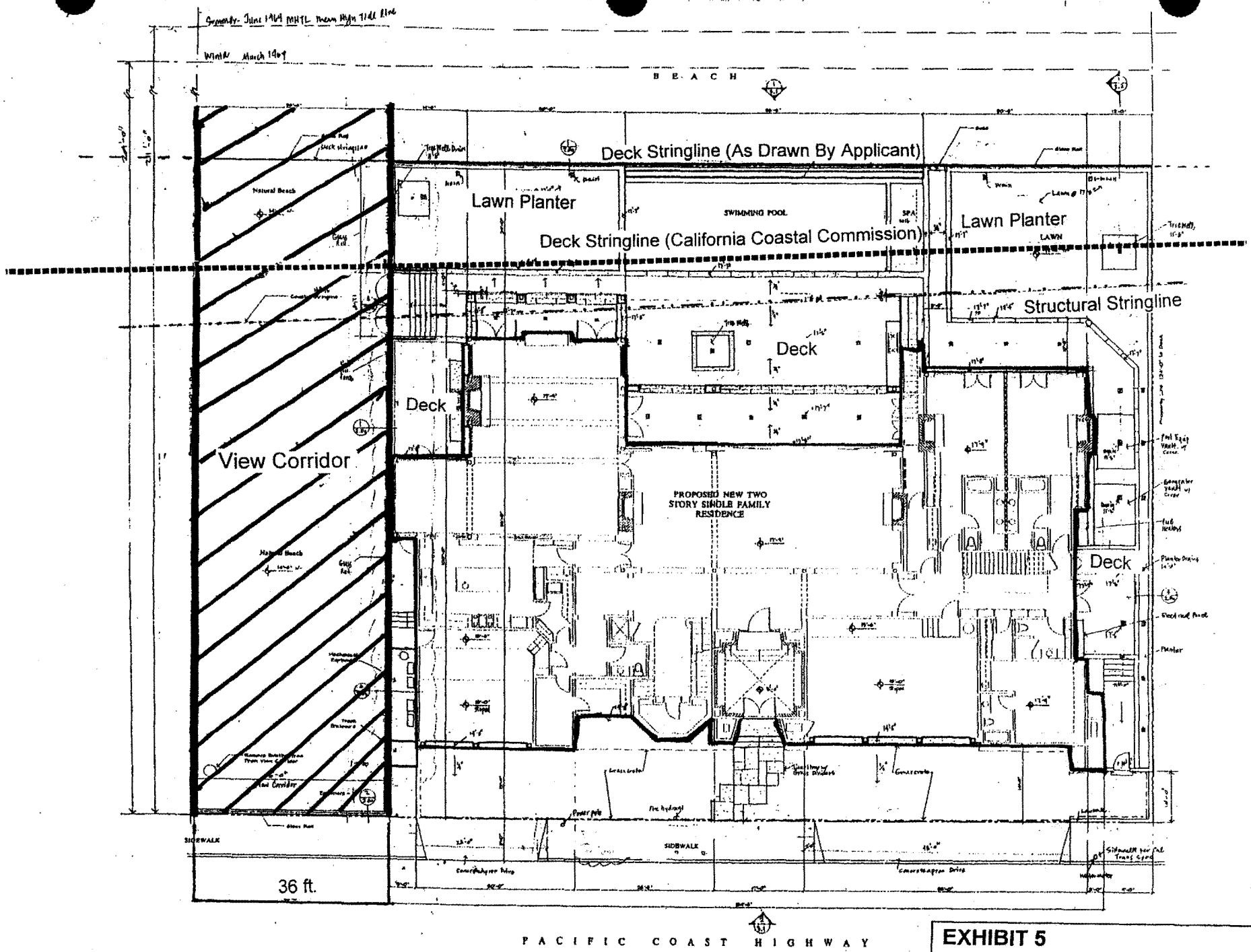
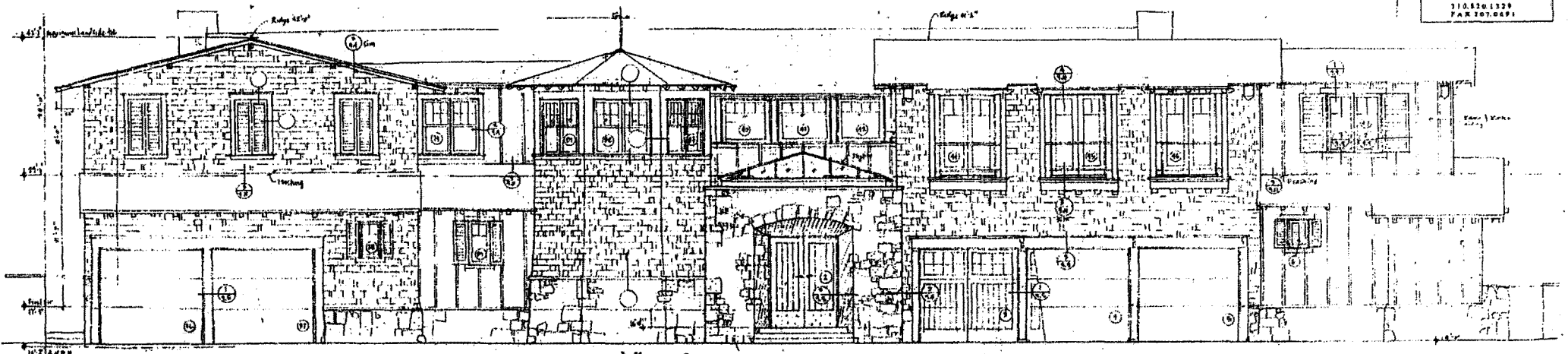


