

Item TU 14a

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

GRAY DAVIS, Governor

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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 VENTURA, CA 93001
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Permit Action: 3/17/00
 Request Submitted 4/17/00
 Staff: CAREY
 Staff Report: 4/20/00
 Hearing Date: 5/9-12/00

**STAFF REPORT: REQUEST FOR RECONSIDERATION**

APPLICATION NO: 4-97-243

APPLICANT: Beverley Higgins

AGENT: Matthew Higgins

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

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, and 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.

COMMISSION ACTION: Approval with Modifications**DATE OF COMMISSION ACTION:** February 17, 2000**PROCEDURAL NOTE:**

§13109.2 of the California Code of Regulations provides that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of any term or condition of a coastal development permit which has been granted.

The grounds for reconsideration of a permit action are provided in §30627 of the Coastal Act, which states in relevant part that:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.

SUMMARY OF APPLICANT'S CONTENTIONS

The applicant contends that both bases provided in §30627 of the Coastal Act for the granting of reconsideration are met. The reconsideration request letter from the applicant's agent is provided in Exhibit 1. Specifically, the applicant contends that: 1) there is new evidence in the form of past Commission actions on permits in the Malibu area; 2) this new evidence demonstrates that the Commission's imposition of Condition No. 8 was an error of fact or law; and 3) the imposition of the revised Condition No. 6 was an error of fact or law and in excess of the Commission's jurisdiction.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission deny the reconsideration request. The applicant contends that there is new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter and that an error of fact or law has occurred which has the potential of altering the initial decision, particularly the imposition of Special Conditions Nos. 6 and 8. The Commission made clear and supportable findings for its action on February 17, 2000. Revised Findings to reflect modifications made to the staff recommendation are scheduled to be adopted by the Commission at the May 9-12, 2000 hearing. Staff recommends that the Commission find there is no relevant new evidence which in the exercise of reasonable diligence, could not have been presented at the hearing on the permit, that there was no error of fact or law with regard to the permit approval, and that the request for reconsideration is therefore denied.

STAFF RECOMMENDATION:

MOTION: *I move that the Commission grant reconsideration of Coastal Development Permit No. 4-97-243*

STAFF RECOMMENDATION TO DENY RECONSIDERATION:

Staff recommends a NO vote on the motion. Failure to adopt the motion will result in denial of the request for reconsideration and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

RESOLUTION TO DENY RECONSIDERATION:

The Commission hereby denies the request for reconsideration of the Commission's decision on coastal development permit no. 4-97-243 on the grounds that there is no relevant new evidence which, in the exercise of reasonable diligence, could not have

been presented at the hearing, nor has an error of fact or law occurred which has the potential of altering the initial decision.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description and Background.

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. 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 requested after-the-fact approval of the construction of a rock revetment across the three vacant beachfront parcels. The applicant's consultants contended that the revetment was 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 requested 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 included 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.

The Commission originally considered the permit application in July 1999. At that time, the Commission took testimony and continued the application to get more information on the permit history of the site, as well as technical issues relating to geologic stability of the site, necessity for the revetment, and the design of the revetment. The Commission's Engineer visited the project site, staff reviewed Commission records, and the applicant furnished supplemental information on permit history and the permit application was rescheduled for hearing before the Commission at its December 1999 hearing. At that time, the applicant postponed the hearing in order to respond to modified conditions recommended by staff, specifically recommended Special Conditions Nos. 6 and 8.

The permit application was considered by the Commission at its February 17, 2000 hearing. At that time, the Commission approved the application subject to the ten

special conditions recommended by staff, with a modification to Special Condition No. 6. The special conditions relate 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. The one modification made to Special Condition No. 6 prohibited new paving on the road and allowed the construction of a drainage device along the road instead. Discussion of the Commission's action in this staff report is based on the transcript of the February 17, 2000 hearing as well as the Revised Findings recommended for adoption by the Commission at the May 9-12, 2000 hearing.

B. Grounds for Reconsideration.

The California Code of Regulations provide, in §13109.2, that at any time within thirty (30) days following a final vote upon an application for a coastal development permit, the applicant of record may request that the Commission grant a reconsideration of any term or condition of a coastal development permit which has been granted.

The grounds for reconsideration of a permit action are provided in §30627 of the Coastal Act, which states in relevant part that:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.

Pursuant to §13109.2 of the California Code of Regulations, staff shall prepare a staff report which makes a recommendation to the Commission on the merits of the request for reconsideration. Pursuant to §13109.5 of the California Code of Regulations, reconsideration of the permit shall be granted by a majority vote of the Commission. If reconsideration were granted, the application would be processed as a new application.

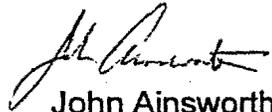
On March 17, 2000, staff received a written request for reconsideration of Permit 4-97-243. This letter, shown in Exhibit 1 was submitted by the applicant's agent Matthew Higgins. The request for reconsideration comprises three contentions which are as follows:

- 1. There is new evidence which, in the exercise of reasonable diligence, could not have been presented at the February 17, 2000 hearing on the permit application.** This new evidence, submitted with the request letter, consists of past Commission actions on eight different permit applications in the Malibu area. The applicant contends that these permit actions represent development similar to the

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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

applicant's project which were not similarly conditioned. The applicant's letter states that she was not aware of these permit actions at the time of the hearing.

2. **The imposition of Special Condition No. 6 was in excess of the Commission's jurisdiction and constitutes an error of fact and law.** The applicant states that the paving of the existing driveway on the bluff face should be considered a "repair and maintenance" activity (within the meaning of Section 30610 (d) of the Coastal Act) which would not require a coastal development permit. The applicant additionally contends that lower portion of the road was destroyed by the El Nino storms of 1997-1998 and that the reconstruction and paving of this portion should not require a permit under Section 30610 (g) of the Coastal Act.
3. **The imposition of the modifications made by the Commission to Special Condition No. 6, during the hearing of February 17, 2000 constitute an error of fact.** The applicant states that the Commission erroneously concluded that the application did not include drainage devices and that it amended Condition No. 6 to redundantly include the installation of a drainage system as an alternative to re-paving the existing roadway.

The applicant's letter states that each of these three noted elements have the potential to alter the Commission's action on Permit 4-97-243, particularly with regard to Special Conditions Nos. 6 and 8. Each of these contentions is discussed in detail below.

1. **New Evidence.**

§30267 of the Coastal Act provides that the first basis for granting reconsideration of a permit action is that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter. The applicant contends that there is new evidence.

a. **Applicant's Contention.**

The applicant states that there is new evidence, in the form of past Commission decisions, that demonstrates that the Commission's imposition of Special Condition No. 8 (Geologic Hazard Restricted Use Area) was an error of fact or law. The applicant's letter states that:

Although the applicant at the time of the hearing contended that there was no basis for said condition other than the Commission's "unlawful" attempt to restrict future residential development of all three ocean front lots, at said time the applicant was not aware of the fact that in the past the Commission had considered and approved numerous extremely similar CDP applications for developments in Malibu, where it was required to review slope failures and bluff stabilization in order to protect existing residences. Never in any of these approvals, all subsequent to 1995, did the Commission impose special conditions which required the applicants to deed restrict any portion of their property as a geologic hazard restricted use area.

...The law demands that the Commission treat similarly situated applicants similar. Although each application must be judged on its own merits, the Commission must provide a uniform and consistent approach on similarly situated applicants which protects the environment as well as the private property rights of its applicants.

In none of the similarly referenced CDP applications did the Commission ever require that an applicant deed restrict any portion of its property as a geologic hazard restricted use area. Not even in the referenced applications where landslides had already occurred. The imposition of Special Condition No. 8 on the subject approval is not consistent with the previous actions of the Commission on other applications.

The following Commission actions are cited by the applicant: 5-88-918A2 (Haagen); 4-95-176 (Hackett); 4-95-110 (Nichols); 4-97-162 (Pepperdine University); 4-98-315 (Hayles & Moore); 4-99-30 (McCormick); and 4-98-190 (Schobolm). Staff reports for these actions are attached to the applicant's request for reconsideration in Exhibit 1 to this staff report.

b. Analysis

The applicant contends that the above noted Commission decisions on permit applications constitute new evidence that form a basis for the Commission to reconsider its action on Permit 4-97-243, particularly the imposition of Special Condition No. 8 (Geologic Hazard Restricted Use). The applicant claims that the seven actions (as reflected in the staff reports for the projects) represent projects similar to the project approved in Permit 4-97-243 that give evidence that the Commission's requirement of Special Condition No. 8 was an error of fact and law.

In reviewing the staff reports submitted by the applicant, the Commission notes that these actions date from 1995 to 1999. As such, none of the information provided in the findings for these decisions could be considered "new evidence", as in not in existence at the time of the February 2000 hearing. The applicant does not indicate any reason why this information should be considered "relevant new evidence".

Additionally, the applicant states that she was not aware of these permit actions at the time of the February 17, 2000 hearing. However, the applicant does not state any reason why this information, "in the exercise of reasonable diligence", could not have been presented at the hearing on the Permit 4-97-243. This information was clearly in existence in the Commission's files prior to the hearing.

Staff would note that the applicant's contention of new evidence primarily relates to the imposition of Special Condition No. 8 (Geologic Hazard Restricted Use). While this condition was not recommended by staff in the original staff report on Permit Application 4-97-243 when it was scheduled for hearing in July 1999, it was part of the staff recommendation when the application was scheduled for the December 1999 hearing.

At that time, the applicant postponed the application to respond to staff's recommendations, including Special Condition No. 8. The application was again scheduled and acted on at the February 2000 hearing. At that time, the applicant objected to the imposition of Special Condition No. 8 and provided new information from the project geologist as well as a second opinion from an additional geologist that dealt with their opinion that the condition should not be applied to the permit application. If the applicant felt that past Commission actions were relevant to the Commission's consideration of the Permit Application 4-97-243, such information certainly, in the exercise of reasonable diligence, could have been presented at the hearing. Therefore, the Commission finds that the information on the seven past Commission actions is not relevant new evidence that supports a reconsideration of Permit 4-97-243.

The applicant maintains that the findings for the seven past Commission actions indicate factual circumstances similar to those in Permit 4-97-243 where the Commission did not require the recordation of a geologic hazard restricted area. Notwithstanding the fact that these actions do not constitute new evidence that could not have been presented at the hearing, staff has reviewed the submitted information and would note that while some of the seven past Commission actions are in similar locations or raise some similar issues, none share all of the fairly unique factual circumstances at issue in Permit 4-97-243, which support the Commission's imposition of Special Condition No. 8 (geologic hazard restricted area).

In requiring that the bluff face on the Higgins site be restricted from additional development, the Commission found that the construction of a revetment, retaining walls and buttress fill would increase the geologic stability of the project site, but that overall stability of the bluff was not sufficient to support further development. Any further development of this area beyond what was approved in Permit 4-97-243 would lead to increased instability. In particular, any infiltration of water into the bluff would increase bluff instability. New 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. 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 through Special Condition No. 8 was found to be necessary to protect the existing Higgins house, to ensure consistency both with §30235 as well as §30253 of the Coastal Act.

Three of the seven cited actions (4-97-162, 4-98-315, and 4-99-30), while involving the remediation of landslides, are not sites containing coastal bluffs. As such, there is no question of the need for shoreline protective devices. These Commission actions therefore, do not implicate §30235 of the Coastal Act.

The remaining four permit actions (5-88-918A2, 4-95-176, 4-95-110, and 4-98-190) do involve development to stabilize or remediate instability on properties containing coastal

bluff areas. None of these permits included the construction of a shoreline protective devices, so §30235 was not implicated. For instance, in the case of 5-88-918A2 (Haagen), there was already a revetment in place on the site, and the other three permits did not require the approval of any shoreline protective device. Permit 4-98-190 (Schlobohm) involved the construction of a retaining wall to support a driveway serving several existing residences on blufftop lots. 4-95-176 (Hackett) included the construction of bluff stabilization measures to protect an existing residence on a bluff. Permit 4-95-110 (Nichols) allowed bluff stabilization and restoration of the bluff face to protect an existing residence on the blufftop. All four permits involve property already developed with single family residences and other ancillary development, so there was no question of future development of septic systems or other uses that could reduce slope stability, threatening the existing development. Therefore, considering this information would not cause the Commission to reach a different conclusion on the imposition of Special Condition No. 8.

In conclusion, the Commission finds that the information on the seven past Commission actions is not relevant new evidence which, in the exercise of reasonable diligence could not have been presented at the February 17, 2000 hearing. Therefore, the Commission finds that this information does not support any reconsideration of Permit 4-97-243.

2. Error of Fact and Law.

§30267 of the Coastal Act provides that the second basis for granting reconsideration of a permit action is that an error of fact or law has occurred which has the potential of altering the initial decision. The applicant contends that an error of fact and law occurred with regard to the imposition of Special Condition No. 6 (Revised Plans).

a. Applicant's Contention.

The applicant asserts that the Commission's imposition of Special Condition No. 6 (requiring a reduction in the width of the bluff driveway to 15 feet maximum and prohibiting the placement of paving on the driveway) was in excess of the Commission's jurisdiction and an error of fact and law. The applicant's letter states that:

The paved roadway has existed on site since 1961. It's (sic) repair and maintenance, including re-paving, should not even require Commission approval pursuant to Section 30610(d) of the Coastal Act, and the Commission in the past, has expressly exempted such repairs from the permit process.

...Section 30610 (g) of the Coastal Act specifically provides that "notwithstanding any other provision of this division" no coastal development permit shall be required for "the replacement of any structure, other than a public works facility, destroyed by a natural disaster".

...The bottom portion of the applicant's paved roadway was destroyed by the El Nino storms of 1997-1998. It's (sic) reconstruction and re-paving should be deemed to be exempt from the permit requirements of the Coastal Act and the Commission is without jurisdiction to require the applicant to either reduce the width of the pre-existing roadway or not re-pave the same.

Finally, the applicant asserts that in at least one previous case [5-88-175-A2 (Sunset Partnership)], the Commission has held that the re-paving of a driveway from Pacific Coast Highway to a beach level residence did not require a permit.

b. Analysis

Despite the fact that the road grading (including widening at the top of the road below the proposed retaining walls, widening in curves, and construction of buttress fill at bottom of road) and paving are part of the project description for Permit 4-97-243, the applicant maintains that these activities do not in fact require a coastal development permit. The applicant contends that the Commission's imposition of Special Condition No. 6 restricting this proposed grading to a maximum width of 15 feet and prohibiting the road pavement was therefore in excess of its jurisdiction, an error of fact and law.

During the hearing, the applicant's representative, Don Schmitz, stated that:

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 activity.

§30610(g) of the Coastal Act actually pertains to the replacement of a structure destroyed by disaster. This section states that:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development...

(g) (1) The replacement of any structure, other than a public works facility, destroyed by a disaster. The replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, or bulk of the destroyed structure by more than 10 percent, and shall be sited in the same location on the affected property as the destroyed structure.

In response to Mr. Schmitz' contention that paving of the road did not require a permit, Commissioner McClain-Hill stated that:

First, to the extent that the matter before us calls for us to approve the pavement of the road, we certainly have the option not to 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.

The Commission made no other determination on the applicant's claim that the paving of the road was an exempt activity, under §30610(g) of the Coastal Act. As such, the Commission did not forestall the applicant's ability to pursue an exemption for road paving, if this activity qualifies under the provisions of the Coastal Act. Staff would note that although it was not discussed at the February 17, 2000 hearing, staff had previously considered a request by the applicant to consider the reconstruction of the bottom portion of the road as an exempt activity under §30610(g) of the Coastal Act. In the attached 8/30/99 letter (Exhibit 2), staff stated that this activity required a coastal development permit because, in part, deterioration of the roadway and erosion of the toe of the bluff was not the result of one disaster, but rather ongoing at the site for some time. ...

As noted above, the applicant's request for reconsideration additionally contends that repair and maintenance of the road, including repaving, is an exempt activity pursuant to the provisions of §30610(d) of the Coastal Act. This section states that:

Notwithstanding any other provision of this division, no coastal development permit shall be required pursuant to this chapter for the following types of development...

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall by regulation, require that a permit be obtained pursuant to this chapter.

The California Code of Regulations do establish criteria for repair and maintenance activities that require a coastal development permit in §13252, which states in relevant part that:

(a) For purposes of Public Resources Code Section 30610(d), the following extraordinary methods of repair and maintenance shall require a coastal development permit because they involve a risk of substantial adverse environmental impact:

...(3) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

- (A) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;
- (B) The presence, whether temporary or permanent, of mechanized equipment or construction materials.

The paving of the bluff face driveway on the applicant's site would be located within an environmentally sensitive habitat area and on a bluff face. Further, paving would involve the placement of solid materials (asphalt) and would likely require the use of

mechanized equipment (although the applicant has not indicated what methods would be used for paving). As such, paving a road in the subject location would require a coastal development permit.

Finally, the applicant contends that in at least one previous action similar to Permit 4-97-243, the Commission specifically found that repaving a road on a bluff did not require a permit. Although the applicant did not specifically state that she considers this to be new evidence within the meaning of §30267 of the Coastal Act, its inclusion is clearly meant to introduce new evidence. This permit amendment approval was acted on in 1993. As such, none of the information provided in the findings for this amendment could be considered "new evidence", as in not in existence at the time of the February 2000 hearing. As discussed above, the applicant could have provided this information to the Commission at that hearing.

Nonetheless, the Commission has reviewed this information provided by the applicant. The Commission action cited by the applicant is Permit Amendment 5-88-175-A2 (Sunset Partnership). The original permit was approved in 1988 for the demolition of a single family residence and construction of a new residence on a bluff top/beach-front lot, and construction of a beach cabana on beach level. The second amendment was for the modification of Special Condition No. 4c to allow for the paving of the existing parking lot located on the back dune at beach level, and the paving of the parking area. The project description in the staff report for the amendment states that:

This is an after-the-fact permit application for (sic) to change special condition #4c to allow for the paving of the parking lot located on the back dune at sea level, and the paving of the parking area. The paving of the area has already occurred. The applicant claims that the proposed project is necessary to provide a sufficient turn-around area for the Fire Department and other emergency vehicles at the base of the bluff to ensure adequate safety access to the structure on the adjacent lot. In conjunction with the paving of the parking area, the applicant also repaved the roadway. This action does not require a coastal development permit and is not under review. (Emphasis Added)

While this project description states that the repaving of the road does not require a permit, there is no further discussion as to the reason for this determination. The staff report does not contain any finding that the repaving of the road was considered repair and maintenance within the meaning of §30610(d) of the Coastal Act. The amendment file contains a project description submitted by the applicant (Attachment "A" to Amendment Application), which does provide some information on the reasoning behind the statement that the road paving required no permit. This document contains Sunset Partnership's interpretation that the original permit authorizes the construction of a residence, accessory structures, and ancillary development, including the road repavement. The project description states that:

In this case, repairs were made to the existing paved roadway in order to comply with the Fire Department's edict for an all-weather road. Accordingly, applicant's position is that the paving and repair of the existing roadway was authorized by the original Coastal

Permit and that the only issue to be addressed by the Amendment Application is the paving of the portion of the parking lot s which extends over the leachfield area.

There is nothing in the file that indicates that Sunset Partnership requested an exemption for the road paving pursuant to §30610(d) of the Coastal Act (repair and maintenance) or on any other basis. Rather, the project description indicates that it took the position that the road paving was approved in the original permit. As such, the Commission finds that there is no evidence that shows that the repaving of the road in this case of Permit Amendment 5-88-175-A2 was considered exempt pursuant to §30610(d) of the Coastal Act.

In conclusion, in approving Permit 4-97-243 on February 17, 2000, the Commission made no determination on the applicant's claim that the paving of the road was an exempt activity, under §30610(g) of the Coastal Act. The applicant made no claim that the road paving was exempt under §30610(d) of the Coastal Act and therefore the Commission made no determination as this section's applicability to the road paving. As such, the Commission did not forestall the applicant's ability to pursue an exemption for road paving, if this activity qualifies under the provisions of the Coastal Act. Thus, the Commission finds that there was no error of fact or law with regard to the imposition of Special Condition No. 6.

3. Error of Fact

§30267 of the Coastal Act provides that the second basis for granting reconsideration of a permit action is that an error of fact or law has occurred which has the potential of altering the initial decision. The applicant contends that an error of fact occurred with regard to modifications the Commission made to Special Condition No. 6 (Revised Plans) during the hearing on the subject permit application.

a. Applicant's Contention.

The applicant alleges that the Commission erred in modifying Special Condition No. 6 to allow the applicant to incorporate a drainage feature along the driveway on the bluff face, rather than paving the road to allow it to convey drainage and limit infiltration.

The applicant's letter states that:

Since its construction in 1961 the roadway has served as the principal drainage conduit for site runoff to the beach. In other words, in addition to providing access, the roadway has historically served as a drainage structure also. The applicant, based on the recommendations provided by the project geologist, has proposed the addition of "visually unobtrusive drainage devices" to upgrade the existing roadway/drainage structure as a component of the original CDP application...

Despite the applicant's attempt to clarify the record at the time of the hearing, the Commission erroneously concluded that the applicant had not proposed any subsurface

drainage system and amended the approval of the application to redundantly include the installation of a drainage system as an alternative to re-paving the existing roadway/drainage structure.

