Item TU 13A

RECORD PACKET COPY

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

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
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Commission Action:	2/17/00
Staff:	CAREY
Staff Report on Findings:	4/20/00
Hearing Date on Findings:	5/9-12/00

STAFF REPORT: REVISED FINDINGS

APPLICATION NO: 4-97-243

APPLICANT: Beverley Higgins **AGENT:** Matthew Higgins

PROJECT LOCATION: 33400 Pacific Coast Highway, City of Malibu, Los Angeles County

COMMISSION ACTION: Approval with Modifications

DATE OF COMMISSION ACTION: February 17, 2000

COMMISSIONERS ON THE PREVAILING SIDE: Allgood, Daniels, Desser, Dettloff, Kruer, McClain-Hill, Nava, Reilly, Wan, and Woolley.

PROJECT DESCRIPTION: Request for the after-the-fact approval of the construction of a rock revetment at the toe of a coastal bluff across three vacant beachfront parcels to protect an existing driveway and residence, remedial grading (40 cu. yds. cut and 170 cu. yds. fill) to buttress damaged roadway. The application also includes the new construction of retaining walls (ranging in height from 2 ft. to 6 ft.) along roadway and below existing residence, paving existing driveway on the bluff face, installation of drainage devices, and offer to dedicate a lateral public access easement.

LOCAL APPROVALS RECEIVED: City of Malibu Approval in Concept

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action on February 17, 2000 approving Coastal Development Permit 4-97-243, with Special Conditions relating to the applicant's assumption of risk, implementation of the applicant's offer to dedicate lateral public access, conformance with geologic recommendations, construction responsibilities, sign restrictions, revised plans (to restrict graded road to maximum 15 foot width and prohibit grading), recordation of a geologic hazard restricted use area deed restriction, preparation and implementation of a bluff revegetation plan, timing of condition compliance, and timing of implementation of the project plans.

SUBSTANTIVE FILE DOCUMENTS: 1) Permit Applications 4-93-092 (Higgins); 5-90-1033 (Higgins); 5-90-830 (Sprik); 5-88-918 (Haagen); 5-86-160 (Haagen); 2) Geologic Memoranda, dated 6/17/98, 2/19/98, 12/26/97, 2/7/94; Response to Geology and Geotechnical Engineering Review Sheet, dated 10/15/98; Engineering Geologic Report for Proposed Single Family Residence, dated 1/3/91, all prepared by Donald B. Kowalewsky. 3) Drain Rock Toe for Rock Revetment, dated 5/16/99, prepared by David C. Weiss. 4) Wave Uprush Study Update, dated 3/3/99, prepared by Pacific Engineering Group. 5) Response to Coastal Commission Staff Report, dated 2/8/95; Response to Coastal Commission Permit Application Review, dated 3/9/94; Report of On-Site Observations, dated 3/1/93; and Wave Uprush Study, dated 3/13/90, all prepared by David C. Weiss. 5) Emergency Remedial Bluff Repairs and Roadway Repair, dated 12/29/97, prepared by RJR Engineering Group, Inc.

STAFF RECOMMENDATION:

MOTION: ***I move that the Commission adopt the revised findings in support of the Commission's action on February 17, 2000 concerning Coastal Development Permit 4-97-243.***

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the February 17, 2000 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS:

The Commission hereby adopts the findings set forth below for approval with conditions of Permit 4-97-243 on the ground that the findings support the Commission's decision made on February 17, 2000 and accurately reflect the reasons for it.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be

pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Compliance.** All development must occur in strict compliance with the proposal as set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

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

5. **Inspections.** The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.

6. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

7. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Assumption of Risk/Shoreline Protection

A. By acceptance of this permit, the applicant acknowledges and agrees to the following:

1. The applicant acknowledges and agrees that the site may be subject to hazards from liquefaction, storm waves, surges, erosion, landslide, flooding, and wildfire.

2. The applicant acknowledges and agrees to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development.

3. The applicant unconditionally waives any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards.

4. The applicant agrees to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

5. No future repair or maintenance, enhancement, reinforcement, or any other activity affecting the shoreline protective device approved pursuant to Coastal Development Permit 4-97-243, as shown on Exhibit 3, shall be undertaken if such activity extends the seaward footprint of the subject shoreline protective device. By acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to such activity that may exist under Public Resources Code section 30235.

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 include a legal description of the applicant's entire parcel and an exhibit showing the location of the shoreline protective device approved by this permit. 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.

2. 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 mean high tide line landward to the toe of the rock revetment, as shown on the Grading and Drainage Plan prepared by VPL Engineering, dated 11/10/99.

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.

3. Geology

All recommendations contained in the Geologic Memoranda, dated 6/17/98, 2/19/98, 12/26/97, 2/7/94; Response to Geology and Geotechnical Engineering Review Sheet, dated 10/15/98; Engineering Geologic Report for Proposed Single Family Residence, dated 1/3/91, all prepared by Donald B. Kowalewsky. as well as all recommendations contained in the Wave Uprush Study Update, dated 3/3/99, prepared by Pacific Engineering Group and the Response to Coastal Commission Staff Report, dated 2/8/95; Response to Coastal Commission Permit Application Review, dated 3/9/94; Report of On-Site Observations, dated 3/1/93; and Wave Uprush Study, dated 3/13/90, all prepared by David C. Weiss shall be incorporated into all final project plans and designs and shall be implemented during construction, and all plans must be reviewed and approved by the geotechnical and coastal engineering consultants prior to commencement of construction. Prior to the issuance of the coastal development permit, the applicant shall submit evidence to the Executive Director's satisfaction that the geotechnical and coastal engineering consultants have reviewed and approved all final project plans and designs and construction procedures as incorporating their recommendations, and have so indicated by stamping and signing all relevant final plans and drawings.

The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes in the proposed development approved by the Commission which may be required by the consultants shall require an amendment to the permit or a new coastal development permit. The Executive Director shall determine whether any changes to the plans approved by the Commission constitute a "substantial change."

4. Construction Responsibilities and Debris Removal

No stockpiling of construction materials or storage of equipment shall occur on the beach and no machinery will be allowed in the intertidal zone at any time. The permittee shall immediately remove from the beach area any and all debris that results from the construction activities.

5. Sign Restrictions

No signs shall be posted on the property subject to this permit (and/or on immediately adjacent properties) which (a) explicitly or implicitly indicate that the portion of the beach on Assessor's Parcel Numbers (APN) 4473-019-005, 4473-019-006, or 4473-019-007 located seaward of the bulkhead approved by Coastal Development Permit 4-97-243 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.*" To effectuate the above prohibitions, the permittee is required to

submit to the Executive Director for review and approval prior to posting the content of any proposed signs.

6. Revised Plans

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised grading plans which show that the graded areas of the driveway to the beach have been reduced in width to a maximum of 15 feet and that no new paving is provided on the roadway. The revised plans may also incorporate a drainage feature, such as a swale or v-ditch, within the 15-foot width of the roadway, that conveys drainage from the bluff face to the beach below. All areas outside the 15-foot maximum width shall be revegetated as required by Condition 7 below.

7. Bluff Revegetation Plan

Prior to issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a detailed bluff revegetation plan prepared by a qualified Landscape Architect, resource specialist or biologist. The plan shall be reviewed and approved by the geotechnical consultant to ensure that the plans are in conformance with the consultants' geotechnical recommendations. The plans shall include, but not be limited to, the following criteria:

a. Provisions and specifications for removal of all non-native plants, including provisions for phasing of removal, if necessary, to minimize the extent of area devoid of vegetation.

b. Bluff revegetation program which utilizes only native drought resistant plants, endemic to coastal bluffs. The revegetation program shall use a mixture of seeds and container plants to increase the potential for successful revegetation. All areas of the bluff face not developed with the driveway, revetment, or retaining walls approved in Permit 4-97-243 shall be planted for erosion control and visual enhancement purposes. No hydroseeding shall occur in areas of the bluff where native plant material is already established. A temporary irrigation system may be used until the plants are established, as determined by the consulting landscape architect or resource specialist, but in no case shall the irrigation system be in place longer than three (3) years.

c. An interim erosion control plan for the interim stabilization of disturbed areas on the coastal bluff. The interim erosion control measures shall include, but not limited to: sand bag barriers or silt fencing, installation of geotextiles or mats for disturbed areas on the bluff and measures to ensure stockpiled materials are stabilized. These interim erosion control measures shall be maintained until the permanent drainage system is installed and the disturbed areas are revegetated.

d. Monitoring and maintenance program to ensure the successful revegetation of the bluff. The bluff revegetation plan shall be implemented within 30 days of the completion of the

roadway, drainage, and retaining wall improvements. However, the removal of exotic vegetation and revegetation with native species may be carried out in several phases to minimize bluff disturbance. The plan shall specify the areas for phased removal and the timing necessary for each phase. Revegetation shall provide 90 percent coverage within five (5) years and shall be repeated, if necessary, to provide such coverage. This time period may be extended by the Executive Director for good cause.

Five years from the date of the issuance of this permit, the applicant shall submit, for the review and approval of the Executive Director, a revegetation monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the bluff revegetation is in conformance with the revegetation plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

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

8. Geologic Hazard Restricted Use Area

A. No development, as defined in Section 30106 of the Coastal Act, shall occur on the bluff face portions of Assessor's Parcels Number 4473-019-003, -004, -005, -006, and -007, as shown in Exhibit 5 except for:

1. Construction of the rock revetment and drainage structures, remedial driveway grading limited to 15-foot width, retaining walls, and bluff revegetation approved under Coastal Development Permit 4-97-243.

2. Repair and maintenance of development approved under Coastal Development Permit 4-97-243, provided that such repair or maintenance is in conformance with a Commission-approved amendment or new coastal development permit, unless the Executive Director determines that no amendment or coastal development permit is required.

B. Prior to issuance of the coastal development permit, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development in the designated geologic hazard restricted area. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the restricted area. The deed restriction shall run with the land, binding all successors and assigns, and

shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

9. Condition Compliance

Within 90 days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

10. Implementation of Project Plans

Within 60 days of issuance of this coastal development permit, or within such additional time as the Executive Director may grant for good cause, the applicant shall implement the approved project plans to stabilize the bluff, including the revetment, buttress, retaining walls, paving, and drainage devices. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description.

The proposed project site is located on Encinal Beach in the western area of the City of Malibu. The applicant owns five parcels that make up the project site. The parcel map for the project site is shown in Exhibit 2. Access to the project site is provided by a driveway from Pacific Coast Highway. Two of the parcels contain area on the top of a coastal bluff, as well as area on the face of this bluff. The western lot contains the applicant's residence and the eastern lot is developed with a driveway and deck associated with the applicant's residence. The three other parcels owned by the applicant are vacant and are located seaward of the other two. These three parcels contain bluff face as well as sandy beach areas. There is a private beach access driveway which descends the bluff face to the beach below on the applicant's property.

The applicant requests after-the-fact approval of the construction of a rock revetment across the three vacant beachfront parcels. The applicant's consultants contend that the revetment is necessary to protect the toe of the bluff from wave erosion because further erosion could destabilize the bluff as well as the existing residence above. The applicant

also requests after-the-fact approval of remedial grading (40 cu. yds. cut and 170 cu. yds. fill) to regrade the toe of the bluff and buttress the damaged roadway. The fill was imported to the site and dumped down the bluff face from the road above. Finally, the application also includes the new construction of retaining walls (ranging in height from 2 ft. to 6 ft.) along the roadway and below the existing residence, paving the existing road on the bluff face, installation of drainage devices, and an offer to dedicate public access to the beach seaward of the revetment across the three lots.

Permit Continuance from the July 1999 Hearing

The proposed project was originally heard by the Commission at its July 13, 1999 hearing. Several issues were raised by the Commission in relation to the permit history of the single family residence and driveway on the proposed project site, as well as technical issues relating to the geologic stability of the site, the necessity for the proposed revetment, and the design of the revetment. The hearing was continued so more information could be assembled by the applicant and staff.

Since that hearing, the Commission's Engineer, Lesley Ewing has visited the site with the applicant and the applicant's geologic consultant and has provided staff and the applicant with comments and recommendations. This information is discussed in Sections C and D below.

Staff has also reviewed Commission records and the applicant has furnished supplemental information with regard to the permit history of the existing residence and driveway on the bluff face. This information is discussed in Section B below.

Emergency Permits

The subject permit application is in part a follow-up to Emergency Permit Applications 4-97-243-G (Higgins) and 4-98-039-G (Higgins). In Application 4-97-243-G, the applicant requested approval to pave the roadway on the bluff face in order to minimize infiltration of runoff into terrace deposits on the bluff. The application was later modified to include the construction of a temporary sand berm at the toe of bluff to protect from wave erosion. Staff determined that the paving of the access road was not necessitated by an emergency. However, Emergency Permit 4-97-243-G was granted on January 8, 1998 for the construction of a sand berm across the property to protect the toe of the bluff from wave erosion.

In February 1998, the applicant submitted Emergency Permit Application 4-98-039-G in response to wave erosion to the base of the bluff during El Nino storms. The applicant stated that a sand berm had been constructed along the beach on three different occasions, but that storm waves had continued to erode the bluff. In this application, the applicant requested approval to: 1) construct a rip-rap revetment to protect the roadway, drainage structure and slope; 2) buttress the destroyed portion of the roadway and slope; 3) perform remedial maintenance on the roadway; 4) construct retaining wall

below the existing residence; and 5) pave the roadway to prevent water infiltration. On February 20, 1998, Emergency Permit 4-98-039-G was granted for:

> The construction of a 100-foot long (approximate), 14 foot high rock rip-rap revetment. The revetment shall be tied into the existing rip-rap revetment located on the adjacent property to the east and shall run along the entire length of the property. The purpose of the rock revetment is to protect the coastal bluff from further erosion which may cause harm to the existing structures of the property.

However, staff determined that the other four requested items (buttress grading, roadway maintenance, retaining wall, and road paving) were not necessary on an emergency basis and were not made part of the emergency permit approval. This emergency permit was approved subject to nine conditions of approval. Condition No. 2 stated that: "Only that work specifically described above and for the specific property listed above is authorized. Any additional work requires separate authorization from the Executive Director". Additionally, Condition No. 3 stated that: "The work authorized by this permit must be completed within 30 days of the date of this permit".

In this case, the permitted construction of the rock revetment was not completed or even begun within 30 days of the issuance of the emergency permit. In fact, the construction of the rock revetment and other development was begun in May 1998. Furthermore, the applicant carried out remedial grading to create a buttress at the toe of the bluff, including the dumping of fill material down the bluff face from the road above. This development was not permitted. As such, at the time the applicant attempted to carry out this construction, the revetment was unpermitted because it was not completed within 30 days of the issuance of the emergency permit and the grading was unpermitted because it was not even approved in the emergency permit.

As such, when the applicant began the construction in May 1998, there was no active coastal development permit. Additionally, the applicant did not have permits from the City of Malibu. In May 1998, the City of Malibu issued a stop-work notice to the applicant, halting the construction before the revetment or buttress were complete. Therefore, these elements of the subject permit application are requests for after-the-fact approval, even though the revetment and buttress have yet to be completed.

B. Background.

As described above, there is a driveway on the proposed project site which extends from Pacific Coast Highway across a parcel not included in the subject site, across the blufftop portion of the site providing access to the existing single family residence, and switchbacks down the bluff face to the beach below. The bluff face portion of this roadway is currently in disrepair. Most of this portion of the driveway is unpaved and subject to erosion from uncontrolled runoff and lack of vegetation. The original construction of a roadway on the project site predated the effective date of the California Coastal Zone Conservation Act of 1972 (Proposition 20). A photograph of the site from 1961 (exact date in 1961 unknown) in the Commission files clearly shows this road in a

rough-graded condition, although it is clearly not paved. In another photograph from the files of the South Coast Regional Commission dated 1972 (exact date in 1972 unknown), the road is in a paved condition, but no other structures are present on site.

At the request of the Commission after the July hearing, the applicant has submitted additional information with regard to the origins of the road. A copy of a grading permit from the County of Los Angeles granted to Jean Houle for the subject site has been submitted (Exhibit 6). The work approved under this permit is "Grade and pave road to beach for access to future residence and gst (sic) house". The grading permit application was filed on 9/1/61 and the final certification of the County engineer was noted on 11/15/61. In addition, the applicant submitted a copy of a "Complaint for Foreclosure of Mechanic's Lien-Breach of Contract", wherein a grading and paving contractor is suing Jean Houle for payment for the grading and paving of approximately 8,000 sq. ft. of driveway between 10/11/61 and 11/14/61. Although this document does not contain any information about the final disposition of this action, the time frame noted is consistent with the grading permit. Based on the whole of this evidence, the driveway was graded and paved prior to Proposition 20.

In addition to the development of the driveway, there has been an extensive permit application history both on the applicant's property and adjacent parcels.

1. Past Commission Actions

a. Subject Project Site.

There have been several past Commission actions on several of the five parcels that make up the proposed project site. (Exhibit 2 shows the assessor's parcel map for the project site).

Proposition 20 Actions

In September 1972, Edward Higgins placed a pre-fabricated factory-built structure, consisting of two separate sections on temporary wooden supports on Parcel 4473-019-003, prior to securing any building permits from the County of Los Angeles. A building permit was secured for this structure on January 26, 1973. However no construction was undertaken on the site prior to the February 1, 1973 effective date of Proposition 20. (Staff would note that similar structures were also placed on two of the beachfront parcels which are part of the proposed project site considered herein. Further, two similar structures were placed on the two parcels immediately adjacent to the proposed project site to the north). The Higgins applied to the Regional Commission for a determination of vested rights. The vested rights request was denied by the Commission.

Subsequently, the Higgins applied for Permit P-12-19-73-2414 for the placement of 4 modular homes on Parcels 4473-019-002, -003, -005, and -007 . Part "C" of this permit

was to approve the placement of the modular home that is the subject of Permit 4-97-243 (Parcel 4473-019-003). This permit application was denied by the South Coast Regional Commission. The staff report for this permit states that: "This is a suitable use for the general area but the specific site if (sic) unsuitable for this type of intensive use. The instability of the bluff would suggest removal to another site". The following reasons are listed as the basis for the recommendation of denial:

1. This structure represents a threat to bluff stability
2. The structure should be removed
3. Inconsistent with existing land use in the area
4. Not feasable (sic) to meet County requirement of 2 car garage or carport on this site.

The applicants appealed the decision to the State Coastal Commission (Appeal 113-74). The appeal was also denied. [Staff would note that the other structures placed on other parcels that make up the subject project site were similarly denied.]

In a subsequent court action, the trial court found that the Higgins had not obtained a permit from the Commission for the development of any of the lots (including that containing the subject residence) and that none of the development was exempt from the permit requirement by reason of substantial lawful construction on the property prior to February 1, 1973. The court issued judgment enjoining development of the properties and imposing civil penalties. The Higgins appealed the judgment but the judgment was affirmed by the Court of Appeal on March 30,1977.

Staff could locate no information in the Commission's files or the Attorney General's files pertaining to the enforcement of this judgment. The applicant's agent has asserted that an "informal agreement" was entered into between the Commission and Higgins whereby Higgins agreed to remove the two units placed on the beach lots in return for the Commission permitting the subject residence as well as two other modular units on adjacent parcels. [Staff would note that no evidence of any agreement, informal or otherwise was provided.] The applicant's agent has also provided evidence that the monetary portion of the judgment was satisfied in 1979.

The two modular units on the beach were eventually removed. However, the Commission did not take action to require removal of the residence on Parcel 4473-019-003, which is the subject of this application and, in fact, the Commission approved additions to the residence. In December 1980, the Commission considered three permits (A-80-7340, A-80-7341, and A-80-7342) for additions to the modular units that remained on Parcels 4473-019-001, -002, and –003. Permit A-80-7342 was the application for additions to the structure that is the subject of the subject permit application. This administrative permit was approved for the: "addition of a carport, master bedroom, recreation room and decks to an existing single family residence". The applicant's agent has provided a copy of a transcript of a portion of the December 1, 1980 hearing tape of the South Coast Regional Commission (Exhibit 7 contains the

relevant part). During the hearing, Commission Chair Ruth Gallanter asked several questions about the legality of the modular units considered under these three permits. In response to her questions, staff states that:

> These are ones that were on violation for a long time, but the court did not order them removed. And, so although they were put on after the Coastal Act was in effect, no permit was ever received for them.

Given this exchange, it seems clear that the Commission was aware of the unpermitted status of the subject residence when the additions were approved. Permit A-80-7342 is attached as Exhibit 8. The applicant's agent asserts that the Commission's approval of this permit was in furtherance of the "informal agreement". No evidence has been provided that suggests the Commission was satisfying any agreement with the applicant in approving the additions, but they were aware that the "existing" residence had not been permitted and had been the subject of court action. The applicant has submitted evidence of a County building permit for the approved additions and these additions were constructed.

Other Permit Actions

5-90-830 (Sprik)

In 5-90-830 (Sprik), the Commission denied the construction of a 3,900 sq. ft. single family residence on Parcel No. 4473-019-005. The proposed structure would have cascaded down the bluff to the beach level. The Commission denied the permit based on its inconsistency with the visual resource, hazards, access, and environmentally sensitive habitat policies of the Coastal Act. The Commission found that the proposed residence could not be considered infill development as the bluff in the area was largely undeveloped. The Commission also found that if a home were approved in the proposed location, the applicants would likely later request a seawall to protect the home and that it was unlikely that such a protective device could be found consistent with the Coastal Act. The Commission further found that the residence would have adverse cumulative impacts on public access. Finally, the Commission found that the proposed project would have adverse impacts on the environmentally sensitive habitat area on the bluff face.

5-90-1033 (Higgins)

The Commission subsequently denied Permit 5-90-1033 (Higgins) for the construction of a 4,003 sq. ft. single family residence on Parcels No. 4473-019-004 and 007 (as adjusted by a proposed lot line adjustment). The Commission denied this permit application based on its inconsistencies with the visual resource, hazards, access, and ESHA policies of the Coastal Act. In this permit application, the applicant proposed a lot line adjustment whereby the project site would be combined with a portion of the lot above it, ostensibly to give a potential building pad area on the bluff face that would not

extend to beach level. However, this proposed building pad area was extremely steep and highly eroded. The Commission found that this proposed project could not be considered infill development and that it would destroy a relatively undeveloped bluff face. They further found that a home built in this location could be subject to hazards from wave damage and erosion and that it was very likely that in the future the applicant would request a protective device to protect the structure. It was finally found that the proposed residence would have adverse impacts on coastal access and on the environmentally sensitive habitat area on the bluff face.

4-93-092 (Higgins)

Permit Application 4-93-092 (Higgins) was denied by the Commission. This application proposed the construction of a 14-foot high, 120-foot long rock revetment across the three beachfront parcels (Parcels Nos. 4473-019-005, 006, and 007). The applicants originally proposed the revetment to protect a cabana on the site. However, staff considered this structure to be temporary in nature, and in any case, unpermitted. The applicants later revised their application to request the revetment to protect an existing roadway and turnaround area on the site. However, the Commission found that while the road predated Proposition 20, the bottom portion of the road and turnaround area had been modified without permits. Additionally, the Commission found that there was no evidence that the road or turnaround were in danger from erosion. Finally, the Commission found that there were alternatives to the proposed project such as regrading and revegetating the toe of the bluff which could be effective in maintaining the road. The Commission findings state that:

> Given the minimal amount of erosion which has taken place on the site to date, it would be premature at this point to commit this beach to a revetment when there are clearly less environmentally damaging alternatives available. It is possible that the erosion situation on the site may change in the future. Nothing precludes the applicants from applying at a later date to remedy any future problems.

It should be noted that the applicant did not apply to carry out such a project as regarding and revegetating the toe of the bluff.

4-98-223-G (Higgins)

As described above, the applicant applied for and was granted two emergency permits (4-97-243-G for a sand berm, and 4-98-039 for the construction of a rock revetment). However, as discussed above, construction was carried out after the 30 days that the emergency permit was effective and development was undertaken that had not been approved under the emergency permit. As such, when the applicant began the construction in May 1998, there was no active coastal development permit. Additionally, the applicant did not have permits from the City of Malibu. In May 1998, the City of Malibu issued a stop-work notice to the applicant, halting the construction before the revetment or buttress were complete. In August 1998, the applicant submitted a request for an emergency permit (4-98-223-G) to complete the construction of the

buttress fill to support the coastal bluff, retaining wall adjacent to the roadway, and repair of underground drainage devices. This request for an emergency permit was denied. Staff determined that no emergency existed at the time of the application.

b. Adjacent Parcels.