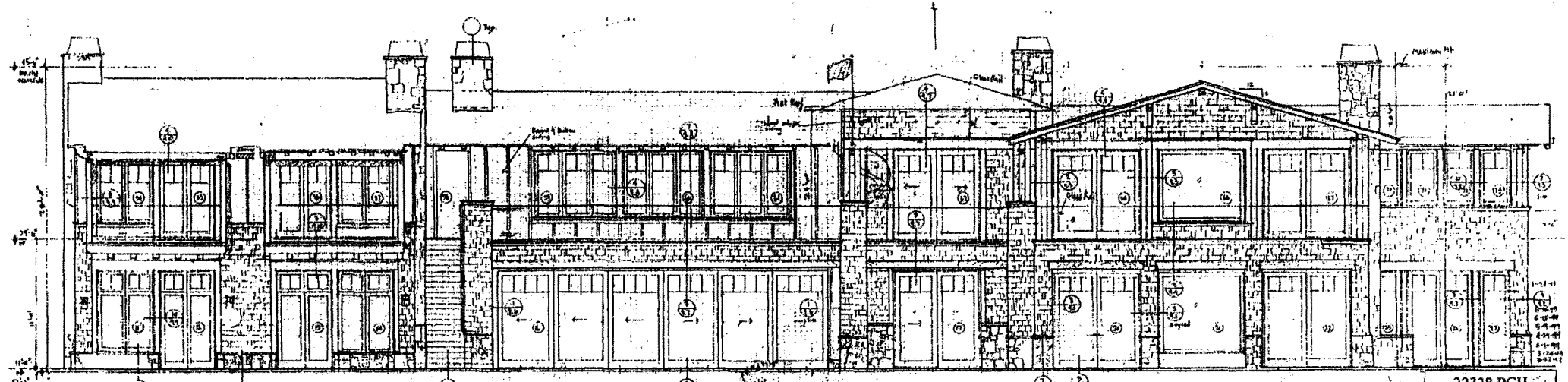
EXHIBIT 5
CDP 4-99-266 (Daly)
Site Plan/Floor Plan

GIANNETTI
ARCHITECTURE
INTERIORS
12233
DOROTHY ST.
L.A. 90049
310.820.1339
FAX 310.0491



View from Pacific Coast Highway

North - PCH Street
ELEVATION (2)