In addition to this contention that the Commission required a redundant drainage system rather than permit a paved road to serve as a drainage device, the applicant further states that this requirement would not be consistent with the project geologist's recommendations, so approval of the final project by the geologist (as required by Special Condition No. 3) could not be obtained.

b. Analysis

As noted by the applicant, the Commission discussed the proposed road paving. The applicant characterized the pavement as necessary, both because the road would be used to convey drainage as well as preventing infiltration of water into the bluff. The Commission discussed whether there was a need to pave the driveway in order to convey drainage and prevent water infiltration, or if a drainage system would be of more benefit. In response to questions from the Commission, the Staff Geologist, Mark Johnsson stated that a drainage system to minimize infiltration would be better than the road paving. After discussion, a motion was made to amend Special Condition 6 to prohibit paving of the driveway on the bluff and to allow instead the construction of a drainage device to serve the same function. In response to the Commission's pending vote on this amendment, the applicant's representative, Don Schmitz clearly told the Commission that a drainage system was proposed as part of the project description. Don Schmitz stated that: "I would draw your attention to Exhibit 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". As such, the information that there was a drainage system proposed as part of the project for the top of the bluff was clearly before the Commission. The modified condition reads as follows:

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.

The underlined text in the above condition language indicates the modification made by the Commission during the hearing. (Staff would note this condition language is recommended for adoption by the Commission in the Revised Findings for Permit 4-97-243 scheduled for consideration at the May 9-12, 2000 hearing)

As described above, the applicant contends that the Commission's substitution of a drainage device for the proposed road paving results in the requirement of an additional, redundant drainage system. However, the drainage system that is proposed as part of the applicant's project description consists of several catch basins designed to capture runoff from existing developed areas on the blufftop and a subsurface pipe designed to convey this runoff to the base of the bluff in a non-erosive manner.

The drainage feature, such as a swale or v-ditch, added to Special Condition No. 6, would by contrast, convey drainage from precipitation falling on the bluff itself to the base of the bluff, in a non-erosive manner. This provision was added to serve the same drainage function as the applicant proposed with the road paving. As such, this drainage feature would augment, not duplicate, the subsurface drainage system that was approved as part of the project description of Permit 4-97-243. Therefore, the Commission finds that no error of fact occurred with respect to the modification of Special Condition No. 6.

Finally, the applicant states that the prohibition of road paving and substitution of drainage device on the bluff face is not consistent with the recommendations of the project geologist for paving on the bluff and will prevent them from obtaining his approval of the revised plan required by Special Condition No. 6. The Commission finds that the drainage device will serve the same function of the road paving, namely intercepting precipitation and conveying to the base of the bluff, rather than allowing it to infiltrate the bluff. As such, there is no conflict with the recommendations of the geologist. Rather, the drainage swale or v-ditch is simply an alternative to the applicant's proposal that can be similarly evaluated by the project geologist.

In conclusion, just prior to the Commission vote to modify Special Condition No. 6 to prohibit paving of the bluff face driveway and to instead allow the construction of a drainage device, the applicant's representative clearly stated that the project description included the installation of a subsurface drainage system. The drainage device, such as a swale or v-ditch, allowed in the modified Special Condition No. 6, will augment, not duplicate the drainage system proposed by the applicant to convey runoff from the blufftop. Therefore, the Commission finds that there was no error of fact with regard to the modification of Special Condition No. 6.

Matthew Higgins
P. O. Box 4115
Malibu, California 90265
(310) 457-7300

RECEIVED
MAR 17 2000
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 16, 2000

Mr. Jack Ainsworth
California Coastal Commission
South Central Coast Area
89 South California Street, 2nd Floor
Ventura, CA 93001

Re: **Coastal Development Permit (CDP) No. 4-97-243
Request For Reconsideration**

Address: 33400 Pacific Coast Highway, Malibu (Higgins)

Project Description: Construction of a rock revetment at the toe of a coastal bluff across three beachfront parcels to protect an existing road and residence, remedial grading (40 cu. yds. cut and 170 cu. yds. fill) to buttress damaged roadway and construction of stairs along 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 road on the bluff face, installation of drainage devices, and offer to dedicate a lateral public access easement.

Dear Jack:

Pursuant to California Code of Regulations, Article 18, Section 13109, the applicant herein requests Reconsideration of the Commission's action of February 17, 2000, regarding the above captioned application.

The applicant contends that the Commission's approval of the application with Special Condition Nos. 6 and 8 constitutes a prejudicial abuse of discretion and is inconsistent with numerous recent Commission actions of which the applicant was not previously aware of.

Specifically, the applicant contends that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing, and that an error of fact and law occurred which has the potential of altering the Commission's initial decision.

Exhibit 1

4-97-243-R

Applicant's Request for
Reconsideration

California Coastal Commission
Re: CDP No. 4-97-243 (Higgins)
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Page 2

The Imposition Of Special Condition No. 6 Was In Excess Of The Commission's Jurisdiction & Constitutes Both An Error Of Fact And Law Which Should Have The Potential To Alter The Commission's Decision Of February 17, 2000

Special Condition No. 6, as amended by the commission, provides that the applicant cannot re-pave, much less maintain it to its pre-Proposition 20 pavement width, the roadway which has existed on the site since 1961. Said action is entirely inconsistent with the repair and maintenance provisions of the Coastal Act, as well as with past Commission action on extremely similar applications.

The paved roadway has existed on site since 1961. It's repair and maintenance, including re-paving, should not even require Commission approval pursuant to Section 30610(d) of the Coastal Act, and the Commission in the past, has expressly exempted such repairs from the permit process.

Section 30610(d) of the Coastal Act specifically provides that "notwithstanding any other provision of this division" no coastal development permit shall be required for repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities...

Section 30610(g) of the Coastal Act specifically provides that "notwithstanding any other provision of this division" no coastal development permit shall be required for "the replacement of any structure, other than a public works facility, destroyed by a natural disaster". Section 30610(g) further provides as follows:

"Such replacement structure shall conform to applicable existing zoning requirements, shall be for the same use as the destroyed structure, shall not exceed either the floor area, height, and/or bulk of the destroyed structure by more than 10%, and be sited in the same location on the affected property as the destroyed structure."

The bottom portion of the applicant's paved roadway was destroyed by the El Nino storms of 1997-1998. It's reconstruction and re-paving should be deemed to be exempt from the permit requirements of the Coastal Act and the Commission is without jurisdiction to require the applicant to either reduce the width of the pre-existing roadway or not re-pave the same.

In November 1993, in CDP No. 5-88-175A2 (Sunset Partnership), the Commission in an extremely similar after the fact

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application, specifically held that the re-paving of a driveway from Pacific Coast Highway to a beach level residence located at 27854 Pacific Coast Highway did not require a CDP. A copy of the Staff Report: Permit Amendment for No. 5-88-175A2 is attached hereto as **Exhibit 1**.

In May 1999, the applicant specifically requested staff to permit her to reconstruct the roadway pursuant to Section 30610 (g). Staff erroneously denied said request stating that the driveway was destroyed by numerous storms and not by one disaster.

Section 30610 of the Coastal Act takes preference over other, possibly contrary sections of the Act. The fact that the pre-existing roadway may have been destroyed by a series of storms, rather than one storm, is irrelevant. Section 30610(g) specifically provides that the "disaster" may include a series of events by providing "force or forces which destroyed the structure to be replaced". The fact is the road could be utilized and was not actually destroyed until the 1997-1998 El Nino Storms.

The original Staff Report, on page 14, provides that in CDP Application No. 4-93-092 the Commission denied Mrs. Higgins application to construct a rock revetment across the property in order to protect an existing roadway and turnaround area on the site finding that "while the roadway predated Proposition 20, only minor erosion has taken place and there is no evidence that the road or turnaround area were in danger from erosion."

To the contrary, when describing the condition of the property subsequent to the 1997-1998 El Nino storms, the original Staff Report provides as follows:

"Unlike the conditions in 1993,, the toe of the bluff on the proposed 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: 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..."

"[o]bservation 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... The past condition of the bluff did not indicate significant erosion of the base of the bluff necessitate the construction of shoreline protective devices. However, the increased erosion after 1998 is readily apparent. 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 it is necessary to protect the toe of the bluff from further

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erosion in order to prevent further damage to the existing structures on the site." See Original Staff Report, pages 14 and 15.

There is no question but that the original and revised Staff Reports substantiate the fact that the roadway pre-existed Proposition 20 and that the recent 1997 - 1998 El Nino storm caused significant damage to the roadway tantamount to having destroyed the same by natural disaster. Pursuant to Public Resources Code Section 30610(g) the replacement of the pre-existing roadway should be exempt from the permit requirements of the Coastal Act and the Commission is clearly without jurisdiction to require the applicant to reduce the width to below that which existed prior to the effective date of Proposition 20.

The Imposition Of Special Condition No. 6, As Amended By The Commission At The Time Of The Hearing, Constitutes An Error of Fact Which Should Have The Potential To Alter The Commission's Decision Of February 17, 2000

Since its construction in 1961 the roadway has served as the principal drainage conduit for site runoff to the beach. In other words, in addition to providing access, the roadway has historically served as a drainage structure also. The applicant, based on the recommendations provided by the project geologist, has proposed the addition of "visually unobtrusive drainage devices" to upgrade the existing roadway/drainage structure as a component of the original CDP application. (see the addendum to project description attached to and incorporated in Application for Coastal Development Permit 4-97-243).

Despite the applicant's attempt to clarify the record at the time of the hearing, the Commission erroneously concluded that the applicant had not proposed any subsurface drainage system and amended the approval of the application to redundantly include the installation of a drainage system as an alternative to re-paving the existing roadway/drainage structure.

The Commissions' action requiring the applicant to delete the re-paving of the roadway/drainage structure has the effect of placing the applicant in a position that will make it impossible for her to meet the obligation set forth under Special Condition No. 3 of the approval, which requires that 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. As evidenced on page 2 of Donald Kowalewsky's geological report, dated January 11, 2000 (already in staff's possession) Mr. Kowalewsky states that "This office cannot approve a reduced pavement width because it would allow for increased infiltration resulting in a decrease in the factor of safety for the slopes below." Therefore, the requisite approval from Mr. Kowalewsky will be impossible to obtain.

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Relevant New Information Discovered After The Commission's Imposition Of Special Condition No. 8 Evidences That The Commissions Imposition Of Said Special Condition Constitutes An Error Of Fact Or Law Which Should Have The Potential To Alter The Commission's Decision Of February 17, 2000

Special Condition No. 8 unreasonably requires the applicant to record a deed restriction across the entire area of the three legal ocean front lots and a portion of the two legal upper bluff lots, designating all of the area landward of the revetment to the top of the bluff as a geological hazard restricted use area. The condition restricts all future development on the relevant portion of these lots to only those minimal safety improvements necessary to protect the existing up slope residence.

Although the applicant at the time of the hearing contended that there was no basis for said condition other than the Commission's "unlawful" attempt to restrict future residential development of all three ocean front lots, at said time the applicant was not aware of the fact that in the past the Commission had considered and approved numerous extremely similar CDP applications for developments in Malibu, where it was required to review slope failures and bluff stabilization in order to protect existing residences. Never in any of these approvals, all subsequent to 1995, did the Commission impose special conditions which required the applicants to deed restrict any portion of their property as a geological hazard restricted use area. In every case the CDPs were approved with reasonable conditions which merely required the normal waiver of public liability and/or assumption of risk deed restrictions. The similar applications are delineated as follows:

CDP No. 5-88-918A2 (Haagen) wherein the applicant requested to restore the bluff, return path to original contour, construct 60 ft. long, 5 ft. high retaining wall, place railroad ties along both sides of the path to control erosion, modify retaining wall at base of bluff, backfill with 40 cu yds. of fill, and place irrigation below bluff, on the immediately contiguous property to the east of the applicants property at 33368 Pacific Coast Highway. A copy of the Staff Report and CDP are attached hereto collectively as **Exhibit 2**.

CDP No. 4-95-176 (Hackett) wherein the applicant requested to stabilize the bluff and foundation of an existing residence with a 47 ft long soldier pile wall, grade beams and 125 cu yds. of cut, replace patio, improve drainage and install 2 rip rap energy dissipater at 32232 Pacific Coast Highway. A copy of the Staff Report and CDP are attached hereto collectively as **Exhibit 3**.

CDP No. 4-95-110 (Nichols) wherein the applicant requested to perform slope stabilization and bluff restoration on bluff with an existing home at 32588 Pacific Coast Highway. A copy of the Staff Report and CDP are attached hereto collectively as **Exhibit 4**.

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CDP No. 4- 97-162 (Pepperdine University) wherein the applicant requested landslide remediation including, but not limited to, 27 shear pin caissons ranging from 26 to 43 ft long, excavation and recompaction of 6,000 cu yds. of material, export 18,000 cu yds. of cut, 253 ft long shotcrete retaining wall (15 ft. maximum height), drainage facilities, inclinometers and dewatering systems, removal and reconstruction of stairs, repairs to Latigo Shore Drive, including curbs and gutters, at 26755 Latigo Shore Drive and 26800 Pacific Coast Highway. A copy of the Staff Report and CDP are attached hereto collectively as **Exhibit 5**.

CDP No. 4-98-315 (Hayles & Moore) wherein the applicants requested 6,587 cu yds. of grading to remediate slope failure, widen 15 foot wide driveway to 20-25 ft wide, at 22148 Monte Vista Road and 22155 Eden Road. A copy of the Staff Report and CDP are attached hereto collectively as **Exhibit 6**.

CDP No. 4-99-30 (McCormick) wherein the applicant requested to demolish an 1,890 sq. ft. home and construct a 5,814 sq. ft. house, 4 car garage, and 384 ft. long 3-6 ft. high retaining wall, with 2,055 cu yds. Of grading to remediate landslide at 7015 Grasswood Avenue. A copy of the Staff Report and CDP are attached hereto as **Exhibit 7**.

CDP No. 4-98-190 (Schobolm) wherein the applicant requested to repair a driveway, install retaining wall, remedial grading, and dewatering wells to service an existing single family residence at 33608 Pacific Coast Highway. A copy of the Staff Report and CDP are attached hereto as **Exhibit 8**.

The above referenced Staff Reports evidence actions taken by the Commission which were consistent with its Malibu-Santa Monica Mountains District Interpretive Guidelines. See Section II, (c) 1. The action taken by the Commission with regard to the subject application was not.

The law demands that the Commission treat similarly situated applicants similar. Although each application must be judged on its own merits, the Commission must provide a uniform and consistent approach on similarly situated applicants which both protects the environment as well as the private property rights of its applicants.

In none of the similarly referenced CDP applications did the Commission ever require that an applicant deed restrict any portion of its property as a geological hazard restricted use area. Not even in the referenced applications where landslides had already occurred. The imposition of Special Condition No. 8 on the subject approval is not consistent with the previous actions of the Commission on other applications. Particularly, not when the applicants geological consultants have already determined that feasible engineering techniques exist which would permit safe development to occur, and which are consistent with the Commission's Land Form Alteration Policy Guidance document prepared by Staff in 1994 (See section entitled: "Overview of

California Coastal Commission
Re: CDP No. 4-97-243 (Higgins)
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Engineering Techniques to Reduce Grading").

Donald Kowalewsky's geological report, dated January 11, 2000 (already in staff's possession) specifically provides that there is no geological basis to require a geological hazard restricted use area over the bluff and beach front parcels. Mr. Kowalewsky states that "construction using our 1991 recommendations would not have lead to decreased slope stability. It would have increased the stability of the slope to a safety factor greater than 1.5".

The applicant retained a second consulting geologist, Mr. John Tsao of C.Y. Geotech, Inc., to review all of Mr. Kowalewsky's reports regarding the subject property as well as the November 1999 Staff report in order to obtain an independent review and determination of the issues. In his geological report, dated February 4, 2000 (already in staff's possession) Mr. Tsao concluded that there is no reasonable geologic basis to require the geologic hazard restricted use area designation and concurred with the specific recommendations provided by Mr. Kowalewsky.

The applicant requests reconsideration of the Commission action of February 17, 2000, and requests that Special Condition Nos. 6 and 8 be eliminated.

Thank you for your consideration.

Sincerely,

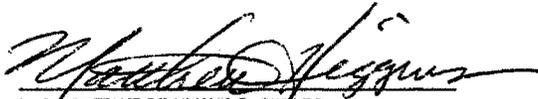

MATTHEW HIGGINS
for Applicant BEVERLY HIGGINS

Exhibit 1

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., 2ND FLOOR
VENTURA, CA 93001
(805) 641-0142

Filed: 10-21-93
49th Day: 12-9-93
180th Day: 4-19-94
Staff: SPF-VNT
Staff Report: 10-29-93
Hearing Date: November 16-19, 1993
Commission Action:

**STAFF REPORT: PERMIT AMENDMENT**

APPLICATION NO.: 5-88-175A2

APPLICANT: Sunset Partnership AGENT: Elizabeth Watson

PROJECT LOCATION: 27854 Pacific Coast Highway, City of Malibu; Los Angeles County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Demolish single family residence and construct single family residence on bluff-top beach-front lot, construct 576 sq. ft. beach cabana on beach level.

DESCRIPTION OF AMENDMENT: Change special Condition #4c to allow for the paving of the parking lot located on the back dune at sea level, and the paving of the parking area.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits P-76-7428 (Ventress), 5-88-175 (Sunset Partnership), 5-88-175A (Sunset Partnership) and 5-89-578 (Ventress).

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission determine that the proposed development with the proposed amendment, subject to the conditions below, is consistent with the requirements of the Coastal Act.

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby approves the amendment to the coastal development permit, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 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. Special Conditions.

NOTE: Unless specifically altered by the amendment, all conditions attached to the previously approved permit and amendment remain in effect.

4. Beach Level Development

Prior to the transmittal of the coastal permit the applicant shall submit revised plans that show:

a) Elimination of the beach level cabana.

b) Relocation of the leach field. The leachfield shall be relocated off the sand area at the toe of the bluff and landward of elevation 24 as shown in Exhibit C, unless the applicant demonstrates to the satisfaction of the Executive Director that no other location on the lot meets the plumbing code.

c) No construction of beach level seawall. The applicant agrees that no seawall shall be installed as part of the leachfield system.

III. Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Background

This is an after-the-fact permit application for to change special condition #4c to allow for the paving of the parking lot located on the back dune at sea level, and the paving of the parking area. The paving of the area has already occurred. The applicant claims that the proposed project is necessary to provide a sufficient turn-around area for the Fire Department and other emergency vehicles at the base of the bluff to ensure adequate safety access to the structure on the adjacent lot. In conjunction with the paving of the parking area, the applicant also repaved the roadway. This action does not require a coastal development permit and is not under review. The parking area is located at the base of a coastal bluff and is separated from the ocean by a wall of vegetation, and on the adjacent lot which is seaward of the parking lot, a cabana and seawall in front of the cabana. The parking area is not visible from the beach or Pacific Coast Highway.

In 5-88-175 the applicant was granted a permit to demolish the existing 2,000 sq. ft. single family residence and construct a new 6,000 sq. ft. single family residence in approximately the same location, on the bluff. The septic system for the residence was proposed to be at the base of the bluff under the existing parking area. The applicant was also proposing a beach level cabana. The Commission approved the project with six special conditions which required the recordation of an assumption of risk deed restriction, a final geology report which delineated the set back line for development on the bluff, an offer to dedicate and open space area in the canyon, the removal of the cabana from the proposed plans, relocation of the leachfield if possible, prohibition of paving of the beach level parking area and the construction of a seawall, a State Lands determination and revised grading plans. Later, the applicant received an amendment to this permit to relocate the garage and add a guest house on the bluff. This amendment was approved with a future improvements deed restriction. Both the permit and the amendment have been issued, and construction has commenced.

The lot is located on the seaward side of Pacific Coast Highway and extends from the bluff to the beach. Total relief on the property is approximately 120 feet, with slopes ranging from horizontal toward Pacific Coast Highway to nearly vertical at the bluff edge. The lot also contains a portion of the canyon on the west side of the property. Due to the constraints of the lot, the only feasible place for the septic system was at the base of the bluff on the back dune.

There is an existing cabana on the neighboring lot on the beach. Access to this cabana is on the applicant's property via the existing road. The parking area, where the leachfield system is underneath, was also pre-existing. The cabana, located at 27856 Pacific Coast Highway, on the neighboring lot was approved by the Commission in P-76-7428 (Ventress). This permit was approved with several special conditions; one condition prohibited the paving of the parking lot. At that time the lot was composed of loose sand and there was no mature vegetation at the base of the bluffs.

B. Beach Development

Section 30253 of the Coastal Act states:

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.

All projects requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 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.

Section 30211 of the Coastal Act states:

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

Section 30212 of the Coastal Act states:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except 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 way 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 access way.

All beach front projects requiring a coastal development permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. The Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline. The major access issue in such permits is the occupation of sand area by a structure, in contradictions of Coastal Act policies 30211, 30212, and 30221. However, a conclusion that access may be mandated does not end the Commission's inquiry. As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with ... the need to protect ... rights of private property owners..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the U.S. Supreme Court's decision in the case of Nollan vs. California Coastal Commission. In that case, the court ruled that the Commission may legitimately require a lateral access easement where the proposed development has either individual or cumulative impacts which substantially impede the achievement of the State's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate those impacts.

The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access of such projects can include among others, encroachment on lands subject to the public trusts thus physically excluding the public; interference with natural shoreline processes which are necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to an ability to use and cause adverse impacts on public access such as above.