The Commission has taken several actions on the adjacent parcel to the east of the project site. In Permit 5-86-160 (Haagen), the Commission approved the demolition and rebuilding of an existing cabana, regrading of an existing access path and the construction of a rock revetment. At the hearing for this permit, the applicant's agent presented information to the Commission that the revetment was pre-existing at the proposed location. The Commission found that, on the basis of this information, the applicant's proposed improvements to the revetment were "repair and maintenance". Permit 5-86-160 was approved with conditions relating to revised plans, lateral access offer to dedicate, assumption of risk, and a requirement to remove any rock which might migrate from the revetment. The applicant failed to meet the permit conditions and begin construction before this permit expired. In Permit 5-88-918 (Haagen), the Commission approved the very same project approved under Permit 5-86-160 subject to the same conditions.

2. Pending Applications.

The applicant has a separate permit application pending before the Commission. Permit Application 4-95-105 (Higgins) was submitted in May 1995 for the after-the-fact approval of additions to the existing residence, stairs along the roadway, deck, and a lot-line adjustment. At the time of submittal, staff requested that the applicant submit additional information in order for staff to fully analyze the permit request and prepare a recommendation for Commission action. Most of the requested items have been submitted by the applicant. Still outstanding is evidence that the proposed development has received approval from the local government (City of Malibu). Staff has received verbal information from the City of Malibu that the City has determined that the additions in question require no approval from the City because they were carried out prior to its incorporation. However, to date staff has not received written confirmation of the City's determination. At this time therefore, the application remains incomplete, but still pending. If indeed the City takes the position that no City approval is required, staff will schedule application 4-95-105 for Commission hearing.

C. Shoreline Protective Devices

The applicant proposes to construct a rock revetment across the width of the project site. The proposed revetment would be located at the toe of a coastal bluff. The revetment would be approximately 110 feet in length, 30 feet wide, and 14 feet high. The revetment would tie-in to the return wall of an existing revetment on the downcoast end of the property. On the upcoast side of the property, the revetment would be joined to a bedrock area of bluff. At the recommendation of the Commission's Engineer, the

applicant has submitted a revised revetment plan which shows a more concave design. This revision was recommended to reflect waves back to the south rather than onto the toe of the bluff on the upcoast property.

The applicant contends that the bluff on the proposed project site was subject to extreme erosion during the El Nino Storms in 1997-1998, resulting in the loss of up to 30 feet of the toe of the bluff. The applicant has submitted evidence, in the form of investigations conducted by coastal engineers and an engineering geologist, that a shoreline protective device and other improvements are needed to prevent further erosion of the bluff, and to protect existing development from damage. The applicant's consultants contend that if a shoreline protective device is not constructed on the subject site, the bluff would continue to erode, further damaging the existing roadway, further destabilizing the bluff slopes, and causing support for the existing residence to be lost.

After identifying the applicable Coastal Act sections upon which the Commission relies as the standard of review of the proposed project, and the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) policies upon which the Commission has relied as guidance in past permit decisions, the discussion of the impacts of the shoreline protective device will proceed in the following manner:

First, the staff report describes the physical characteristics of the Encinal Beach shoreline; second the report analyzes the dynamics of the Encinal Beach shoreline; and third, the report analyzes the location of the proposed shoreline protective device in relation to wave action. Finally, the report evaluates whether the proposed shoreline protective device is warranted, weighing the available evidence in light of the Coastal Act requirements and the past guidance of the LUP policies, and whether the proposed revetment will adversely impact the shoreline sand supply and shoreline processes.

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

> 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.

Additionally, Section **30253** of the Coastal Act states 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.

Malibu/Santa Monica Mountains Land Use Plan (LUP)

To assist in the determination of whether a project is consistent with sections 30235, 30250(a), and 30253 of the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) for guidance. The Malibu LUP has been found consistent with the Coastal Act and provides specific standards for development along the Malibu coast. For example, policies 166 and 167 provide, in concert with Coastal Act section 30235, that revetments, seawalls, cliff retaining walls and other shoreline protective devices be permitted only when required to serve coastal-dependent uses, to protect existing structures or new structures which constitute infill development and only when such structures are designed and engineered to eliminate or mitigate the resultant adverse impacts on the shoreline sand supply. In addition, Policy 153 indicates that development of sites that are exposed to potentially heavy tidal and wave action shall require that development be set back a minimum of ten (10) feet landward from the mean high tide line.

1. Proposed Project and Site Shoreline Characteristics

The City of Malibu includes a narrow strip of coast that is some 27 miles long, backed by the Santa Monica Mountains. The proposed project site is located on the less densely developed west end of Malibu. The applicant's proposed project is located on Encinal Beach, a narrow sandy beach backed by high, steep bluffs. The bluffs backing this beach contain areas of highly erodeable deposits as well as bedrock outcrops of harder materials. This beach is located in an area between Nicholas Canyon County Beach and the three pocket beaches that make up the Robert H. Meyer Memorial State Beach (El Pescador, La Piedra, and El Matador). The project site consists of sandy beach area, a steep bluff face developed with a road, and bluff top area developed with a single family residence, and decks, driveway. There are several resistant rock outcrops located in the intertidal zone seaward of the project site.

The property immediately downcoast of the project site has similar site characteristics. There is an existing grouted rock revetment located on this property which is located significantly seaward of the toe of the bluff. There is a grout rock return wall at the end of this revetment which ties into the bluff along the downcoast edge of the proposed project site. The end of this wall is shown on the grading plans for the subject project, shown in Exhibit 3. As noted above, improvements to this revetment were found by the Commission to constitute repair and maintenance.

On the property immediately upcoast of the project site, the bluff face is composed of more resistant bedrock outcrops. The applicant's consultants have stated that this material: "is considered non-scourable from a coastal engineering perspective". The toe

of the bluff on the upcoast property is located slightly seaward of the toe of the bluff on the subject site.

The applicant's consultants have identified a process at work on the subject site which is asserted to result in increased erosion to the toe of the bluff. As early as 1993, David Weiss stated that the wave action acting on the toe of the bluff is magnified due to the "flushing" action of waves being forced between the rock revetment on the downcoast property and the rock outcroppings located in the intertidal zone. Weiss's 1993 report concluded that:

> The scouring action of the water is intensified as the waves are forced between the natural rock outcropping on your beach and the existing rock revetment. The water is reflected off the face of the revetment and onto the toe of the adjacent embankment.

The Commission Engineer has confirmed that in addition to poor drainage and the lack of or wrong types of vegetative cover, the location and design of the revetment on the downcoast property has contributed to bluff instability. The existing downcoast revetment is located far out onto the beach, is grouted between the rocks, and is constructed at an angle oblique to the shoreline. The grouting reduces the amount of energy that can be absorbed by the revetment, increasing the amount that is reflected from the structure. Additionally, the location and angle of the revetment will direct much of the reflected wave energy onto the toe of the bluff on the proposed project site.

As described in the background section above, in 1993, the Commission considered a permit application (5-93-092) for the construction of a rock revetment across the three lots of the subject site. The applicants originally proposed the revetment to protect a cabana on the site. However, staff considered this structure to be temporary in nature, and in any case, unpermitted. The applicants later revised their application to request the revetment to protect an existing roadway and turnaround area on the site. However, the Commission found that while the road predated Proposition 20, only minor erosion has taken place and that there was no evidence that the road or turnaround were in danger from erosion. Finally, the Commission found that there were alternatives to the proposed project such as regrading and revegetating the toe of the bluff, which could be effective in maintaining the road.

Unlike the conditions in 1993, the toe of the bluff on the proposed project site sustained more significant erosion as the result of the 1997-1998 El Nino storm waves. The waves generated by heavy surf conditions attacked the toe of the bluff. The applicant's consultants investigated the site and concluded that:

> During the February 1998 El Nino storms, the bluff on the subject property suffered extensive erosion. The base of the bluff eroded landward approximately 30 feet. The lower portion of the driveway was eroded away by the avulsive

nature of the wave uprush[1]. The bedrock slope at the base of the bluff protected the property to the west. The existing rock revetment on the east adjacent property protected that property.

In addition to damage to the existing roadway, the applicant's engineering geologist determined that wave erosion at the base of the bluff decreased overall slope stability on the site and endangered the residence at the top of the bluff which is supported on standard foundations. The applicant has submitted evidence, in the form of investigations conducted by coastal engineers and an engineering geologist, that a shoreline protective device and other improvements are needed to prevent further erosion of the bluff, and to protect existing development from damage. The applicant's consultants contend that if a shoreline protective device is not constructed on the subject site, the bluff would continue to erode, further damaging the existing roadway, further destabilizing the bluff slopes, and causing support for the existing residence to be lost.

Additionally, observation by staff since at least 1990 indicates that much more extreme erosion has taken place at the toe of the bluff on the project site after the El Nino storms of 1998. As detailed above, the Commission has considered various applications for development on the proposed project site. The past condition of the bluff did not indicate significant erosion of the base of the bluff necessitating the construction of shoreline protective devices. However, the increased erosion after 1998 is readily apparent.

Further, as discussed above, after the proposed project was continued from the July 1999 hearing, the Commission Engineer Lesley Ewing visited the project site with the applicant and the applicant's geologic consultant to assess the threat to development on the site and the proposed stabilization. She concluded that continued erosion of the toe of the bluff will threaten the residence. She states that the residence will probably be threatened in the next 5 to 10 years. However, one large storm could change the situation significantly or mild weather for the next ten years could postpone the need for protection. The Commission Engineer determined that eventually, without the currently proposed revetment, the bluff will retreat landward such that a much larger revetment and or bluff retaining wall could be required to protect the existing development.

Based on the consultant's analysis and staff's observations of the wave erosion that has taken place at the base of the bluff, the Commission concludes that that it is necessary to protect the toe of the bluff from further erosion in order to prevent further damage to the existing structures on the site and to avoid the necessity to construct larger protective structures later. The applicant's consultants have determined that continued wave erosion would result not only in further damage to the existing road, but would

[1] The Commission does not agree that the erosion of the driveway was the product of an "avulsive" event. The term "avulsion" is a legal boundary term and not a term that coastal engineers would use to describe physical events on the shoreline.

also lead to increased slope instability and loss of support for the existing residence. The applicant's geologist claims that the bluff could suffer a catastrophic failure that could occur suddenly at any time and this threatens the house now. Therefore the applicant claims that the revetment is needed now at the proposed location, where the toe of the bluff is currently located. Additionally, as noted above, the Commission's Engineer has stated that eventually, without the currently proposed revetment, bluff retreat could necessitate the construction of a much larger protective device. The Commission finds that the evidence presented by the applicant indicates that the bluff may be subject to a sudden catastrophic failure that would threaten the stability of the existing house or require the construction of a larger protective device in the future. As such, the Commission finds that the proposed revetment is necessary to protect existing development from wave erosion, as allowed under Section 30235 of the Coastal Act.

Beach Erosion Pattern

Having defined Encinal Beach as a narrow bluff-backed beach, the next step is to consider the overall trend of sand supply on the beach. Evaluating whether or not a pattern of beach erosion exists is the key factor in determining the impact of the proposed seawall on the shoreline. Generally, beaches fit into one of three profile categories: 1) eroding; 2) equilibrium, or 3) accreting. The persistent analytical problem in dealing with shore processes in California is distinguishing long-term trends in shoreline change from normal seasonal or cyclical variation.

The applicant's consultants have provided no information on shoreline change in the area of the proposed project site. However, Encinal Beach has been identified as an eroding beach. The U.S. Army Corps of Engineers, Los Angeles District, identifies the beaches from the Ventura County line to Lechuza Point as trending from stable to slowly eroding (Reconnaissance Study of the Malibu Coast, 1994). An earlier study, titled Shoreline Constraints Study, by Moffatt and Nichols (June 30, 1992) concluded that Encinal Beach is a retreating shoreline, and provides confirmation of the Army Corps analysis that the beach shows evidence of a long term erosional trend.

Additionally, observation by staff since at least 1990 indicates erosion taking place at the project site. Additionally, investigations conducted by the applicant's consultants over the years has indicated increased erosion. When the Commission considered an application (5-90-830) for development of a single family residence on one of the three bluff face/beachfront lots, the wave uprush study prepared for the project indicated that, in the opinion of the consultant (David C. Weiss, 3/13/90) a residence could be constructed on the bluff face, supported on caissons, and no shoreline protective device would be necessary for protection of the residence (this application was denied). In 1993, the applicant's consultants identified the presence of erosion at the base of the bluff and the applicant applied (5-93-092) for the construction of a revetment to protect an unpermitted beach cabana and the existing roadway. At that time, the Commission found that the erosion at the toe of the bluff was minor and that alternatives, such as regrading or filling the toe to repair the existing road, existed to the construction of a

shoreline protective device. Finally, after the El Nino storms in 1998, the base of the bluff experienced significant erosion, which the applicant's consultants have determined necessitates the construction of the proposed revetment and road buttressing. Staff site visits to the site after these storms confirmed that significant erosion of the bluff has taken place. As such, the trend on the site has been increasing erosion over time.

Furthermore, the Commission notes that many studies performed on both equilibrium and eroding beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device is placed. Therefore, based on the preponderance of evidence of these studies, considered in conjunction with site-specific evidence of beach erosion, the Commission concludes that the site proposed for placement of a seawall is located on an eroding beach.

2. Location of the Proposed Shoreline Protective Device in Relation to Wave Action.

The Commission notes that loss of beach is widely understood to occur when shoreline protective devices are placed on equilibrium or eroding beaches. To determine what the impacts of the proposed bulkhead on the shoreline are likely to be, the location of the proposed protective device in relationship to the expected wave runup must be analyzed.

The applicant has submitted a number of reports prepared by the coastal engineering consultants, including a wave uprush study, dated 3/13/90 for the construction of a residence on one of the beachfront parcels (This Application 5-90-830 was denied), by David C. Weiss as well as a wave uprush study update, dated 3/3/99, prepared by Pacific Engineering Group. Based on the consultant's information, the proposed revetment would be located landward of documented positions of the mean high tide line. To avoid approving development that will encroach on public tidelands during any time of the year, the Commission, usually relying on information supplied by the State Lands Commission, will look to whether the project is located landward of the most landward known location of the mean high tide line. In this case, the State Lands Commission has reviewed the proposed revetment and presently does not assert a claim that the project intrudes onto sovereign lands (SLC letter dated February 22, 1999). Notwithstanding the location of the mean high tide line, wave uprush will extend to the revetment during high tide and low beach profile conditions in the winter.

It is important to accurately calculate the potential of wave runup and wave energy to which the seawall will be subject. Dr. Douglas Inman, a widely recognized authority on Southern California shoreline processes, states that[2]:

> While natural sand beaches respond to wave forces by changing their configuration into a form that dissipates the energy of the waves forming them, seawalls are rigid and

[2] Letter from Dr. Inman to Coastal Commission staff civil engineer Lesley Ewing dated February 25, 1991.

> fixed, and at best can only be designed for a single wave condition. Thus, seawalls introduce a disequilibrium that usually results in the reflection of wave energy and increased erosion seaward of the wall. The degree of erosion caused by the seawall is mostly a function of its reflectivity, which depends upon its design and location.

Rock revetments operate on the principle that wave energy is dissipated within the voids of the wall, thereby producing less wave reflected energy than a smooth vertical wall. However, similar to a vertical wall, a rock revetment is a rigid structure fixed in place and will reflect wave energy and produce the same type of erosional impacts cited by Dr. Inman above.

In past permit actions, the Commission has found that one of the most critical factors controlling the impact of a shoreline protective device on the beach is its position on the beach profile relative to the surf zone. All other things being equal, the further seaward the revetment is, the more often and more vigorously waves interact with it. The best place for a revetment, if one is necessary, is at the back of the beach where it provides protection against the largest of storms.

The applicant's consultants used two design waves to determine the wave uprush to be expected on the proposed project site. The two waves were found to represent the most hazardous situations for the subject beach. An 11.7 ft. wave with a period of 10 seconds was found to have minimal effect on structures due to energy loss. The more serious wave was a 3.3ft. wave with a period of 18 seconds. It was determined that the uprush zone from this wave would extend to elevation 13.9 feet MSL on the proposed revetment.

Based on the above discussion, the Commission finds that the proposed revetment, at its proposed location, has the potential to encroach into an area of the beach that is currently subject to wave action during storm and high tide events. As previously discussed, the Commission finds that Encinal Beach is a narrow, eroding beach and that the proposed revetment will, at times, be subject to wave action during storm and/or high tide events. Therefore, the following section evaluates the impacts of the proposed seawall on the beach based on the above information which identified the specific structural design, the location of the structure, and the shoreline geomorphology.

a. Effects of the Shoreline Protective Device on the Beach

The proposed 110 ft. long rock revetment will be constructed on the sandy beach at the base of the coastal bluff. Although the precise impact of a structure on the beach is a persistent subject of debate within the discipline of coastal engineering, and particularly between coastal engineers and marine geologists, it is generally agreed that a shoreline protective device will affect the configuration of the shoreline and beach profile. Adverse impacts upon the shoreline may accrue as the result of beach scour, end scour (undermining of the beach areas at the ends of the seawall), the retention of potential beach material behind the wall, the fixing of the back beach and the interruption of

alongshore processes. To evaluate these potential impacts relative to the proposed structure and its location at Encinal Beach, each of the identified effects will be evaluated below.

(1) Beach Scour

Scour is the removal of beach material from the base of a cliff, seawall or revetment due to wave action. The scouring of beaches caused by seawalls is a frequently-observed occurrence. When waves impact a hard surface such as a coastal bluff, rock revetment, or vertical bulkhead, some of the energy from the wave will be absorbed, but much of it will be reflected back seaward. This reflected wave energy in combination with the incoming wave energy, will disturb the material at the base of the seawall and cause erosion to occur in front and down coast of the hard structure. This phenomenon has been recognized for many years and the literature acknowledges that seawalls do affect the supply of beach sand. The Wave Uprush Study prepared by the applicant's coastal engineer notes that the maximum wave uprush applicable to the subject site, will extend to the proposed revetment.

The Commission notes that the proposed revetment will be located seaward of the maximum wave uprush and will therefore be periodically acted upon by wave action. In past permit actions, the Commission has found that shoreline protective devices which are subject to wave action tend to exacerbate or increase beach erosion. The following quotation summarizes a generally accepted opinion within the discipline of coastal engineering that:

> These structures are fixed in space and represent considerable effort and expense to construct and maintain. They are designed for as long a life as possible and hence are not easily moved or replaced. They become permanent fixtures in our coastal scenery but their performance is poor in protecting community and municipalities from beach retreat and destruction. Even more damaging is the fact that these shoreline defense structures frequently enhance erosion by reducing beach width, steepening offshore gradients, and increasing wave heights. As a result, they seriously degrade the environment and eventually help to destroy the areas they were designed to protect.[3]

The above 1981 statement signed by 94 respected coastal geologists indicates that sandy beach areas available for public use can be harmed through the introduction of seawalls. Thus, in evaluating an individual project, the Commission assumes that the principles reflected in that statement are applicable. To do otherwise would be inconsistent with the Commission's responsibilities under the Coastal Act to protect the public's interest in shoreline resources and to protect the public's access along the ocean and to the water, as discussed in more detail in the subsequent section concerning public coastal access.

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[3] Saving the American Beach: A Position Paper by Concerned Coastal Geologists (March 1981, Skidaway Institute of Oceanography), pg. 4.

The impact of seawalls as they are related to sand removal on the sandy beaches is further documented by the State Department of Boating and Waterways:

> While seawalls may protect the upland, they do not hold or protect the beach which is the greatest asset of shorefront property. In some cases, the seawall may be detrimental to the beach in that the downward forces of water, created by the waves striking the wall rapidly remove sand from the beach.[4]

Finally this observation was underscored more recently in 1987 by Robert G. Dean in "Coastal Sediment Processes: Toward Engineering Solutions":

> Armoring can cause localized additional storm scour, both in front of and at the ends of the armoring...Under normal wave and tide conditions, armoring can contribute to the downdrift deficit of sediment through decreasing the supply on an eroding coast and interruption of supply if the armoring projects into the active littoral zone.[5]

It is generally agreed that where a beach is eroding, the erection of a shoreline protective device will eventually define the boundary between the sea and the upland. This result can be explained as follows: on an eroding shoreline fronted by a beach, a beach will be present as long as some sand is supplied to the shoreline. As erosion proceeds, the entire profile of the beach also retreats. This process stops, however, when the retreating shoreline comes to a seawall. While the shoreline on either end of the seawall may continue to retreat shoreline retreat in front of the seawall stops. Eventually, the shoreline fronting the shoreline protective device protrudes into the water, with the winter mean high tide line fixed at the base of the structure. In the case of an eroding shoreline, this represents the loss of beach area as a direct result of the shoreline protective device.

Dr. Craig Everts found that on narrow beaches where the shoreline is not armored, the most important element of sustaining the beach width over a long period of time is the retreat of the back beach and the beach itself. He concludes that:

> Seawalls inhibit erosion that naturally occurs and sustains the beach. The two most important aspects of beach behavior are changes in width and changes in the position of the beach. On narrow, natural beaches, the retreat of the back beach, and hence the beach itself, is the most important element in sustaining the width of the beach over a long time period. Narrow beaches, typical of most of the California coast, do not provide enough sacrificial sand during storms to provide protection against scour caused by breaking waves at the back beach line. This is the reason the back boundary of our beaches retreats during storms.[6]

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[4] State Department of Boating and Waterways (formerly called Navigation and Ocean Development), Shore Protection in California (1976), page 30.
[5] Coastal Sediments '87.
[6] Letter Report dated March 14, 1994 to Coastal Commission staff civil engineer Lesley Ewing from Dr. Craig Everts, Moffatt and Nichol Engineers.

Dr. Everts further concludes that armoring in the form of a seawall or revetment interrupts the natural process of beach retreat during a storm event and that:

> ...a beach with a fixed landward boundary is not maintained on a recessional coast because the beach can no longer retreat.[7]

The Commission has observed this phenomenon up and down California's coast where a seawall has successfully halted the retreat of the shoreline, but only at the cost of usurping the beach. For example, at La Conchita Beach in Ventura County, placement of a rock revetment to protect an existing roadway has caused narrowing of the existing beach. Likewise, at City of Encinitas beaches in San Diego County, construction of vertical seawalls along the base of the bluffs to protect existing residential development above has resulted in preventing the bluffs' contribution of sand to the beaches, resulting in narrowing.

As set forth in earlier discussion, Encinal Beach is a narrow, receding beach backed by steep bluffs. The applicant's coastal engineering consultant has indicated that the revetment will be acted upon by waves during storm conditions. If a seasonal eroded beach condition occurs with greater frequency due to the placement of a revetment on the subject site, then the subject beach would also—at a minimum—accrete at a slower rate. The Commission notes that many studies performed on both eroding and oscillating beaches have concluded that loss of beach occurs on both types of beaches where a shoreline protective device exists. Therefore, the Commission notes that the proposed revetment, over time, will prevent natural erosion of the bluff and halt the contribution of sand to the beach through this process. This will result in potential adverse impacts to the beach sand supply resulting in increased seasonal erosion of the beach and longer recovery periods.

The impacts of potential beach scour are important relative to beach use for two reasons. The first reason involves public access. The subject property is located between two public beach areas (Nicholas Canyon County Beach and Robert H. Meyers State Beach). If the beach scours at the base of the revetment, even minimal scouring in front of the 110 ft. long bulkhead will translate into a loss of beach sand available (i.e., erosion) at an accelerated rate than would otherwise occur under a normal winter season if the beach were unaltered. Loss of sand at an accelerated rate could reduce the width of beach in front of the project site available for the public to walk along. The second impact relates to the potential turbulent ocean condition. Scour at the face of a seawall will result in greater interaction with the wall and thus, make the ocean along Encinal Beach more turbulent than it would be along an unarmored beach area.

Thus, the Commission has ordinarily required that shoreline protection devices be located as far landward as possible to reduce adverse impacts from scour and erosion.

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[7] ibid.

As described above, the toe of the bluff has been eroded from wave action. This alone does not currently pose a threat to the stability of the house, since the toe of the bluff could still erode substantially before the house would be in any danger. The erosion-related threats to the house could be addressed at some time in the future, if the bluff continues to erode landward until the stability of the house is threatened. This erosion would be expected to occur slowly over a period of many years. If a shoreline protective device was eventually required due to continued erosion of the bluff, it would be located further landward than the site of the proposed revetment, where it would interact less frequently with waves. However, the applicant's geologist claims that the bluff could suffer a catastrophic failure that could occur suddenly at any time and this threatens the house now. Therefore the applicant claims that the revetment is needed now at the more seaward location, where the toe of the bluff is currently located. The Commission finds that the evidence presented by the applicant indicates that the bluff may be subject to a sudden catastrophic failure that would threaten the stability of the existing house or require a larger protective device. The proposed revetment is located at the toe of the bluff and designed to tie into the return wall of the revetment downcoast and to the bluff upcoast. As such, the Commission finds that the applicant has sited the proposed revetment as landward as possible, given the need to protect the existing residence from catastrophic failure.