View from Beach

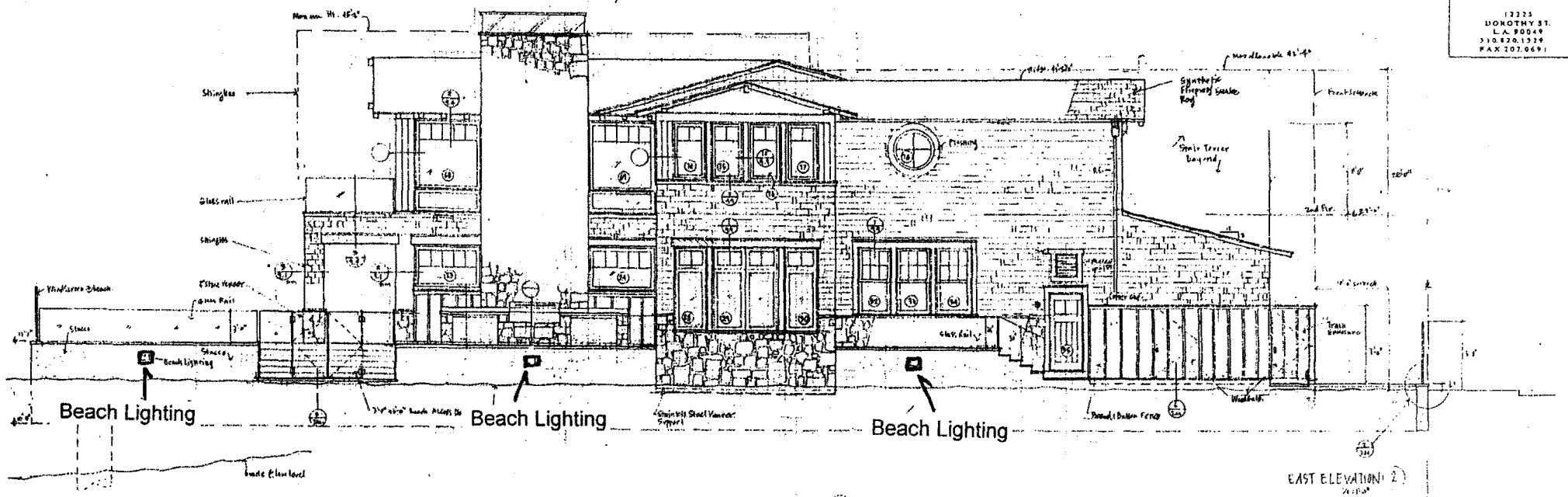
South - Ocean Side
ELEVATION (1)

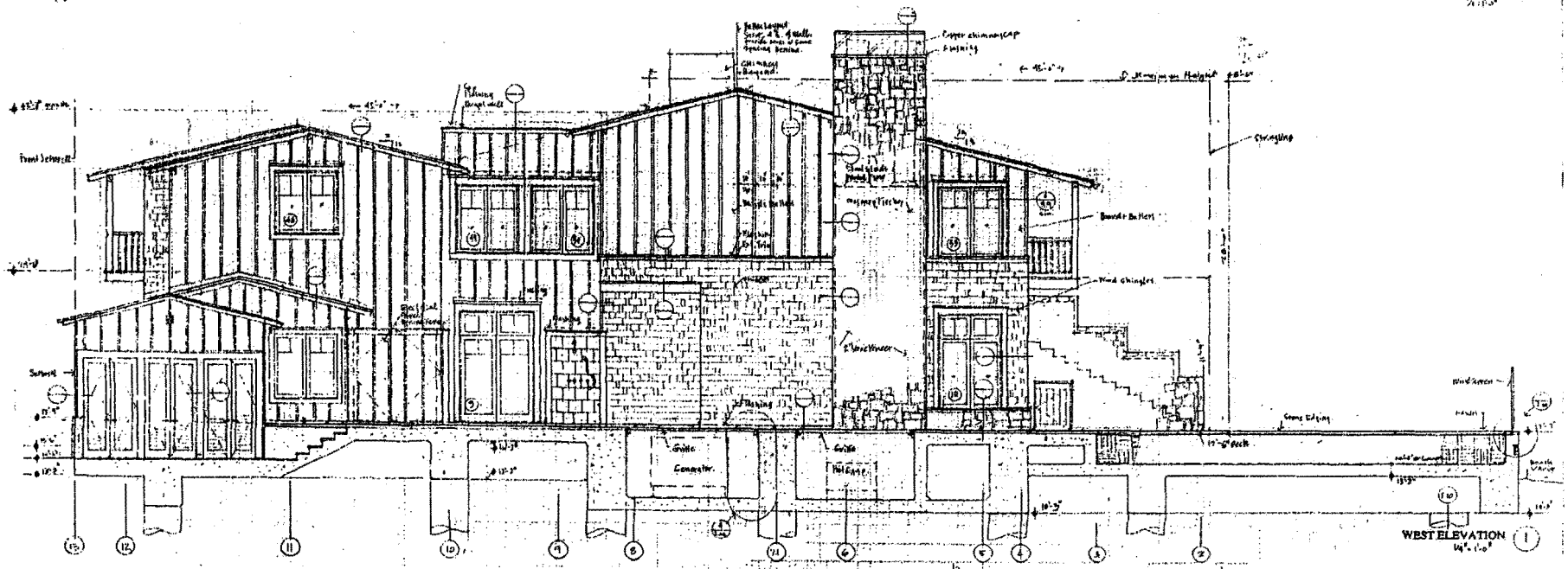
22338 PCH
RESIDENCE
22338 PAC. COAST HWY.
MALIBU, CA