In order to avoid negative impacts on public access, the project must not be located on public lands. Pursuant to Public Resources Code sections 30401 and 30416, the State Lands Commission is the agency entrusted with management of all state lands, including tide and submerged lands; the Commission is compelled to both respect the State Lands Commission's assertion of jurisdiction over this area and to also avoid issuing a permit for the project which the Lands Commission has indicated could not be permitted. The original permit required a state lands determination which showed that the development would not encroach onto State Lands. This was submitted. The proposed development is no further seaward than the development approved in the original permit, thus the Commission concludes that there is no interference on lands subject to the public trusts. As stated in the project description, the proposed development is blocked from view by a wall of vegetation between the base of the bluff and the beach. In addition, the parking area is existing, the paving of a parking area would have little visual impact if it was visible at all. Thus, the concern of the Commission with relation to the consistency of this application with the public access policies of the Coastal Act is any potential interference with natural shoreline processes which are necessary to maintain publicly-owned tidelands and other public beach areas.

In this case, the proposed amendment is to allow for the paving of the parking area located behind and adjacent to the cabana on the neighboring lot. In the 1976 permit [P-76-7428 (Ventress)] for the neighboring lot, the parking area was described as loose sand; however, in the 1988 permit for the subject lot, staff noted that the parking area was composed of decomposed granite. Seaward of the parking area there is a mature stand of vegetation. As such, the parking area is not in a natural, beach like, condition. This parking area, located at the base of the bluff, is not normally subject to wave action. A wave uprush report submitted in the original permit stated that the most seaward portion of the leachfield is located 17 feet landward of the design wave uprush limit and thus requires no wave uprush protection. Thus, it can be concluded that the parking area is not subject to wave attack.

In P-76-7428 (Ventress), the Commission approved the cabana on the adjacent lot with four conditions. Condition 3 required the recording of a deed restriction which prohibited the placement of any surface pavement or covering on the lot. There are no findings in the report that explain why this condition was imposed. In 5-88-175 (Sunset Partnership), the Commission noted that the parking area protected the toe of the bluff and supplied a reserve of sand to the beach during major storms. The Commission found that the parking area for the cabana should not be paved in order to preserve the back dune sand system. However, the Commission notes that the parking area even in 1988 was composed of decomposed granite and not sand. The parking area is landward of the wave uprush limit and is not subject to wave attack. Moreover, there is a mature stand of vegetation between the parking area and the beach thus reducing the availability of any sand on the leachfield system for the beach erosion system. In 5-89-578 (Ventress) the Commission approved a seawall in front of the cabana on the neighboring lot. This seawall also interrupts the role the parking area may have played in supplying beach sand to the beach. Finally, the leachfield system is in place where there once was a sand that could supply the beach. This leachfield system was approved under the original permit. As it exists, the parking area is not a valuable source

of sand for the beach during major storms. Thus, it does not appear that the paving of the parking lot will have adverse effects on the sand supply or the shoreline processes. As such, there will no negative impact on the shoreline profile and the paving of the parking area will not adversely affect the beach. The proposed project will have no individual or cumulative impacts on public access. Therefore, the Commission finds that that a condition to require lateral access is not appropriate. The Commission concludes that for the reasons mentioned above, the project, as proposed, is consistent with the public resource sections regarding public access, and encroachment onto public lands.

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard and assure stability and structural integrity. In the original permit, there was some concern over the placement of the leachfield in the parking area. The Commission conditioned the permit, requiring the applicant to relocate the leachfield system if a more suitable location could be found. The applicant submitted several geologic reports with percolation tests. All concluded that the only feasible place to put the leachfield system was in the parking area at the base of the bluff. Recently, the applicant submitted a letter from the City of Malibu's Health Department which concluded that the paving of a parking lot above the leachfield would have no adverse impacts on the leachfield. The Commission found that the placement of the leachfield system would not have any adverse effects on beach processes. The paving of the parking lot at the base of the bluff does not require any grading or changes to the bluff. The parking area and the beach area are separated by a wall of vegetation and previous coastal engineering reports have indicated that the parking area is not subject to wave action. Thus, there are no geologic hazards that could result from the paving of the parking area. In the original permit, the Commission required the applicant to record an assumption of risk deed restriction which stated that the applicant was aware that hazards existed on the site since all risks associated with beach development could not be completely eliminated. Since the paving of the parking area will not affect the geologic stability of the bluff and since an assumption of risk deed restriction has already been recorded on the site, the Commission finds that as proposed, the project is consistent with Section 30253 of the Coastal Act.

C. Violation

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

D. Local Coastal Plan

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 coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. On December 11, 1986, the Commission certified the Land Use Plan portion of the Malibu/Santa Monica Mountains Local Coastal Program. While the County prepared and certified LUP is no longer legally effective in the newly incorporated city of Malibu, the previously certified LUP continues to provide guidance as to the types of uses and resource protection needed in the Malibu area in order to comply with Coastal Act policy. The certified LUP contains policies to guide the types, locations, and intensity of future development in the Malibu/Santa Monica Mountains area. Among these policies are those specified in the preceding sections regarding shoreline protection. As conditioned, the proposed development will not create adverse impacts and is consistent with the policies contained in the LUP. Therefore, the Commission finds that approval of the proposed development will not prejudice the ability of the City of Malibu to prepare a certifiable Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act.

E. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment.

There are no negative impacts caused by the proposed development which have not been adequately mitigated. Therefore, the proposed project is found consistent with CEQA and the policies of the Coastal Act.

0675M

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., 2ND FLOOR
VENTURA, CA 93001
(805) 641-0142

Filed: 10-21-93
49th Day: 12-9-93
180th Day: 4-19-94
Staff: SPF-VNT
Staff Report: 10-29-93
Hearing Date: November 16-19, 1993
Commission Action:

STAFF REPORT: PERMIT AMENDMENT

APPLICATION NO.: 5-88-175A2

APPLICANT: Sunset Partnership AGENT: Elizabeth Watson

PROJECT LOCATION: 27854 Pacific Coast Highway, City of Malibu; Los Angeles County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Demolish single family residence and construct single family residence on bluff-top beach-front lot, construct 576 sq. ft. beach cabana on beach level.

DESCRIPTION OF AMENDMENT: Change special Condition #4c to allow for the paving of the parking lot located on the back dune at sea level, and the paving of the parking area.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits P-76-7428 (Ventress), 5-88-175 (Sunset Partnership), 5-88-175A (Sunset Partnership) and 5-89-578 (Ventress).

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission determine that the proposed development with the proposed amendment, subject to the conditions below, is consistent with the requirements of the Coastal Act.

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby approves the amendment to the coastal development permit, subject to the conditions below, on the grounds that, as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 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. Special Conditions.

NOTE: Unless specifically altered by the amendment, all conditions attached to the previously approved permit and amendment remain in effect.

4. Beach Level Development

Prior to the transmittal of the coastal permit the applicant shall submit revised plans that show:

a) Elimination of the beach level cabana.

b) Relocation of the leach field. The leachfield shall be relocated off the sand area at the toe of the bluff and landward of elevation 24 as shown in Exhibit C, unless the applicant demonstrates to the satisfaction of the Executive Director that no other location on the lot meets the plumbing code.

c) No construction of beach level seawall. The applicant agrees that no seawall shall be installed as part of the leachfield system.

III. Findings and Declarations

The Commission finds and declares as follows:

A. Project Description and Background

This is an after-the-fact permit application for to change special condition #4c to allow for the paving of the parking lot located on the back dune at sea level, and the paving of the parking area. The paving of the area has already occurred. The applicant claims that the proposed project is necessary to provide a sufficient turn-around area for the Fire Department and other emergency vehicles at the base of the bluff to ensure adequate safety access to the structure on the adjacent lot. In conjunction with the paving of the parking area, the applicant also repaved the roadway. This action does not require a coastal development permit and is not under review. The parking area is located at the base of a coastal bluff and is separated from the ocean by a wall of vegetation, and on the adjacent lot which is seaward of the parking lot, a cabana and seawall in front of the cabana. The parking area is not visible from the beach or Pacific Coast Highway.

Exhibit 2

**CALIFORNIA COASTAL COMMISSION**

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

AMENDMENT TO COASTAL DEVELOPMENT PERMIT

Date July 2, 1997

Permit Number 5-88-918-A2 issued to Charals Haagan

to demolish existing beach cabana, construct new 750 sq. ft. cabana, regrade access path, create beach level turn around, construct beach revetment on location of previous revetment; amended to relocate existing driveway on landward portion of property; add 600 sq. ft. above existing garage/gym on landward portion of property; reduce height and length of approved retaining wall to maximum of 5 feet at existing graded path; reduce height of approved 750 sq. ft. cabana from 20 feet to 10 feet; revise retaining wall along northern property line to a maximum height of six feet with a 42 inch high open fence above and 100 cubic yards of fill.

at 33368 Pacific Coast Highway, City of Malibu; Los Angeles County.

has been amended to include the following change:

Restoration of unpermitted grading of bluff to return path to original contour; construct 60 linear feet of retaining wall with a maximum height of five feet along seaward side of path at top of bluff; restore contour of bluff at site of erosion with 15 cubic yards of fill; restore vegetation on bluff with native plants; place railroad ties along entire length of path on both sides for erosion control; changes to the height of the retaining wall at the base of the bluff by tapering each end to the 30 foot contour and reducing the height by up to five feet, raising the height of the center of the wall by one foot to a maximum height of eleven feet, reducing the length of the retaining wall by three feet to a total length of 79 feet, modifying the shape of the wall to eliminate cutting into the bluff, and backfilling of the slope with 40 cubic yards of fill; placement of irrigation below grade on bluff to be used for a one year period.

This amendment will become effective upon return of a signed copy of this form to the Commission office. Please note that the original permit conditions unaffected by this amendment are still in effect.

PETER M. DOUGLAS
Executive Director


By: Susan P. Friend
Title: Coastal Program Analyst

ACKNOWLEDGMENT

I have read and understand the above amendment and agree to be bound by the conditions as amended of Permit No. 5-88-918.

Date _____

Signature _____

3944C/SPF/dp

SPECIAL CONDITIONS

1. Assumption of Risk Deed Restriction

Prior to the issuance of the coastal development permit amendment, the applicant, as landowner, shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from erosion or slope failure and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and 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.

2. Revised Drainage Plans and Installation of Drainage Devices

Prior to the issuance of the coastal development permit amendment, the applicant shall submit for the review and approval of the Executive Director, two sets of a revised plan, prepared by a licensed engineer, which include the installation of an energy dissipator at the base of the path which incorporates as much natural material (such as rock) as feasible. These plans shall incorporate all drainage devices recommended by RJR engineering Group, Inc. in their letter of December 10, 1996, including but limited to, velocity reducers and decomposed granite. No grading or other alterations to the bluff may occur for this drainage device.

The drainage device shall be installed on site within 60 days of the issuance of the coastal development permit.

3. Condition Compliance

The requirements specified in the foregoing special conditions that the applicant is required to satisfy as a prerequisite to the issuance of this permit must be fulfilled within 120 days of Commission action. Failure to comply with such additional time as may be granted by the Executive Director for good cause, will terminate this permit approval.

4. Compliance with Irrigation Plans

The applicant agrees to comply with and implement all of the irrigation notes and instructions listed on the revegetation plan with regards to the watering of the site. Watering shall occur no more than once a week and only during periods of no rainfall.

The irrigation system may only be used for one-year commencing with the implementation of the revegetation. No more than one year from the date of the approval of this permit amendment, all above grade portions of the system including the risers and heads shall be removed and the main line at the top of the bluff shall be capped. The irrigation period may be extended by the Executive Director, for good cause, pursuant to a recommendation by the consulting restoration specialist that additional watering is necessary for the long-term survival of the vegetation on the bluff face.

No long-term irrigation of the bluff face is permitted.

5. Implementation and Completion of Revegetation

The applicant agrees to complete the implementation of the restoration plan including the removal of exotic, invasive species from the bluff face within one year of the issuance of the permit, but no later than April 1, 1998.

CALIFORNIA COASTAL COMMISSION

1000 SOUTH CENTRAL COAST AREA
 1000 SOUTH CALIFORNIA ST., SUITE 200
 VENTURA, CA 93001
 (805) 641-0142

Filed: 1-7-97
 49th Day: 2-25-97
 180th Day: 7-6-97
 Staff: SPF-VNT *SP*
 Staff Report: 1-16-97
 Hearing Date: Feb 4-7, 1997
 Commission Action:

STAFF REPORT: PERMIT AMENDMENT

W 8a

APPLICATION NO.: 5-88-918-A2

APPLICANT: Charals Haagen

AGENT: William Crigger

PROJECT LOCATION: 33368 Pacific Coast Highway, City of Malibu; L.A. County

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED: Demolish existing beach cabana, construct new 750 sq. ft. cabana, regrade access path, create beach level turn around, construct beach revetment on location of previous revetment; amended to relocate existing driveway on landward portion of property; add 600 sq. ft. above existing garage/gym on landward portion of property; reduce height and length of approved retaining wall to maximum of 5 feet at existing graded path; reduce height of approved 750 sq. ft. cabana from 20 feet to 10 feet; revise retaining wall along northern property line to a maximum height of six feet with a 42 inch high open fence above and 100 cubic yards of fill.

DESCRIPTION OF AMENDMENT: Restoration of unpermitted grading of bluff to return path to original contour; construct 60 linear feet of retaining wall with a maximum height of five feet along seaward side of path at top of bluff; restore contour of bluff at site of erosion with 15 cubic yards of fill; restore vegetation on bluff with native plants; place railroad ties along entire length of path on both sides for erosion control; changes to the height of the retaining wall at the base of the bluff by tapering each end to the 30 foot contour and reducing the height by up to five feet, raising the height of the center of the wall by one foot to a maximum height of eleven feet, reducing the length of the retaining wall by three feet to a total length of 79 feet, modifying the shape of the wall to eliminate cutting into the bluff, and backfilling of the slope with 40 cubic yards of fill; placement of irrigation below grade on bluff to be used for a one year period.

LOCAL APPROVALS RECEIVED: "Approval in Concept" from the City of Malibu.

SUBSTANTIVE FILE DOCUMENTS: Coastal Development Permits 5-84-108 (Haagen), 5-86-160 (Haagen), 5-86-160R (Haagen), 5-88-918 (Haagen), and 5-88-918A (Haagen).

PROCEDURAL NOTE: The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or

3) the proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

SUMMARY OF STAFF RECOMMENDATION:

This is an after-the-fact application for the restoration of grading on a bluff without the benefit of a coastal development permit. The project also includes changes to the height and length of the approved retaining wall at the base of the bluff and the construction of a new retaining wall at the top of the bluff. This project is highly visible from the beach, located on an environmentally sensitive habitat area, and subject to geologic instability. Staff recommends that the Commission approve the amendment to the coastal development permit subject to special conditions regarding the recordation of an assumption of risk deed restriction, revised drainage plans, condition compliance, compliance with irrigation plans, implementation of the revegetation plan, and a revegetation monitoring plan.

STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby approves the amendment to the coastal development permit, on the grounds that as conditioned, the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and first public road nearest the shoreline and is in conformance with the public access and public recreation policies 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.

NOTE: Unless specifically altered by the amendment, all standard and special conditions attached to the previously approved permit remain in effect.

II. Special Conditions

1. Assumption of Risk Deed Restriction

Prior to the issuance of the coastal development permit amendment, the applicant, as landowner, shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide:
(a) that the applicant understands that the site may be subject to extraordinary hazard from erosion or slope failure and the applicant assumes

the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and 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.

2. Revised Drainage Plans and Installation of Drainage Devices

Prior to the issuance of the coastal development permit amendment, the applicant shall submit for the review and approval of the Executive Director, two sets of a revised plan, prepared by a licensed engineer, which include the installation of an energy dissipator at the base of the path which incorporates as much natural material (such as rock) as feasible. These plans shall incorporate all drainage devices recommended by RJR engineering Group, Inc. in their letter of December 10, 1996, including but limited to, velocity reducers and decomposed granite. No grading or other alterations to the bluff may occur for this drainage device.

The drainage device shall be installed on site within 60 days of the issuance of the coastal development permit.

3. Condition Compliance

The requirements specified in the foregoing special conditions that the applicant is required to satisfy as a prerequisite to the issuance of this permit must be fulfilled within 120 days of Commission action. Failure to comply with such additional time as may be granted by the Executive Director for good cause, will terminate this permit approval.

4. Compliance with Irrigation Plans

The applicant agrees to comply with and implement all of the irrigation notes and instructions listed on the revegetation plan with regards to the watering of the site. Watering shall occur no more than once a week and only during periods of no rainfall.

The irrigation system may only be used for one-year commencing with the implementation of the revegetation. No more than one year from the date of the approval of this permit amendment, all above grade portions of the system including the risers and heads shall be removed and the main line at the top of the bluff shall be capped. The irrigation period may be extended by the Executive Director, for good cause, pursuant to a recommendation by the consulting restoration specialist that additional watering is necessary for the long-term survival of the vegetation on the bluff face.

No long-term irrigation of the bluff face is permitted.

5. Implementation and Completion of Revegetation

The applicant agrees to complete the implementation of the restoration plan including the removal of exotic, invasive species from the bluff face within one year of the issuance of the permit, but no later than April 1, 1998.

Further weeding and plantings as indicated in the restoration report and/or the plans shall be conducted during the monitoring period as necessary.

6. Revegetation Monitoring Program

The applicant agrees to monitor the restoration area for a period of three years, commencing with the implementation of the revegetation plan, to ensure the successful restoration of the site. The applicant shall submit to the Executive Director, annual reports on the status of the restoration program, prepared by a qualified restoration specialist or biologist with an expertise in restoration. These reports shall be submitted to the Executive Director no later than the first of May of each year. The first report shall be required at the end of 1996-1997 rainy season, but no later than May 1, 1997.

The annual reports shall outline the success or failure of the restoration project and include recommendations for additional restoration measures if necessary. If the consulting biologist determines that additional or different plantings are required, the applicant shall be required to do additional plantings by the beginning of the rainy season of that year (November 1). If at the completion of the third year of monitoring, the consulting specialist determines that the restoration project has in part, or in whole, been unsuccessful the applicant shall be required to submit a revised, supplemental program to compensate for those portions of the original program which were not successful. The revised or supplemental restoration program shall be processed as an amendment application to the original coastal development permit.

III. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. Project Description

This is an after-the-fact application for work on a coastal bluff which includes the following: restoration of the unpermitted grading of the path along the bluff to return the path to its original width and contours; construct 60 linear feet of retaining wall with a maximum height of five feet along seaward side of path at the top of the bluff; restore the contours of the bluff at the site of erosion with 15 cubic yards of fill; restore vegetation on bluff with native plants; place railroad ties along entire length of the path on both sides for erosion control; complete minor changes to the retaining wall at the base of the bluff by reducing the length from 82 feet to 79 feet and reducing the height of the wall from 10 feet to 5 feet at the east end of the wall and backfilling of the slope behind the wall with 40 cubic yards of fill; and place an irrigation system below grade on the bluff for temporary irrigation of new plants (See Exhibits 4-6). All this work has been completed.

The unpermitted developments include the original unpermitted grading of the path, construction of the retaining wall at the top of the bluff, and changes to the retaining wall design at the base of the bluff. The applicant's agent claimed that the grading on the bluff was done to allow for construction equipment to access the base of the bluff where construction of a wall and cabana were previously approved. [The wall at the top of the bluff was constructed to support the access road which was damaged by erosion. The

changes to the retaining wall at the base of the bluff were done to minimize alteration of the toe of the bluff. The applicant continued to work on the site constructing the approved developments after enforcement staff notified the applicant and agent of the unpermitted development. Restoration of the path back to its original width and contour, the restoration of the erosion on the bluff, the revegetation of the bluff face with installation of below grade irrigation pipes, and the 30 inch high railroad ties along both sides of the bluff were done at the end of 1996. None of this restorative work was first approved or authorized by the Commission. Hence, the amendment application before the Commission is for work that has been completed.

The project is located on an approximately 1.2 acre site which extends from Pacific Coast Highway to the mean high tide line. Exhibit 3 is a survey of the site which shows the location of the residence and garage at the top of the bluff and the old cabana at the base of the bluff. The residence is located on the top of the bluff, and there is a cabana at the base of the bluff. The coastal bluffs along this section of the Malibu coast are recognized as environmentally sensitive habitat areas.

B. Project Background

The history of development on the site, including the permit history is extensive. The original single family residence at the top of the bluff was constructed circa 1945. There is also a cabana at the base of the bluff and a path leading down to this cabana along the bluff face; both these developments pre-date the passage of proposition 20 in 1972 and the January 1, 1977 effectiveness date of the Coastal Act.

The current property owner and applicant, Charals Haagen, purchased the property in 1982. During the storms of 1983, the applicant, without the benefit of a coastal development permit, constructed a seawall on the beach, seaward of the existing cabana. In response to notification from enforcement staff, the applicant submitted the first permit action on this site, coastal development permit 5-83-504 (Haagen), for the after-the-fact construction of the seawall. This permit was denied by the Commission. The applicant then resubmitted coastal development permit application 5-84-108 (Haagen) for the same development. During this application process, the applicant argued that there was an existing seawall on the beach and that the construction done in 1983 was repair and maintenance of that seawall. The project was recommended for approval with several specials conditions. However, the permit was not acted on in a timely manner and expired.