In past permit actions, the Commission has also required a lateral public access easement for new shoreline protection devices to mitigate adverse impacts to beach sand supply and public access. To ensure that any potential adverse effects of the proposed seawall are mitigated to the maximum extent feasible, the applicant has proposed to offer a dedication for a lateral public access easement along the beach. Special Condition 2 has been included to implement the applicant's proposal of an offer to dedicate a new lateral public access easement. Therefore, as conditioned, the project will minimize the adverse impacts resulting from construction of the new revetment and is consistent with the applicable Coastal Act sections and with past Commission action. Public access is discussed in more detail below.

(2) End Effects

End scour effects involve the changes to the beach profile adjacent to the shoreline protection device at either end. One of the more common end effects comes from the way reflection of waves off of the shoreline protection device in such a way that they add to the wave energy which is impacting the unprotected coastal areas on either end. Coastal engineers have compared the end effects impacts between revetments and bulkheads. In the case of a revetment, the many angles and small surfaces of the revetment material reflect wave energy in a number of directions, effectively absorbing much of the incoming wave rather than reflecting it. Because of the way revetments modify incoming wave energy, there is often less problem with end effects or overtopping than that which occurs with a vertical bulkhead. However, revetments, especially those located in more seaward locations will result in end scour. In fact, as noted above, the revetment on the adjoining property has resulted in accelerated

erosion to the bluff on the subject site. The existing revetment is located far out onto the beach, is grouted between the rocks, and is constructed at an angle oblique to the shoreline. The grouting reduces the amount of energy that can be absorbed by the revetment, increasing the amount that is reflected from the structure. Additionally, the location and angle of the revetment will direct much of the reflected wave energy onto the toe of the bluff on the proposed project site. The resulting erosion of the bluff on the proposed project site is a clear example of impacts from end effects.

In addition, the Commission notes that the literature on coastal engineering repeatedly warns that unprotected properties adjacent to any shoreline protective device may experience increased erosion. Field observations have validated this concern. Although it is difficult to quantify the exact loss of material due to end effects, Gerald G. Kuhn of the Scripps Institute of Oceanography concludes in a paper entitled, "Coastal Erosion along Oceanside Littoral Cell, San Diego County, California," (1981) that erosion on properties adjacent to a rock seawall is intensified when wave runup is high.

An extensive literature search on the interaction of seawalls and beaches was performed by Nicholas Kraus in which he found that seawalls have the same effects on narrow beaches or beaches eroded by storm activity as Dr. Kuhn observed in relation to rock seawalls. Dr Kraus' research indicated that the form of the erosional response to storms that occurs on beaches without seawalls that are adjacent to beaches with seawalls is manifested as more localized toe scour and end effects of flanking and impoundment at the seawall.[8] Dr. Kraus' concluded that seawalls were a likely cause of retained sediment, increased local erosion and increased end erosion. Dr. Kraus states:

> At the present time, three mechanisms can be firmly identified by which seawalls may contribute to erosion at the coast. The most obvious is retention of sediment behind the wall which would otherwise be released to the littoral system. The second mechanism, which would increase local erosion on downdrift beaches, is for the updrift side of the wall to act as a groin and impound sand. This effect appears to be primarily theoretical rather than actualized in the field, as a wall would probably fail if isolated in the surf zone. The third method is flanking, i.e., increased local erosion at the ends of walls. (underline added for emphasis)

In addition, the results of other researchers investigating the length of shoreline affected by heightened erosion adjacent to seawalls concluded that:

> ...erosion at the ends of seawalls increases as the structure length increases. It was observed in both the experimental results and the field data of Walton and Sensabaugh (1978) that the depth of excess erosion is approximately 10% of the seawall length. The

[8] "Effects of Seawalls on the Beach", published in the Journal of Coastal Research, Special Issue #4, 1988.

laboratory data also revealed that the along-coast length of excess erosion at each end of the structure is approximately 70% of the structure length.[9]

A more comprehensive study was performed over several years by Gary Griggs which concluded that beach profiles at the end of a seawall are further landward than natural profiles.[10] This effect appears to extend for a distance of about 6/10 the length of the seawall and represents both a spatial and temporal loss of beach directly attributable to seawall construction.

The applicant's coastal engineer has stated that the proposed revetment will have no end scour impacts on adjacent properties. The report states that:

> The construction of a revetment, concave to the north...will reflect no wave forces onto adjacent properties. The geometry of the proposed revetment will not allow it. The reflection of wave action or forces work on the principal of "the angle of incidence equals the angle of reflection". Simply stated, this means that at whatever angle the wave approaches the structure, it will be reflected off that structure at the same angle. Because the proposed revetment is oriented parallel to the bluff by the time it reaches its westerly terminus, it cannot reflect wave action onto adjacent property any more than the existing bluff does at this time.

The Commission notes that end effect erosion may be further minimized by locating a proposed shoreline protection device as landward as possible to reduce the frequency with which the seawall is subject to wave action. In the case of the proposed project, and as noted previously, the proposed revetment will be located at the toe of the bluff, as far landward as feasible, given the need to protect the existing residence from catastrophic failure of the bluff slope. Additionally, in response to the Commission Engineer's recommendations, the applicant has redesigned the proposed revetment such that it has a concave shape and directed in a south-southwest direction. As designed, wave energy will be reflected back south to the ocean and is much less likely to be directed to the toe of the bluff on the upcoast property. As such, the proposed revetment is designed to minimize erosional end effects.

(3) Retention of Potential Beach Material

A shoreline protective device's retention of potential beach material impacts shoreline processes simply by depriving beaches of nutrients that would normally be fed into the littoral cell and deposited on beaches through the actions of normal shoreline processes. A revetment functions to keep upland sediments from being carried to the

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[9] "Laboratory and Field Investigations of the Impact of Shoreline Stabilization Structures on Adjacent Properties" by W.G. McDougal, MA Sturtevant, and P.D. Komar in Coastal Sediments '87.

[10] "The Interaction of Seawalls and Beaches: Seven Years of Field Monitoring, Monterey Bay, California" by G. Griggs, J. Tait, and W. Corona, in Shore and Beach, Vol. 62, No. 3, July 1994.

beach by wave action and bluff retreat. One of the main sources of sediment for beaches are the bluffs themselves, as well as the material that has eroded from inland sources and is carried to the beach by coastal streams. The protective device may be linked to increased loss of material in front of the wall. The net effect is documented in "Responding to Changes in Sea Level, Engineering Implications" which provides:

> A common result of sea wall and bulkhead placement along the open coastline is the loss of beach fronting the structure. This phenomenon, however, is not well understood. It appears that during a storm the volume of sand eroded at the base of a sea wall is nearly equivalent to the volume of upland erosion prevented by the sea wall. Thus the offshore profile has a certain "demand" for sand and this is "satisfied" by erosion of the upland on a natural beach or as close as possible to the natural area of erosion on an armored shoreline...[11]

As explained, the revetment will protect the applicant's property from continued loss of sediment through erosion and bluff retreat. However, the result of this protection, particularly on a narrow beach, is a loss of sediment on the sandy beach area that fronts the seawall. Furthermore, as explained previously, this loss of sediment from the active beach leads to a lower beach profile, seaward of the protective device, where the seawall will have greater exposure to wave attack.

In past permit actions, the Commission has required a lateral public access easement for new shoreline protection devices to mitigate adverse impacts to beach sand supply and public access. In the case of this project, to mitigate any possible adverse effects upon public access along the beach, the applicant proposes to dedicate a new public lateral access easement along the beach. Special Condition 2 has been included to implement the applicant's offer to dedicate a new lateral public access easement. Therefore, as conditioned, the project will minimize the adverse impacts resulting from construction of the revetment and is consistent with the applicable Coastal Act sections and with past Commission action.

e. Analysis

Coastal Act Sections 30235, 30253 and 30250(a) set forth the Commission's mandate relative to permitting shoreline protective devices and beachfront development. In order for the Commission to permit the proposed project, which includes a 110 ft. long rock revetment at the base of a bluff, it must find the project consistent with the Chapter 3 policies of the Coastal Act.

Section 30235 of the Coastal Act, cited above, states that shoreline protective devices such as revetments and other construction that would alter natural shoreline processes shall be permitted when those structures are necessary to serve coastal-dependent uses or to protect existing structures or to protect public beaches in danger from erosion

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[11] "Responding to Changes in Sea Level: Engineering Implications," National Academy of Sciences, National Academy Press, Washington, D.C., 1987 (at page 74).

and when they are designed to eliminate or mitigate adverse impacts on local shoreline sand supply. The applicant's consultants have identified accelerated erosion taking place at the base of the bluff on the subject site. This erosion is attributed to the effect of wave energy being concentrated and intensified between the revetment on the downcoast property and natural rock outcrops in the intertidal zone. The subject property experienced significant erosion of the toe of the bluff in the El Nino storms in 1998. The applicant's consultants have determined that continued wave erosion would result not only in further damage to the existing road, but would also lead to increased slope instability and loss of support for the existing residence. The applicant's geologist claims that the bluff could suffer a catastrophic failure that could occur suddenly at any time and this threatens the house now. Therefore the applicant claims that the revetment is needed now at the proposed location, where the toe of the bluff is currently located. Additionally, as noted above, the Commission's Engineer has stated that, without the currently proposed revetment, eventually bluff retreat will necessitate the construction of a much larger protective device. The Commission finds that the evidence presented by the applicant indicates that the bluff may be subject to a sudden catastrophic failure that would threaten the stability of the existing house or require a larger protective device. As such, the Commission finds that the proposed revetment is necessary to protect existing development from wave erosion.

The Commission also finds that further development on the bluff would be hazardous because the entire bluff could collapse in a catastrophic failure. Therefore, the Commission approves construction of the revetment in the proposed location to protect the Higgins house from catastrophic failure of the bluff. Since the bluff is inherently unstable, in approving the revetment to protect the house from a catastrophic failure of the bluff, it is also necessary to restrict new development on the bluff. Based on the evidence submitted by the applicant, the bluff slope is clearly unsafe.

The Commission finds that the proposed project will increase the geologic stability of the project site, however, overall stability of the bluff is not sufficient to support development. Any further development of this area beyond what is approved in this permit would lead to increased instability. In particular, any infiltration of water into the bluff would require a septic system and the resulting introduction of water from septic effluent would contribute to slope instability, threatening the existing Higgins residence. In addition, any grading of the bluff or introduction of water through permanent irrigation or septic effluent would contribute to slope failure, threatening the existing road and residence. New development on the bluff would be likely to increase the instability of the bluff, hasten erosion of the bluff, and would likely require future shoreline protective devices, such as retaining walls, to protect development on the bluff and the existing Higgins residence. Therefore, restricting new development on the bluff is necessary to protect the existing Higgins house.

In addition, new development on the bluff would require additional structures to prevent erosion of the bluff and protect any development on the bluff. Construction of such structures, to protect new development on the bluff, would be inconsistent with Sections

30235, 30253 and 30251 of the Coastal Act. As explained above, new development on the bluff would likely require retaining walls to provide geologic stability for the new development as well as the existing Higgins house. The Commission is only required to approve a shoreline protective device that is the minimum required to provide protection for the existing development, i.e., the existing Higgins house. Therefore, the Commission must restrict further development on the bluff to prevent increased instability of the bluff that could threaten the Higgins house and to ensure that additional shoreline protective devices will not be needed to protect the Higgins house in the future. As discussed below, Special Condition No. 8 restricts development on the bluff to only that development approved herein. Only as so conditioned would the proposed project minimize hazards to the existing residence and insure that development would not require the construction of additional protective devices that would further alter natural landforms along this bluff, consistent with Section 30235 of the Coastal Act.

Section 30253 of the Coastal Act, (also cited above) mandates that new development neither create nor contribute significantly to erosion, or contribute to 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 or cliffs. In past permit actions, the Commission has required that new shoreline protection devices be located as landward as possible to reduce adverse impacts to sand supply and public access resulting from the development. In the case of this project, the applicant has demonstrated that the proposed revetment will be located at the base of the bluff, as landward as is feasible, given the need to protect the existing residence from catastrophic failure. It will tie into the return wall of the revetment on the downcoast property. The proposed revetment will end at the rock outcrop in the bluff on the upcoast property. As such, the proposed revetment will be located as far landward as possible.

Further, Special Condition 1 (Section A5) states that no future repair or maintenance, enhancement, reinforcement or any other activity involving the revetment may be undertaken if it would result in an extension of the seaward footprint of the revetment. This restriction will ensure that the revetment would be maintained in the most landward location possible and would not be allowed to extend any further seaward in the future. Additionally, in response to the Commission Engineer's recommendations, the applicant has redesigned the proposed revetment such that it has a concave shape and directed in a south-southwest direction. As designed, wave energy will be reflected back south to the ocean and is much less likely to be directed to the toe of the bluff on the upcoast property. Therefore, impacts from the revetment would be minimized.

Finally, in past permit actions, the Commission has also required a lateral public access easement for new shoreline protection devices to mitigate adverse impacts to beach sand supply and public access. In the case of this project to mitigate any possible adverse impacts to public access along the beach, the applicant has proposed to dedicate a new public lateral access easement along the beach. Special Condition 2

has been included to implement the applicant's offer to dedicate a new lateral public access easement.

f. Conclusion.

Section 30250(a) of the Coastal Act states, in part, that new development not adversely affect, either individually or cumulatively, coastal resources. As discussed above, the proposed project, as conditioned, will minimize adverse impacts resulting from the construction of the proposed revetment by ensuring that the structure is located as landward as possible and by including an offer to dedicate lateral public access in the project description. As described below, the Commission has required the applicant to revise the plans to limit the width of the paved driveway to a maximum of 15 feet in order to limit development on the bluff face. Further, a bluff revegetation plan has been required to minimize impacts to sensitive resources and visual resources as well as to add slope stability. These conditions will serve to minimize impacts to coastal resources. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30235, 30250, and 30253 of the Coastal Act.

D. Hazards and Geologic Stability

Coastal Act Section 30253 states 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.

Section 30253 of the Coastal Act mandates that new development provide for geologic stability and integrity and minimize risks to life and property in areas of high geologic, flood, and fire hazard. In addition to section 30253 of the Coastal Act, the certified Malibu/Santa Monica Mountains LUP contains several policies and standards regarding hazards and geologic stability. For example, Policy 147 suggests that development be evaluated for impacts on and from geologic hazards. Policy 153 suggests that no development should be sited less than 10 ft. landward of the mean high tide line. These policies have been certified as consistent with the Coastal Act and used as guidance by the Commission in numerous past permit actions in evaluating a project's consistency with section 30253 of the Coastal Act.

Storm, Wave and Flood Hazard

The Malibu coast has been subject to substantial damage as a result of storm and flood occurrences, geological failures and firestorms. The proposed project site is subject to flooding and/or wave damage from storm waves and storm surge conditions. Past occurrences have resulted in public costs (through low-interest loans for home repairs and/or rebuilding after disasters) in the millions of dollars in the Malibu area alone.

Along the Malibu coast, significant damage has also occurred to coastal areas from high waves, storm surge and high tides. In the winter of 1977-78, storms triggered numerous mudslides and landslides and caused significant damage along the coast. The "El Nino" storms in 1982-83 caused additional damage to the Malibu coast, when high tides over 7 feet combined with surf between 6 and 15 feet. These storms caused over $12 million in damage. The El Nino storms of 1987-88, 1991-92, and 1997-1998 did not cause the far-reaching devastation of the 1982-83 storms; however, they too were very damaging in localized areas and could have been significantly worse except that the peak storm surge coincided with a low tide rather than a high tide.

The applicant proposes to construct a rock revetment across the width of the project site. The proposed revetment would be located at the toe of a coastal bluff. The revetment would be approximately 110 feet in length, 30 feet wide, and 14 feet high. The revetment would tie-in to the return wall of an existing revetment on the downcoast end of the property. On the upcoast side of the property, the revetment would be joined to a bedrock area of bluff. The proposed revetment will be subject to wave attack, flooding, and erosion hazards that in the past have caused significant damage to development along the California coast, including the Malibu coastal zone and the beach area nearby the subject property. The Coastal Act recognizes that new development, such as the construction of the proposed revetment on a beach and coastal bluff, will involve the taking of some risk. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to determine who should assume the 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 his property. In addition, the previously referenced Wave Uprush Study performed by the applicant's consulting coastal engineer states affirms that there will always be certain risks associated with living on the beach.

Therefore, the Commission finds that due to the unforeseen possibility of wave attack, erosion, landsliding, and flooding, the applicant shall assume these risks as a condition of approval and agree to indemnify the Commission for any damages imposed on it due to approval of this permit. Because this risk of harm cannot be completely eliminated, Special Condition 1 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, when executed and recorded on the

property deed, will also show that the applicant is aware of and appreciated the nature of the hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development.

In addition, Section 30253 of the Coastal Act requires that new development minimize risk to life and property in areas of high geologic, flood and fire hazard, and assure stability and structural integrity. Beachfront development raises issues relative to a site's geologic stability. As noted previously, the Malibu shoreline has experienced coastal damage regularly from geologic instability induced by winter rains and heavy surf conditions.

In addition to the wave uprush studies prepared for the proposed project site, as discussed above, the applicant has submitted the following geologic investigation reports for the site: Geologic Memoranda, dated 6/17/98, 2/19/98, 12/26/97, 2/7/94; Response to Geology and Geotechnical Engineering Review Sheet, dated 10/15/98; Engineering Geologic Report for Proposed Single Family Residence, dated 1/3/91, all prepared by Donald B. Kowalewsky. These reports address the need for the proposed revetment, road improvements, and retaining walls to stabilize the bluff and provide stability for the existing residence.

As discussed above, the applicant applied for the construction of a rock revetment in 1993 (5-93-092). The applicant's consultants identified the presence of erosion at the base of the bluff and the applicant applied for the revetment to protect an unpermitted beach cabana and the existing roadway. At that time, the Commission found that the erosion at the toe of the bluff was minor and that alternatives, such as regrading or filling the toe to repair the existing road, existed to the construction of a shoreline protective device. Finally, after the El Nino storms in 1998, the base of the bluff experienced significant erosion, necessitating the construction of the proposed revetment and road buttressing. Staff site visits to the site after these storms confirmed that significant erosion of the bluff has taken place. The applicant's consultants determined that waves undercut the base of the bluff, decreasing overall slope stability. The construction of a rock revetment was recommended to minimize erosion at the toe of the bluff.

In addition to the construction of the revetment across the project site, the applicant's consultants made recommendations to increase the stability of the bluff. These include the buttressing of the slope at the base including the use of imported fill, paving the existing road to prevent water infiltration and to act as a drainage swale, to repair the existing catch basin and pipe that provides drainage for the bluff top areas of the site, and the construction of retaining walls beneath a steep portion the slope and beneath the existing residence.

It should be noted that coastal bluffs are typically unstable, erosional features. By their very nature, bluffs can be expected to erode over time. The Commission has consistently recognized this fact and required new development to minimize impacts to

coastal resources by locating structures well back from the edge of the bluff. In this case, there is existing development both on the bluff face (road) and near or over the bluff edge (residence). It is the location of these existing structures which causes them to be endangered by bluff instability and necessitates the construction of shoreline protective device, grading and other improvements to improve slope stability.

As part of the project, the applicant has proposed to repair the existing driveway on the bluff face, to widen and realign it to an alignment that the applicant asserts originally existed, and to pave the road. As discussed above, there is evidence that this driveway existed in a graded and paved condition prior to Proposition 20. However, the evidence does not indicate the width of the road prior to Proposition 20. Since that time, the driveway has eroded, been buried by material eroded from slopes above, the lower portion was destroyed by wave action, and the driveway has been altered by the applicant without coastal development permits. At present, a driveway does remain on the site which is approximately 15-20 feet wide, comprised primarily of dirt with some pavement areas, with concrete stairs along one side of approximately ½ of the length. The existing road is shown by a dotted line on Exhibit 3. The realignment/widening of the road proposed by the applicant would result in an increase to the width of approximately 20-25 feet. The two curve areas would be increased up to a maximum of 30 feet (upper curve) and 40 feet (lower curve) wide. The proposed realigned driveway is shown by solid double lines on Exhibit 3.

The Commission finds that it is important to restrict any new development on the bluff face to only that which is located in areas previously developed or that which is absolutely necessary to protect the existing structures. In this case, the proposed buttress fill at the toe of the bluff is necessary to rebuild the area eroded by storm waves. However, the Commission finds that the proposed road widening and paving is not necessary to promote bluff stability. The Commission Geologist states that it is not necessary to pave the road to convey surface water off the bluff. The proposed paving would have only a minimal effect on water infiltration. Conveying surface water down the bluff face could be accomplished by a drainage ditch or swale that would occupy a much smaller area than the proposed paved road.

Staff recognizes that there is evidence of continuing use of this driveway since before Proposition 20. However, there is some uncertainty with regard to the alignment of this road over time. No engineered plans of the original construction appear to exist. Comparison of various photographs and sketches of the road are inconclusive as to the actual width or alignment of the road. Certainly, the driveway width has changed over time due both to erosion as well as modifications made by the applicant. In any case, this driveway does not serve any existing, approved development. The applicant uses this driveway for private access to the beach below. The applicant has stated that the proposed paving of the road would constitute "repaving" the existing driveway destroyed by disaster. However, the driveway has actually deteriorated over time through erosion. The applicant has previously requested a determination from staff that the remedial grading of the bottom portion of the road was exempt from the requirement of a coastal

development permit under §30610(g) (disaster replacement) of the Coastal Act. In a letter dated August 30, 1999 (Exhibit 9), staff responded that this activity did require a coastal development permit. Deletion of the widened driveway areas from the plans, limitation of the driveway to a maximum width of 15 feet, and prohibition of the placement of paving on the driveway would provide continuing access while limiting development, particularly of impervious surfaces on the bluff face. All areas on the bluff face outside of the driveway will be revegetated with appropriate bluff species in order to minimize further erosion, as required by Special Condition 7. The Commission finds it necessary to require the applicant to submit revised plans which show that the width of the driveway has been limited to a maximum of 15 feet and that pavement of the road is prohibited. This is set forth in Special Condition 6. As so conditioned, the proposed project will limit development on the bluff face in order to minimize the amount of impervious surface, erosion, and runoff.

The Coastal Act does provide for the construction of shoreline protective devices and other improvements, such as those proposed, to protect existing development. The applicant has submitted evidence, in the form of investigations conducted by coastal engineers and an engineering geologist, that a shoreline protective device and other improvements are needed to prevent further erosion of the bluff, and to protect existing development from damage. The applicant's consultants contend that if a shoreline protective device is not constructed on the subject site, the bluff would continue to erode, further damaging the existing roadway, further destabilizing the bluff slopes, and causing support for the existing residence to be lost.

Additionally, observation by staff since at least 1990 indicates that much more extreme erosion has taken place at the toe of the bluff on the project site after the El Nino storms of 1998. As detailed above, the Commission has considered various applications for development on the proposed project site. The past condition of the bluff did not indicate significant erosion of the base of the bluff necessitating the construction of shoreline protective devices. However, the increased erosion after 1998 is readily apparent.

Further, as discussed above, after the proposed project was continued from the July 1999 hearing, the Commission Engineer Lesley Ewing visited the project site with the applicant and the applicant's geologic consultant to assess the threat to development on the site and the proposed stabilization. She concluded that continued erosion of the toe of the bluff will threaten the residence. She states that the residence will probably be threatened in the next 5 to 10 years. However, one large storm could change the situation significantly and mild weather for the next ten years could postpone the need for protection. Eventually, without the currently proposed revetment, the bluff will retreat landward such that a much larger revetment and or bluff retaining wall could be required to protect the existing development.

Based on the consultant's analysis and staff's observations of the wave erosion that has taken place at the base of the bluff, the Commission concludes that that it is necessary

to protect the toe of the bluff from further erosion in order to prevent further damage to the existing structures on the site and to avoid the necessity to construct larger protective structures later.

As set forth in Section 30253 of the Coastal Act, new development shall assure structural integrity and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area. The applicant's geologist states that: "I concur that a rock revetment will be beneficial and if properly designed and constructed will not adversely affect adjacent properties". Additionally, the geologist has determined that the proposed buttress fill and retaining walls will increase the slope stability of the bluff. The retaining walls proposed for the area below the existing residence are proposed to be supported on caissons in order to provide adequate support for the residence, which is constructed on conventional foundations. The retaining wall proposed further down the slope would be constructed on conventional footings. The drainage repairs would minimize erosion from runoff sheetflowing down the bluff face. The engineering geologist has made specific recommendations relating to the construction of the proposed improvements and has concluded the site will be stable if these recommendations are incorporated into the project.

The Commission finds that the development is consistent with Section 30253 of the Coastal Act so long as the geotechnical consultant's and the coastal and structural engineering consultant's recommendations are incorporated into project plans. Therefore, Special Condition 3 requires the applicant to submit final project plans and designs that have been certified in writing by the geologic, geotechnical and coastal engineering consultants as conforming to their recommendations.