3.1

EXHIBIT 6
CDP 4-99-266 (Daly)
North/South Elevations

GIANNETTI
ARCHITECTURE
INTERIORS
12223
DOROTHY ST.
L.A. 90049
310.820.1339
FAX 207.0691





22338 PCH
RESIDENCE
22338 PAC. COAST HWY.
MALIBU, CA.

3/2

EXHIBIT 7
CDP 4-99-266 (Daly)
East/West Elevations

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

PAUL D. THAYER, *Executive Officer*
California Relay Service From TDD Phone **1-800-735-2922**
from Voice Phone **1-800-735-2929**

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

December 21, 1999

File Ref: SD 99-04-30.1
AD 206; AD 253; AD 254

Mike Barsocchini
Barsocchini & Associates
3502 Coast View Drive
Malibu, CA 90265

Dear Mr. Barsocchini:

SUBJECT: Coastal Development Project Review for Demolition of Three Existing Residences and the Construction of a New Single Family Residence at 22338 Pacific Coast Highway, Malibu, Los Angeles County

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

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

Your clients propose to demolish three existing single family residences that extend across 22328 (22332), 22336, and 22338 Pacific Coast Highway and construct a new residence and swimming pool across the lots to be known as 22338 Pacific Coast Highway in the Carbon Beach area of Malibu. An existing timber bulkhead extends across all three lots. Two of the lots contain beach access stairs and the third lot an existing platform, all seaward of the bulkhead. Based on the November 29, 1999 plans you submitted the existing timber bulkhead and stairs/platform structures, will all be removed. The new residence and swimming pool, which will be built on pilings, will extend no further seaward than the existing bulkhead and appear 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.

EXHIBIT 8
CDP 4-99-266 (Daly)
State Lands Determination Letter

Our records show that each of the lots is burdened with an existing Irrevocable Offer to Dedicate an easement for public access and passive recreational use along the shoreline. The dedications are as follows:

22328 Pacific Coast Highway

The dedication was recorded May 16, 1985 as Document 85-550116, Official Records of Los Angeles County, and runs "... from the mean high tide line landward to the approved bulkhead ...". This dedication was a condition of the CCC's issuance of CDP 5-83-644 on October 27, 1983, and was authorized for acceptance by the CSLC at its May 9, 1996 meeting pursuant to Minute Item 63 (AD 253).

22336 Pacific Coast Highway

The dedication was recorded November 4, 1983 as Document 83-1310243, Official Records of Los Angeles County, and runs "... from the mean high tide line landward to the toe of the bulkhead ...". This dedication was a condition of the CCC's issuance of CDP 5-83-341 on June 9, 1983, and was authorized for acceptance by the CSLC at its May 9, 1996 meeting pursuant to Minute Item 63 (AD 254).

22338 Pacific Coast Highway

The dedication was recorded September 2, 1980 as Document 80-848043, Official Records of Los Angeles County, as an easement for public access and passive recreational use along the shoreline "... 25 feet wide as measured from the daily high water line which is understood to be ambulatory. In no case shall said access be closer than ten feet from the approved development ...". The dedication was authorized for acceptance by the CSLC at its September 9, 1993 meeting pursuant to Minute Item 22 (AD 206).

We anticipate the effect, if any, of the project being proposed on these offers of dedication will be addressed by the CCC in their consideration of your application for a coastal development permit.

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

ROBERT L. LYNCH, Chief
Division of Land Management

cc: Craig Ewing, City of Malibu