Following this action, the applicant then submitted coastal development permit 5-86-160 (Haagen) which was also for the after-the-fact construction of the seawall and additional development including a request to demolish the existing cabana at the base of the bluff, construct a new cabana and seawall at the base of the bluff, and regrade and recontour the entire bluff face including changing the configuration of the existing path. Due to staff concerns, the applicant modified this project description removing the request to regrade the bluff face and change the path, and removing the request for a second seawall at the toe of the bluff. This application was approved with special conditions which eliminated the second seawall (already agreed to by the applicant), removed the plans to regrade and reconfigure the bluff face including the path (also already agreed to by the applicant), provide for small scale erosion control measures along the path, record a lateral access

deed restriction and an assumption of risk deed restriction. However, the conditions of the permit were not met and this permit also expired.

The applicant upon expiration of 5-86-160 (Haagen) submitted coastal development permit application 5-88-918. This application was for the same development proposed before: reconstruct the existing seawall, demolish the old cabana, construct a new cabana, and regrade the path along the bluff face with the construction of retaining walls. This permit was approved by the Commission with special conditions as shown in Exhibit 11. These conditions are the same as imposed in 5-86-160 (Haagen). It should be noted that the Commission did make the determination that the seawall subject to the permit application was the repair and maintenance of an existing seawall and thus exempt from permit requirements pursuant to Section 30610 of the Coastal Act. The coastal development permit 5-88-918 was extended five times and finally issued on July 12, 1995.

In addition, the applicant has received two amendments to this permit. The first amendment, 5-88-918A, submitted on January 25, 1991 requested to relocate the existing driveway on the landward portion of the property; add 600 sq. ft. above existing garage/gym on landward portion of property; reduce height and length of approved retaining wall to maximum of 5 feet at existing graded path; and reduce the height of the approved 750 sq. ft. cabana from 20 feet to 10 feet. This amendment was processed as an immaterial amendment and received no objections. It is important to note, however, that the project description incorrectly requests a reduction in the approved retaining wall at the graded path. However, no retaining walls were ever approved or authorized by the Commission under this permit. In fact, in a letter to the applicant's agent at the time of the application, Commission staff addressed the fact that no walls were allowed on the path as the construction of retaining walls requires grading (See Exhibit 12). As noted in both the special conditions and the findings, grading of the bluff was not permitted. The plans which were signed by Commission staff for the underlying permit and the amendment specifically state that no grading or retaining walls will be constructed on the bluff (See Exhibit 13). Thus, it can be concluded that the Commission's original intent and actual approval did not authorize any walls on the bluff face.

Finally, the third amendment on this site, [5-88-918-A3 (Haagen)], for changes to the retaining wall at Pacific Coast Highway, along the northern property line, allowing for a maximum six foot high wall with a 42 inch open fence above requiring a total of 100 cubic yards of fill was determined to be an immaterial amendment by the Executive Director. This immaterial amendment was reported to the Commission at the January 1997, Commission meeting.

C. Geologic Hazards

Section 30253 of the Coastal Act states in part that :

New development shall:

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

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction

of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30235 of the Coastal Act states:

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

Coastal bluffs, such as this one, are unique geomorphic features that are characteristically unstable and have significant environmental and visual value. This coastal bluff is a designated environmentally sensitive habitat area. Any development on a coastal bluff will have adverse impacts to the environmental and visual qualities of the bluff and natural shoreline processes. As noted above, Section 30253 of the Coastal Act mandates that new development provide for geologic stability and integrity and minimize risks to life and property and Section 30235 of the Coastal Act states that construction which alters natural shoreline processes shall be permitted only when required to protect existing structures from erosion, and only when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Therefore, it is necessary to review any proposed project first for the necessity of the project pursuant to Section 30235 of the Coastal Act and then for compliance with Section 30253 of the Coastal Act.

The developments on site which affect the geologic stability of the site and incorporate the placement of development on the bluff face include the construction of a retaining wall at the top of the bluff, railroad ties along the path, irrigation on the bluff face, and restorative grading and vegetation on the bluff face. The minor changes to the wall at the base of the bluff do not create any significant change with regards to geologic stability. The backfill behind this wall is necessary in order to recontour the bluff face to its original condition.

In the Commission's original approval of this project under the permit 5-88-918, the Commission emphasized that no regrading or recontouring the bluff could occur. Retaining walls, which would include grading and thus recontour the bluff were not allowed. A summary of the Commission's findings are noted in a letter from staff to the applicant's previous agent (see Exhibit 12). At the time of the original permit, there was no evidence that there was any geologic instability of the site. The consulting geologist for the original project noted that the site is a relatively stable bluff, likely to retreat no more than a few inches every year. The bluff was noted as being subject to surface sloughing and raveling. There was no indication in the previous reports that the stability of the residence at the top of the bluff was in any danger. Bluff erosion which has occurred on the site in two locations has caused a concern regarding the stability of the residence as evidenced in the geology report from the consulting geologist (Exhibit 9 includes the geologist's findings regarding slope stability and the potential danger to the residence).

The first element of development noted above is the construction of a 60 foot long retaining wall with a maximum exposed height of five feet (See Exhibits 4-5). The consulting geologist has stated that because of continuing erosion and bluff instability, the upper retaining wall and erosion control devices are now necessary to minimize bluff retreat and protect the subject property, residence, and backyard amenities from damage.

The wall constructed at the top of the bluff was constructed along a vertical portion of a headscarp of a surficial failure that occurred near the top of the bluff between 28 to 32 feet from the seawardmost portion of the residence. The consulting geologist found that the upslope portion of the failure was subject to creep which would put the stability of the residence at danger. Further erosion at the location of the failure will undermine the residence. Although the rate of erosion was previously measured at a few inches a year, the erosion occurred in one large failure resulting in a significant loss of the bluff. Erosion is expected to accelerate due to this failure and could result in another larger failure within the lifetime of the residence. Should another failure occur, the residence could be undermined. Thus, the geologist concluded that retarding the erosion was necessary to protect the residence.

The applicant's consulting geologist has submitted a geology report which addresses alternative designs for erosion control and remediation of the surficial failure at the top of the slope. After review of these alternatives, included in Exhibit 9, it was concluded that the proposed, and constructed, upper retaining wall design was the most favorable as it would create the least amount of adverse visual impacts and provide geologic stability. The proposed retaining wall will create the least amount of disturbance to the bluff while providing stability to the residence. Leaving the site as it existed with the erosion would create a hazard for the residence in the near future. Thus, the proposed project is necessary and the most feasible project. Therefore, the Commission finds that this portion of the development is consistent with both Section 30253 and 30235 of the Coastal Act.

The next element of development involves the placement of 30 inch high, partially buried below grade, railroad ties along both sides of the path for erosion control. The applicant's consulting geologist has stated that:

The [railroad tie] curb will serve many purposes including diverting drainage along the path rather than over the slope face, as well as, retarding flow from the slope as it reaches the path.

In addition, in the original geology report prepared by Robert Stone and Associates and dated May 13, 1986 for application 5-86-160, the consulting geologist noted that improved drainage control which reduces surface water concentration and flow will reduce the rate of erosion.

The consulting engineer has stated that the path acts as a natural swale, collecting storm runoff down the bluff. To reduce future erosion on the path, the applicant's consulting geologist recommends that the path be covered with decomposed granite and include velocity reducers every 20 linear feet. These

actions are necessary, according to the consulting geologist to help reduce the potential for future slope failures and mitigate erosion. These erosion control devices for the bluff face will mitigate further erosion on the slope in an unobtrusive manner and are therefore consistent with Section 30235 of the Coastal Act.

The railroad ties can also be found consistent with section 30253 of the Coastal Act as they will aid in the stability of the bluff face and will not create adverse impacts. Moreover, Special condition 1 of the underlying permit does allow for the placement of "unobtrusive, small scale erosion control devices along the path." The applicant has stated that these railroad ties will be screened by the vegetation once it matures. Thus the railroad ties can be considered as unobtrusive, small scale erosion control devices.

Finally, the letter from the consulting engineer stresses the need for a energy dispersion system at the end of the path at the base of the bluff to reduce the velocity of runoff and thereby reduce erosion. The plans submitted by the applicant do not incorporate such a drainage device. Therefore, the applicant shall submit revised plans which include a drainage device at the base of the bluff which is constructed with natural material, such as rock, to mitigate erosion and visual impacts (Exhibit 2). As conditioned, the railroad ties are consistent with sections 30253 and 30235 of the Coastal Act.

The next proposed element is the placement of irrigation pipes below grade on the bluff face. The irrigation plans, submitted for this project, indicate that the irrigation system will be used for two years and shall only be handled manually. No automated watering is recommended. However, the applicant has agreed to use the irrigation system for one year, as reflected in the project description. The plan further states that watering shall cease when runoff is apparent on the slope and shall be used no more than a maximum of once a week. These parameters are set forth because a major cause of instability on bluffs and bluff failure results from oversaturation of the soil. When soils are saturated they become heavy and are more likely to slip or create massive landslides. Thus, it is imperative to minimize the amount of water on a coastal bluff. Therefore, in order for this portion of the development to not create adverse geologic impacts, these irrigation instructions should be followed strictly, with the noted change of use from two years to one year, as outlined in special condition 4.

The use of irrigation for a two year period provides more time for saturation of the bluff face. As noted above, oversaturation of the bluff will increase the geologic instability of the bluff. As two years of watering is not necessary, or favorable, for the long-term survivability of the young plants, as noted in the next section, the applicant has agreed to limit the use of the irrigation on the bluff face to one year.

It is imperative to note that the Commission routinely only allows above grade irrigation systems for the temporary use while establishing young plants and seeds during a restoration project. Had the restoration efforts not occurred without the benefit of a coastal development permit, the Commission would have required revised plans for above ground irrigation. However, in this particular case, the removal of the below grade irrigation would require the uprooting of the newly planted species and the removal of the erosion control fencing on the bluff face. The unpermitted revegetation efforts include an extensive planting of young species and the placement of metal fence meshing

on the entire site for erosion control on a very steep slope. The removal of this fencing and plants would be more detrimental in this case as evidenced in the next section. Moreover, further disturbance of this bluff would cause adverse geologic impacts to the restoration efforts. Therefore, in this case, the Commission finds that the removal of all above grade portions of the irrigation system including the risers and heads, and the capping of the main line at the top of the bluff will serve the same purpose as removing the irrigation system. Special condition 4 requires that this action occur within one year of the issuance of the coastal development permit.

The last element of development involves the revegetation of the bluff with native endemic species and the removal of exotic, invasive plant species. This revegetation, along with the repair of the two slope failures, will return the bluff to its natural contours and revegetate the bluff with native vegetation. These developments will restore the geologic integrity of the bluff by repairing the bluff and mitigating surficial erosion through the placement of plant cover. Thus, these aspects of the development are consistent with Sections 30235 and 30253 of the Coastal Act.

Finally, the Coastal Act recognizes that development on a coastal bluff may involve the taking of some risk. The proposed measures can not completely eliminate the hazards associated with bluffs such as bluff erosion and failure. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to establish 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.

The Commission finds that due to the unforeseen possibility of erosion, bluff retreat, and slope failure, the applicant shall assume these risks as a condition of approval, as outlined in special condition 1. Because this risk of harm cannot be completely eliminated, the Commission must require the applicant to waive any claim of liability on the part of 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 show that the applicant is aware of and appreciates the nature of hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development.

In conclusion, with special conditions to submit revised drainage plans, remove the below grade irrigation pipes, follow the recommendations of the restoration specialist with regards to watering, and record an an assumption of risk deed restriction the project is consistent with Sections 30253 and 30235 of the Coastal Act.

D. Environmentally Sensitive Habitat Areas and 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 30240 of the Coastal Act 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 30250(a) of the Coastal Act states:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30251 of the Coastal Act states:

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

The proposed project is located on a coastal bluff which is a Commission designated environmentally sensitive habitat area (ESHA). Section 30230 of the Coastal Act mandates that marine resources be maintained, enhanced and when feasible restored. Areas, such as ESHAs, are to be given special protection to sustain their habitat. Likewise, Section 30240 of the Coastal Act mandates that only resource dependent uses be allowed in ESHAs. Such uses could include a fish ladder in a stream, a public trail in parkland, or restoration. These are uses which would enhance or restore an ESHA. Section 30251 of the Coastal Act suggests that development restore or enhance an area, and mandates the minimization of landform alteration and the protection of public views. Finally, Section 30250 of the Coastal Act calls for new development to not contribute, individually or cumulatively, to the degradation of coastal resources.

In past permit actions, the Commission has regularly denied development on coastal bluffs to protect the environmental resources from disturbance or degradation. For example, the Commission has denied several applications for new stairways on bluff faces [5-91-632 (Zal), 5-90-1080 (Golod), and 5-89-1045 (Campa)]. Permits have been approved for the restoration of bluff faces which include the maintenance, without enlargement or enhancement, of existing paths including 4-94-051 (S.A.M. Trust) and 4-96-30 (Golod). When new development is required to protect a structure, the Commission has, in past permit actions, required that development be minimized so as to protect the bluff resources. The Commission has, on occasion, approved shoreline protective devices at the base of bluffs, and has routinely approved repair and maintenance projects, and restoration and revegetation of bluff faces. In all cases, however, the Commission has conditioned these projects to ensure the restoration of the native vegetative cover for habitat protection purposes as well as for improving the visual quality and mitigating potential geologic instability.

In this case, the applicant is proposing the restoration of the bluff face with native vegetation and improvements to the path which include 60 linear feet of retaining wall at the top of the bluff, 30 inch high railroad ties along the path which are partially below grade, repair of a washout on the bluff to restore the contour of the bluff face, and minor changes to the retaining wall at the base of the bluff which includes 40 cubic yards of backfill to restore the bluff contours. The applicant is also proposing the installation of a below grade irrigation system along the face of the bluff to use on a temporary basis. The applicant's agent has stated that they will agree to remove the risers and heads and cap the main line at the top of the bluff once the plants have reestablished.

Prior to the original unpermitted disturbance of the bluff face and path and the subsequent unpermitted restoration of the bluff face including the improvements on the bluff, the bluff was heavily vegetated and was disturbed only by the existence of the path. Thus, prior to any disturbance of the bluff face, the bluff face was accessible for animals, such as invertebrates and marine birds, to use for nesting, feeding and shelter. The disturbance of this area through the change in vegetation or the removal of vegetation results in a change of and loss in the number and distribution of species. The species which utilize the bluffs are an important component in the ecology of marine life. The Commission recognizes the unique habitat of bluffs and their importance in providing areas for marine animals such as invertebrates and birds. The disruption of the habitat through the removal of endemic species and the introduction of exotic species reduces the value and availability of these areas for sensitive marine wildlife. The cumulative effect of increased development on coastal bluffs further degrades these habitat areas. Therefore, in determining the consistency of each element of the project, the Commission must consider the previously existing habitat and visual value of the site and the value of the site with regards to the habitat and visual quality after development.

The first element of this restoration includes the repair of the wash out on the bluff face. Clearly this action will return the bluff face to its natural contour and increase the area available to wildlife. In conjunction with this development is the revegetation of the bluff face with native vegetation and the removal of non-native invasive vegetation on the bluff face. The proposed revegetation will also have a positive impact on the habitat and visual value

of the bluff face. As stated previously, the revegetation of the bluff has been implemented. However, all non-native species on the site have not been removed. The consulting restoration specialist left some of the invasive plant species to aid in maintaining the integrity of the bluff and reduce surficial erosion and instability. Therefore a complete restoration of the vegetative cover will not be complete until all invasive plant species are removed and there is sufficient (90 percent) coverage of the bluff face with native plant species. The restoration report calls for three years of monitoring to insure that restoration is successful, as outlined in the report (Exhibit 8). To ensure the successful restoration of the bluff, the Commission finds it necessary to require the applicant, as indicated in special conditions 4 and 5 to remove the remaining invasive plant species within one year of the issuance of the permit and submit monitoring reports for a period of three years beginning with the first report in the spring of 1997. As conditioned, this portion of the development is consistent with Sections 30230, 30240, 30250, and 30251 of the Coastal Act.

The next elements of development include work on the path. Work to return the path to its original configuration involved restorative grading to reduce the width, placement of 30 inch high railroad ties for erosion control and the installation of 60 feet of retaining wall at the top of the bluff (See Exhibit 4). These actions were done to provide for path at its original shape and width. The unpermitted grading widened the road and removed vegetation, thereby decreasing the value of the area for wildlife and removing endemic bluff vegetation. The return of the path to its original contours increases the area available for wildlife; thus this work to restore the bluff is beneficial from a habitat value standpoint.

However, the placement of the wall and the railroad ties do present a visual impact of the bluff face. The Commission must consider that there is already a visual impact created by the path itself and the cabana and wall at the base of the bluff. Thus, the Commission must consider whether or not the wall and the railroad ties present an additional significant visual impact which would require the denial of such developments. The applicant has included in the revegetation plan, placement of shrubs in front of the wall at the top of the bluff to screen the view of the wall from the beach. Moreover, the wall is an earth tone color, instead of a color that stands out such as white. The use of an earth tone color reduces the visual impact created by the placement of the wall. Likewise, the applicant's agent has stated that the vegetative cover on the bluff face will grow over and conceal the railroad ties along the road. Thus, once the revegetation is completed and successful, as mandated in special condition 5, there should be no significant adverse visual impact from the wall and the railroad ties. Therefore, the developments described above with regards to the path are consistent with the Sections 30230, 30240, 30250, and 30251 of the Coastal Act.

On the bluff face, the applicant is proposing an irrigation system to aid in the success of the revegetation. The applicant has submitted evidence which indicates that a below grade system did exist on the bluff face. The contractor at the site has confirmed that the work which was done included replacing the main line under the path with a larger line and placing taller risers on the lateral lines on the bluff face. Thus, the only new development at this time with regards to the irrigation system on the bluff face, in the restoration area, is the above grade risers and heads. However, this evidence does not indicate whether or not the irrigation system existed prior to the

January 1, 1977 effectiveness date of the Coastal Act. There is no evidence to support the existence of irrigation pipes below grade on the bluff prior to the January 1, 1977 effectiveness date of the Coastal Act. Thus, the Commission can not reach the conclusion that the below grade irrigation system does not need a coastal development permit.

The applicant's agent has argued that below grade irrigation on the bluff face was approved in the permit 5-88-918 (Haagen). The applicant did submit an irrigation plan with the landscaping plan which was required under special condition 1 of the original permit. This irrigation plan shows above grade drip irrigation on the bluff face and below grade main lines in the path. There are no lateral, below grade, lines proposed on the bluff face in this older irrigation plan. The Commission concludes that no below grade irrigation pipes on the bluff face were previously approved.

It is important to note that in past permit actions, the Commission has not allowed the placement of new permanent below-grade irrigation for the restoration of an ESHA. When irrigation is required on a temporary basis to supply water to a restored area, above grade irrigation, which can later be removed, is utilized. The concern with the placement of permanent irrigation in an ESHA is that the site will contain man-made devices in an area which is designated as a habitat area. However, in this case, the removal of the irrigation pipes would cause a significant disturbance to the restoration that has already occurred. The removal of the irrigation would require the removal of the planted species as well as the erosion control mesh fencing. This activity will affect the percentage of plants which survive on the bluff face. The uprooting and replanting of young plants will decrease their chance for survival due to the increased stress from such activity. However, the Commission must ensure that no permanent irrigation remains on the bluff face. Therefore, the Commission finds that in this case, the dismantling of the system by removing the above ground risers and heads will remove any unnatural or man-made irrigation devices above grade and thus accomplish the Commission's goal of providing a natural bluff face. The capping of the main line at the top of the bluff will ensure that no additional watering of the site will occur. The below grade irrigation lines in the bluff face, which are not connected to any water source, will not contribute, or accelerate, the natural erosion of the bluff face

The use of permanent irrigation is also an unfavorable activity due to the increased possibility in oversaturation of the bluff. Oversaturation of the bluff with water will cause an increase in water and a decrease in air in the soil on the bluff face. This, in turn, leads to the acceleration of bluff failure because heavy, saturated, soil is more likely to slip and fall. Thus, oversaturation of a bluff will lead to a more rapid erosion of the bluff and thus increases the instability of the bluff face. As noted in the preceding section, the instability of the bluff face will create a hazardous situation for the residence at the top of the bluff.

The oversaturation of the bluff face will also negatively affect the long term success of the plants on the bluff face due to unnatural reliance on water. Plants which are placed for restoration must be able to survive the natural conditions of the mediterranean climate. Thus, they must be able to stand long periods without water. Over watering young plants in the early stages causes the plants to become dependent on water. When the irrigation is removed the plants will not be able to survive the natural weather cycle and

will die. Thus, to ensure that the plants do not become water dependent, the applicant shall conform to the recommendations of the restoration specialist as noted on the plans (See Exhibit 7) and modified by the applicant in the project description, as noted in special condition 3. These specifications mandate that the plants shall not be watered more than once a week and that monitoring shall occur to ensure the plants are not overwatered.

The length of time for the irrigation to be used has been changed from two years to one year. The watering of young plants for a period of two years is too long and increases the plants chances of becoming water reliant. Young plants do not need additional water for more than one season. By the second season, plants should be able to survive the normal conditions of the area. Thus these plants should not need additional watering in the second year. If they do receive additional water there is a greater chance of reducing their long term survivability rates. The applicant has agreed to dismantle the irrigation system on the bluff after one year as noted in special condition 4.