In the July 1999 hearing, the Commission raised the question of whether the applicant was applying for the construction of a revetment and driveway improvements in order to stabilize and provide access to the bluff face/beach parcels for future development plans. Although there have been past permit applications (discussed in Section B above) for development on several of these bluff/beach parcels, the applicant has not indicated any plans to develop any of these parcels at this time.

It is clear that the conditions on the site have changed significantly since the time that development of residences and septic systems was proposed for these lower lots. For instance, in 1991, the applicant's geologic consultant concluded that development of a single family residence with septic system on the bluff face would be feasible and that it would be safe from landslide, settlement, or slippage. In 1993, the Commission concluded (in Permit Denial 5-93-092) that there was no evidence of significant erosion at the base of the bluff and that the construction of a revetment at that point was not warranted to protect the driveway. At that time, the Commission found that the erosion at the toe of the bluff was minor and that alternatives, such as regrading or filling the toe to repair the existing road, existed to the construction of a shoreline protective device.

By contrast, after the El Nino storms in 1998, the base of the bluff experienced significant erosion, necessitating the construction of the proposed revetment and road buttressing. Staff site visits to the site after these storms confirmed that significant erosion of the bluff has taken place. The applicant's consultants determined that waves undercut the base of the bluff, decreasing overall slope stability. It was also at this time that the applicant's geologic consultant identified that the erosion at the toe of the bluff not only threatened the existing driveway, but actually could cause the loss of support for the house above. The applicant's geologist has therefore recommended not only the construction of the proposed revetment to protect the toe of the bluff, but also the construction of two parallel retaining walls supported on caissons located directly below the existing residence in order to provide a factor-of-safety of 1.5 for the slope supporting the home.

As described above, the toe of the bluff is eroding from wave action. The bluff is also eroding due to surface water runoff. These factors alone do not currently pose a direct threat to the foundation of the house. However, the applicant's geologist claims that the bluff could suffer a catastrophic failure that could occur suddenly at any time and this threatens the house now. Therefore the applicant claims that the revetment is needed now at the proposed location, where the toe of the bluff is currently located. Additionally, as noted above, the Commission's Engineer has stated that, without the currently proposed revetment, eventually bluff retreat could necessitate the construction of a much larger protective device. The Commission finds that the evidence presented by the applicant indicates that the bluff may be subject to a sudden catastrophic failure that would threaten the stability of the existing house or require a larger protective device.

The Commission also finds that further development on the bluff would be hazardous because the entire bluff could collapse in a catastrophic failure. Therefore, the Commission approves construction of the revetment in the proposed location to protect the Higgins house from catastrophic failure of the bluff. Since the bluff is inherently unstable, in approving the revetment to protect the house from a catastrophic failure of the bluff, it is also necessary to restrict new development on the bluff. Based on the evidence submitted by the applicant, the bluff slope is clearly unsafe.

Even though the construction of the revetment and retaining walls would improve the geologic stability of the bluff slopes on the project site, overall stability would not be increased above a factor-of safety of 1.5. For instance, the Response to Geology and Geotechnical Engineering Review Sheet, dated 10/15/98, prepared by Donald Kowalewsky, states that:

> Appendix B provides stability analyses along two cross-sections for both existing slopes and areas of proposed grading and retaining walls. Along cross-section A-A' the proposed rock revetment and stabilization fill will exceed a minimum safety factor of 1.5. An existing steep slope between the upper and lower access road (above the area of the proposed revetment and stability fill) has a safety factor of 1.0. In order to improved stability of that portion of the slope, massive grading would be required. It is our

understanding that no work is proposed for that portion of the slope other than removing loose earth debris from the slope face.

Therefore, the Commission finds that the proposed project will increase the geologic stability of the project site, however, overall stability of the bluff is not sufficient to support development. Any further development of this area beyond what is approved in this permit would likely lead to increased instability. In particular, any infiltration of water into the bluff would increase bluff instability. Development on the bluff would require a septic system and the resulting introduction of water from septic effluent would contribute to slope instability, threatening the existing Higgins residence. In addition, any grading of the bluff or introduction of water through irrigation would contribute to slope instability. New development on the bluff would be likely to increase the instability of the bluff; hasten erosion of the bluff, and would likely require future shoreline protective devices, such as retaining walls, to protect development on the bluff and the existing Higgins house. Therefore, restricting new development on the bluff is necessary to protect the existing Higgins house.

In addition, new development on the bluff would require additional structures to prevent erosion of the bluff and protect any development on the bluff. Construction of such structures, to protect new development on the bluff, would be inconsistent with Sections 30235, 30253 and 30251 of the Coastal Act. As explained above, new development on the bluff would likely require retaining walls to provide geologic stability for the new development as well as the existing Higgins house. The Commission is only required to approve a shoreline protective device that is the minimum required to provide protection for the existing development, i.e., the existing Higgins house. Therefore, the Commission must restrict further development on the bluff to prevent increased instability of the bluff that could threaten the Higgins house and to ensure that additional shoreline protective devices will not be needed to protect the Higgins house in the future.

As such, the Commission finds it necessary to require the applicant to record a deed restriction across the bluff face portion of the proposed project site that designates this area as a geologic hazard restricted use area and restricts the development allowed within this area to only those improvements approved herein. These improvements include only the proposed rock revetment, remedial driveway grading, drainage structures, retaining walls and bluff revegetation. This requirement is included as Special Condition 8. Only as so conditioned would the proposed project assure structural stability, minimize risks to life and property from geologic hazard, and insure that development would not require the construction of additional protective devices that would further alter natural landforms along this bluff.

As discussed below, a bluff revegetation plan has been required to minimize impacts to sensitive resources and visual resources as well as to reduce soil erosion on the bluff. By removing exotic invasive vegetation and revegetating all disturbed areas with native,

drought resistant species endemic to bluffs and monitoring its success, soil erosion on the bluff will be reduced.

The proposed development, with its excavation and construction staging on the sandy beach and the possible generation of debris and or presence of equipment and materials that could be subject to tidal action 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 could result in disturbance through increased turbidity caused by erosion and siltation of coastal waters. To ensure that effects to the marine environment are minimized and that the construction phase of the proposed project poses no hazards, Special Condition 4, Construction Responsibilities and Debris Removal requires the applicant to ensure that stockpiling of dirt or materials shall not occur on the beach, that no machinery will be allowed in the intertidal zone at any time, and that all debris resulting from the construction period is promptly removed from the beach and seawall area.

The Commission notes that the proposed project is designed to minimize risks to life and property and assure stability and structural integrity. Therefore, the Commission finds that as conditioned to assume the liability of development, provide evidence of the consultant's review and approval of the final plans, to require proper treatment of construction materials and appropriate disposal of debris, to reduce the width of the graded and paved area of the bluff, to revegetate the bluff, and to record a geologic hazard restricted use area deed restriction across the bluff face are of the site, the proposed development is consistent with Section 30253 of the Coastal Act.

E. 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.

Section **30210** of the Coastal Act 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.

Section **30211** of the Coastal Act states that:

> 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.

Section **30212(a)** of the Coastal Act 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:

> 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.

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 proposed the revetment would be located at the base of a coastal bluff. The project site is located between two public beaches. There are at this time, no developed, open vertical public accessways in the vicinity of the proposed project site. 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.

As noted above, interference by a revetment has a number of 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 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. 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 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' 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.

Due to the aforementioned adverse impacts of shoreline protective structures on public access, the proposes shoreline protection device must be judged against the public access and recreation policies of the State Constitution, Sections 30210, 30220, and 30211 of the Coastal Act. Along the California coast, the line between land and ocean is complex and constantly moving.

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

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

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

The Commission must consider a project's direct and indirect impact 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.

To avoid approving development that will encroach on public tidelands during any time of the year, the Commission, usually relying on information supplied by the State Lands Commission, will look to whether the project is located landward of the most landward known location of the mean high tide line. In this case, the State Lands Commission has reviewed the proposed revetment and presently does not assert a claim that the project intrudes onto sovereign lands (SLC letter dated February 22, 1999).

Even structures located above the mean high tide line, however, may have an impact 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 impacts on public ownership and public use of shorelands. The applicant is proposing to construct a new rock revetment at the base of the coastal bluff across the project site. As discussed above, there is substantial evidence that this project will result in some indirect impacts on tidelands because the proposed revetment is located in an area that will be subject to wave attack and wave energy, at least some times during the year. The applicant has offered a lateral public access easement, however, to mitigate any adverse effects on coastal access or recreation that the proposed revetment may have.

The Commission must also consider whether a project affects any public right to use shorelands that exit independently of the public's ownership of tidelands. In addition to a development proposal's impact 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.

In this case, no evidence has been presented in connection with this application that the public may have acquired rights of use under the doctrine of implied dedication. Although the Commission notes that the proposed revetment is located as landward as possible in relation to the toe of the bluff, given the need to protect the existing residence from catastrophic failure, there is still evidence that the revetment will be subject to wave uprush which may result in some potential adverse individual and cumulative impacts on sand supply, beach profile, and ultimately, public access as a result of localized beach scour, retention of beach material and interruption of the alongshore and onshore sand transport process.

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 addition, in past permit actions, the Commission has also required a lateral public access easement for new shoreline protection devices to mitigate adverse impacts to beach sand supply and public access. In the case of this project, to conclude with absolute certainty what impacts the proposed development would cause on the shoreline processes and public access, 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 applicant has proposed to offer a dedication of a public lateral access easement along the beach to mitigate any possible adverse impacts the proposed bulkhead may have on public access. The applicants offer proposes the easement as measured from the toe of the proposed revetment to the MHTL. Because the applicant has proposed, as part of the project, an offer to dedicate a new lateral access easement along the beach across the proposed project site, it has not been necessary for Commission staff to engage in an extensive analysis of the potential adverse effects to public access resulting from the proposed project. As such, Special

Condition 2 has been included to implement the applicant's offer to dedicate a new lateral public access easement prior to the issuance of the coastal development permit.

The Commission further 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 a chilling effect on the legitimate, protected access of the public to public trust lands. The Commission has determined, therefore, that to ensure that such postings are clearly understood by the applicant to be off limits until or unless a coastal development permit is obtained for such signage, it is necessary to impose Special Condition 5 to ensure that similar signs are not posted on the this property. The Commission finds that if implemented, Special Condition 5 will protect the public's right of access to the sandy beach below the MHTL.

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.

F. Environmentally Sensitive Habitat Areas/Visual Resources

Section **30230** of the Coastal Act states:

> Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

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, and minimizing alteration of natural streams.

Section **30240** of the Coastal Acts states:

> (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

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.

Sections 30230 and 30231 require that the biological productivity and quality of coastal waters and the marine environment be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, and maintaining natural buffer areas. Further, Section 30251 of the Coastal Act 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, the Coastal Act defines Environmentally Sensitive Habitat Areas (ESHAs) as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and development. In 1979, the California State Water Resources Control Board designated the intertidal and offshore areas from Mugu Lagoon to Latigo Point in Malibu, which includes the proposed project site, as an Area of Special Biological Significance (ASBS). This designation is given to areas requiring protection of species or biological communities to the extent that alteration of natural water quality is undesirable. Additionally, the Commission has, in past permit actions, consistently recognized the bluffs in western Malibu as containing natural vegetation and habitat areas that qualify as ESHA. Observation of the subject site by staff has indicated that the bluff slope ESHA has been severely degraded due to development and the presence of ornamental and invasive plant species used for landscaping. Section 30240 of the Coastal Act permits development in areas that have been designated as ESHAs only when the location of the proposed development is dependent upon those habitat resources and when such development is protected against significant reduction in value. However, as previously noted, the original development of a road down the bluff on the subject site predates Proposition 20 and the Coastal Act.

As discussed above, coastal bluffs are typically unstable, erosional features. By their very nature, bluffs can be expected to erode over time. Additionally, natural bluff areas vegetated with native bluff species provide unique, valuable habitat areas. Further, natural bluff areas are valuable visual resources.

The Commission has consistently recognized both that bluffs may be unstable and that they are valuable habitat and visual resources. Given these facts, the Commission has required new development to minimize impacts to coastal resources by locating structures well back from the edge of the bluff. In this case, there is existing development both on the bluff face (road) and near or over the bluff edge (residence). As discussed above, the applicant has supplied evidence that the revetment located on the adjacent property has also caused a condition contributing to accelerated erosion of the base of the bluff.

The Coastal Act does provide for the construction of shoreline protective devices and other improvements, such as those proposed, to protect existing development. In this case, the applicant's consultants have determined that continued wave erosion would result not only in further damage to the existing road, but would also lead to increased slope instability and loss of support for the existing residence. As such, the Commission finds that the proposed revetment, and the other proposed improvements are necessary to protect existing development from wave erosion and slope instability.

Nonetheless, the Commission finds that it is important to restrict any new development on the bluff face to only that which is located in areas previously developed or that which is absolutely necessary to protect the existing structures. In this case, the proposed buttress fill at the toe of the bluff is necessary to rebuild the area eroded by storm waves. However, the Commission finds that the proposed road widening and paving is not necessary to promote bluff stability. Staff recognizes that there is evidence of continuing use of the driveway across the site since before Proposition 20. However, there is some uncertainty with regard to the alignment of this road over time. No engineered plans of the original construction appear to exist. Comparison of various photographs and sketches of the road are inconclusive as to the actual width or alignment of the road. Certainly, the driveway width has changed over time due both to erosion as well as modifications made by the applicant. In any case, this driveway does not serve any existing, approved development. The applicant uses this driveway for private access to the beach below.

The applicant has stated that the proposed paving of the road would constitute "repaving" the existing driveway destroyed by disaster. However, the driveway has actually deteriorated over time through erosion. Deletion of the widened driveway areas beyond 15 feet in width from the plans and prohibition of driveway pavement would provide continuing access while limiting development on the bluff face. All areas on the bluff face outside of the driveway will be revegetated with appropriate bluff species in order to minimize further erosion, as required by Special Condition 7. The Commission finds it necessary to require the applicant to submit revised plans which show that the

width of the driveway has been limited to a maximum of 15 feet. This is set forth in Special Condition 6. As so conditioned, the proposed project will limit development on the bluff face in order to minimize the amount of impervious surface, erosion, and runoff.

Past development on the bluff face to construct the road (predating Proposition 20) resulted in extreme disturbance of the natural bluff habitat as well as contributed to an increase in erosion through the concentration of runoff and removal of natural vegetation. In addition, non-native, invasive vegetation such as myoporum has been introduced to the disturbed bluff areas. The unpermitted construction of stairs (to be considered in Permit 4-95-105), grading for the buttress fill, as well as the proposed development of retaining walls will result in addition disturbance. Further, the fill that the applicant brought to the site to construct the buttress fill was dumped down the steepest slope on the bluff face, further adding to the disturbed nature of this slopes. Given the existing level of development on this bluff face as well as the improvements necessary to protect the existing structures, it is unlikely that the remaining open bluff face areas could be restored to a condition where they would be considered fully functioning habitat. On the other hand, these areas could be revegetated with native bluff plant species for the purposes of stabilizing disturbed soils, visual enhancement, and use as habitat for a more limited range of plants, animals, and insects.

In order to ensure that the buttress fill area is revegetated and the disturbed natural slope area have non-native, invasive vegetation removed and are revegetated with native bluff species, the Commission finds it necessary to require the applicant to submit a bluff revegetation plan as detailed in Special Condition 7. This condition requires the applicant to prepare and implement a plan for revegetating all bluff areas with native drought resistant plants endemic to coastal bluffs. Furthermore, the applicant is required to monitor the success of the revegetation and supplement the plantings if it should prove necessary.

As discussed above, the Commission finds that the proposed development, though located on a sensitive bluff, is necessary to protect existing development. In order to minimize the area of the bluff that is disturbed, revised plans are required to limit the width of the road to 15 feet maximum and to prohibit the addition of pavement on the driveway. Further, a bluff revegetation plan is required to be developed and implemented to remove non-native invasive plants and to plant all disturbed areas with native bluff species. The Commission finds that only as so conditioned is the proposed project consistent with Sections 30230, 30231, 30240 and 30251 of the Coastal Act.

G. Violations

Various developments have been carried out on the subject site without the required coastal development permits. The applicant requests after-the-fact approval of the construction of a rock revetment across the three beachfront parcels to protect an existing road and residence. The applicant's consultants contend that the revetment is necessary to protect the toe of the bluff from wave erosion because further erosion

could destabilize the bluff as well as the existing residence above. The applicant also requests after-the-fact approval of remedial grading (40 cu. yds. cut and 170 cu. yds. fill) to regrade the toe of the bluff and buttress the damaged roadway. The fill was imported to the site and dumped down the bluff face from the road above. The applicant has proposed to retain the above mentioned development as part of this permit application.

As described above, construction of the proposed revetment and the buttress fill were already begun by the applicant before a stop-work notice was issued by the City of Malibu. At this time, this work has not been completed pending the issuance of permits. In order to ensure that the unpermitted aspects of the portion of the project are resolved in a timely manner, Special Condition 9 requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action. All of the elements approved in this project are related to improving slope stability on the proposed project site. It is important that these elements be completed within the same time frame to assure that slope stability is improved. Therefore, Special Condition 10 requires the applicant to implement the approved plans within 60 days of the issuance of the coastal development permit.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit. Finally, the Commission notes that the subject permit action does not address all unpermitted development on the site. There is development such as additions to the residence, stairs on the bluff face, and a lot line adjustment which are the subject of a pending application (4-95-105) as described above.

H. Local Coastal Program

Section **30604** of the Coastal Act states that:

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

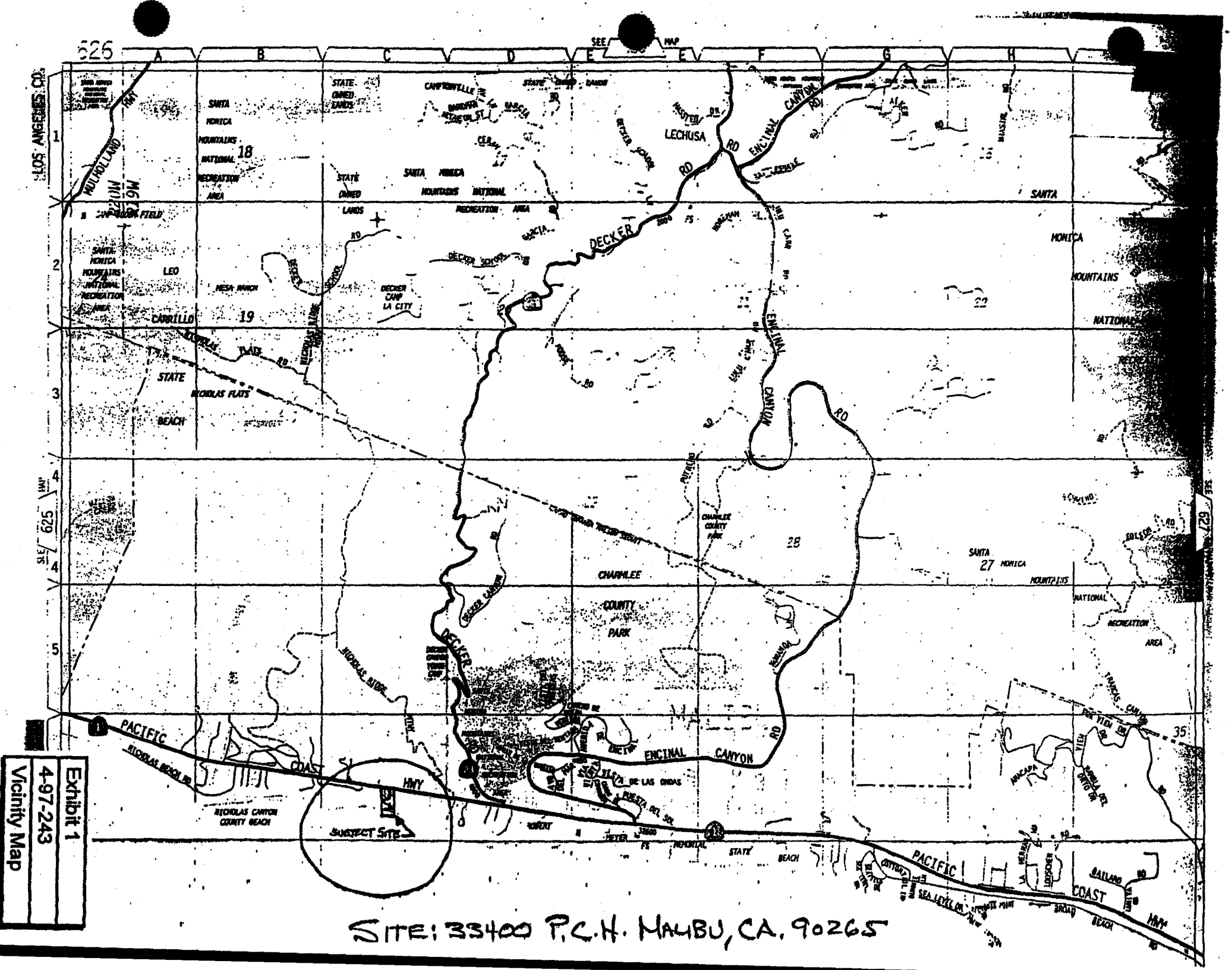
Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with the Chapter 3 policies of the Coastal Act. The preceding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

with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program for Malibu which is also consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

I. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a 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.



SITE: 33400 P.C.H. MALIBU, CA. 90265

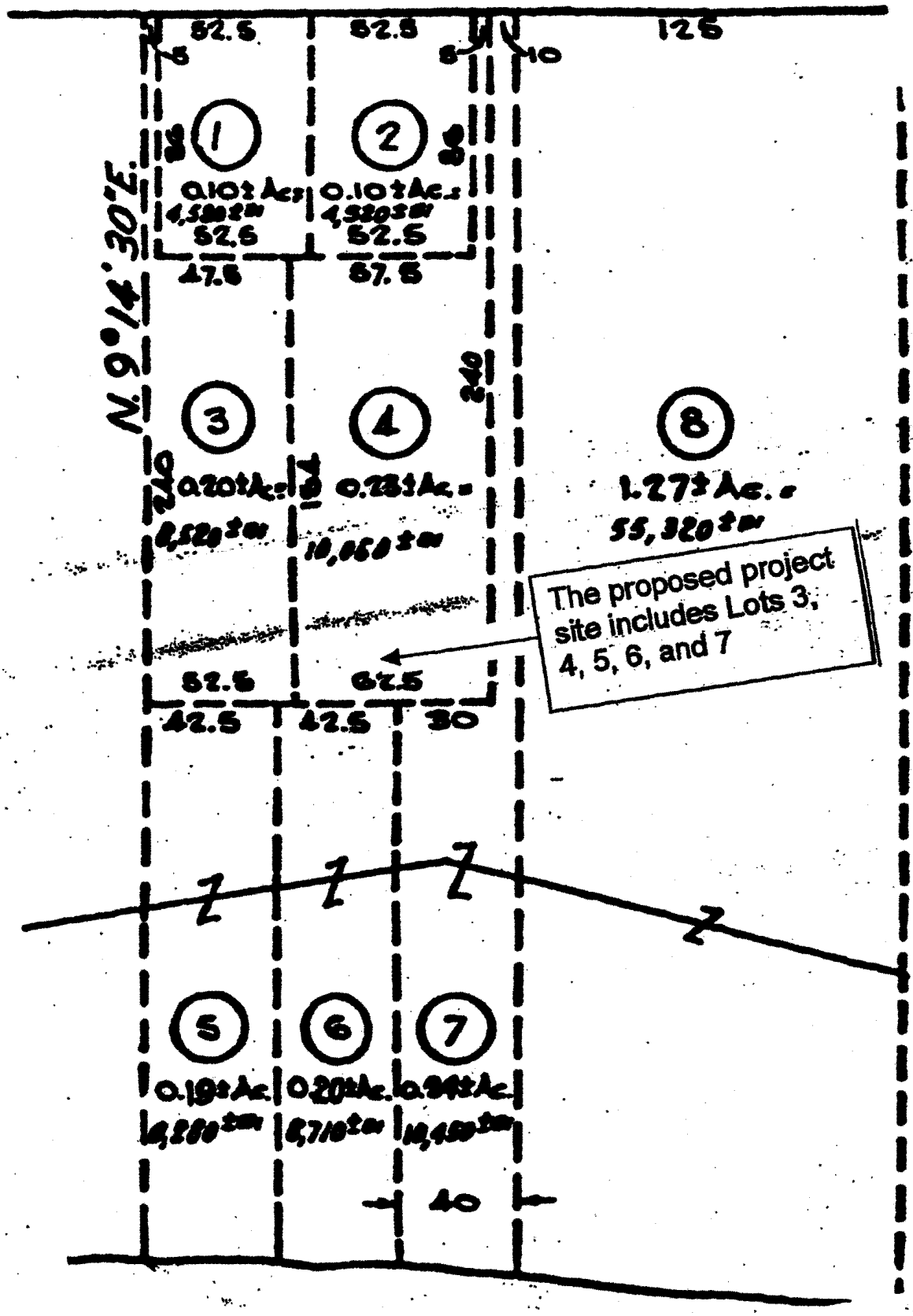


Exhibit 2
4-97-243
Parcel M

BASIS OF BEARINGS:

THE BEARING OF S 80°45'30" E ON THE CENTER LINE OF PACIFIC COAST HIGHWAY AS DESCRIBED IN A DEED RECORDED IN BOOK 15228, PAGE 342 OF OFFICIAL RECORDS OF LOS ANGELES WAS USED AS THE BASIS OF BEARINGS FOR THIS MAP.

BENCHMARK:

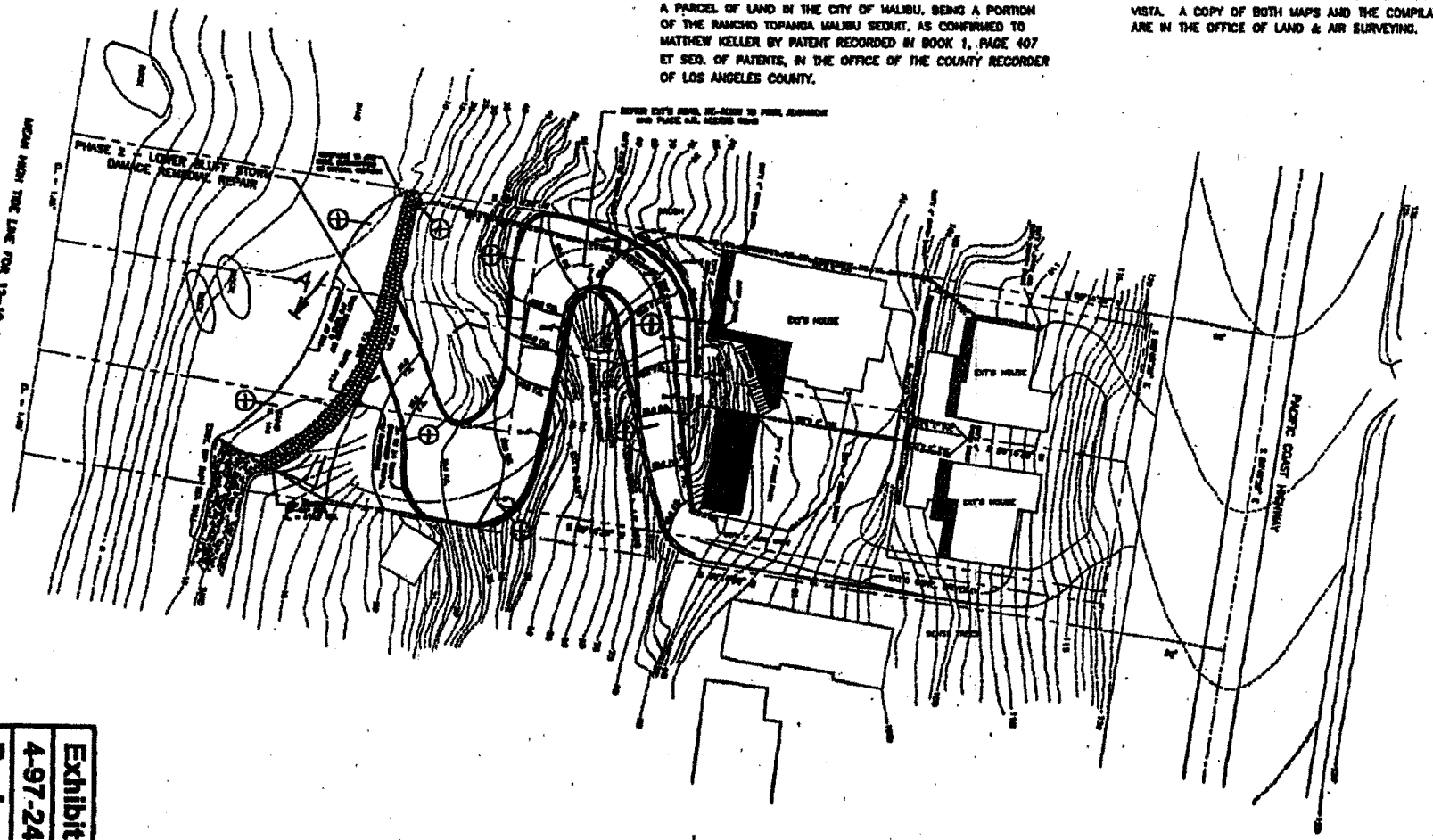
L.A.C.E. B.M. FDY-9067
EL=113.402 (1990 ADJ.)

LEGAL DESCRIPTION

A PARCEL OF LAND IN THE CITY OF MALIBU, BEING A PORTION OF THE RANCHO TOPANGA MALIBU SEQUIT, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1, PAGE 407 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF LOS ANGELES COUNTY.

SURVEYORS NOTES:

1. MEAN HIGH TIDE ELEVATION USED FOR THIS MAP IS 1.85'.
2. THIS MAP IS A COMPILATION OF A MAP PREPARED BY LAND & AIR SURVEYING AND A MAP SUPPLIED BY MALIBU VISTA. A COPY OF BOTH MAPS AND THE COMPILATION ARE IN THE OFFICE OF LAND & AIR SURVEYING.



GRAPHIC SCALE

1" = 20'

PHASE II EMERGENCY BLUFF RESTORATION & PAVEMENT PLAN

GRADING AND DRAINAGE PLAN

ADDRESS: 33400 PACIFIC COAST HIGHWAY MALIBU, CALIFORNIA 90265

OWNER: MR. MATT BIEGOWSKI

VPL ENGINEERING, INC.

Exhibit 3
4-97-243
Revised Grading Plan

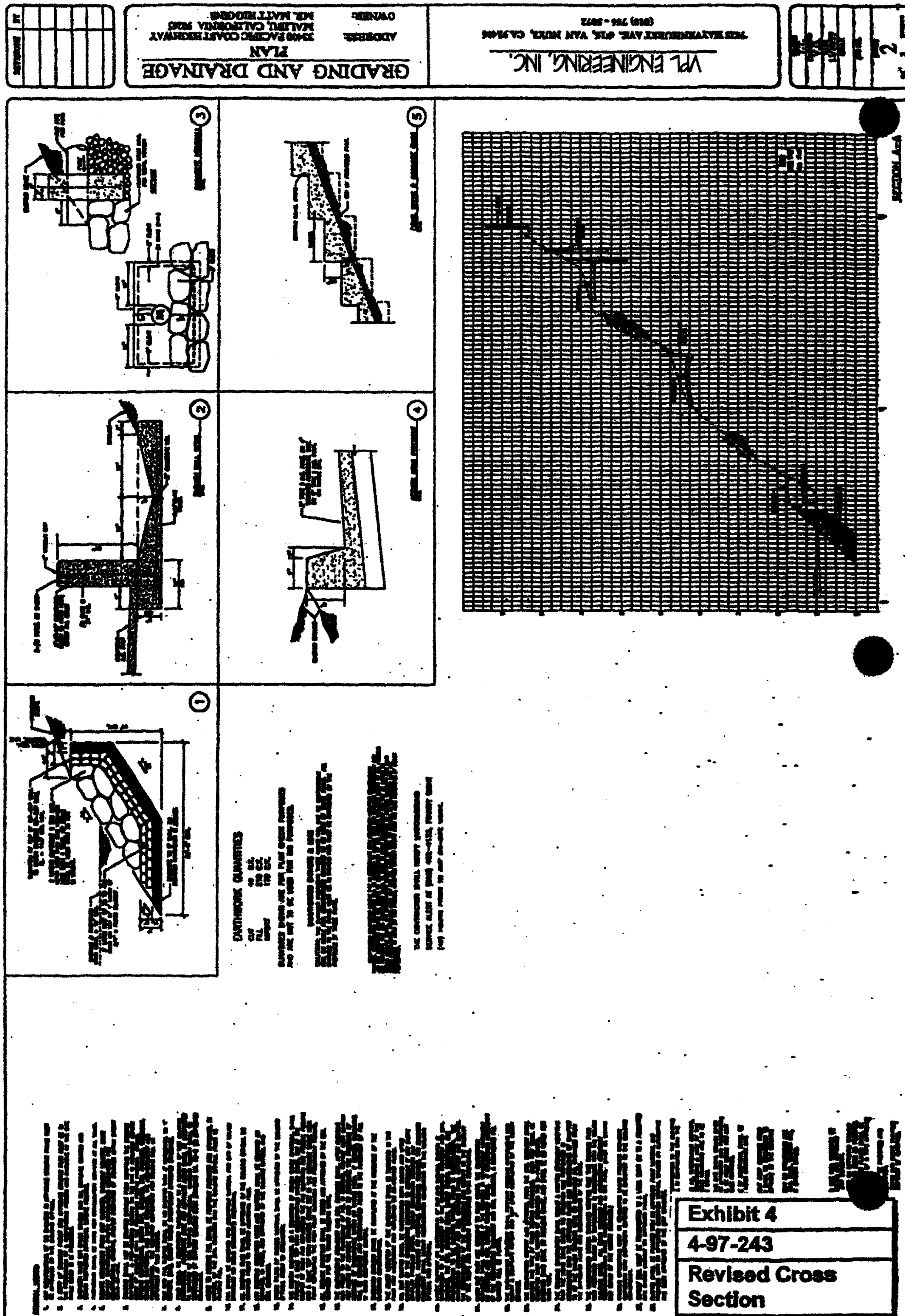


Exhibit 4

4-97-243

Revised Cross Section

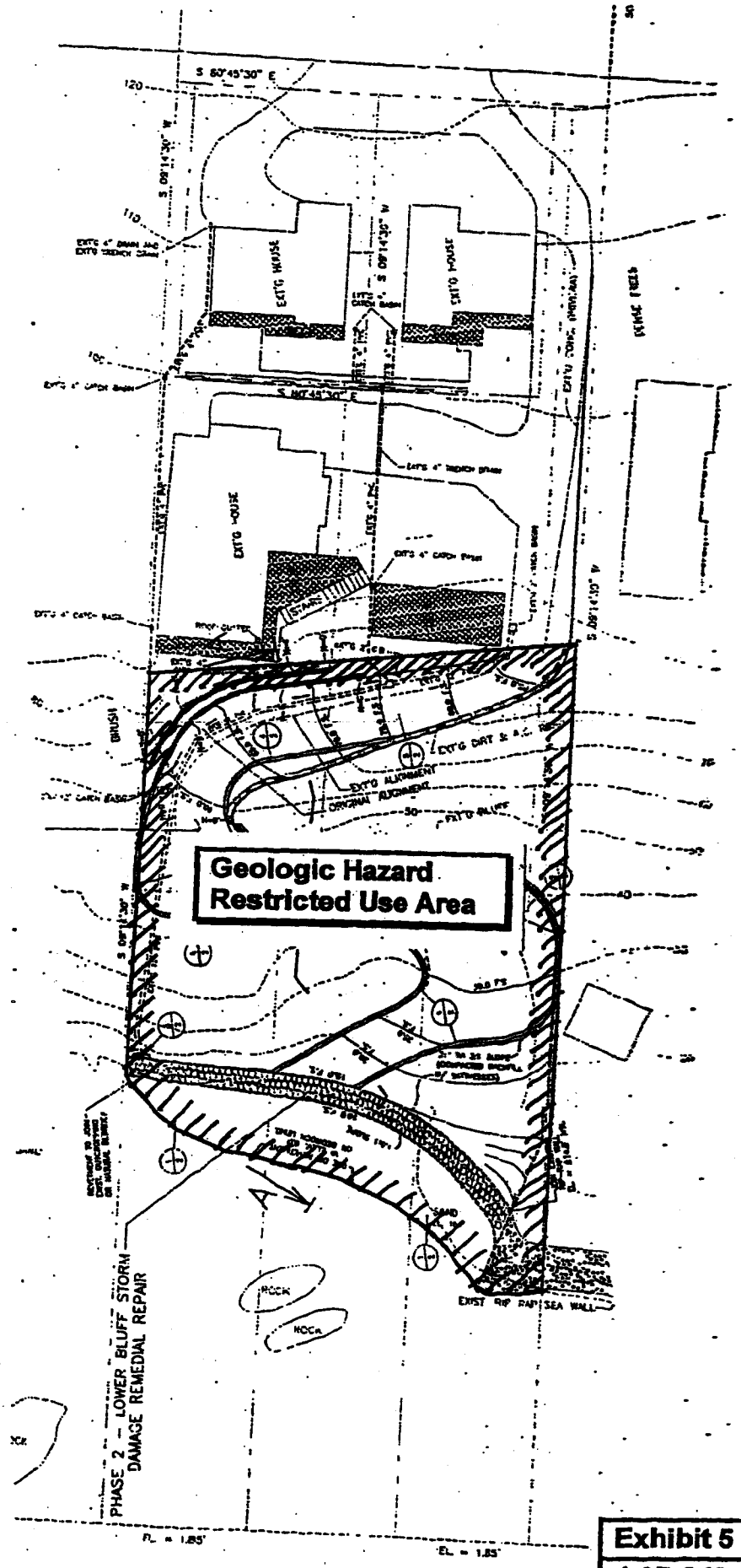


Exhibit 5
4-97-243
Geologic Hazard Restricted Use Area

APPLICATION FOR GRADING PERMIT

COUNTY OF LOS ANGELES
Department of County Engineer
Building and Safety Division
JOHN A. LAMBIE, County Engineer
CASBATT D. GRIFFIN, Supt of Building

SITE ADDRESS 33400 PACIFIC COAST HWY
LOCALITY MALIBU
NEAREST CROSS ST. DECKER CAN. RD.
DISTRICT NO 9-2 | MAP NO 4524 | STATE HWY. (YES) NO

FOR APPLICANT TO FILL IN

SITE ADDRESS 33400 PACIFIC COAST HWY.
LOT NUMBERS PAR LOT 1 OF 534 BLOCK
TRACT NUMBER
OWNER JEAN FOX
MAIL ADDRESS 10360 CLYDE AVE
CITY SUNLAND TEL NO. 7-7550
ENGINEER STATE REG. NO
ADDRESS
SUPV'G. GRAD'G. ENGINEER STATE REG. NO.
ADDRESS
GRADING CONTRACTOR OWNER TEL NO.
ADDRESS

USE ZONE R-1
SPECIAL CONDITIONS

SET BACK	YARD	HWY.	STREET NAME	EXIST. WIDTH
FRONT P.L.		50'	Pacific Coast Hy	100'
SIDE P.L.				

SURETY & BOND
BOND NO.
SURETY COMPANY
DATE FILED
REC'D BY
CASH DEPOSIT $ 155.00 REC'D BY J. Lopez DATE FILED 9/1/61

DESCRIPTION OF WORK

GRADE & PAVE ROAD TO PEAK FOR ACCESS TO FUTURE RESIDENCE & GST HOUSE

CHECK IF SUPERVISED GRADING ☐
SIGNATURE OF APPLICANT
ADDRESS
NO. OF CUBIC YDS. HANDLED:

P.C. FEE $ 6.00
FEE $ 33.00

10-18-61
GRD PREP OK J.Berg

10-25-61
Road OK TO PAVE J.Berg

I HEREBY ACKNOWLEDGE THAT I HAVE READ THIS APPLICATION AND STATE THAT THE ABOVE IS CORRECT AND AGREE TO COMPLY WITH ALL COUNTY ORDINANCES AND STATE LAWS REGULATING EXCAVATING AND GRADING.

SIGNATURE OF PERMITTEE
ADDRESS

WORK TO BE COMPLETED WITHIN ____ DAYS

	DATE	INSPECTORS SIGNATURE
FINAL CONTOUR MAP FILED		
FINAL CERTIF. OF ENG'R REC'D.	11/15/61	
WORK COMPLETED		DISTRICT ENGINEER
SURETY BOND RELEASED	12/27/61	Bond

CLYDE N. DIRLAM, PRINCIPAL STRUCTURAL ENGINEER

FULL CHECK VALIDATION (CK) N.S. CASH
PERMIT VALIDATION (CK) N.S. CASH

1 EE
1 155.00
1 33.00

Exhibit 6
4-97-243
Grading Permit-Road

12/1

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
666 E. OCEAN BOULEVARD, SUITE 3107
P.O. BOX 1450
LONG BEACH, CALIFORNIA 90801
(213) 590-5071 (714) 846-0648

December 1, 1980

Torrance
City Council Chambers
3031 Torrance Boulevard
Torrance, California

ADMINISTRATIVE AGENDA

To be reported at the December 1, 1980 hearing.

(1) A-80-7340 VT — Addition of a carport, bedroom and second story deck to an existing SFD. Property does not have ocean frontage. ($12,000), at 33408 Pacific Coast Hwy., in Malibu, by Neland Sprik and Matthew Higgins.

(2) A-80-7341 VT — Addition of a carport, bedroom and second story deck to an existing SFD. Property does not have ocean frontage. ($12,000), at 33410 Pacific Coast Hwy., in Malibu, by Neland Sprik and Kelly Higgins.

(3) A-80-7342 VT — Addition of a carport, master bedroom, recreation room, and decks to an existing SFD. Property does not have ocean frontage. ($18,000), at 33412 Pacific Coast Hwy., in Malibu, by Neland Sprik and Matthew Higgins.

(4) A-80-7361 VT — Minor additions to an existing beach fronting residence, including the construction of seaward extending trellised patio sun screens, and trellised fences screening existing decks. Project also includes the construction of a guest parking space on the landward side of Malibu Cove Colony Road. Approval of permit will rectify alleged violation. ($3,200), adjacent to MHT, at 27124 Malibu Cove Colony Road, in Malibu, by Mr. & Mrs. S.P. Garvey.

Appealed 3-9-81

Condition: Prior to issuance of permit, the Executive Director shall certify in writing that the following condition has been satisfied. The applicant shall execute and record a document, in a form and content approved in writing by the Executive Director of the Commission irrevocably offering to dedicate to a public agency or a private association approved by the Executive Director, and easement for public access and passive recreational use along the shoreline.
Such easement shall be a 25 foot wide strip of beach as measured inland from the water line (document shall state that the daily high water line is understood by both parties to be ambulatory from day to day, as will the 25 ft. wide strip of dry, sandy beach). In no case shall said access be closer than 10 ft. from the approved development.
Such easement shall be recorded free of prior liens except for tax liens and free of prior encumbrances which the Executive Director determines may affect the interest being conveyed.
The offer shall run with the land in favor of the People of the State of California binding successors and assigns

(continued)

Exhibit 7
4-97-243
Hearing Transcript
(3 pages)

South Coast Region, California Coastal Commission
December 1, 1980
Administrative, Single-Family & Amendment Calendars

* * * * *

[Roll Call]

CHAIR GALLANTER: We have slightly modified the order of the agenda, but not much, and the Administrative Calendar and the Single Family remain the first items of business.

So, we will go through that in our usual procedure, which is that the Commission will go through page by page on the Administrative and Single Family agendas. We will then ask whatever questions we have. We will then go to the public and call them off one number at a time. If you agree with whatever it says on the agenda, you don't have to say anything at all. If you have some problem with the conditions, or lack of conditions, or if you have an objection to the item, you should then come to the podium and address us very, very briefly. We will not hold a public hearing on any of those issues today.

If there is sufficient question that we need to spend more time, and more detailed analysis on a particular permit, we will set it for a public hearing at a later time. It takes four Commissioners -- they keep changing the procedures on me -- it takes four Commissioners to move an

item to public hearing.

So, with that, Commissioners, we will start with the Administrative agenda.

Are there any questions on page one?

[Pause in Proceedings]

All right, for those who may need to know this -- digressing for a moment -- Commissioner Reeda called. He is ill and will not be here today.

Questions on -- yeah, I had a question on page 1, since nobody else seems to. On the first three items, which seem to be adjacent, are those existing structures? things that we had permits for? that we granted permits for? or are they pre-Prop. 20? And, if they were, the question is were there any conditions attached to the original permits.

COASTAL STAFF ANALYST: These are ones that were on violation for a long time, but the court did not order them removed. And, so although they were put on after the *Coastal Act* was in effect, no permit was ever received for them.

CHAIR GALLANTER: And, so no conditions were ever --

UNIDENTIFIED SPEAKER: They are all paid.

CHAIR GALLANTER: All right.

COASTAL STAFF ANALYST: It has been a couple of years.

STATE OF CALIFORNIA — EDMUND G. BROWN JR., Governor

CALIFORNIA COASTAL COMMISSION
SOUTH COAST REGIONAL COMMISSION
666 E. OCEAN BOULEVARD, SUITE 3107
P.O. BOX 1450
LONG BEACH, CALIFORNIA 90801
(213) 590-5071 (714) 846-0648

FILE COPY

COASTAL DEVELOPMENT ADMINISTRATIVE PERMIT

Application Number: A-80-7342

Name of Applicant: Neland Sprik, 8655 E. Florence Avenue, Downey CA 90240
Matthew Higgins P.O. Box 4115, Malibu, CA 90265

Development Location: 33412 Pacific Caost Hwy.
Malibu, CA

Development Description: Addition of a carport, master bedroom, recreation roo and decks to an existing SFD. Property does not have ocean frontage.

I. The Executive Director of the South Coast Regional Commission hereby grants, subject to condition(s), a permit for the proposed development, on the grounds that the developmer as conditioned will be in conformity with the provisions of Chapter 3 of the Californis Coastal Act of 1976, will not prejudice the ability of the local government having juri diction over the area to prepare a Local Coastal Plan conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Conditions: none

Exhibit 8
4-97-243
Permit A-80-7342
(3 pages)

Conditions met on N/A By VR VT

III. This permit may not be assigned to another person(s) except as provided in Section 13170 of the Coastal Commission Rules and Regulations.

IV. This permit shall not become effective until:

A. Completion of the Regional Commission review of the permit pursuant to the notice of public hearing.

B. A copy of this permit has been returned to the Regional Commission, upon which copy all permitees or agent(s) authorized in the permit application have acknowledged that they have received a copy of the permit and have accepted its contents.

V. Any development performed on this permit prior to the review by the Regional Commission is at the applicant's risk and is subject to stoppage upon completion of the review pending the Regional Commission's approval and/or completion of any appeal of the Regional Commission's decision.

VI. Work authorized by this permit must commence within two years from the date of approval. Any extension of time of said commencement date must be applied for prior to expiration of the permit.

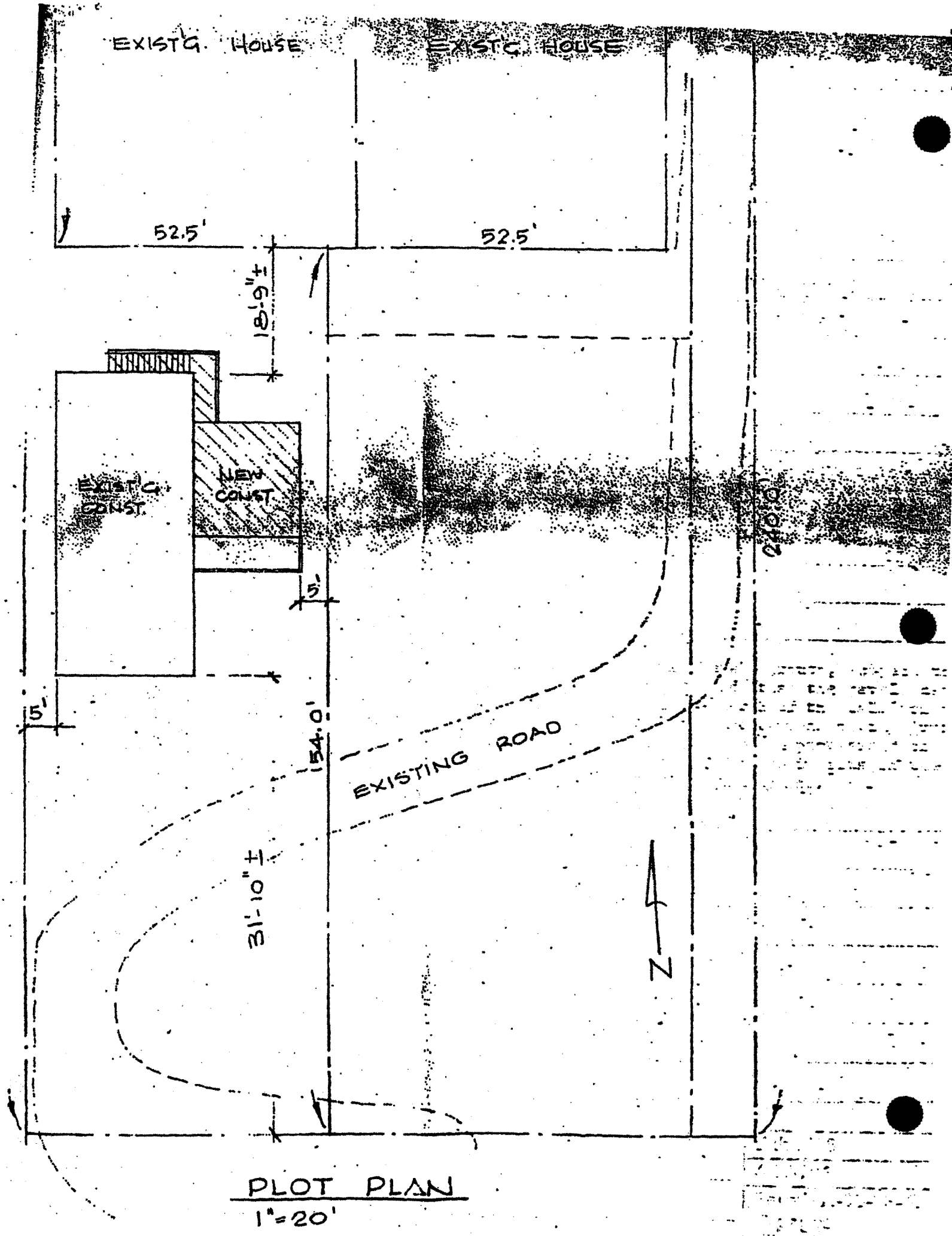
Approved on December 4, 1980.