Finally, the last element of development includes the minor changes to the approved wall at the base of the bluff and the reconfiguration of the bluff face behind this wall. These changes include reducing the length of the wall by three feet, reducing the height of the wall at each end and raising the height of the wall at the center to eleven feet. As with the restorative grading efforts described above, the reconfiguration of the bluff behind the wall and subsequent revegetation is consistent with the Sections of the Coastal Act noted above as it will restore and enhance the ESHA. However, this area of the site shall also be subject to the monitoring and implementation schedule noted in special conditions 5 and 6. The changes to the wall are minor in nature and actually reduce the overall size of the wall. The height of the wall is tapered on the end to reduce the visual impacts. Thus, the changes to this wall are consistent with Section 30251 of the Coastal Act.

In conclusion, with conditions which require the removal of exotic plant species within one year, the removal of the below grade irrigation pipes within 60 days of commission action, compliance with the irrigation notes, removal of all irrigation after one year and monitoring of the site for long term success of the restoration, the Commission finds that the proposed project is consistent with Sections 30230, 30240, 30250, and 30251 of the Coastal Act.

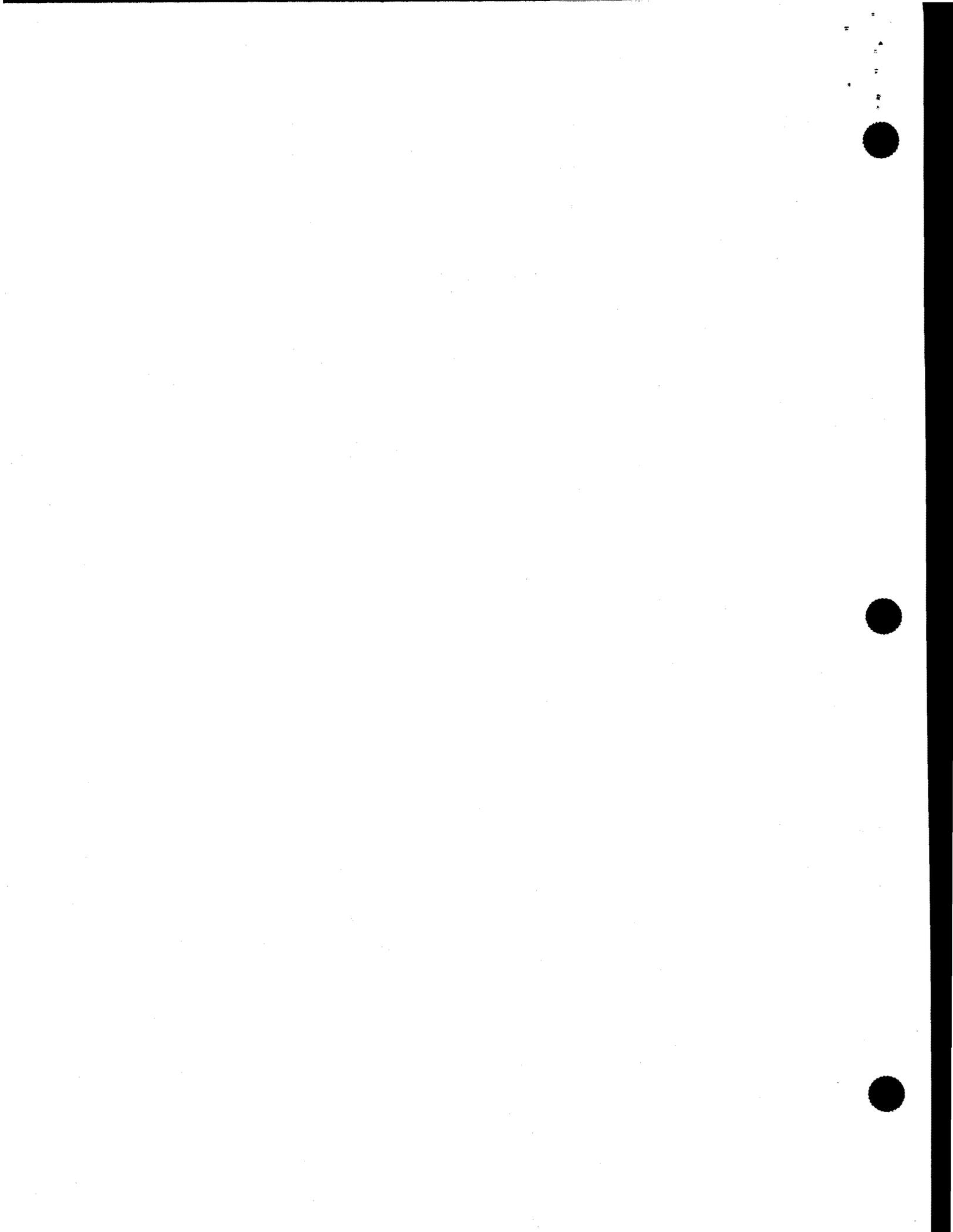
E. Violation

Although development has taken place prior to submission of this permit application, consideration of the application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to any violation of the Coastal Act that may have occurred.

F. Local Coastal Program

Section 30604(a) of the Coastal Act states:

- (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 the division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

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

G. CEQA

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications 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)(i) 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 impact which the activity may have on the environment.

The proposed project, as conditioned, is consistent with the applicable policies of the Coastal Act. There are no feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the proposed permit, as conditioned, is found consistent with CEQA and the policies of the Coastal Act.

2214M

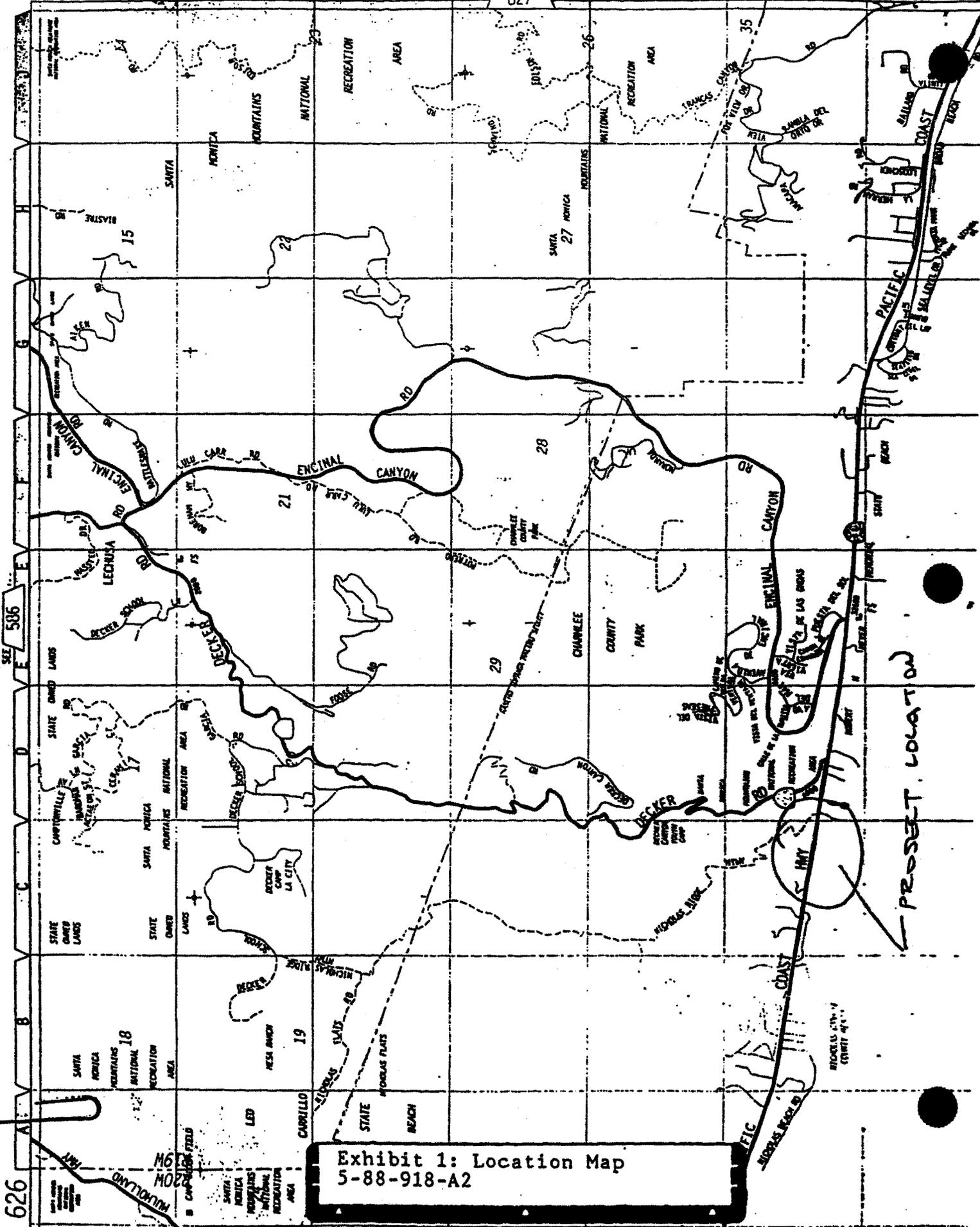


Exhibit 1: Location Map
5-88-918-A2

626

M6
200M

PROJECT LOCATION

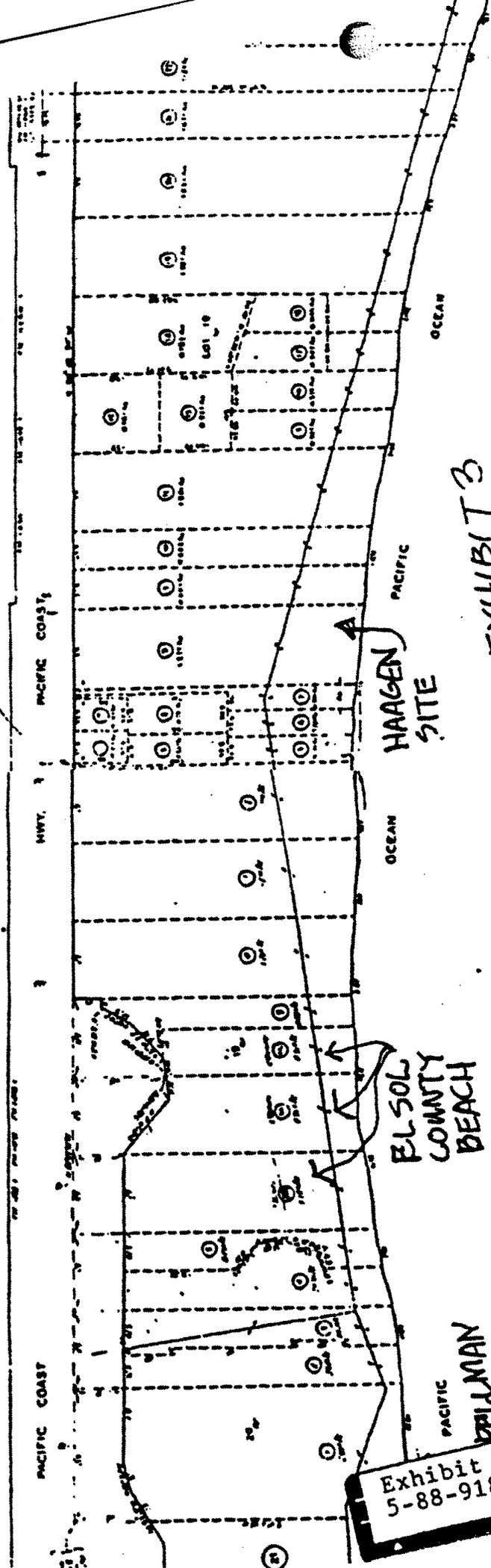


EXHIBIT 3
P-5-86-160

LAND OF MATTHEW HELLER IN THE RANCHO
TOPANCA, MALIBU SECUIT

LAND OF MATTHEW HELLER IN THE RANCHO
TOPANCA MALIBU SECUIT

Exhibit 2: Parcel Map
5-88-918-A2

52.89'
A.M.B. 4473-17-1
A.M.B. 4473-17-2
A.M.B. 4473-17-3
A.M.B. 4473-19-1
A.M.B. 4473-19-2
A.M.B. 4473-19-3
A.M.B. 4473-19-4
A.M.B. 4473-19-8

7705.02' Msd. by this survey
7702.63' Record per C.R. 21952

PACIFIC COAST

3.72'

52.89'
20'
40'

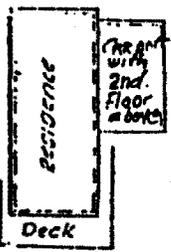
125.00'

S80°45'30"E

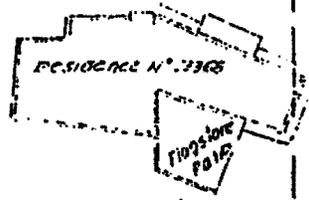
158.00'
3100.00' 2'
of this survey

Wide easement for
public utilities
reserved by Mobile-
head Land Co. per
C.R. 21951-209

A.M.B. 4473-17-1 A.M.B. 4473-17-2



A.M.B. 4473-17-3 A.M.B. 4473-19-1



SUBJECT PROPERTY
A.M.B. 4473-19-8

NORTHLINE

NORTHLINE

GANDY BEACH

EXISTING ROCK REVETMENT
APPROX. ELEV. 10'

TOE OF REVETMENT

MEAN HIGH TIDE LINE (Oct. 1928)

AS SCALED FROM FM 11648-1 (ATTOR. ELEV. LBS.)

89-13409A9

EXHIBIT "C"

☐ = LATERAL ACCESS

Exhibit 3: Old Survey of Site
5-88-918-A2

CITY OF MALIBU
 PLANNING DEPARTMENT
 APPROVED FOR CONCEPT
 DATE: 1/15/96
 PROJECT NO. 96-020
 PREPARED BY: J. J. [unclear]
 CHECKED BY: [unclear]
 APPROVED BY: [unclear]

For the Commission of Environmental and
 Public Works, City of Malibu
 Project No. 96-020



SCALE: 1/8" = 1'-0"
 DATE: 2/1/96

BLUFF AS-BUILT /
 RESTORATION PLAN
 2326B P.C.H., MALIBU

AMENDMENT TO CITY OF
 MALIBU PERMIT NOS.
 1354, 1355, 1353, 1354
 AND COASTAL PERMIT NO.
 5-00-718

PPR 96.020

RECEIVED
 FEB 15 1996
 CITY OF MALIBU

CITY OF MALIBU
 PLANNING DEPARTMENT
 APPROVED FOR CONCEPT
 DATE: 1/15/96
 PROJECT NO. 96-020
 PREPARED BY: J. J. [unclear]
 CHECKED BY: [unclear]
 APPROVED BY: [unclear]

For the Commission of Environmental and
 Public Works, City of Malibu
 Project No. 96-020

RESTORATIVE GRADING
 TO RETURN PATH TO
 ORIGINAL CONTOUR

WALL FOR SHORING
 BLUFF AT TOP
 OF BLUFF

RESTORATIVE GRADING
 TO FIX ERODED AREA
 (WASHOUT)
 APPROVED WALL
 AT PAVE OF BLUFF

- 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF MALIBU ZONING ORDINANCE AND THE CALIFORNIA ZONING ACT.
- 2. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF MALIBU ZONING ORDINANCE AND THE CALIFORNIA ZONING ACT.
- 3. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF MALIBU ZONING ORDINANCE AND THE CALIFORNIA ZONING ACT.
- 4. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF MALIBU ZONING ORDINANCE AND THE CALIFORNIA ZONING ACT.
- 5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF MALIBU ZONING ORDINANCE AND THE CALIFORNIA ZONING ACT.

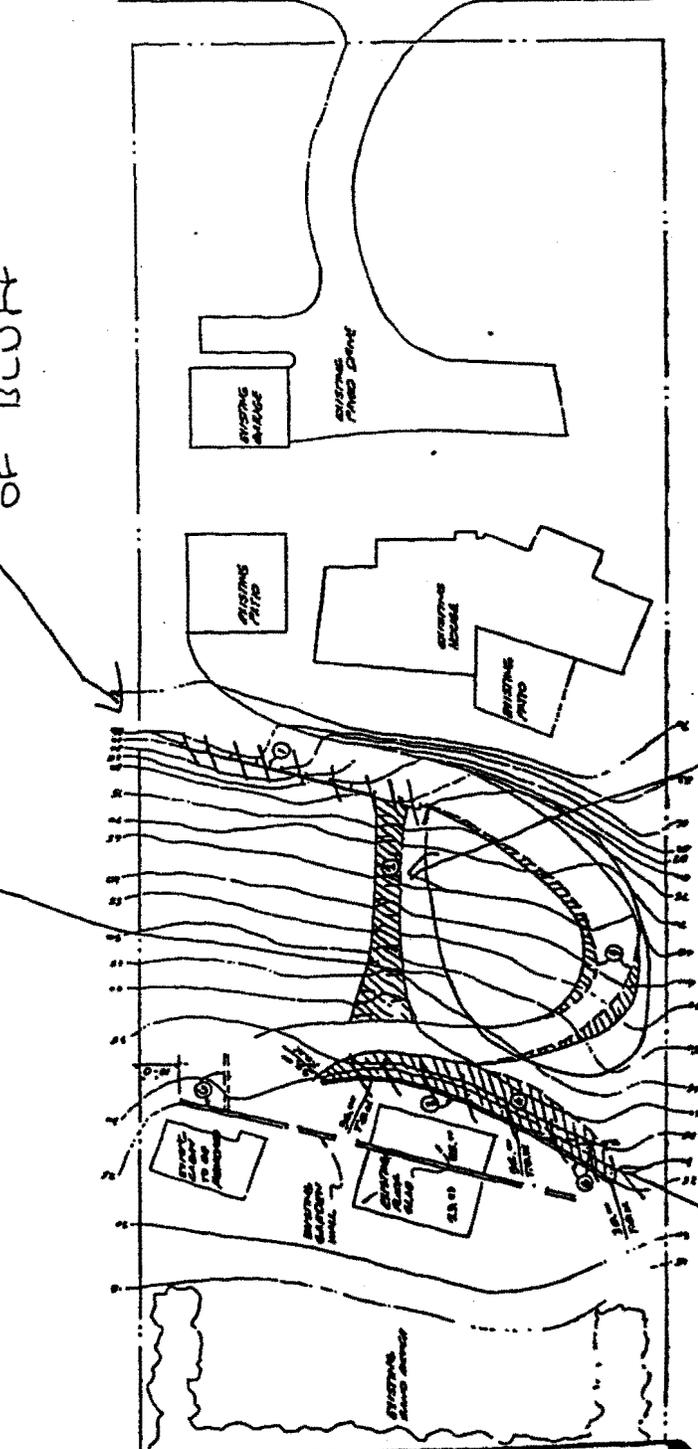
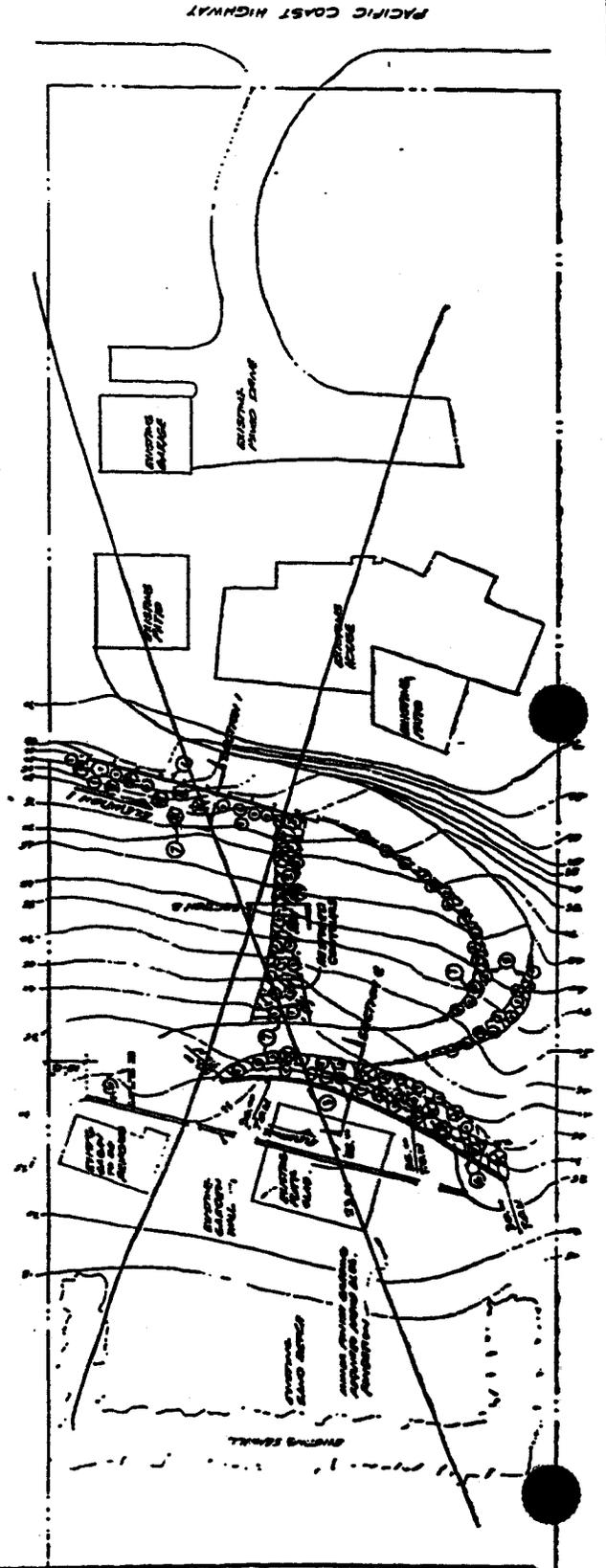
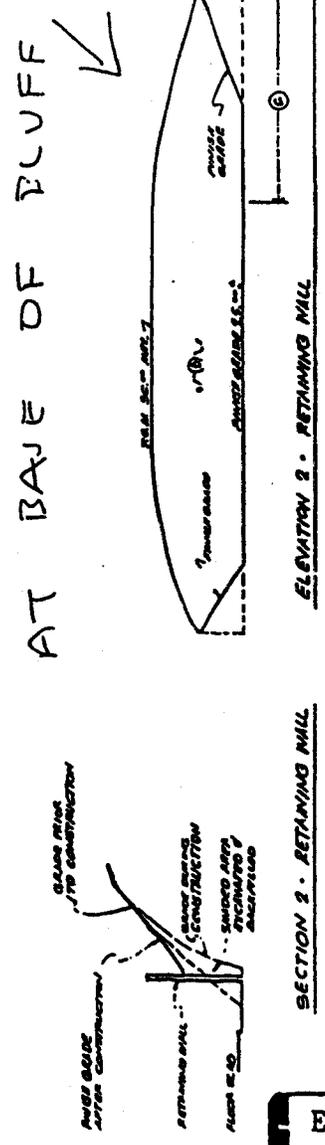
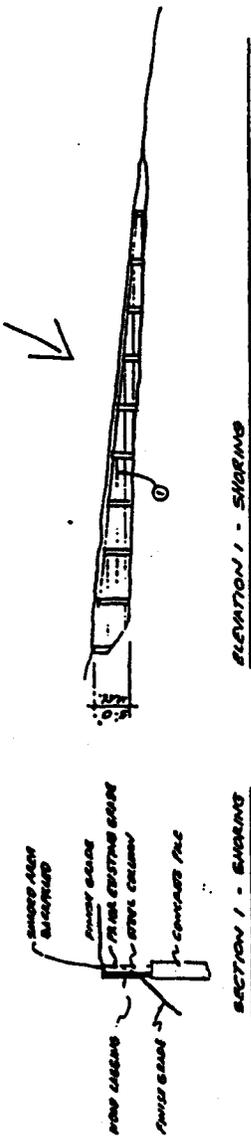