M. J. Carpenter
Executive Director

I, _____, permittee/agent, hereby acknowledge receipt of Permit Number A-80-7342 and have accepted its contents.

(Date) (Signature)

Scheduled Hearing Date December 1, 1980



PLOT PLAN

1"=20'

STATE OF CALIFORNIA – THE RESOURCES AGENCY GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 641 - 0142

August 30, 1999

Alan Robert Block
1901 Avenue of the Stars, Suite 1610
Los Angeles, CA 90067

Subject: Disaster Replacement Request for Roadway on Bluff at 33400 Pacific Coast Highway, Malibu

Dear Mr. Block:

This letter is in response to the subject request for a determination that no coastal development permit will be required for the reconstruction of the bottom portion of a roadway on the bluff face, pursuant to §30610(g) of the Coastal Act.

Although not explicitly stated in either your letter or Mr. Higgins' letter requesting this determination, we have assumed that this road reconstruction is the same as the relevant portion of the development proposed in Permit Application 4-97-243. In other words, we have assumed that the proposed reconstruction includes remedial grading in the amount of 250 cu. yds. (40 cu. yds. cut and 210 cu. yds. fill) to buttress the roadway behind the proposed rock revetment, as shown on the plans prepared by VPL Engineering, Inc., and dated 7/1/98.

We have reviewed this request and have determined that the proposed roadway reconstruction **does** require a permit. Deterioration of the roadway and erosion of the toe of the bluff is not the result of one disaster, but rather, has been ongoing at the project site for some time. In fact, the Higgins' consultants have documented ongoing erosion at the site since as early as 1990.

Further, as noted on the grading plan notes, the proposed road reconstruction would re-align the road to its "original" alignment. The proposed alignment of the bottom of the roadway has not existed in that location for some time, since at least before 1990. As such, even if the bottom portion of the road had been destroyed in a single disaster rather than deteriorating and eroding over time, the work now proposed is not for the replacement of a structure that existed previously. Rather, the proposed reconstruction is new development to recreate a structure in a size and alignment that may have existed historically, but not for some time.

Finally, the roadway reconstruction is integrally related to the rest of the project proposed under Application 4-97-243. The proposed road buttress would backfill directly behind the proposed rock revetment. The paving is proposed on the entire length of the road. It is appropriate that all the elements of the proposed development are considered together as one project.

Exhibit 9
4-97-243
Disaster Replacement Letter

In conclusion, we have reviewed your request and have determined that the proposed reconstruction of the bottom portion of the roadway on the bluff face **requires** a coastal development permit. Permit Application 4-97-243 is pending before the Commission for development that includes the proposed reconstruction. If you have any further questions, please feel free to contact me.

Very Truly Yours,

John Ainsworth
Regulatory Supervisor

cc: Matthew Higgins

STATE OF CALIFORNIA

COASTAL COMMISSION

COPY

BEVERLEY HIGGINS,
CITY OF MALIBU,
COUNTY OF LOS ANGELES

Application No. 4-97-243

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Thursday
February 17, 2000
Agenda Item No. 9.a.

Quality Resort -- Mission Valley
875 Hotel Circle South
San Diego, California

Exhibit 10 (73 Pages)
4-97-243
Transcript from the February 17, 2000 Commission Hearing

APPEARANCES

COMMISSIONERS

Sara Wan, Chair
Dave Potter, Vice Chair
David Allgood, Alternate
Paula Daniels
Christina L. Desser
Shirley Dettloff
Patrick Kruer, Alternate
Cynthia McClain-Hill
Pedro Nava
Mike Reilly
John Woolley

STAFF

Peter Douglas, Executive Director
Chuck Damm, Senior Deputy Director
Amy Roach, Staff Counsel
Lisa Trankley, Deputy Attorney General
Mark Johnson, Staff Geologist

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INDEX TO SPEAKERS

-o0o-

California Coastal Commission
February 17, 2000
Beverley Higgins -- Application No. 4-97-243

* * * * *

CHAIR WAN: That brings us to Item 9.a. Higgins.

SENIOR DEPUTY DIRECTOR DAMM: And, Item 9.a. is Application 4-97-243, and this is a project that is a bluff property, adjacent to Encinal Beach at 33400 Pacific Coast Highway in the City of Malibu.

The project, itself, involves a request for the after-the-fact approval of the construction of a rock revetment at the toe of this coastal bluff, along with actions to be taken to stabilize the bluff face, itself, including construction of retaining walls, and improvements to an existing roadway that leads down from the highway to the beach, itself.

The staff is recommending that the Commission approve this project subject to a number of special conditions. You also have a lengthy response from the applicant that is in a separate handout to you for this project, in which they go over the history of the project, from their perspective, and why the Commission should approve the application that is before you today.

This is a matter that, initially, was scheduled for Commission action at your July hearing this past summer.

At that hearing, the Commission had a number of concerns related to the development on this site, and what was permitted, or not permitted. In addition, you had questions with regards to whether or not the proposed rock revetment is necessary to protect the existing structure as the applicant was alleging.

Since that time, we have had Leslie Ewing of our staff, and more recently our staff geologist, Mark Johnson, look at the information that was provided by the applicant's geologist, and the staff is convinced that the rock revetment is, indeed, needed to protect the existing structure on the site.

That is not to say that the applicant could not possibly do a very expensive retrofitting where they, perhaps, put in caissons to support the home on the hillside, and those caissons would be sunk very deep, in order to assure that as the hillside experienced any further erosion, that the structure would remain.

However, in staff's opinion, because it is an existing residence, and Section 30235 of the *Coastal Act* indicates that shoreline protective measures shall be allowed where necessary to protect existing development, provided they are designed to be the best alternative, and all impacts associated with the seawall are mitigated, that they can be permitted.

Staff, with the special conditions, feels that the project does conform with the visual resource policies of the *Coastal Act*, the public access policies, as well as the geologic hazards policies contained in Chapter 3 of the *Coastal Act*.

However, the applicant is not in agreement with the special conditions, and in particular, they object to Special Conditions No. 6 and No. 8. Special Condition No. 6 of the staff report indicates that the road and the paving of that old existing road be limited to a width of not more than 15 feet. We believe that closely resembles what was graded back in approximately 1961, and that the paving that existed on the site, that the 15-foot limitation will insure that this driveway that leads down from Pacific Coast Highway to the beach is somehow not being widened for purposes that the applicant may have for any type of future development on the property.

Special Condition No. 8 is designed to assure that with the approval of this seawall to protect the existing residence that that seawall not be used as justification in the future to allow further additional development on this site.

Attached to your staff report, there is an exhibit which shows the lot configuration of this property -- I believe it is Exhibit 5 -- the lot configuration on the

property is such that there are three lots located below the existing residence. Those lots have a history, with regards to Commission action, and the applicant wanting a seawall, with the intention of developing those lots. In staff's opinion, we are concerned that if the seawall is approved, in order to protect existing development -- as is allowed under the *Coastal Act* -- that that, while being permissible under Section 30235 of the *Coastal Act*, is not allowed in order to have new development.

The *Coastal Act* specifically says that any new development shall be designed so as not to require shoreline protective measures. So, we are concerned that the approval of this application not somehow be a springboard for the property owner, or future property owners, to make an argument that it is now safe to intensify use on this property, and to build additional structures on the property because there is an existing seawall that will insure that that new development is adequately protected.

We do not feel that the applicant can have it both ways, arguing that this site is not stable, that they need to build these retaining walls, that they need to take the remedial actions, that they need to construct the rock revetment in order to protect the existing home, and then at a subsequent date use that as an argument to allow intensified use on the site, or additional structures, guest

homes, development of that type.

There certainly is concern on the part of the applicant with regards to Special Condition No. 8, which establishes a geologic hazard restricted use area. Staff believes that that condition is appropriate, even though the applicant's geologist indicates that the lower portion of the property could be built on, provided you use proper foundations, and techniques, to guard against hazards associated with landslides and wave action.

Staff's position is that this is clearly a hazardous location. The applicant is proposing this project that is before you today, because of the hazards associated with this property, and that the only reason we are recommending approval is because in our opinion the existing home is threatened. We certainly would not be recommending approval of this project to simply protect vacant property that is located closer to the ocean.

And, for that reason, we feel Special Condition No. 8 is an appropriate mitigation for allowing the seawall to protect the existing home, while providing the Commission with assurance that it will not lead to additional development on the lower portion of the property.

With those special conditions we do, as I mentioned earlier, feel that the project is consistent with the *Coastal Act*.

I do have some slides that I think would be helpful to the Commission if you wish to see those.

CHAIR WAN: Yes, definitely would like to see them.

[Slide Presentation]

SENIOR DEPUTY DIRECTOR DAMM: This first slide was a slide that was taken in 1990 -- I don't know if we can get the room any darker? That helps a little bit, thank you.

The property will show up better in subsequent slides, but it is located on the right-hand side of the slide. The residence is up on the upper portion of the slope.

This is a 1997 picture taken showing rock that is on an adjoining property, known as the Haagen property. The Commission did, back in the -- I believe was the 1980s or 1990 review this. They found that the rock that was now placed on the beach, was exempt from needing a permit, that there had been rock previously on the beach, and no Coastal Development Permit was required by the Commission.

The applicant is indicating that in their opinion, the placement of this rock, which is probably some 40- to 50-feet out on the beach, has resulted in indefects that are affecting their property, which is located just immediately -- whoops, can't find the red dot -- there. It is located just beyond the retaining wall, which eventually became a

cabana on the Haagen property. The applicant's residence, up on the hillside.

Okay. This is the road that comes down from the highway to the beach. This is a recent photo. It was taken in 1997. The exhibits that I handed out to you earlier show that this road was graded prior to the *Coastal Act*, and it was also paved, as near as staff can tell from the documentation that we have, prior to the 1972 *California Conservation Coastal Act*.

This is a photo after the el nino storms showing the toe of the bluff at the beach. During those storms this bluff eroded at the toe on the order of some 20 to 30 feet. The road, as you can see, is switch backs, and is partially damaged by the erosion, as it leads down to the beach, itself.

The rock revetment in front of the applicant's property, the director approved an emergency permit to place rock there, however, they did not place the rock consistent with the terms of the emergency permit. Under the staff recommendation, this rock revetment would have to be relocated, so that it is at -- it curves back, and is at the toe of the slope, as you see it in this photo, not further out on the beach, as it exists today.

The rock revetment shown here is covered with sand. You can see the area where the staff would be

recommending the rock revetment be pulled back landward -- a person is standing in that area.

This is just another view of the rock revetment, covered for the most part with sand, at this point.

That concludes the slides.

CHAIR WAN: Do you have a slide? or can you show on any of the exhibits -- point to me -- where the unpermitted development that took place, additions to the house that took place in '95 are located? do you have any idea where they are?

[Pause in Proceedings]

SENIOR DEPUTY DIRECTOR DAMM: Some of the unpermitted development: that concrete stairway coming down the bluff, has not been permitted, would be subject to further action by, and review by the --

CHAIR WAN: But, there were additions to the house that are still pending from 1995, that were unpermitted. Where are those additions to the house? are they landward, or seaward?

SENIOR DEPUTY DIRECTOR DAMM: With regards to the home, there were areas that were enclosed that appeared to be deck areas that became enclosed areas.

And, if you refer to Exhibit 3 on the staff report, you will see the applicant's proposed widening of the roadway as it comes down the bluff face. You will also see

some areas that are crosshatched gray areas --

CHAIR WAN: Are those the areas?

SENIOR DEPUTY DIRECTOR DAMM: Those are --

CHAIR WAN: So, some of those areas extend out towards the bluff?

SENIOR DEPUTY DIRECTOR DAMM: Well, they do, but there was development there. It is just that it has become enclosed.

CHAIR WAN: Okay, I just needed to know what that development was.

SENIOR DEPUTY DIRECTOR DAMM: Okay.

CHAIR WAN: Okay, thank you.

COMMISSIONER ALLGOOD: Were there permits to enclose?

CHAIR WAN: No.

SENIOR DEPUTY DIRECTOR DAMM: No, there are other violations associated with this property, where the applicant has submitted an application, and we describe that in your staff report.

The City of Malibu has not given an approval in concept for that activity. We have had verbal confirmation from the city that they do not plan to require any permits for this activity, that it was done prior to the city's incorporation. We are going to ask the city to verify that in writing. If that is the case, then we are going to bring

that application to the Commission without any action from the City of Malibu.

COMMISSIONER ALLGOOD: There is an exhibit in the blue-fronted agenda item, Thursday 9.a. it seems to have a pretty good photograph of the site. I was wondering if you could show us on this photograph just what is the unpermitted portion of the house?

CHAIR WAN: It shows on that, Exhibit 3, shows quite easily. It is the crosshatched part.

COMMISSIONER ALLGOOD: Staff Exhibit 3, is that correct?

CHAIR WAN: Yes, staff Exhibit 3 shows it quite well. That is what I didn't know, from the staff exhibit, because it wasn't marked what the crosshatched area was.

[Pause in Proceedings]

SENIOR DEPUTY DIRECTOR DAMM: One minute.

CHAIR WAN: All right, perhaps when Mr. Schmitz makes his presentation, he can answer that question and show it to you.

Okay, any ex-parte communications?

[No Response]

Seeing none, I am going to open the public hearing. Mr. Schmitz, how long will you need?

MR. SCHMITZ: Madam Chair, I have a lot of ground to cover, a lot of questions by the Commissioners. I will

need 15 minutes.

CHAIR WAN: Fifteen minutes.

MR. SCHMITZ: Thank you.

Commissioners, Don Schmitz, representing the applicants, the Higgins. I would like to thank staff for the recommendation of approval. I would like to start my --

CHAIR WAN: I have one speaker in opposition, if you want to save any time for rebuttal, you will have to take it out of your 15 minutes.

MR. SCHMITZ: Thank you, Madam Chair.

[Slide Presentation]

I would like to thank staff for the recommendation of approval. I would like to address some of the Commission's questions from the previous hearing, and in the hearing today.

In regards to the pending application before the Commission, we are waiting for clarification from the City of Malibu regarding the approval in concept. It is my under-standing that the preponderance of the issue that is still pending is back behind the house, the landward side of the house, that there is a deck issue, perhaps on the seaward side, but obviously the issue at hand today is whether or not this Commission is concerned about approving a shoreline protection device to protect a legal development, that is clearly not the case.

In regards to the previous hearing, there were some pointed questions by the Commission in regards to the history of the property. It is important to note that the road was, in fact, graded in 1961. The Commission has been provided with a grading permit from the County of Los Angeles -- it was, in fact, a legal road. In addition, the public record has been supplied to the Commission that the road was paved at that time.

We would like the Commission to please take note of the fact that the road configuration has not changed in the last 40 years. It is essentially today the same road that it was, as it was graded back in 1941.

Now, there was some questions by the Commissioners at the last hearing with regards to whether or not there truly was a hazard to the house up on the bluff. By the way, this is the existing paving you can see right here, where this section of the bluff was undermined. And, you saw some of the pictures by the staff.

The erosion to the bluff, which was in fact precipitated by the adjacent rock revetment, which was poorly designed -- and this has been documented by the coastal engineer, and has been agreed upon, too, by the Coastal Commission engineer -- it created a swirling action which undermined the bluff to a dramatic degree. That bluff below the applicant's house has retreated 30 feet. It is a some

60-foot wide lot. In addition, you have an escarpment here that is 15- to 20-feet wide.

Now, Commissioners, I want you to think about an analogous situation. If you lived on a hillside piece of property, and you woke up in the morning and found some grading contractor had come in and removed tons and tons and tons of earth from the base of the hill that supported your house, well, I think that you would be rightfully concerned.

And, it is appropriate for the Commission, and for the project engineer, and for the project geologist to determine that the undercutting of this coastal bluff has resulted in a situation where the overall stability of the bluff has been degraded to the point where a cataclysmic failure could occur, and would destroy the house.

And, accordingly, this mass wasting event, which cannot be predicted, the staff engineer, the Coastal Commission staff engineer said it could happen five or ten years from now, or it could happen in the next large storm event. We can't wait until that happens. We have to take a pro-active approach, and we have to come in with a rock revetment which will do two things. It will protect the bluff from any future damage, and it will buttress the base of the slope, so that the slope failure will not occur. This shows, again, the very impressive erosion that occurred from the swirling action off of the down slope revetment.

And, here you see, this is the adjacent revetment, which sticks out an inordinate distance out into the beach, and the emergency revetment. This revetment will be angled back, pursuant to the design by the coastal engineer, David Weiss, so that it will tie into the hardened bluff face, where there is good hard bedrock adjacent, and tying in on a curved fashion to the existing adjacent revetment, so there will be no more future erosion of the beach.

We are, in fact, very much in opposition to the staff Condition No. 6 -- and, if I could get an overhead, please -- which states that the applicant should -- could we turn that around for the Commission -- so that the applicant has to reduce the existing roadway down to 15 foot. Now, we have a problem with this on several points.

This existing road, as has been documented, has not changed since 1961. This isn't a dirt road across a cow pasture somewhere in farmland, where somebody drives to the side in order to avoid a mud puddle, and over 40 years it can move. It is a graded road with cut and fill slopes. This is a 1970 survey. This is part of the public record. There is a stamp there, and it shows that the project is in, essentially, the same configuration as the exhibits which are in your staff report. And, it is some 30-feet wide in this curve, and it is some 40-feet wide there.

The road was designed by the applicant in 1960 to

facilitate the installation of a pre-manufactured house. It was graded wide enough so that a modular home could be brought down into this area.

Could I have the next overhead, please.

Accordingly, we don't believe it is appropriate -- could you turn it around for the Commission, other way, there we go. We don't believe that there is a nexus between the application before you, and a condition which will reduce significantly the utility of an existing structure, in this case the road, that pre-dates the *Coastal Act* itself by over 10 years, and has been there for 40 years.

And, this is the exhibit in the staff report. This is the updated survey, and you can see that the road is, essentially, in the same configuration. And, here is the rock revetment.

Now, staff has indicated in their staff report that these two minor retaining walls, which are designed only to address some minor surfacial slumping below the existing house here, is their nexus. The applicant is proposing these two retaining walls, and accordingly will widen out the road just in this area.

Well, the road won't be widened out, because it will be concurrently narrowed right there. It certainly is not proportional for this Commission to require that the entire length of the road be narrowed down to 15 feet, when

there will be no expansion of the overall width of the road, and we think that that is inconsistent with the Dolan case. There is no proportionality between the condition, and the action item that is before the Commission today.

Additionally, the Commission should take note of the fact that the project geologist, Don Kowalewsky, has stated that the amount of impermeable surface should be maintained to minimize the amount of infiltration into the bluff surface, so that there will not be additional destabilization of the bluff. If this Commission requires the existing paved road to be narrowed down to 15 feet, you will of course increase the amount of infiltration into the bluff, and further destabilize the sand.

The second component that we have a great deal of difficulty with is Condition No. 8, which is illustrated in Exhibit 5 of your staff report. The Coastal Commission staff indicates that as a condition of approval the applicant should take this entire portion of the bluff and place a deed restriction for a geological hazard over the bluff. This is predicated upon a note in the original report that said this area, right here, this very small area, was in fact a problem.

Now, there is a minor two-foot retaining wall right here, a slough wall that is a component of this application, which we will address. Certainly, it is an

enormous leap of faith to take this one small area and to take the entire remaining bluff and set it aside as a deed restricted area due to a geologic hazard. This is not warranted by the reports submitted by the licensed geologists and geotechnical engineers, as staff has stated in their presentation.

Additionally, staff has made a presentation to you that indicates, "Well, we can't have it both ways. If the bluff is being destabilized, we can't say that it is stable."

Well, in fact, that is exactly what we can say, because the rock revetment will protect the toe of the slope, and it will stabilize the slope. We have a January addendum report from the project geologist, who did four borings into this bluff, 40- to 60-feet deep. His name is Don Kowalewsky. He is one of the most conservative and respected geologists in the Malibu area. He has stated that this geologic hazard deed restriction is erroneous and misapplied.

Additionally, a second geotechnical engineer, John Tsao, has submitted a report to the Commission staff -- I hope it was included in your addendum packet -- that states also that the geologic hazard area, as indicated in the exhibit here is inappropriate, and is not warranted from a geotechnical standpoint.

I think that what we really have here -- and staff all but said so in its report -- is an over-attempt through a

deed restriction on a non-supported geologic issue, to extinguish three legal lots. I don't believe that that is appropriate. I don't believe it is warranted under the *Coastal Act*, and I am not sure that it is entirely legal.

I have a suggestion I would like to make to this Commission, in regards to Special Condition No. 8. If this Commission still has concerns in regards to the geologic integrity of this bluff, because of staff's recommendation that you take the three lots in this area and put a deed restriction over it, I would point out to this Commission that the City of Malibu has reviewed this geology and soils report, and has stated unequivocally that it is safe with the revetment, that there is not a geologic hazard.

And, if there is still concern in the Commission's mind, we would suggest, as opposed to complete elimination of Condition No. 8, which would effectuate a taking of those three lots, that as a condition of approval, that the geology and soils reports for the project be sent to the State Board of Geologists and Geophysicists for another independent review. We will abide by their findings. If they concur with the staff that this area is in fact a geological hazard, we record the deed restriction. Of course, if the determination is made that it is not a geologic hazard, it is inappropriate and it should not be placed on the property.

I would retain the remainder of my time for

rebuttal. I am available for any questions you may have.

CHAIR WAN: Staff, how much time is left?

SENIOR DEPUTY DIRECTOR DAMM: Five minutes.

CHAIR WAN: Okay, and those of you who have cell phones in the audience, please turn them off.

Paula Yankopoulas. How much time will you need, Ms. Yankopoulas?

MS. YANKOPOULAS: Well, I put my statements --

CHAIR WAN: Bring the mike down, so we can hear you.

MS. YANKOPOULAS: I put my statement in your packet, and I hope you had a chance to read it, but I changed the ending.

CHAIR WAN: So?

MS. YANKOPOULAS: I will read through the first part quickly, and then give you my new ending.

CHAIR WAN: Okay, fine.

MS. YANKOPOULAS: It comes to three or four pages.

CHAIR WAN: Okay, thank you.

MS. YANKOPOULAS: My name is Paula Yankopoulas. My husband and I own the property immediately to the west of the Higgins property. It is our property which is being harmed by the construction of the Higgins' seawall. It is our beach which is being scoured, and our bluff which is being compromised.

The Coastal Commission staff has recommended that the Higgins revise their plan for the rock revetment to help mitigate the predictable damage which it will cause to our side; however, the seawall is in. It has already been constructed. It is a massive structure, 14-feet high, 30-feet wide, and I guess 110-feet long. This was done several months after the emergency permit had expired.

We worry that the Higgins family's compliance with any directives to change the contour of the rock revetment to mitigate its effect -- we worry about the Higgins family's compliance with any directives to change the contour of the rock revetment to mitigate its effects on our property. After all, it has taken the Higgins family nearly 30 years just to apply for Coastal Commission permits to legalize several additions to the Beverley Higgins house. This house is one of the two existing structures which it is claimed that the seawall is needed to protect.

The Coastal Commission coastal engineer's assessment that the Beverley Higgins house could fall down in five years if unprotected by the rock revetment seems to be an exaggeration.

When the Higgins family sought a permit to build a house on one of the bluff face lots, the same geologist, Donald Kowalewsky, who was cited before, argued in his letter of September 5, 1991, in the worse case it would take a

minimum of 80 years for the bluff to erode back to the proposed location of the house. For geologic conditions that underlie this site, it will require a minimum of 750 years before the base of the sea cliff will approach the foundation piles. The truth probably lies somewhere in between.

I submit to you the proposition that if the Beverley Higgins house is in danger of falling down, it is because of its precarious location at the edge of the bluff, and because of the haphazard way that it was constructed over the years. The nucleus of the house, a prefabricated structure, placed at the edge of the bluff in 1973 was denied a Coastal Commission permit in 1974 on the grounds that this structure represents a threat to bluff stability -- I am quoting -- and the instability of the bluff would suggest removal to another site.

The house remained, undoubtedly, because of the ongoing court case -- see remark on Beverley Higgins letter. In a letter to the Coastal Commission dated November 5, Beverley Higgins describes the house as in dire danger of collapse -- and I won't read that.

The Coastal Commission action in October 1980 awarding the Higgins family permits for the addition of a carport, master bedroom, recreation room, and decks is somewhat of a mystery. The recreation room is not included in the square footage of the local county permit, which lists

a total of 426-square feet. In the application for the Coastal Commission permit, the proposed development is described as -- and I quote -- addition of carport, master bedroom -- and I underscore, remodel of existing lower-level room to serve as recreation room, no grading necessary. The grading had already been done.

Since the construction --

CHAIR WAN: Could you hold just a minute.

Staff, how much time did you give her.

SENIOR DEPUTY DIRECTOR DAMM: We gave her three minutes.

CHAIR WAN: Okay.

MS. YANKOPOULAS: Can I have a few more?

CHAIR WAN: Give her another two minutes. Give her until five --

MS. YANKOPOULAS: Okay.

CHAIR WAN: -- but I suggest that you wind it up within five.

MS. YANKOPOULAS: Read fast.

Since the construction of this rec room had to involve major excavation of the bluff, in order to put the entire floor underneath the nucleus house, I have to believe the Coastal Commissioners were not made aware of the location of the room, and that it represented serious insult to the bluff.

Indeed, the applicant certifying Item 19 of the application, there will be no significant adverse impact, and understood to the environment caused by the proposed project. They lied. We know that the construction of this lower level, gouging out a whole room from the bluff was done in 1979 or '80 because there was a permit awarded to demolish the prefabricated house by two strangers.

Now, the color photo which you mentioned earlier, is my color photo, and it shows the Beverley Higgins house, what it looks like today, more or less. It is a 1994 photo, and you can see that the erosion at the toe of the bluff occurred quite a ways down, and at the far eastern corner of the property. If the rock revetment were, in fact, capable of protecting the house from slipping, why so many supports, retaining walls, et cetera?

I repeat, I will find it very ironic if a permit for a rock revetment is awarded to protect a house which after 27 years of being in place has virtually no permits. And, if you would like me to tell you which of the parts of the house have a permit I can do that. The only part that remains that has a permit is that third-floor bedroom. It was over the garage, which has been enclosed, and you can see the nucleus house, it is the black.

COMMISSIONER WOOLLEY: Could you, if I bring this to you, would you point to where that is, please.

COMMISSIONER REILLY: Take the microphone with you.

CHAIR WAN: Would you take the microphone with you. You can pull it out, okay, and just come to the edge so that all of the Commissioners can see what it is that you are pointing to.

MS. YANKOPOULAS: This is the nucleus house right here. This is the lower-level house, which was described as being redecorated.

The top of the bluff is up here. It is also farther back. There is, from my property, a long pole -- which is in the original photo -- on the other side. That exists behind here, because this balcony has been built out over the bluff.

This is where the carport was, and this is the room that was awarded the permit.

This is construction. This is also construction here. This is also new construction back here.

COMMISSIONER WOOLLEY: And, behind that is the same property?

MS. YANKOPOULAS: And, now this is -- there were three houses put in. There was another. This, again, would be somewhere back here, the original prefabricated house, and all the rest of this is pretty much illegal -- I think there is one permit on each house. And, it all came out of that

1980 Coastal Commission meeting, which I think focused on the legality of this main house, and it has never been proved that this main house, or this nucleus house, which was a pre-fab house brought to the property two days before the *Coastal Act* came into effect. It has never been proved that that house has been permitted.

So, there really is only one permit, you know, that can be legitimately talked about, and it is this little bedroom up here, 426-square feet.

CHAIR WAN: All right, thank you.

Take a minute to just wind up, okay.

MS. YANKOPOULAS: Can I quickly talk about the road?

CHAIR WAN: Yes --

MS. YANKOPOULAS: Okay, the --

CHAIR WAN: -- go ahead.

MS. YANKOPOULAS: -- road from the Pacific Coast Highway, to the toe of the bluff, is the other socalled existing structure, which the rock revetment purports to protect from wave damage.

The Higgins family has been continuously grading and widening the present road down the bluff without any permits for at least 10 years.

When we moved to the property in 1987, the whole bottom of the road was overgrown -- there was no bottom of

the road. It was overgrown with natural plants. The Higgins' tenants used to cross over into our property in order to be able to get to the beach. So, all of this grading of the road, as it is now, was done in the last 10 or so years.

They are asking for you today to approve a 25-foot wide paved road, with a widened curve, and a wider turnaround at the eastern side of the toe of the bluff.

And, I mention Mr. Kowalewsky's letter. I think it is almost amusing that he says that the infiltration of rain water into the soil has to be minimized by more concrete on the bluff. Maybe we should pave over all of the bluffs of Malibu.

Anyway, in the original grading permit in 1961, the stated purpose of the road is to grade and pave the road to the beach for access to future residence and guest house. There can be no other reason for the construction and paving of this road.

At this time, the road doesn't serve a purpose. It doesn't even provide pedestrian access to the beach, since there are 30-feet of jagged rock between the toe of the bluff and the sand. Only vehicles with big tires can make it over the seawall.

Clearly, the reason the Higgins family has juggled the ownership of the bluff lots, and has reestablished the

road, is to be in readiness to develop these lots. I do not think it is a coincidence that the road the Higgins are asking you to approve, pave 25-feet wide, widened curves, turnaround at the end, is exactly the type and size required by the Malibu - L.A. County Fire Department before it will allow new building on the bluff. The largest fire truck has to be able to negotiate the curves and turn-around at the end.

CHAIR WAN: You are going to have to wind up. Perhaps you can summarize.

MS. YANKOPOULAS: Okay, okay, I will summarize.

In summary, what we have is property which contains three illegally built houses. The original road is long gone. The new road has been graded without permits, and has a different configuration. The rock revetment has been built without a permit.

My question is, what legal existing structure is being protected by this rock revetment? In fact, there seems to be no legal existing structures on the Higgins property.

I urge you to deny this permit for a rock revetment, not only because it will harm my property, but also because it will encourage and reward maneuvers that evade and make a mockery of the permit process.

I hope that you will direct the Higgins family to remove the rock revetment, and return the beach to its prior

natural state.

Thank you.

CHAIR WAN: Mr. Schmitz, you have five minutes for rebuttal.

MR. SCHMITZ: I am going to need that, Ma'am.

MS. YANKOPOULAS: What are you going to need?

CHAIR WAN: The microphone.

MR. SCHMITZ: Thank you very much -- maybe she won't like what I have to say.

Don Schmitz, representing the applicants, the Higgins.

Commissioners, a number of points were raised here that we do not concur with. There is not any great mystery in regards to how those three homes were there. They were brought out there. There was an argument between the applicant -- actually, there was more than three homes. There were five homes. There was an argument between the Coastal Commission of 1972, and the property owner, in regards to a vesting issue. An agreement was reached. Two of the homes were removed, three remained.

Additionally, there is no mystery in regards to the permit for the additions to the home that was approved by the Coastal Commission in the 1980s.

Additionally, there is no mystery in regards to the road. It is very well documented. It is not a matter of

opinion. It has been there since 1961. And, we have submitted surveys to the staff from 1970, and surveys today that shows that the configuration of the road has not changed.

It is not true, Commissioners, that the application before you today is to grade the road. The application is not to pave the road. It is to maintain the road, and it is to repave an existing road that has been there for 40 years..

In regards to the change in the geologist's position, in 1981 it was his determination that, yes, the bluff was stable. Then, in 1996 or '7, we had the largest el nino event in the history of mankind, since we have been watching these things, and there was tremendous damage to the bluff. That should be completely obvious.

It is also not true that our clients have graded the road and changed the configuration of the road. And, we are not asking to pave over all of the bluffs in Malibu. We are asking to maintain the same configuration of the paving that has been there, again, for 40 years.

So, getting back to the matter at hand, truly the application before the Coastal Commission is warranted under Section 30235 of the *Coastal Act*. The house is in danger, and the rock revetment is an appropriate way of protecting the house. Staff is in concurrence with our coastal

engineer, and the geotechnical engineer.

We still would ask this Commission to remove Condition No. 6 which unduly requires the applicant to reduce the width and configuration of a road that they have enjoyed for 40 years, and it has been there 10 years before the adoption of the *Coastal Act*, Prop. 20 -- excuse me, not the *Coastal Act*, Prop. 20.

Additionally, the issue of the geologic hazard area, which staff admits is not supported by the project geologist, and a second opinion by another project geologist should be deleted from the project description, and the conditions.

Commissioners, these are three legal lots. I understand that staff, and probably many of these Commissioners, would like to forever and ever eliminate by any means legally possible, the potential of the applicants to ever use those three legal lots; however, they have a right to apply to protect their property from the storm damage. It is not appropriate for this Commission to eliminate, unless there is a real geologic hazard, which the evidence indicates there is not, these legal lots. I have never seen this Commission take an action where they eliminate the development potential on three legal lots, when the project geologist says they are safe.

Again, I would recommend, and we would

respectfully request this Commission either eliminate Condition No. 8, or at a very minimum, change that condition so that the applicant and the Coastal Commission staff forward the geotechnical reports -- the soils reports, and the geology reports -- to an independent third party, the state Seismic Safety Commission, or the state Board of Geologists and Geophysicists, for their review and determination. If it is, in fact, a geologic hazard area, and should be deed restricted, we will do so. But, if the third party determines that it is not a geologic hazard, then the deed restriction condition should be expunged from the permit.

That would conclude our presentation, and we are available for any questions --

CHAIR WAN: I'll return to staff.

MR. SCHMITZ: -- you may have.

SENIOR DEPUTY DIRECTOR DAMM: Thank you, Madam Chair, and staff has a number of comments that we would like to make in response.

First of all, clearly there is no shortage of violations with regards to the history of this property, but what the staff has done is focused in on the application that is before you today, with regards to whether or not the work that is being requested, in the form of the rock revetment, and the paving of the road, and the retaining walls, is

necessary in order to protect the existing single-family home.

While we believe that that is the case, and we are recommending approval, we certainly have significant concerns with regards to this project, and those concerns relate -- as I said earlier -- to any development that would occur on a site that, in staff's opinion, is fraught with problems, has been, and in no small part because of activities that this applicant took in the form of grading on a bluff face, that the Commission would normally not allow.

And, if you refer to page 36 of your staff report, you will see citations in the staff report from the geology report, and one of those citations indicates that in order to get an adequate factor of safety to do further development on this site, massive grading would be required of the bluff face.

Staff remains of the opinion that while the seawall can be allowed, and this work on the bluff face, in the form of the retaining walls, to protect the existing home, that should not be, at some point, either by this property owner, or future owners, used in some fashion to justify that, "Well, there is an increased ability to develop this property now, because there is a seawall," when the *Coastal Act* would not allow for that type of grading and use to occur in a hazardous location.

In addition, I want to clarify that with regards to the existing rock revetment on the adjoining property, that staff did not state that that is the major cause for the erosion that has occurred on this property. We believe it is a contributing factor, but we do not know that that is the major cause for the erosion. The storm events of '97 - '98 may well have had significant effects on this property, regardless of that existing rock revetment on the neighbor's property.

As to the road, and the 15-foot wide width for that road, the only reason the staff is recommending allowing the paving of the road is because the applicant's geologist has indicated that that is a necessary component of the overall bluff remediation, stabilization efforts to protect this home.

Certainly, if they need to do additional work, it could be in the form of brow ditches, paved brow ditches, or other types of swales to convey water, but we don't believe that the necessity to make this road 20 feet, or 25 feet in certain areas, is warranted, when the Commission's policy would be not to allow this road at all.

As to questions of the other violations in the pending application, for those it is discussed on page 15 of your staff report. There are a number of activities that have occurred on this site without a permit. The applicant

has submitted an application that is pending.

As I mentioned earlier, we were hoping to have the City of Malibu take an action on that. We have been informed verbally that they will not. If that turns out to be the case, we will bring that application before the Commission. It does include additions to the existing residence. It does include additional decks. It includes that concrete stairway that I showed in the slide, and all of those will require further review and approval by the Commission.

The other thing that I want to mention to the Commission is that as with all applications, the Commission does have a range of options, or alternatives, that you can take, with regards to this application before you today. I mention this because it is up against the *Permit Streamlining Act*. You do need to take an action, unless the applicant withdraws the project.

Certainly, if the Commission is not comfortable with the staff recommendation, an option is to deny this project. Another option would be to allow the applicant to file an amendment request, if you are not comfortable with the conditions contained in the staff report. But, we would urge that you take an action today, and we would urge that you approve this project with the conditions that the staff is recommending.

The staff geologist, Mark Johnson, has a couple of

additional comments that he would like to make at this point.

STAFF GEOLOGIST JOHNSON: Thank you.

I would just like to reiterate that this is a steep bluff, in danger of instability, and the applicants acknowledge this, and that is the whole purpose of the revetment, and the proposed improvements.

While it is true that the revetment will tend to reduce erosion at the toe of the bluff, and provide some buttressing affect, that it is not intended to -- by their own admission -- to further bluff stability for future development.

As you know, water on a hillside such as this can exacerbate slope instability. Any development of that bluff will require the installation of septic systems. A septic system will inject water directly into that slope, which is something you really do not want to do.

So, whether or not the slopes are marginally stable -- and the applicants have not demonstrated that they are -- the introduction of water through a septic system could lead to slope instability.

The applicants, themselves, acknowledge that water in the slopes is a problem, in their objections to Special Condition 6, by objecting to a reduction in the width of the road, maintaining that that will lead to increased infiltration. It is my professional opinion that any

putative increase in infiltration is negligible, certainly negligible compared to injections of waters into the slope through a septic system. Since development would necessitate a septic system, Special Condition No. 8 is totally appropriate in my opinion.

CHAIR WAN: Commissioner Kruer, then Commissioner Reilly, then Commissioner Dettloff.

COMMISSIONER KRUER: Madam Chair, as one of the members here of Commissioners, and maybe one of the newer ones, I am very perplexed today about this particular project, because -- and I would like to ask staff a couple of questions.

I don't understand -- this is a project that has, in my time here I have never seen so many violations, so many after-the-fact permits, so many tumultuous history of permitting, socalled informal permits -- which we call in the development business, no permit -- and the history of this is just incredulous to me.

And, so now, stewards of the *Coastal Act*, we are to look here and this applicant is asking to fall on an emergency situation that the house that -- purportedly parts of it at least, maybe all of it -- are unpermitted. They allege they are, but maybe unpermitted. And, maybe these unpermitted conditions, maybe even parts of the house, were built out more the seaward, and maybe that house could have

been corrected without building a revetment.

And, I think the revetment, the concern I have is still in the geological area -- I think Dr. Johnson just mentioned some of my major concerns -- and that is that we do a revegetation plan, and the rock revetment will act to create some stability to the slope, but any, any new increase in water, or irrigation, or new septic tanks, or anything else in that particular lot, or any of those lots, would obviously be catastrophic to the slopes themselves, and the bluffs, and to further erosion.

So, one of my concerns -- and always has been one of my concerns -- is that you can do some of these rock revetments, on an emergency basis, and we look at that, but really what has caused the problems is some of the applicant's bad decisions to begin with, and these ones, not only bad decisions, but unpermitted decisions, and then you fall on the side of saying, "Okay, you, under the *Coastal Act* have to save us."

And, I guess, in this particular application, my concern and a question to staff is that in light of this history of all of these violations, and all of the history of the after-the-fact permit applications, and all of this that has gone on for years, how do we, as members of the Commission, rely on -- if we approve this project today -- that they are going to comply with all of these new

conditions that you, the staff, is asking them to do? help me in this area on this first question?

SENIOR DEPUTY DIRECTOR DAMM: Well, that is an excellent question, Commissioner.

The permit will not be released from our office until all of the conditions have been met. If the applicant just simply decides, okay, they will not meet the conditions, they won't do anything, this will be an enforcement issue that the Commission staff, and ultimately perhaps the Commission, will be dealing with, but it would be in the enforcement mode at that point.

COMMISSIONER KRUER: Okay.

How would -- Dr. Johnson, how would the road, this argument, this discussion, whether the 40-foot road, or even the 15-foot road, how does that create more stability, under your professional opinion, for the cliff here? do you believe it provides stability, as the applicant is talking about?

STAFF GEOLOGIST JOHNSON: In general, a road is going to increase instability by cut and fill on the side of a road.

The only argument, and it is a weak argument, is that an impervious surface will reduce infiltration into the slope, but the cut slopes that were necessitated to put the road in, actually lead to increased instability, and that is

manifested now by the improvements, the retaining walls that the applicant is requesting.

COMMISSIONER KRUER: Okay.

SENIOR DEPUTY DIRECTOR DAMM: And, then Commissioners, if I could just add one more point to that.

We have had applicants propose to modify bluff faces through extensive Guniting, and other measures, arguing that that prevents the infiltration of water into the bluff face. The Commission has found that to be totally inconsistent with the provisions of the *Coastal Act* dealing with protecting land forms, and also in this case, protecting areas that have been designated as environmentally sensitive habitat, and that is what the bluff faces in Malibu are designated.

COMMISSIONER KRUER: Okay.

Was there any way that the Commission staff, or others, looked at the fact -- or the geologists -- of is there any way that the house, itself, the one that is socalled in imminent danger, or danger, were there parts of the house, this unpermitted house -- as I see it as unpermitted from what I have read -- were there parts of the house, the decks, that were enclosed later, or something, could there have been something of that removed towards the seaward side to not create this new revetment? were there some other ways to protect parts of the house that didn't

have to go to this revetment?

SENIOR DEPUTY DIRECTOR DAMM: The staff did not look at that type of alternative, Commissioner. And, the reason we didn't is because we do believe that there was a residence that the Commission, through a 1980 permit, allowed additions to occur, and at that time knew about the history of that residence.

So, in staff's opinion, that is an existing residence. It is a residence that the Commission has known about, has approved additions to, and therefore in our opinion does have the ability to have shoreline protection under Section 30235.

We do not believe that the entire residence is unpermitted. We think it is, has been, approved.

COMMISSIONER KRUER: I think -- also I would like to mention to the staff, and to other Commissioners -- I think it is essential that the Commission retain the two sections 6 and 8 that are in there, because in regard to the geology, to me whether you put the revetment in or not, the biggest threat to creating more erosion much faster, even if the revetment is in, is the inducing new water, or septic tanks systems, or anything into that bluff side hillside, that will create something that will speed up the process, much, much faster.

And I would ask the other Commissioners to look at

that before removing that. That is -- if you are going to approve this today, I would ask you to insure that those conditions are left in there as staff suggested.

And, I will turn it over back to the Chair person.

CHAIR WAN: Commissioner Reilly.

[MOTION]

COMMISSIONER REILLY: Madam Chair, I will move per staff, and request first discussion.

CHAIR WAN: I have a motion, do I have a "second"?

COMMISSIONER MC CLAIN-HILL: Second.

CHAIR WAN: Seconded by Commissioner McClain-Hill. You want to speak to the motion?

COMMISSIONER REILLY: Just briefly, Madam Chair.

I think that it is difficult in this matter to separate the application before us from the history of the project. I think that is partly what we are struggling with here, but I think we probably need to do that.

I would imagine that at some point we will have the rest of the thing on our plate before this Commission, and have a chance to look at some of the other unpermitted activities at that point.

I think staff has adequately addressed the major issues here. I think that staff has adequately, through their conditions, and particularly 6 and 8, protected the coastal resource issues, and there may be some amendments

that Commissioners want to offer, to additionally afford protection, but I am comfortable with what staff has done on this.

The one question I would have, and request of staff, on page 47, where we discuss our CEQA findings, Deputy Attorney Douglas yesterday kind of gave us an update on CEQA adequacy, and I would just request that staff incorporate all of the findings that you make within this by reference into the CEQA findings, so we have adequately covered the discussion of alternatives, and can deal with that.

CHAIR WAN: The attorney general was Patterson.

COMMISSIONER REILLY: I'm sorry, it was Patterson.

CHAIR WAN: We just changed your position, Peter, okay.

COMMISSIONER REILLY: Well, he were sitting over there.

CHAIR WAN: Commissioner Dettloff.

COMMISSIONER DETTLOFF: Yes, for me there was just one question, and it is a question I think that was asked at our original hearings, and I think in many ways you have probably answered this, Mr. Damm, but the question for me, remaining, are we protecting a legal structure? We have had all of these violations in this project area, but it has come down to me, whether I like the project or not, and whether I like violators getting away with something this many years,

the question is do we have a legal structure? Could you just "Yes" or "No", or a little description.

SENIOR DEPUTY DIRECTOR DAMM: In staff's opinion, the evidence that we have -- and we have spent a great deal of time looking into this, both trying to go back over past records that we have, as well as records that the Attorney General's Office has, and frankly, those records are skimpy, because this goes back 20 years, or more.

However, the evidence that is there does support that the existing home on that bluff face was allowed. In fact, as I mentioned earlier, the Commission allowed an addition to it, and it mentioned in that addition the history of this project site. So, we are comfortable that, yeah, there is an existing home that under Section 30235 is entitled to some protection.

Now, there have been additions to that home, and we haven't been able to divide those out, but there is the existing home.

COMMISSIONER DETTLOFF: That is my next question. This will then come before us.

We have a legal structure in which we can react today? When the violations come before us, in the future, and I assume that they will, will we then have to approve the various improvements they have made to the existing structure of this home, simply because having taken them all out, then

we no longer have a house in which to react to.

My concern is that you have so many provisions that have not -- that have broken the law, or simply weren't permitted, that when we get down to it, we still have a remaining house, is my question?

I am concerned with how are we going to react now that we have protected a legal structure, when we start taking away from it, if that would be the case? I have got all of these little pieces.

SENIOR DEPUTY DIRECTOR DAMM: The staff will be reviewing any improvements, and additions, that have been done without permits, as to their conformity with the policies of Chapter 3 of the *Coastal Act*, and if, in our opinion, they conform with those policies, we will be recommending approval. If we think they don't, we won't.

COMMISSIONER DETTLOFF: So, putting in the revetment will protect what is there today, but what is there in the future is still questionable.

SENIOR DEPUTY DIRECTOR DAMM: That is correct.

COMMISSIONER DETTLOFF: I would just like to ask our new geologist, because a lot of the decisions are -- the decisions we are making today -- also will serve somewhat to protect what may happen in the future on those existing lots, would it be your professional judgment that those lots are buildable? simply because of the problems that the now lot

that is being built upon is experiencing?

STAFF GEOLOGIST JOHNSON: I would need to see more information for that --

COMMISSIONER DETTLOFF: All right, all right --

STAFF GEOLOGIST JOHNSON: -- the applicants have certainly --

COMMISSIONER DETTLOFF: -- that was an unfair question.

STAFF GEOLOGIST JOHNSON: -- not demonstrated that today.

COMMISSIONER DETTLOFF: All right, but that would be looked at very carefully.

And, then my last question -- and it may also be a question for you -- by placing the revetment, I think that our speaker indicated that that would cause some harm to their properties. Would you agree, or disagree with that statement?

STAFF GEOLOGIST JOHNSON: Again, that is a difficult thing to see without my -- I have not reviewed the plans for the revetment. The revetment can be designed so that it does not.

COMMISSIONER DETTLOFF: And, we would have a chance to see that revetment plan before it was actually built? how can we guarantee that we are not causing harm to another property owner?

SENIOR DEPUTY DIRECTOR DAMM: Well, the staff recommendation is simply to realign the revetment further landward, and to key it into the harder geologic formation on the adjacent property.

The applicant's geologist has indicated that that will not cause any problems for the adjoining property owner. That is typically the information that we have, and the Commission relies on. I have been out to this site. There is a geologic formation that is of a harder material on the neighbor's property, so we don't feel they will suffer the same sort of damage this applicant has, but you can get these large storm events, and I am not going to guarantee that.

EXECUTIVE DIRECTOR DOUGLAS: Madam Chair, if I may make some additional observations.

For one, I would assume our staff engineer will be looking at any kind of engineering for that seawall, to look to insure, or to try and identify whether or not it is going to exacerbate damage on adjacent properties, or could.

The other point I wanted to make, is that even with the revetment that is being asked for here, that does not make the lots between the revetment and the existing structure necessarily safe. They continue to have, in our opinion, geologic hazardous conditions, as this whole area is unstable, and I think as our geologist has indicated.