Exhibit 4: Proposed Site Plan
 5-88-918-A2

CROWN SECTIONS OF WALLS AT TOP OF BLUFF



1. All lower tier of shoring consisting of 12" and 14" and joists to be removed at 1" or 2" on center with 3/4" steel lagging - to remain.
2. Shoring also to be removed along edge - to be replaced and installed in original position. Approximate wall with volume indicated - 10 cubic yards.
3. Existing retaining wall constructed per permit drawing except as noted.
4. Shoring and the construction of retaining wall - to be installed as shown. Approximate wall with volume indicated - 48 cubic yards.
5. Profile of existing wall - retained for construction access - to be removed to original width. Approximate wall with volume indicated - 10 cubic yards.
6. Configuration of wall and retained to retain structure and to slope - to remain as-is.
7. All detailed areas to be placed following completion of work with the following volume:
 - 1. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 2. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 3. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 4. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 5. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 6. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 7. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 8. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 9. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 10. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 11. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 12. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 13. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 14. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 15. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 16. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 17. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 18. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
 - 19. 1/2" DIA. CONCRETE "CANTON FENCE" - COUNT WILD BIRD 4"
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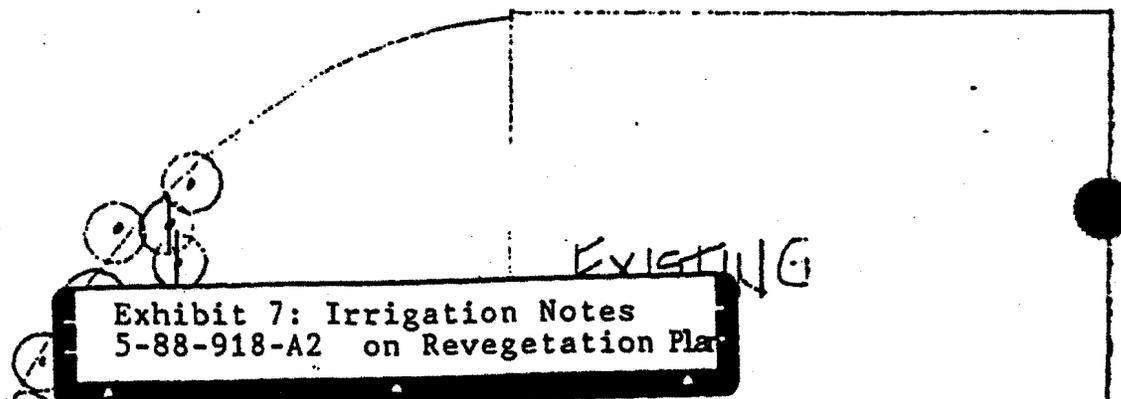
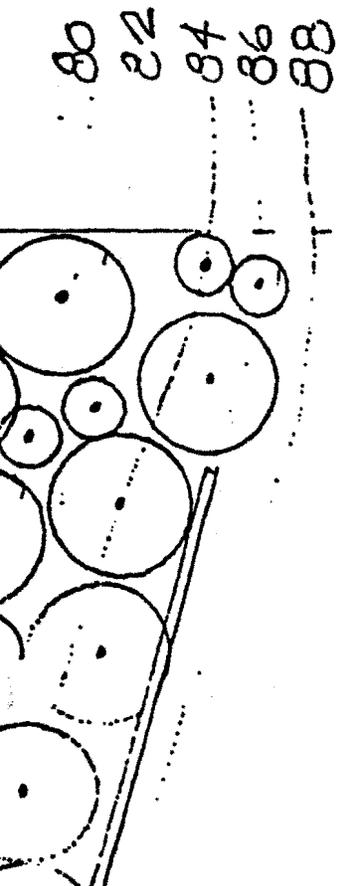


BLUFF RESTORATION PLAN
5-88-918-A2
AMENDMENT TO BUY OF
MILWAUKEE COUNTY
1982, 1988, 1989, 1994
AND ORIGINAL PERMIT NO.
5-88-918

Exhibit 5: Cross Sections of Wall
5-88-918-A2

IRRIGATION

EMERGENCY EROSION CONTROL OVERHEAD IRRIGATION SYSTEM TO BE INSTALLED PRIOR TO PLANTING AND SEEDING. SYSTEM TO BE MAINTAINED UNTIL SLOPE PLANTING IS ESTABLISHED (APPROXIMATELY TWO YEARS). IRRIGATION VALVES MUST BE OPERATED MANUALLY ONLY AND MUST BE TURNED OFF AS SOON AS VISIBLE IRRIGATION RUN-OFF APPEARS ON THE SLOPES. FROM NOVEMBER THROUGH APRIL, THE SYSTEM SHOULD BE USED ONLY TO PROVIDE IRRIGATION WATER TO THE PLANTS WHEN TWO WEEKS HAS PASSED SINCE 1/2" OR MORE OF RAINFALL HAS OCCURRED. FROM MAY THROUGH OCTOBER, THE IRRIGATION SYSTEM MAY BE USED A MAXIMUM OF ONCE A WEEK.



Restoration Plan
by Klaus Radtke

(Violation File #V-4-MAL--95-044 (Haagen)
33368 Pacific Coast Highway, Malibu 90265

Description of Violation

Coastal Staff Enforcement Supervisor Jack Ainsworth and Enforcement Officer Susan Friend, in their letter of January 16, 1995, describe unauthorized development activities not covered by Coastal Development Permit 5-88-918 and amendment 5-88-918A and leading to the issuance of the violation as "grading, constructing retaining walls, and widening a path to the bluff face."

This restoration plan, along with an engineering report for the "as-is" built retaining wall and related necessary documentation, attempts to cure the violation and restore the slope. The plan provides recommendations that restore the slope to its pre-violation condition using, as far as feasible, native plant species endemic to the site. It also provides temporary erosion control for the coming winter rains and also increases long-term slope stability through the planting of deep-rooted native, drought-tolerant woody plant material endemic to southerly facing coastal bluff slopes.

The Restoration Site Plan (Map) prepared by Landscape Designer Marny Randall complements this plan and is referred to herewith.

Site Description

A steep, highly erosive south-facing slope, extends from the rear of the existing residence at 33368 Pacific Coast Highway at a steep, approximately 25 degree angle to the beach below. The slope measures 125 feet in width (width of the lot) and approximately 80 feet in length and has been partially denuded by permitted and non-permitted construction activities. A path winds through the slope leading from the upper lot to the cabana and beach below.

To arrest accelerated erosion, a retaining wall was installed without a coastal permit about 30 feet south of the residence and downslope of the section of the path winding towards the beach. Additional work was also done on the path with railroad ties to arrest further surface erosion and contain runoff within the path area. "After the fact" permits are now being sought in conjunction with this slope restoration plan.

For immediate winter erosion control, barley contours shall be established at 3-foot centers using pregerminated annual barley (Hordeum vulgare).

Biological Inventory

A combination of exotic landscape plants, weedy invasive woody species and remnants of endemic native plants presently provide a limited cover to the steep slope. These plants are listed in Table 1 and were identified during two site visits.

Since much of the erosion witnessed in the area is the result of human activities, adjacent parcels were also evaluated to gain a better understanding of the endemic native plant species that had historically stabilized the steep and highly erosive coastal bluff slopes in the area. Aside from woody plant remnants of the chaparral and coastal sage ecosystems that were readily identified on the Haagen slopes and adjacent parcels (Table 1), herbaceous subshrubs and fire-type successional species and their seed sources must have also been present on site prior to historic human disturbance. These have been almost totally eliminated which therefore leaves the slope exposed to accelerated erosion during human or nature-induced disturbance.

Table 2 provides an extended list of plants identified by this author and Ms. Randall on coastal (sage) bluff slopes in the western Santa Monica Mountains on both dry and more mesic sites.

Table 1 - Biological Inventory of On-Site Bluff Slope and Adjacent Areas

<u>Latin Name</u>	<u>Common Name</u>	<u>Description</u>
Baccharis pilularis spp. cons.	Coyote Brush	Native woody shrub
Brassica nigra	Black Mustard	Invasive non-native
Carpobrotus edulis	Hottentot Fig	Non-native succulent
Cereus peruvianus	Peruvian Cactus	Non-native cactus
Cleome (Isomeris) arborea	Bladderpod	Subshrub
Coreopsis gigantea	Giant Coreopsis	Native perennial herb
Crassula argentea	Jade Plant	Exotic succulent
Elymus condensatus	Giant Wild Rye	Grass
Eriogonum cinereum	Ashy-leaf Buckwheat	Native woody subshrub
Eriogonum fasciculatum	California Buckwheat	Native woody shrub
Eucalyptus citriodora	Lemon-scented Gum	Exotic tree
Helianthus annuus	Common Sunflower	Native annual
Helianthus gracilentus	Slender Sunflower	Native perennial herb
Limonium perezii	Sea Lavender	Perennial herb
Malosma (Rhus) laurina	Laurel Sumac	Native woody shrub
Mesembryanthemum crystallinum	Ice Plant	Succulent
Metrosideros excelcus	New Zealand Christmas Tree	Non-native tree
Myoporum spp.	Myoporum	Exotic tree/tall shrub
Nicotina glauca	Tree Tobacco	Invasive non-native
Opuntia littoralis	Coast Prickly Pear	Native cactus
Pennisetum setaceum	Fountain Grass	Non-native invasive grass
Rhus integrifolia	Lemonadeberry	Native woody shrub
Ricinus communis	Castor Bean	Invasive non-native
Statyca byzantina	Statics, Lamb's Ear	Exotic perennial subshr.

Additional plants not native to the area or the coastal bluffs included a variety of landscaped cacti, iceplants, Bermuda grass, and misc. woody landscape shrubs.

Table 2 - Additional Plants Endemic To Coastal Bluff Slopes

Artemisia californica	California Sagebrush	Woody shrub
Atriplex lentiformis	Quailbush	Woody shrub
Baccharis glutinosa	Mulefat	Woody shrub
Bothriochloa barbinotus	Plumed Beard Grass	
Calystegia macrostegia	Morning Glory	Climbing vine
Distichlis spicata	Salt Grass	Native grass
Encelia californica	Calif Bush Sunflower	Semi-woody subshrub
Eriogonum parvifolium	Coastal Buckwheat	Native woody shrub
Haplopappus ericoides	Goldenbush	Semi-woody subshrub
Haplopappus squarossus	Goldenbush	Semi-woody subshrub
Malacothrix saxatalis	Cliff Aster	Perennial
Mimilus brevipes	Yellow Monkey Flower	Annual
Toxicodendron (Rhus) diversiloba	Poison Oak	Climbing vine
Salvia apiana	White Sage	Woody perennial
Salvia leucophylla	Purple Sage	Woody perennial
Salvia mellifera	Black Sage	Woody perennial
Venegasia carpesioides	Canyon Sunflower	Semi-woody subshrub
Yucca whipplei	Our Lord's Candle	Native shrub

More species exist in the soil seed pool and could be identified after initial human or natural (fire, flood, slide) disturbance which triggers germination in conjunction with soil moisture.

Vegetative Restoration Based on Site Evaluation

Based on the field evaluation it is believed that Lemonadeberry accounted for up to 50 percent shoot-crown cover on the upper two-thirds of the on-site slope and Laurel Sumac for another 10-15 percent. Both species provide excellent surface erosion control and long-term slope stability. Buckwheat and Coyote Brush probably accounted for another 10-20 percent with sages, herbaceous subshrubs and annuals making up the remainder. Quail Bush and Giant Coreopsis may have been naturally present on the lower part of the slope above the coastal strand vegetation.

The Restoration Site Plan (Map) indicates that the appropriate endemic plant species (as listed in Table 1 and 2) are used as the dominant native vegetative cover for long-term restoration and erosion control.

Removal Of Invasive Exotics

All invasive weedy species shown in Table 1 shall be removed from site with minimal soil or slope disturbance. This shall be done by cutting the stem of the plant at ground level and immediately spraying the stump with Roundup. Castor Bean seed pods on standing plants shall first be collected by hand prior to planting of the slope (so that they do not scatter on the slopes), shall be bagged and then legally disposed of. Myoporum and Eucalyptus trees shall not be cut until after the rainy season because their canopies will reduce the rainfall impact on surface erosion control.

Monitoring

Restoration monitoring shall be for a period of three years following the spring after outplanting. An annual monitoring report shall be issued to the Coastal Commission by a person qualified in restoration ecology starting with the 1996/97 growing season but no later than May 15, 1997. Three additional reports shall be issued during May 1998, 1999, 2000.

The project is considered successful if, in the spring of 1997 the restored areas are covered (shoot-crown cover) with at least 35% native vegetation (endemic vegetation native to the bluff slopes), in the spring of 1998 at least 55%, in the spring of 1999 at least 75%, and in the spring of 2000, 90%. All non-native invasive woody and semi-woody species (i.e., Castor Bean) shall have been eliminated from site by the spring of 1997, and during the spring growing season of 2000 no more than 5% non/native weedy annuals/biannuals shall remain on site.

~~Response:~~

~~It is understood the plans will be modified by the project architect to reflect the as-built conditions. No additional response is necessary.~~

COMMENT #2

~~A reduced set of these plans~~

Response:

~~The plans will be provided by the Project Architect. No additional response is necessary.~~

COMMENT #3

If you choose to apply to retain the wall at the top of the bluff, you will need to submit an engineering report which addresses the stability of the site in relation to the residence. The report must discuss the rate of bluff retreat and erosion and contributing factors to these rates, the affects these actions have on the stability of the residence, what measures should be taken, if any to stabilize the residence (including alternatives to the existing developments), and the effects from the current development. Please note that it is not sufficient to simply state that the bluff is unstable or eroding; this is a natural process and does not, in and of itself, warrant development on a bluff face.

Response:

The proposed wall was constructed along the vertical portion of a headscarp of a surficial failure that occurred near the top of the bluff slope. The upslope portion of the surficial failure was susceptible to continued regression (erosion) towards the residence. In addition, the headscarp coupled with the path that was present allowed drainage from the upslope property areas to flow uncontrolled over the headscarp and into the debris of the failure. This erosion, in addition to drainage being conducted into the surficial failure, would have placed the residence in jeopardy had the wall not been constructed. The rate of erosion in the headscarp is anticipated to be fairly rapid due to the steepness of the scarp, type of slope materials, and the amount of drainage that flowed over the scarp had the wall not been constructed. The proposed wall was constructed utilizing steel I-beams set in concrete and wood timbers placed between the I-beams. The height of the exposed wall above the ground surface on the downhill side is on the order of 5 feet. On the upslope side, the top of the wall is flush with the railroad tie type curb that extends about 6 inches above the finished pathway surface. The railroad tie curb acts as a channel to control drainage within the pathway. The pathway surface will have about 6 inches of compacted decomposed granite (Dg) with velocity reducers spaced about every 20 lineal feet. The reducers will help to maintain low flow velocities within the pathway.

The wall and railroad type curb will serve many purposes including increasing the support of the upper bluff slope to protect the residence, providing a drainage system that precludes runoff from flowing over the surficial failure area, and increases the resistance to slope deformation from seismic events (ground shaking). The surficial failure area will also be revegetated and a metal mesh slope erosion fabric will be placed to control surficial erosion until the vegetation is re-established.

The stability of the site was addressed in our report, dated May 20, 1994. In summary, the analysis indicates that failure surfaces from the toe of the slope to the access road have factors of safety greater than 1.5 static and 1.1 pseudo-static (seismic). The results of the analysis indicates that the slope is considered to be grossly stable (i.e. relatively deep failure surfaces). However, as mapped by Robert Stone and Associates, Inc., and as observed, a surficial failure has occurred in the past on the slope surface. An analysis of the surficial failure was conducted. The analysis indicated that the slope under dry conditions has a factor of safety greater than 1.5 (static) and 1.1(pseudo-static). However, in modeling the stability of the bluff slope under wet (saturated conditions) the factor of safety was 0.99. In this regard, it is anticipated that the slope will continue to deteriorate as a result of surficial failures and erosion.

Insufficient information is presently available to determine the rate of bluff erosion, and long term rates may be significantly different than short term rates. Primary factors that generally contribute to an increase in the rate of erosion or bluff retreat are rainfall amounts, drainage, seismicity, and vegetation.

Alternatives for the stabilization of the residence and bluff slope include underpinning the residence, placing a row of piles along the top of the bluff slope to support the earth upslope of the piles (this is very similar to the presently constructed row of piles for the retaining wall); demolishing the residence; reconstruction of the bluff slope utilizing geosynthetic fabrics and controlled grading; placing steel reinforcement and gunite facing on the slope surface; and, construction of a series of concrete type retaining walls producing a step terrace finished slope.

Under the present conditions, a retaining wall constructed along the top of the bluff path will provide stability to the top of the bluff in several ways. First, the wall will control drainage from flowing over the slope face and improves the overall site drainage. Second, the wall supported by steel I-beams placed at depth and surrounded by concrete increases the local stability for surficial failures in the area of the wall and top of bluff. Third, the placement of the retaining wall provides an added degree of safety against slope deformation from seismicity (ground shaking) of the upper portion of the bluff.

At present, with the addition of the retaining wall and railroad tie curb, no measures are presently necessary to stabilize the residence and the proposed construction will greatly prolong the time period until the residence requires stabilization measures.

Underpinning the residence would serve to stabilize the ground directly beneath the residence, however, over time, a retaining wall would need to be placed between the piles to support the exposed soil. No stabilization of the bluff slope would be accomplished.

Placement of a row of piles along the top of the bluff slope would help to stabilize the slope surface and is a very similar alternative to the existing improvement. The difference is where the wall and the slope stabilization piles are placed. Stability of the bluff slope would be improved from the location of the piles northward (upslope). In the long term, the outside (downslope) side of the piles may become exposed and a concrete retaining wall would need to be constructed to support the soil between the piles.

Demolition of the residence is an alternative resulting from the economics of trying to stabilize the residence once the bluff has failed. Failure of the bluff slope would severely limit the access for construction equipment and depending on the failure, the residence may be severely impacted to be economically unsalvageable.

Reconstruction of the bluff slope utilizing geosynthetic fabrics and controlled grading is an alternative to the existing improvements, however the volume of material required, the areal extent of the disturbed ground surface, and the placement of the geogrid reinforcement may undermine the existing residence foundations.

The present slope surface could be lined with steel reinforcement and a gunite facing placed on the slope surface. This would reduce the surface erosion potential, however, would not improve the overall gross stability of the slope.

The construction of a series of concrete type retaining walls producing a step terrace finished slope would also improve the surface erosion potential, however, would not necessarily improve the gross stability.

Considering all of the potential alternatives, the method presently constructed seems a reasonable way to help improve the surficial, as well as, the gross stability of the slope. It is possible to vegetate the slope in such a manner to hide or blend the exposed upper portion of the wall with the remaining slope.

The effects that may result from the current development is primarily disturbed soil and vegetation associated with construction, and once completed and revegetated, the current construction of the retaining wall along the top of the bluff path results in similar conditions that existed prior to development from an aesthetics viewpoint.

~~COMMENT #4~~

~~A filing fee of \$100.00~~

January 8, 1997

Charals Haagen
The New Group
430 S. Grand Avenue
El Segundo, Calif. 90245

RE: Bluff Irrigation/33368 Pacific Coast Highway, Malibu, Calif.