COMMISSIONER DETTLOFF: So, we could, or have we

conditioned the revetment -- we have? So, that would be conditioned, so that if it were shown --

CHAIR WAN: I think what you are asking is, have we conditioned the revetment for review by our staff engineer?

COMMISSIONER DETTLOFF: Review by our staff --

CHAIR WAN: Has it been --

COMMISSIONER DETTLOFF: -- so that we can guarantee --

EXECUTIVE DIRECTOR DOUGLAS: I'll ask -- Mr. Damm will --

COMMISSIONER DETTLOFF: -- that it won't --

EXECUTIVE DIRECTOR DOUGLAS: -- respond to that.

COMMISSIONER DETTLOFF: Okay.

EXECUTIVE DIRECTOR DOUGLAS: The question is, is there a condition that requires review and sign off by our engineer?

SENIOR DEPUTY DIRECTOR DAMM: The staff engineer has gone out to this site, has looked at the design, and has actually been involved in the redesign that we are recommending.

I am not sure if that condition is in there, but we certainly would have no problem making that part of our recommendation, that the final redesign be reviewed by the staff engineer to assure that it is done in a way to

eliminate or minimize --

COMMISSIONER DETTLOFF: I think that is --

SENIOR DEPUTY DIRECTOR DAMM: -- any potential impacts.

COMMISSIONER DETTLOFF: -- necessary, because --

EXECUTIVE DIRECTOR DOUGLAS: We'll incorporate, that, yes.

SENIOR DEPUTY DIRECTOR DAMM: Yes, we'll incorporate that.

COMMISSIONER DETTLOFF: -- to help one homeowner to be detrimental to the other property, I don't think is what our intent is.

CHAIR WAN: Commissioner Allgood.

COMMISSIONER ALLGOOD: To the staff geologist, I don't know the origin of this particular book, but there is a picture here of a road cut down to the ocean, and if you look at it closely, you will see that on either side of where the road cut is, there is a lot of vegetation -- it is a picture purported to be taken in 1961 -- on either side of this road cut, which is allegedly the applicant's cherished road.

It looks to me as though the property in 1961 had already suffered serious erosion, in that the -- at least as far as I can tell from the photograph -- on either side of this road is well vegetated, but the road itself seems to be exposing a lot of soils. Would you attribute that to the

construction of the road, itself? or can you do that from a photograph?

STAFF GEOLOGIST JOHNSON: Bear with me, this is the first time I have seen this photograph.

You are referring to erosion on the left side of the road?

COMMISSIONER ALLGOOD: No, I mean, if you look where the road goes down the hill, it is substantially different in appearance from the property on either side of it. I assume the property line is indicated by the two vertical black lines, drawn in there?

SENIOR DEPUTY DIRECTOR DAMM: That is correct.

COMMISSIONER ALLGOOD: Would you say that the road contributed to that apparent erosion?

STAFF GEOLOGIST JOHNSON: I think that is a reasonable interpretation. I would want to see it -- I have seen it on the ground -- in order to stand by that.

COMMISSIONER ALLGOOD: I understand.

Also, when you pave a surface, does it not tend to accelerate runoff?

STAFF GEOLOGIST JOHNSON: Certainly.

COMMISSIONER ALLGOOD: And, in say a heavy rainstorm, 25 feet of paved surface would, over an equal amount of distance, tend to produce a lot more runoff, than, say, 15 feet?

STAFF GEOLOGIST JOHNSON: In general, certainly.

COMMISSIONER ALLGOOD: And, that runoff would tend to scour away whatever soils it came into contact with?

STAFF GEOLOGIST JOHNSON: Yes.

COMMISSIONER ALLGOOD: Why are we allowing the pavement at all?

SENIOR DEPUTY DIRECTOR DAMM: Commissioner, again, the applicant's geologist has indicated that if this road is not --

COMMISSIONER ALLGOOD: I understand. I don't want --

SENIOR DEPUTY DIRECTOR DAMM: Okay, it would also --

COMMISSIONER ALLGOOD: -- I am interested in asking our geologist, what his opinion is.

STAFF GEOLOGIST JOHNSON: There is a difference between runoff -- we working kind of opposite to each other here. We have got the difference between what runs off of the site, and what infiltrates into the site.

Infiltration into the site will lead to slope instability, deeper seeded landslides. The type of surfacial erosion that we can see in this picture is probably largely the result of runoff. So, there is a balance. And, in terms of slope instability threatening structures, the infiltration is more important. In terms of more surfacial erosion, which

will be in general a more gradual retreat of the bluff, the runoff is the issue.

COMMISSIONER ALLGOOD: I understand.

I am sorry, Mr. Damm, I didn't mean to be rude to you, I am sorry.

There is, in the back of 9.a. a transcript of a 1980 Coastal Commission meeting, in which apparently additions to this allegedly permitted structure were approved. Is this where the original additions were approved in 1980?

SENIOR DEPUTY DIRECTOR DAMM: That is where the additions to the home were approved, yes.

COMMISSIONER ALLGOOD: Did you look at the court records that are alluded here, to confirm? or is anybody here from that time? In other words, there is a statement made in here that the court did not order removal of the structure. Has that been verified to be true?

SENIOR DEPUTY DIRECTOR DAMM: And, I don't know if the deputy attorney general's representative is going to want to comment on this, but we in discussions with the Attorney General's Office, and in looking at our files, the best we could come up with is correspondence that was sent back and forth that indicates that some sort of agreement was reached as part of litigation, or a settlement to litigation, that allowed for this home to remain.

COMMISSIONER ALLGOOD: But, you haven't seen the actual agreement?

SENIOR DEPUTY DIRECTOR DAMM: No, that was not found.

COMMISSIONER ALLGOOD: Does the applicant have a copy of that agreement?

MR. SCHMITZ: Sorry, Commissioners, Don Schmitz, representing the applicants.

The agreement which was reached between Mrs. Higgins, Mr. Higgins, and the director of the Long Beach office of the Coastal Commission, we have not found any documents which memorialize that agreement. The only thing that we have is the comments by the staff, and the Commissioners, in the 1980 approvals of the addition to the homes, indicating that that agreement had been reached.

COMMISSIONER ALLGOOD: Thank you.

Staff, is there more to this record than appears in this transcript?

SENIOR DEPUTY DIRECTOR DAMM: What you have is essentially what the staff has been able to piece together, and again, admittedly, it is very skimpy. Our conclusion though was just that, well, the evidence seems to indicate that they were allowed to keep this home. They were also required to remove several other homes.

COMMISSIONER ALLGOOD: Well, at least there is no

evidence that you can find that requires removal of the home?

SENIOR DEPUTY DIRECTOR DAMM: That is correct.

COMMISSIONER ALLGOOD: Because this doesn't convince me that this is a permitted structure. In other words, I guess the bottom line thing I am asking you is, if the Coastal Commission were to allow additions to an unpermitted structure, or a structure that had been required to be removed, that would be new constructions, not additions, is that correct?

SENIOR DEPUTY DIRECTOR DAMM: That is correct.

COMMISSIONER ALLGOOD: And, so if in error, the Coastal Commission gave the go ahead for additions to a structure that could have, or might have been required to be moved, then that would be an error that we are now being asked to live with?

SENIOR DEPUTY DIRECTOR DAMM: Under that interpretation, correct.

Again, our feeling was --

COMMISSIONER ALLGOOD: I guess what I am trying to get at here is that if we have no evidence -- and apparently we don't, we have rumors of evidence -- that this structure, original structure, to which all of the additions were made, had a permit. I am asking, if it did not have a permit, then are we not to -- shouldn't we not be considering this to be not in existence for purposes of protecting this property?

In other words, we have been through -- when new construction comes in -- I don't know. I am having a real hard time believing -- okay.

I guess we need a closed session here.

CHAIR WAN: No --

EXECUTIVE DIRECTOR DOUGLAS: Madam Chair --

CHAIR WAN: -- we had one yesterday. I don't --

EXECUTIVE DIRECTOR DOUGLAS: -- if I may --

CHAIR WAN: Yes.

EXECUTIVE DIRECTOR DOUGLAS: -- respond to this.

There is kind of an odd history to this, because a lot of the records that were involved in this were destroyed in a fire that affected the Attorney General's Office; however, the reason that we are recommending what we are recommending is that we believe that past Commission action does recognize the legitimacy of a structure here.

So, just because we can't segregate out those components that were not permitted, from those that we believe were, even though don't have proof of that, we think that the history of action on it does support that position.

Then the question is, okay, is the revetment necessary to protect a legally permitted structure, and in our opinion, even though we are not absolutely sure of that, we think that given what the applicant's geologist has presented, that they have made the case for that. And, that

is the dilemma you find yourself in: whether or not the road, for example, needs to be paved, in order to protect the house; or a swale would be sufficient, I don't know the answer to that.

We have basically tried to balance the information that we have here, and come up with the best recommendation we can under a very difficult, and in some cases missing record.

CHAIR WAN: Commissioner McClain-Hill.

COMMISSIONER MC CLAIN-HILL: I have a question, and I want to know if it is a question that can be discussed in closed session.

It is regarding the applicant made a reference to the condition extinguishing the lots being in violation of Dolan, and I just have a couple of questions about what is necessary in order to -- I would like to confer with counsel, just on that very narrow issue, and I would just as soon not do it in open session, unless I have to.

CHAIR WAN: Can we do that in public session, or is it necessary to go to a closed session on that one?

EXECUTIVE DIRECTOR DOUGLAS: Well, we will hear from counsel, but that is an issue that certainly is appropriate for public discussion, because this is potentially, and I think from what Mr. Schmitz was saying, I think there is a reasonable basis to conclude that whatever

the Commission does here may end up being challenged in court.

So, it seems to me to be appropriate, also if the Commission so chooses at some point to go into closed session on it, but the issue of rough proportionality, whether or not that even applies here, is an appropriate public discussion subject, I think.

COMMISSIONER MC CLAIN-HILL: Yeah, I would as soon have a -- I want to confer with counsel, and I want to have a private discussion concerning the legal issues. I don't want to have a policy discussion in closed session.

So, I mean, unless counsel tells me it is inappropriate to do that, I would like a closed session.

CHAIR WAN: And, I agree with her.

COMMISSIONER KRUER: I agree with her.

DEPUTY ATTORNEY GENERAL TRANKLEY: Through the Chair, in response to the question, it is appropriate to move into closed session, because of the potential for litigation.

Thank you.

CHAIR WAN: Can we clear the room. We are going to have a closed session.

[CLOSED SESSION]

CHAIR WAN: I need a report on the closed session.

DEPUTY ATTORNEY GENERAL TRANKLEY: During closed session, the Commission discussed the Higgins matter, but

took no action.

CHAIR WAN: Commissioner McClain-Hill, are you finished?

COMMISSIONER MC CLAIN-HILL: I guess I would say, that at this juncture, I am supportive of the staff recommendation.

And, with respect to, you know, sort of the history of this particular property, vis-a-vis, its unclear permitting, and so on and so forth, it simply, in my view, underscores the need to act more expeditiously concerning matters that we may feel violate -- on enforcement matters.

I mean, we have discussed over, and over, and over, and over, the need to deal with enforcement issues, and this is certainly a case where the record would be much clearer, and our actions today far less tortuous, apparently, or in my view, had some action been taken prior to this date to deal with the myriad of problems on this site.

CHAIR WAN: I have a question of staff.

Included in the unpermitted, after-the-fact development, is a set of stairs towards the base of this, and on page 33 it seems to say that those stairs are going to be allowed to remain? is that true? and if so, can you explain why we are allowing those to remain, rather than a drainage swale?

SENIOR DEPUTY DIRECTOR DAMM: Commissioner, my

understanding is that the stairs will be subject to review under the application that is still pending. We are not requiring their removal at this point.

CHAIR WAN: No, I understand that; however, I want to make it clear, as to whether or not those stairs are being permitted with this application?

SENIOR DEPUTY DIRECTOR DAMM: No, the staff is not recommending that.

CHAIR WAN: Okay, that is very important to me.

I share everybody's concern about what has been going on here, and as far as this whole property being a hazard, if there wasn't a hazard there, if that area at the base of the bluff wasn't a hazard, then frankly there wouldn't be any need for the revetment to protect the house.

I am also concerned about those additions that in fact they may have been only enclosing patios, but patios are accessory structures that can be removed, and if we allow them to be enclosed, then the house can't be removed.

And, I share Commissioner Kruer's comments about if those parts of the house were removed, maybe we wouldn't need a revetment at this time. Maybe we could, in fact, the house cwuld be set further back from the edge of the bluff, so, I am concerned about that.

Also, on the comment on the use of pavement, and Gunite, to deal with water runoff, I understand you are

right. There is a trade off, but I can't tell you how many times I see Gunite on surfaces protecting bluffs, under which water gets in from the side, and from the top, and then pretty soon that Gunite is not serving any purpose anyway. So, I really question -- because it starts to buckle, and you can watch it. I see it all of the time, okay. And, I don't know what the purpose, from a geologic protection perspective is there for the paving of the road.

I really don't understand that, and maybe you can address my concern, because I understand the need to run it off is better than the infiltrated, but in the end, even with paving, it winds up infiltrating anyway.

STAFF GEOLOGIST JOHNSON: That is true, and as I said, I take that as a very weak argument. It would be much better to keep runoff off of the bluff face entirely --

CHAIR WAN: Through a drainage system.

STAFF GEOLOGIST JOHNSON: -- through a drainage system, yes.

CHAIR WAN: So, why are we not requiring a drainage system instead of the paving of the road?

SENIOR DEPUTY DIRECTOR DAMM: Commissioners, you certainly have that as an alternative.

When the staff met out in the field, what we were told is that if this is a road that predated the *Coastal Act*, we saw photos it does, and the applicant indicated that if

they don't pave the road, it will just remain a dirt road, and that is the issue facing you, because they have not indicated they will remove the road, or --

CHAIR WAN: But, the water that is coming off of the top of the bluff, instead of running down the pave-way, it could go into a drainage system, couldn't it?

EXECUTIVE DIRECTOR DOUGLAS: Yes, Madam Chair, and that is an option the Commission has.

If you permit a swale, for example here, and not the paving of the road, and they elect to just leave the current road in place, even though their geologist has said that some sort of drainage collection is necessary to help stabilize or protect the upper house, seems to me that is really foolishness, not to provide that kind of additional protection.

So, I do think that you have that option.

CHAIR WAN: And, I can't make motions, but somebody might think about whether or not they want to make a motion to remove the paving, and require the installation of a drainage system.

And, just one final, just sort of note, about this particular project, and why I am so glad to have a geologist on staff. This is one of the projects, that after I read it, always occurs to me in my mind, when I think about the geology reports we get. We had a coastal engineer David

Weiss prepare a study for this property in 1990, to justify an application at that point to develop on the bluff face, in which he said the bluff face was stable.

Two years later, in 1992, when the Commission denied the application on the bluff face, he came in with a revised study saying that the bluff face was now unstable, and he needed a revetment to protect the road, two years later.

And, when I think about what we face on geology reports, this is the example that always comes to mind.

COMMISSIONER ALLGOOD: Call for the question.

COMMISSIONER NAVA: We're on amending motions.

CHAIR WAN: Commissioner Allgood.

Commissioner Nava.

[MOTION]

COMMISSIONER NAVA: Well, no, I can't discuss -- okay, I want to make an amending motion.

The amending motion will be to amend the staff recommendation to include a requirement for an appropriate drainage system, one to be reviewed by our engineer, and by geologist. And, to strike -- that is a legal term meaning to remove -- the staff recommendation having to do with paving of the road.

COMMISSIONER ALLGOOD: I'll second.

CHAIR WAN: Moved by Commissioner Nava, seconded

by Commissioner Allgood.

You want to talk to the motion?

COMMISSIONER NAVA: Very briefly.

In terms of taking a look at some of the work done by Ms. Ewing, there is an estimate that the structure won't be threatened for five to ten years, absent some sort of catastrophic event.

So, my first assessment of this is I really don't understand at this juncture the rush for this application, given that down stream there are going to be a number of opportunities to review this particular project, to make a determination as to how it can be modified to be consistent with the *Act*, to review whether or not enclosures of patios were appropriate, and to parce out that aspect of this development that was unpermitted.

I don't like being in the position of rewarding people who make developments that are unpermitted, because you set a bad example for everybody up and down this coast, and it makes enforcement and application of the *Act* inconsistent and difficult.

Having said that, it seems to me that in the interest of the property owner, given that the geologist has said a drainage system would be helpful and necessary, and may in fact extend the life for whatever it is that is up there, just makes perfect sense to seek to do that.

In addition, given the sort of issues that arise when you create impervious surfaces, a drainage system seems to me to be the preferable way to go.

CHAIR WAN: Commissioner McClain-Hill.

COMMISSIONER MC CLAIN-HILL: Yeah, I may not have been listening carefully, so I just have a couple of questions for our geologist.

I just want to confirm, it is your view that while there is some merit to the argument that has been presented with respect to benefits associated with paving the road, a formal drainage system would be of more benefit?

STAFF GEOLOGIST JOHNSON: Yes, a drainage system to minimize infiltration throughout the bluff face would be far better than --

COMMISSIONER MC CLAIN-HILL: Okay.

STAFF GEOLOGIST JOHNSON: -- the --

COMMISSIONER MC CLAIN-HILL: And, that is my only question.

COMMISSIONER REILLY: Call for the question.

EXECUTIVE DIRECTOR DOUGLAS: Madam Chair.

CHAIR WAN: Yes.

EXECUTIVE DIRECTOR DOUGLAS: My suggestion is that you ask the applicant's representative to address the amendment on the floor.

CHAIR WAN: One minute, Mr. Schmitz.

MR. SCHMITZ: Yes, Madam Chair, Don Schmitz, representing the applicant.

I would draw the Commission's attention to the project description, which specifies in the last sentence installation of drainage devices.

I would draw your attention to Exhibit No. 3 in the staff report, where you see the heavy dashed line, all drainage will be taken from the impervious surfaces above the bluff, and along the bluff and directed in a non-erosive fashion off of the bluff.

I would also bring to the Commission's attention that we are not applying to this Commission for paving of the road. We are applying for repaving of the road, and I would even hold out that under 30610(g) of the *Coastal Act* it is repair and maintenance, an exempt action.

Regardless, we are already proposing a drainage system on the property, and we want to repave the existing road in the same configuration that it has been in the last 40 years.

And, one last comment to Commissioner Dettloff, we are clear -- and we concur with staff -- that this does not prejudice pro or con, the Commission or the applicant, in regards to approvals or denials of the improvements to the existing single-family homes which are pending.

So, with that we are opposed to any deletion of

the project description which eliminates the repaving of the road, and I would also point out that in the project description included is the stairs which run along the existing road bed adjacent to --

CHAIR WAN: So, you contend that this would, in fact, permit the stairs.

MR. SCHMITZ: That is in our project description, and I believe that the staff report analyzes that.

CHAIR WAN: Commissioner McClain-Hill.

COMMISSIONER MC CLAIN-HILL: Okay, a couple of things.

First, to the extent that the matter before us calls for us to approve the pavement of the road, we certainly have the option to not approve it, and if you believe that there is some legal means by which you can cause a re-pavement of the road, absent our approval, you are certainly free to pursue that.

With respect to -- it seems to me the permitting of the stairs, it has been made pretty clear by at least Commissioner Wan, and I think others would agree, given that we have had stairs stripped out in other places, that we don't want to approve that as part of this permit. And, so it seems to me that there needs to be, just to clarify the issue -- so nobody walks out of here confused -- some

additional amendment to the motion to delete the approval of the stairs, or to make it clear that we do not, by our action today, intend to do so.

And, with respect to the drainage system, I think that it is our intention that the applicant work with our staff to insure that there is an adequate drainage system to deal with the runoff issue in a way that minimizes further erosion of the bluff.

And, I think that, you know, kind of -- I would suggest that we take, you know, expeditious action on this matter.

CHAIR WAN: Commissioner Nava, you are the maker of the amending motion.

COMMISSIONER NAVA: Yeah, I just want to point out to the Commission, under the G Section that was referred to, it talks about the replacement of any structure other than a public works facility destroyed by a disaster, and a disaster means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner. I don't think neglecting is included in that.

So, I want some direction from staff, with respect to the stair issue, because if necessary I will amend my amending motion.

EXECUTIVE DIRECTOR DOUGLAS: We don't believe that

is necessary, because we have made it very clear that the action before you does not approve the stairs. It is our understanding that the approval being sought for the stairway is in a pending application, not the one that is before you.

So, this action would, in our opinion, not approve the stairway.

COMMISSIONER NAVA: Okay, then --

CHAIR WAN: Mr. Douglas, is it not safer to simply delete them, so that there is no legal argument that -- on this issue?

EXECUTIVE DIRECTOR DOUGLAS: We could just make it clear that it is not a part of the application. That is our conclusion.

MR. SCHMITZ: Madam Chair, we will voluntarily withdraw that component of the project description, so that there is no confusion. We are going to be coming back to the Commission on the additions to the home, and we can deliberate on the --

CHAIR WAN: That is fine --

MR. SCHMITZ: issue at that time.

CHAIR WAN: -- as long as it is clear.

Okay, so that we have an amending motion. Can I call the roll on the amending motion.

SECRETARY GOEHLER: Commissioner Daniels?

COMMISSIONER DANIELS: Yes.

SECRETARY GOEHLER: Commissioner Desser?
COMMISSIONER DESSER: Yes.
SECRETARY GOEHLER: Commissioner Dettloff?
COMMISSIONER DETTLOFF: Yes.
SECRETARY GOEHLER: Commissioner Allgood?
COMMISSIONER ALLGOOD: Yes.
SECRETARY GOEHLER: Commissioner Kruer?
COMMISSIONER KRUER: Yes.
SECRETARY GOEHLER: Commissioner McClain-Hill?
COMMISSIONER MC CLAIN-HILL: Yes.
SECRETARY GOEHLER: Commissioner Nava?
COMMISSIONER NAVA: Yes.
SECRETARY GOEHLER: Commissioner Potter?
[No Response]
Commissioner Reilly?
COMMISSIONER REILLY: Yes.
SECRETARY GOEHLER: Commissioner Woolley?
COMMISSIONER WOOLLEY: Yes.
SECRETARY GOEHLER: Chairman Wan?
CHAIR WAN: Yes.
SECRETARY GOEHLER: Ten, zero.
EXECUTIVE DIRECTOR DOUGLAS: Madam Chair, before you call the question on the main motion, let me again point out to the Commission that Condition No. 8, which the applicant's representative raised as potentially raising

questions under the Dolan case, our concern is the hazardous nature of the property, dealing with the geologic instability, this does not include any sort of possessory interest in land. That was the subject in the Dolan case, so that is the reason that we don't think that that is applicable.

CHAIR WAN: Yes, and my basis for my vote on that is really based on the safety issue. There is a major safety, both private and public.

COMMISSIONER REILLY: Clarification from staff before we vote, Madam Chair.

Just to be clear, has staff incorporated Commissioner Dettloff's concerns, my concerns relative to the CEQA findings, and also the applicant's offer to remove the stairs from the scope of work description of the project as we move to vote on the main motion now?

EXECUTIVE DIRECTOR DOUGLAS: Yes, and we will have to come back with revised findings to reflect that --

COMMISSIONER REILLY: Thank you.

EXECUTIVE DIRECTOR DOUGLAS: -- which we will do.

COMMISSIONER REILLY: All right.

CHAIR WAN: Call the roll on the main motion.

SECRETARY GOEHLER: Commissioner Desser?

COMMISSIONER DESSER: Yes.

SECRETARY GOEHLER: Commissioner Dettloff?

COMMISSIONER DETTLOFF: Yes.

SECRETARY GOEHLER: Commissioner Allgood?

COMMISSIONER ALLGOOD: Yes.

SECRETARY GOEHLER: Commissioner Kruer?

COMMISSIONER KRUER: Yes.

SECRETARY GOEHLER: Commissioner McClain-Hill?

[No Response]

I just couldn't hear you?

COMMISSIONER MC CLAIN-HILL: I'm sorry. Yes.

SECRETARY GOEHLER: Commissioner Nava?

COMMISSIONER NAVA: Yes.

SECRETARY GOEHLER: Commissioner Potter?

[No Response]

Commissioner Reilly?

COMMISSIONER REILLY: Yes.

SECRETARY GOEHLER: Commissioner Woolley?

COMMISSIONER WOOLLEY: Yes.

SECRETARY GOEHLER: Commissioner Daniels?

COMMISSIONER DANIELS: Yes.

SECRETARY GOEHLER: Chairman Wan?

CHAIR WAN: Yes.

SECRETARY GOEHLER: Ten, zero.

CHAIR WAN: I think we need a five-minute bio-break, do we? Yes.

[Whereupon the hearing was concluded.]