Dear Charals:

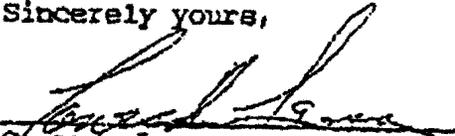
The irrigation system on the bluff at the above referenced address was constructed as follows:

The main line is in the path coming down the hill. This is a reconstruction of a formerly existing line and in conformance with the project Irrigation Plan dated 8/20/94, revised 9/13/94, prepared by Randall Landscape Design.

The lateral lines in the bluff were existing and the risers on those lines have been extended and the heads have been changed.

Please let me know if you have any questions.

Sincerely yours,


Conrado Lara
Landscape and Tree Service
310-673-2377

RECEIVED

JAN - 9 1997

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

Exhibit 10: Letter from contractor
5-88-918-A2 regarding irrigation

III. Special Conditions

1. Revised Plans

Prior to transmittal of the permit the applicant shall submit revised plans and a construction schedule for the review and approval of the Executive Director:

- 1) eliminating the seawall at the toe of the bluff.
- 2) eliminating plans to fill, grade and recontour the bluff.
- 3) providing for visually unobtrusive and small scale erosion control devices on the bluff face to eliminate the erosion potential of the path.
- 4) providing for landscaping and revegetation of the bluff, where necessary, with appropriate low water-use, native vegetation of the coastal strand and coastal sage scrub communities. The plants chosen shall be plants found on the Nicholas and Encinal Beach bluffs. The landscaping shall be completed prior to occupancy of the structure.

2. Lateral Access

Prior to the transmittal of the 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 an easement for 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.

The easement shall extend the entire width of the property from the mean high tide line to the toe of the revetment.

The 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 of the applicant or landowner. The offer of dedication shall be irrevocable for a period of 21 years, such period running from the date of recording.

3. ASSUMPTION OF RISK:

PRIOR to the transmittal of the PERMIT, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from shoreline erosion, flood hazard, bluff failure and earth movement including landslide and the applicant assumes the liability from such hazards; (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards.

The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens and any other encumbrances which the Executive Director determines may affect the interest being conveyed.

4. Removal of Migrating Rock from the Approved Seawall.

Any rock or other debris migrating from the approved seawall shall be the responsibility of the applicant. The applicant shall promptly remove and repair any such materials from the beach.

ACKNOWLEDGEMENT OF PERMIT RECEIPT/ACCEPTANCE OF CONTENTS:

I/We acknowledge that I/we have received a copy of this permit and have accepted its contents including all conditions.

Applicant's Signature

Date of Signing

EXECUTIVE DIRECTOR'S DETERMINATION (Continued):**A. Project Description and History.**

The Commission approves the regrading and widening of a path down the coastal bluff from an existing house to the toe of the bluff, and the construction of a 750 sq. ft. cabana notched into a coastal bluff at Elevation 20, above beach level. This cabana will replace an existing 210 sq. ft. cabana at beach level.

The Commission finds that the construction of the seawall in its present location was not new development but rather replacement of a previously existing seawall destroyed over the years by natural disaster.

Before the Commission's final action, the applicant removed two proposals that appeared on the plans. Prior to the hearing the applicant had agreed to remove the rock and other material that were used to rebuild the seawall on the middle of the beach. At the hearing the applicant presented evidence that

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
245 WEST BROADWAY, SUITE 380
LONG BEACH, CA 90802
(213) 590-5071



January 23, 1990

Andrew Wilk
Alexander Haagen, Co Inc.
P.Po. Box 10010
Manhattan Beach, CA 90266-8010

Dear Mr. Wilk,

Thank you for sending us the plan materials for 5-88-918. We understand that our legal department will soon confirm that you have completed recording necessary documents. We have examined your grading and landscaping plans for conformance with condition one, which requires revised plans that show:

1) eliminating the seawall at the toe of the bluff, 2) eliminating plans to fill, grade and recontour the bluff, 3) providing for visually unobtrusive and small scale erosion control devices on the bluff face to eliminate the erosion potential of the path, 4) providing for landscaping and revegetation of the bluff where necessary with appropriate low water use, native vegetation of the coastal strand and coastal sage scrub communities. The plants chosen shall be plants found on the Nicholas and Encinal Beach bluffs. The landscaping shall be completed prior to occupancy of the structure.

The plans still need work to conform with these standards.

The grading plans require about 1300 cubic yards cut and fill. They do not eliminate plans to fill, grade and recontour the bluff. They employ retaining walls that will be seven and eight feet above the level of a road, which will be cut down the bluff. While early discussions included the use of low retaining walls to protect an existing road, the Commission's approval did not envision construction of walls of this height.

To evaluate the condition, we turned to the findings. The findings specifically state:

"The applicant originally proposed to reconfigure the bluff to allow construction of the new beach cabana and beach path. This reconfiguration would have required 1,033 cubic yards grading and

Exhibit 12: Letter from CCC staff
5-88-918 regarding walls on bluff

Andrew Wilk
page 2

resulted in a new slope. The new slope and the zig zag path will require stabilization devices, such as crib walls and relandscaping.The Commission will permit regrading and expanding the path.....because most of the path was pre-existing. The commission, however, cannot permit extensive recontouring and relandscaping the bluff and have the project remain consistent with Section 30251 and 30253.

The plans you submitted require over 1000 cubic yards cut and fill on the site and over 300 cubic yards export. The grading plans include benching and reconstruction of the bluff face. The walls are obtrusive--comprising cumulatively almost half the height of the bluff (30 feet of 72 feet). Therefore we cannot sign and approve these plans as conforming to the conditions imposed on the approved project.

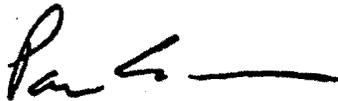
The condition requires the landscaping plan to use native plants of the coastal sage scrub and coastal strand communities, specifically, native plants found on the Nicholas Beach cliffs. The plans that were submitted included several introduced plants that do not conform to this condition. The introduced plants include Sea fig (Carpobrotus chilensis) as a ground cover, which is not native and which is invasive, "New Zealand Christmas Tree" (Metrosideros Excelsus) and Agave Americana, the Century plant, which is from the Mexican desert. Lemonade Berry Rhus Integrifolia does appear on lists of locally endemic natives of the coastal sage scrub communities. Atriplex breweri is a native of the coastal sage scrub, but not to the immediate area, and is not typical of the native communities of Nicholas Beach. If we can be of any assistance in finding lists of native plants, we will be glad to help.

The condition required removal of a retaining wall at the toe of the bluff. You have removed a retaining wall and substituted a wide staircase. This is not part of the permit and cannot be signed off on the approved plans.

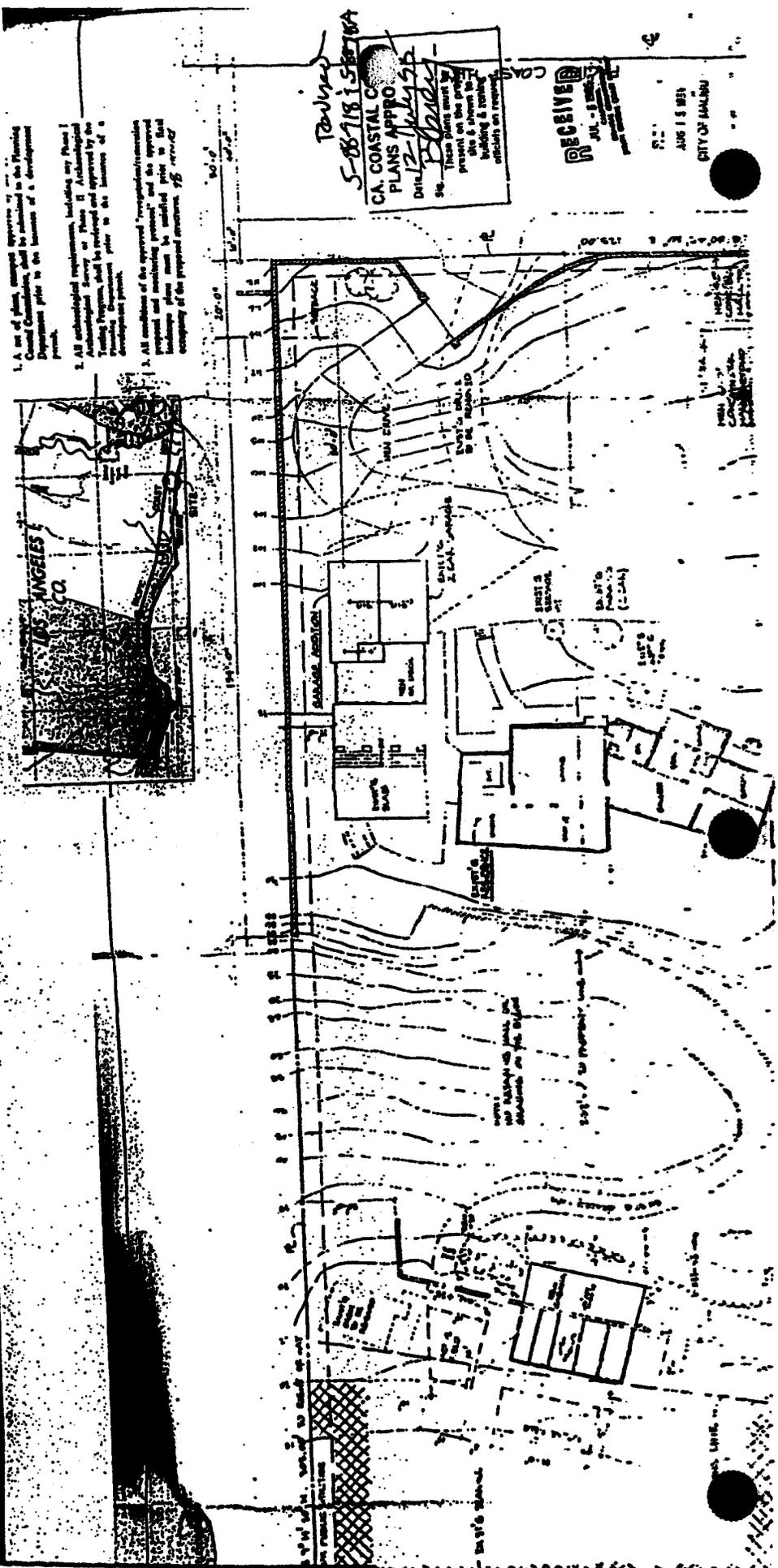
We have one set of plans in the file. This is the set of house plans that we will send to building and safety. If you have changed these plans you may need an amendment.

Thank you for giving us and opportunity to comment on your revised plans.

Very truly yours



Pam Emerson
32550



1. A set of plans, prepared in accordance with the Planning Commission, shall be submitted to the Planning Department prior to the issuance of a development permit.

2. All additional requirements, including any Phase I Archaeological Survey or Phase II Archaeological Survey, shall be prepared and approved by the Planning Department prior to the issuance of a development permit.

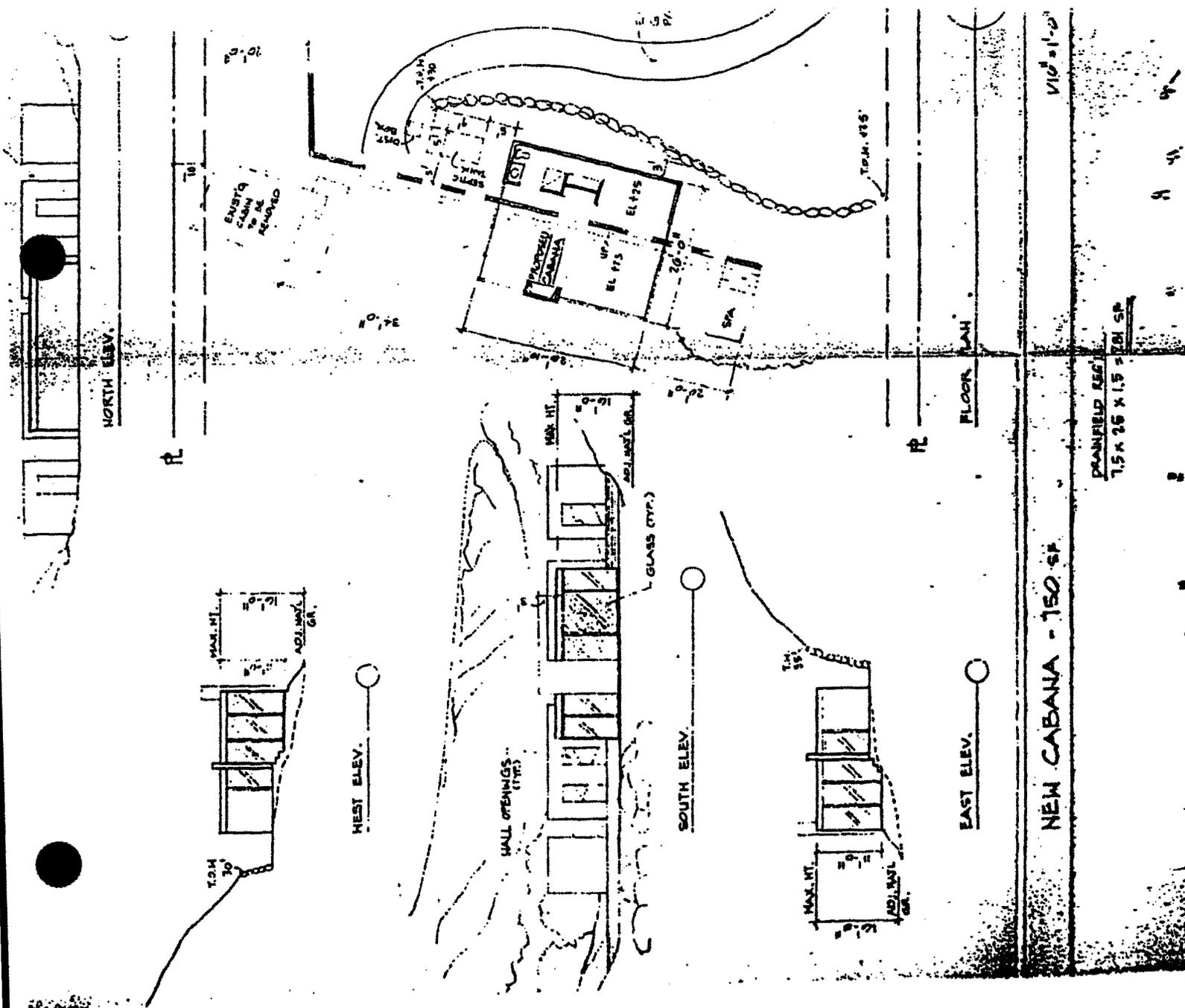
3. All conditions of the approved "Proposition 13/Proposition 55" and the approved "Proposition 13/Proposition 55" shall be included in the final development plan, and shall be included in the final development plan, and shall be included in the final development plan, and shall be included in the final development plan.

Reviews
 5-88-918 I-588764
 CA. COASTAL CDP
 PLANS APPRO.
 DATE: 7/15/88
 BY: [Signature]

RECEIVED
 JUL 15 1988
 CITY OF MALIBU

Exhibit 13: Approved Plan and 5-88-918 x-sections from CDP

CROSS SECTION OF WALL AT
 BASE OF BUFFER FOR
 CABANA



NEW CABANA - 750 SF

FLOOR PLAN
 1.5 x 25 x 1.5 = 750 SF

110'-1-0"

9'-0"

9'-0"

9'-0"

9'-0"

9'-0"

9'-0"

9'-0"

9'-0"

Exhibit 3

CALIFORNIA COASTAL COMMISSION

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

Page 1 of 5

Date: January 17, 1996

Permit Application No. 4-95-176



CORRECTED

NOTICE OF INTENT TO ISSUE PERMIT

On November 14, 1995, the California Coastal Commission granted to Buddy and Sherry Hackett Permit 4-95-176, subject to the attached conditions, for development consisting of:

The installation of an approximate 125 ft. long (43 ft. high) soldier-pile wall and grade beams into a coastal bluff with 245 cu. yds. of grading (125 cu. yds. of cut and 120 cu. yds. of fill) for purposes of stabilizing the eroding bluff and the foundation of an existing single family residence with the replacement of the patio located seaward of the house. The project also includes the construction of two rip rap energy dissipators: 250 sq. ft. and 20 sq. ft. in size with improvements to the existing drainage system. The project also includes the repair and replacement of the bluff face stairs and gang plank ramp structure is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 32232 Pacific Coast Highway, Malibu.

The actual development permit is being held in the Commission office until fulfillment of the Special Conditions 1 - 8, imposed by the Commission. Once these conditions have been fulfilled, the permit will be issued. For your information, all the imposed conditions are attached.

Issued on behalf of the California Coastal Commission on January 17, 1996.

PETER DOUGLAS
 Executive Director

By: Rebecca K. Richardson
 Title: Coastal Program Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this notice of the California Coastal Commission determination on Permit No. 4-95-176, and fully understands its contents, including all conditions imposed.

 Date

 Permittee

Please sign and return one copy of this form to the Commission office at the above address.

A5: 8/95

NOTICE OF INTENT TO ISSUE PERMIT

Page 2 of 5

Permit Application No. 4-95-176

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 in the application for permit, subject to any special conditions 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 project during its development, 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.

SPECIAL CONDITIONS:

1. Landscaping Plans

Prior to the issuance of the permit the applicant shall submit, for the review and approval of the Executive Director, two sets of a landscaping plan prepared by a licensed landscape architect or resource specialist for review and approval by the Executive Director. The applicant shall also submit evidence to the satisfaction of the Executive Director that the landscaping and irrigation plan, including the amount of water to be delivered to the bluff surface, has been reviewed and found acceptable and consistent with the recommendations to ensure slope stability set forth by the geologic engineering consultant. The plans shall include the following:

- a) All non-native plants on the bluff face below the existing residence approved under Coastal Development Permit 4-95-176 shall be removed and replaced by native, drought resistant plants, endemic to coastal bluffs, a

listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Native Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. The plan shall be designed to minimize the need for irrigation and to screen or soften the visual impact of development. Species which require artificial irrigation beyond that necessary to establish new plantings, shall not be used. The plan shall include the removal of all invasive plant material currently on site, such as Castor Bean (Ricinus communis) and Iceplant (Carpobrotus edulis). The applicant shall use a mixture of seeds and plants to increase the potential for successful slope stabilization. The restoration plan may be done in several phases to minimize destabilization of the site. Such planting shall be adequate to provide 90 percent coverage within 3 years and shall be repeated, if necessary, to provide such coverage. This time period may be extended by the Executive Director for good cause.

b) Bluff restoration of disturbed slopes shall include a planting plan, for erosion control, habitat protection and visual enhancement purposes, which may include hydroseeding, hand seeding, planting or any combination of planting and seeding on all disturbed portions of the bluff face, including the location of the proposed drainage improvements. The disturbed slopes shall be planted immediately to minimize destabilization of the bluff face. No hydroseeding shall occur in areas of the bluff where native plant material is already established. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.

c) If jutte netting is to be placed on site, it must be of a type that is biodegradable and can only be used in conjunction with the planting or seeding of an area. Furthermore, the applicant shall be responsible for the continued removal of all non-native invasive plant material from the site until the establishment of the area. Establishment is recognized as 90% germination of the seeding, or 90% coverage of the site if a mixture of plants and seeds are used.

d) Any sprinkler irrigation system presently used on the bluff face shall be removed and a temporary, drip irrigation system shall be implemented to water the new plantings. As an alternative, hand watering may be carried out to establish the landscaping, provided that only the minimum amount of water necessary to establish the plantings is applied. The use of a permanent drip irrigation system in areas immediately adjacent to the residence may be allowed and permanent irrigation of the slope shall be permitted, unless otherwise recommended by L. A. County Department of Forestry. The plan shall include a note to this effect and shall provide detailed watering requirements and scheduling to ensure plant survival. The plan shall set forth the weekly quantities of total water delivery to the slope surface deemed necessary to ensure plant survival during establishment. Irrigation, with the exception of the drip system adjacent to the residence, must be above ground and used on a supplemental basis for a period not to exceed two years from the commencement of the project, inless otherwise recommended by L. A. County Department of Forestry. At the end of the two year period, the applicant must remove all irrigation material from the bluff face. This time period may be extended by the Executive Director for good cause. The irrigation system and landscaping plan shall be reviewed by L. A. County

Department of Forestry to ensure consistency with fire protection standards regarding coastal bluffs. In the event that the recommendations of the Department of Forestry are in conflict with the recommendations regarding slope stability set forth by the geologic engineering consultant, the latter shall be followed.

e) The removal of all tarps from the site at the commencement of development on site. No tarps may be used on site during revegetation of the bluff face.

2. Bluff Restoration Plan

Prior to the issuance of the permit, the applicant shall submit, for the review and approval of the Executive Director, restoration plans prepared by a qualified professional consistent with the Landscaping Plans required in Special Condition #1, where rounding and cleaning of the bluff face on the west side of the property will occur (See Exhibit 3, for approximate location). Consistent with Special Condition #1, these sections of the bluff face shall be planted and maintained for erosion control and visual enhancement purposes.

3. Assumption of Risk Deed Restriction

Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from wave attack during storms and from erosion or slope failure and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and 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.

4. Construction Responsibilities and Debris Removal

The applicant agrees not to store any construction materials or waste where it is subject to wave erosion and dispersion. In addition, no machinery will be allowed in the intertidal zone at any time. The permittee shall remove from the bluff face and beach area any and all debris that result from the construction period.

5. Geologic Recommendations

All recommendations contained in the Geotechnical Engineering and Geologic Investigation by RJR Engineering, dated June 19, 1995 shall be incorporated into all final design and construction plans including surficial stability, foundations, landscaping and drainage. Prior to the issuance of the permit the applicant shall submit for the review and approval of the Executive Director, evidence of the consultant's review and approval of all project plans.

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

6. Drainage Structure Maintenance Responsibility

The applicant agrees that should the project drainage structure fail or result in any erosion of the bluff, the applicant shall be responsible for any necessary repairs or restoration of the eroded areas.

7. Septic System Approval

Prior to the issuance of the permit, the applicant shall submit, for the review and approval of the Executive Director, evidence that an evaluation of the existing system by a registered sanitary engineer has occurred and a report that confirms the system's serviceability and overall integrity. In addition, the applicant shall submit an approval of the proposed development relative to its impact on the existing private sewage disposal system from the City of Malibu, Environmental Health Department. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

8. Drainage Structures Color

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, which restricts the color of the drainage pipes to earth tone colors compatible with the surrounding environment. White and black tones shall not be acceptable. The document shall run with the land for the life of the structure approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens.

3001C/RKR/drp

CALIFORNIA COASTAL COMMISSION

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

TH13bCORRECTED**ADDENDUM – ITEM 13b**

January 10, 1996

TO: Commissioners and Interested Persons

FROM: California Coastal Commission
South Central Staff

SUBJECT: Addendum to Item 13b, Coastal Development Permit Application
#4-95-176 (Hackett), for the Commission Meeting of Jan. 11, 1996.

1. The following typographical corrections should be made to special conditions 1(d), 2 and 3:

a. The third sentence of Special Condition #1d, on page 4, shall read:

The use of a permanent drip irrigation system in areas immediately adjacent to the residence may be allowed and permanent irrigation of the slope shall not be permitted unless otherwise recommended by L. A. County Department of Forestry.

b. The fifth sentence of Special Condition #1d, on page 4, shall read:

Irrigation, with the exception of the drip system adjacent to the residence, must be above ground and used on a supplemental basis for a period not to exceed two years from the commencement of the project, unless otherwise recommended by L. A. County Department of Forestry.

c. The first sentence of Special Condition #2, on page 4, shall read:

Prior to the issuance of the permit, the applicant shall submit, for the review and approval of the Executive Director, restoration plans prepared by a qualified professional consistent with the Landscaping Plans required in Special Condition #1, where rounding and cleaning of the bluff face on the west side of the property will occur (See Exhibit 3, for approximate location).

d. The first sentence of Special Condition #3, on page 5, shall read:

... (a) that the applicant understands that the site may be subject to extraordinary hazard from wave attack during storms and from erosion or slope failure and the applicant assumes the liability from such hazards ...

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
 SOUTH CALIFORNIA ST., SUITE 200
 SANTA MONICA, CA 93001
 (805) 641-0142



Filed: 9/18/95
 49th Day: 11/6/95
 180th Day: 3/16/95
 Staff: R. Richardson
 Staff Report: 10/31/95
 Hearing Date: Nov. 14, 1995
 Commission Action:

STAFF REPORT: REVISED FINDINGS

TH136

APPLICATION NO.: 4-95-176

APPLICANT: Buddy and Sherry Hackett AGENT: Lisa Hackett

PROJECT LOCATION: 32232 P. C. H., City of Malibu, Los Angeles County

PROJECT DESCRIPTION: The installation of an approximate 125 ft. long (43 ft. high) soldier-pile wall and grade beams into a coastal bluff with 245 cu. yds. of grading (125 cu. yds. of cut and 120 cu. yds. of fill) for purposes of stabilizing the eroding bluff and the foundation of an existing single family residence with the replacement of the patio located seaward of the house. The project also includes the construction of two rip rap energy dissipators: 250 sq. ft. and 20 sq. ft. in size with improvements to the existing drainage system. The project also includes the repair and replacement of the bluff face stairs and gang plank ramp structure.

Lot area:	2.25 acres
Building coverage:	2,699 sq. ft.
Pavement coverage:	7,850 sq. ft.
Landscape coverage:	2,500 sq. ft.
Ht abv fin grade:	N/A

COMMISSION ACTION: Approved with Conditions

DATE OF COMMISSION ACTION: November 11, 1995

COMMISSIONERS ON PREVAILING SIDE: Areias, Calcagno, Doo, Fleming, Vincent, Rynerson, Rick, Wright, Wolfsheimer and Chairman Williams

SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following revised findings in support of the Commission's action on November 14, 1995 approving the proposed development with special conditions regarding the submittal of a landscaping and bluff restoration plan, the recordation of an assumption of

risk deed restriction, the agreement to construction responsibilities and debris removal, the conformance of the project to the geologic recommendations, the agreement to maintain the drainage structures, the submittal of evidence that the septic system is adequate and the recordation of a color restriction for the drainage pipes. The subject site is located adjacent to the west of El Matador State Beach. However, no portion of the project is located on state or public lands, as the entire bluff face is in private ownership. The proposed project is intended to stabilize a coastal bluff and the foundation of an existing single family residence that was built in the 1950s. The approximate 125 ft. long soldier pile wall will be constructed subsurface (43 ft. in height) approximately 5 ft. back from the face of the bluff and will not be visible for some time well into the future (approximately 150-200 years based on 1/4 in. yearly erosion rate). As set forth in the applicant's geotechnical report, the consultants' performed an analysis of three different alternatives. The proposed soldier-pile wall represents the preferred alternative providing that the recommendations pertaining to drainage and landscaping are incorporated into the project.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 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. 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. Landscaping Plans

Prior to the issuance of the permit the applicant shall submit, for the review and approval of the Executive Director, two sets of a landscaping plan prepared by a licensed landscape architect or resource specialist for review and approval by the Executive Director. The applicant shall also submit evidence to the satisfaction of the Executive Director that the landscaping and irrigation plan, including the amount of water to be delivered to the bluff surface, has been reviewed and found acceptable and consistent with the recommendations to ensure slope stability set forth by the geologic engineering consultant. The plans shall include the following:

a) All non-native plants on the bluff face below the existing residence approved under Coastal Development Permit 4-95-176 shall be removed and replaced by native, drought resistant plants, endemic to coastal bluffs, as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Native Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. The plan shall be designed to minimize the need for irrigation and to screen or soften the visual impact of development. Species which require artificial irrigation beyond that necessary to establish new plantings, shall not be used. The plan shall include the removal of all invasive plant material currently on site, such as Castor Bean (Ricinus communis) and Iceplant (Carpobrotus edulis). The applicant shall use a mixture of seeds and plants to increase the potential for successful slope stabilization. The restoration plan may be done in several phases to minimize destabilization of the site. Such planting shall be adequate to provide 90 percent coverage within 3 years and shall be repeated, if necessary, to provide such coverage. This time period may be extended by the Executive Director for good cause.

b) Bluff restoration of disturbed slopes shall include a planting plan, for erosion control, habitat protection and visual enhancement purposes, which may include hydroseeding, hand seeding, planting or any combination of planting and seeding on all disturbed portions of the bluff face, including the location of the proposed drainage improvements. The disturbed slopes shall be planted immediately to minimize destabilization of the bluff face. No hydroseeding shall occur in areas of the bluff where native plant material is already established. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.

c) If jute netting is to be placed on site, it must be of a type that is biodegradable and can only be used in conjunction with the planting or seeding of an area. Furthermore, the applicant shall be responsible for the continued removal of all non-native invasive plant material from the site until the establishment of the area. Establishment is recognized as 90% germination of the seeding, or 90% coverage of the site if a mixture of plants and seeds are used.

d) Any sprinkler irrigation system presently used on the bluff face shall be removed and a temporary, drip irrigation system shall be implemented to water the new plantings. As an alternative, hand watering may be carried out to establish the landscaping, provided that only the minimum amount of water necessary to establish the plantings is applied. The use of a permanent drip irrigation system in areas immediately adjacent to the residence may be allowed and permanent irrigation of the slope shall be permitted, unless otherwise required by L. A. County Department of Forestry. The plan shall include a note to this effect and shall provide detailed watering requirements and scheduling to ensure plant survival. The plan shall set forth the weekly quantities of total water delivery to the slope surface deemed necessary to ensure plant survival during establishment. Irrigation, with the exception of the drip system adjacent to the residence, must be above ground and used on a supplemental basis for a period not to exceed two years from the commencement of the project, inless otherwise required by L. A. County Department of Forestry. At the end of the two year period, the applicant must remove all irrigation material from the bluff face. This time period may be extended by the Executive Director for good cause. The irrigation system and landscaping plan shall be reviewed by L. A. County Department of Forestry to ensure consistency with fire protection standards regarding coastal bluffs. In the event that the recommendations of the Department of Forestry are in conflict with the recommendations regarding slope stability set forth by the geologic engineering consultant, the latter shall be followed.

e) The removal of all tarps from the site at the commencement of development on site. No tarps may be used on site during revegetation of the bluff face.

2. Bluff Restoration Plan

Prior to the issuance of the permit, the applicant shall submit, for the review and approval of the Executive Director, restoration plans prepared by a qualified professional consistent with the Landscaping Plans required in Special Condition #1, which exhibits the recontoured portions of the bluff where the compacted fill will be placed and where rounding and cleaning of the bluff face on the west side of the property will occur (See Exhibit 3, for approximate location). Consistent with Special Condition #1, these sections of the bluff face shall be planted and maintained for erosion control and visual enhancement purposes.

3. Assumption of Risk Deed Restriction

Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from during storms and from erosion or slope failure and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and 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.

4. Construction Responsibilities and Debris Removal

The applicant agrees not to store any construction materials or waste where it is subject to wave erosion and dispersion. In addition, no machinery will be allowed in the intertidal zone at any time. The permittee shall remove from the bluff face and beach area any and all debris that result from the construction period.

5. Geologic Recommendations

All recommendations contained in the Geotechnical Engineering and Geologic Investigation by RJR Engineering, dated June 19, 1995 shall be incorporated into all final design and construction plans including surficial stability, foundations, landscaping and drainage. Prior to the issuance of the permit the applicant shall submit for the review and approval of the Executive Director, evidence of the consultant's review and approval of all project plans.

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

6. Drainage Structure Maintenance Responsibility

The applicant agrees that should the project drainage structure fail or result in any erosion of the bluff, the applicant shall be responsible for any necessary repairs or restoration of the eroded areas.

7. Septic System Approval

Prior to the issuance of the permit, the applicant shall submit, for the review and approval of the Executive Director, evidence that an evaluation of the existing system by a registered sanitary engineer has occurred and a report that confirms the system's serviceability and overall integrity. In addition, the applicant shall submit an approval of the proposed development relative to its impact on the existing private sewage disposal system from the

City of Malibu, Environmental Health Department. Any substantial changes in the proposed development approved by the Commission which may be required by the consultant shall require an amendment to the permit or a new coastal permit.

8. Drainage Structures Color

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, which restricts the color of the drainage pipes to earth tone colors compatible with the surrounding environment. White and black tones shall not be acceptable. The document shall run with the land for the life of the structure approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens.

IV. Findings and Declarations.

A. Project Description and Background

The applicants are proposing to stabilize a coastal bluff, improve the drainage and repair and replace the existing staircase on the face of a coastal bluff on a 2.25 acre developed lot in western Malibu. Specifically, the project involves the installation of an approximate 125 ft. long (43 ft. high) soldier-pile wall and grade beams into a coastal bluff with 125 cu. yds. of grading (cut) for purposes of stabilizing the eroding bluff and the foundation of the existing single family residence. Additionally, the applicant is proposing the replacement of the patio located seaward of the house. The project also includes the construction of two rip rap energy dissipators: 250 sq. ft. and 20 sq. ft. in size with improvements to the existing drainage system. The applicant is also proposing the placement of 120 cu. yds. of fill on the bluff face, to be located on an existing flat area on the southwest side of the upper portion of the bluff. The project also includes the repair and replacement of the bluff face stairs and gang plank ramp structure.

The subject site is located adjacent to the west of El Matador State Beach. The bluff face is part of the applicant's property and no portion of the proposed work is located on State or public lands.

The property is an irregularly flag shaped lot with a long driveway that descends from PCH as an elevation of 170 ft. to the building pad at an elevation of 84 ft. As stated in the site conditions of the geotechnical investigation report, the building pad is developed at approximately the mid-elevation level of the ocean bluffs in this area. It is estimated that the original bluff face had an inclination of approximately 1.5:1 and a height of 100 ft. The bluff face was graded to create the building pad area and presently is above a near vertical sea cliff that averages approximately 30 ft. in height. The bluff face is fronted by a narrow beach which is estimated to be approximately less than 50 ft. in width. A prominent gully which is approximately 80 feet in depth with a 5 ft. wide channel bottom borders the site to the west.

The site is developed with a two story 2,700 sq. ft. house, a driveway, a septic system, two wooden counterfort retaining walls, other concrete block walls and wooden walls, drainage improvements, landscaping, a partially destroyed stairway, a gangplank to the beach and various footpaths. As submitted by the applicant, the residence was built in the 1950s and the two wooden counterfort walls were built approximately in winter of 1974. On October 12, 1995, the applicants were authorized under a coastal development emergency permit (G4-95-176) to construct the soldier pile wall only. The basis for this emergency was the occurrence of increased retaining wall failure which provides support for the existing home's foundation. Staff investigation has not evidenced any other coastal development permits issued for development on this site.

B. Geologic Stability

Section 30253 of the Coastal Act mandates that new development provide for geologic stability and integrity and minimize risks to life and property. Section 30235 of the Coastal states that construction which alters natural shoreline processes shall be permitted only when required to protect existing structures from erosion, and only when when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Likewise, Section 30250(a) of the Coastal Act states that new development not adversely affect, either individually or cumulatively, coastal resources. Section 30240 of the Coastal Act calls for the protection of environmentally sensitive habitat areas, and Section 30251 calls for the protection of visual resources and mandates the restoration and enhancement of visual qualities when feasible. Any development on a coastal bluff will affect coastal resources.

Coastal bluffs, such as this one, are unique geomorphic features that are characteristically unstable and have significant environmental and visual value. This coastal bluff is a designated environmentally sensitive habitat area. Any development on a coastal bluff will have adverse impacts to the environmental and visual qualities of the bluff, and natural shoreline processes. Therefore, it is necessary to review any proposed project first for the necessity of the project and compliance with Section 30253 of the Coastal Act.

Section 30253 states in part:

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 30235 of the Coastal Act states:

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

To assist in the determination of the consistency of a project with Section 30253 and 30235 of the Coastal Act, the Commission has, in past permit actions, looked to the Malibu Land Use Plan (LUP) for guidance. The LUP has been found to be consistent with the Coastal Act and provides specific suggests for development along the Malibu coast. Policy 147 suggests that development be evaluated for impacts on and from geologic hazards. Policy 148 suggests that development be limited on unstable slopes to assure that development does not contribute to slope failure. Policies 163 and 164 suggest that development on bluff top lots be setback from the bluff and that geologic reports be prepared to address the geologic issues. Finally, Policy 165 suggests that no permanent structures be permitted on bluff faces.

Erosion on coastal bluffs is expected to occur. Coastal bluffs are unstable and erosional by nature. The residence on site was built on the bluff face by grading a flat pad area at an 84 ft. elevation. Investigation of aerial photos taken in the 1950s (after the residence was built) was performed by the applicant's consulting engineer. However, estimates as to the home's setback from the bluff face were not be made. Therefore information as to whether the residence was constructed with the expectation that the bluff face would erode and retreat cannot be determined.

In order to find any development on this bluff consistent with Section 30253 and 30235 of the Coastal Act, the applicant must provide ample, conclusive evidence, that there is a current geologic hazard that has put the residence in danger and that the proposed development is the minimum development for remediating the hazard. The applicant has submitted a "Geotechnical Engineering and Geologic Investigation Report" prepared by RJR Engineering Group, and dated June 19, 1995. The purpose of this report was to evaluate the stability of the site and the geologic structure of the site with respect to stabilization of the bluff.

With respect to site stability the report stated that, "The overall gross and pseudo-static analysis for the site, indicates the slopes are generally stable." The report further stated that based on the geomorphology of the site and on surficial analysis a continuation of slope retreat and erosion would occur as a result of common bluff type processes.

The site is presently developed and improvements relative to stabilizing the site include wooden and concrete block retaining walls along with two counterfort retaining walls. As submitted by the applicant the other wooden retaining walls that are located on the site were constructed to repair soil slumps in late 1974. The retaining wall adjacent to the southwestern side of the residence has failed and resulted in significant cracks in the patio slabs

which at the time of the geologic investigation were "slowly enlarging". Erosion on the southeast side of the residence has resulted in bluff retreat within 15 ft. from the residence.

In order to remediate the site's stability, the report analyzes three alternatives. The first involves the construction of a series of 6 ft. high walls beginning at the toe of the bluff, with 2:1 slopes between the walls. This alternative would necessitate the slope to be rebuilt with compacted fill. As proposed under this alternative, the remediation would be visible from the adjacent public beach and the amount of grading required would be significantly more. The second alternative would require the applicant to construct a three tiered wall system beginning at the top portion of the bluff face. As with the first alternative, this too would be visible.

The third alternative, most closely represents the project proposed. The only deviation to the described project in the geologic report, is that the proposed soldier pile wall as designed will be located approximately 5 ft. landward of the slope face. As proposed, the wall will be constructed at an underground at a height of approximately 43 ft. Staff inquired as to the rate of erosion of the bluff face to determine if a portion of the wall would be visible from the public beach at some future date. The applicant's consulting geotechnical engineer, Mr. Rob Anderson, stated that the rate of bluff retreat would be significantly minimized if the proposed recommendations relative to drainage and landscaping were incorporated into the project plans. Based on those assumptions, Mr. Anderson estimated that the bluff would retreat approximately 1/4 of an inch per year. Mr. Anderson estimated that in this area of the coast an undeveloped bluff, where drainage is not diverted and where non-native landscaping exists the erosion rate would potentially range for 1/2 to 2 inches per year. Thus, based on the estimates made by the consulting engineer, bluff retreat would be significantly reduced if the recommendations made in the geotechnical report were incorporated into the project. In addition, the design coupled with the drainage and landscape conditions would ensure a reduced amount of landform alteration and would eliminate the wall's visibility from the beach area.

With respect to landscaping, the geologic report states that, "After the walls have been constructed we recommend that the lower slope face be cleaned and thoroughly vegetated with native vegetation. . ." The report further identifies that vegetating the site with native drought tolerant vegetation is considered a high priority and that irrigation at the top of the slope should cease to insure maximum site stability. Given that the top of the bluff is developed with three single family residences which are not owned by the applicant, the Commission recognizes and notes that the project cannot require any reduction in irrigation of landscaping on these properties.

Further, according to the consulting engineer, an increase in saturation on the bluff from rain water, drainage and irrigation largely contribute to destabilizing the bluff and endangering the existing structure. As stated, the top of the bluff is developed with three single family homes which all have landscaping and irrigation and thereby increase the amount of water on the slope. These facts combined with the fact that the design of the residence which exists on the bluff face and was constructed in accordance with building standards of the 1950s underscores the need for minimization of slope saturation. As such any increase in water on the bluff face increases the

precipitation and saturation rates, and thereby increases the potential for slope or surficial failures to occur on already unstable bluffs. Therefore, in order to reduce irrigation and minimize the saturation of the soil, special condition #1 has been crafted to ensure that the bluff face is revegetated with drought tolerant natives and that the placement of geotextiles, such as jutte netting are utilized to minimize further erosion. (Discussed further in the following section regarding Environmentally Sensitive Habitat Areas and Visual Resources.)

With respect to the existing wooden counterfort retaining walls located on the southwestern side of the site, the applicant has indicated that they will remain in place. In addition, the applicant has proposed to place 120 cu. yds. of recompacted fill atop the flat area that is located at the base of this wall. Given that the proposed soldier pile wall will, once constructed, effectively serve to remediate any slope failure, staff has discussed the removal of the existing counterfort walls with the applicant's consulting engineers. The engineers asserted that keeping these retaining walls in place would serve only to ensure that erosion of surficial soil does not occur. The consulting engineers agreed that a similar result of reduced erosion of surficial soil would result if the southwestern section of the upper bluff face were to be recontoured and vegetated with native drought tolerant vegetation. The engineers suggested that one alternative would be to keep the walls in-tact and restore that segment of the bluff with the fill that is proposed to be located on the area below the walls. The Commission notes, however, that in the event that the counterfort walls collapse after being buried with fill material, that the property owner would be less likely to be aware of such failure until significant site disturbance and destabilization had occurred. The applicant's agent has stated that these walls have been planted with native vegetation and will continue to be maintained with such vegetation. Therefore, the Commission finds that in this case, in order to minimize the possibility of risk to the property, the retention of the counterfort walls as they currently exist is consistent with Section 30253 of the Coastal Act.

In addition to constructing the soldier pile wall to stabilize the site, the applicant is proposing three main drainage improvements that as designed will redirect water away from the bluff face. First, located on the west side of the property, a rip rap energy dissipator that is approximately 250 sq. ft. in size will be constructed. As stated previously, the main drainage of this site is presently fed by a culvert at street grade on PCH and flows to the western channel via a deeply eroded channel below the southwest end of the driveway. This drainage pattern has caused a scouring of the western slope below the driveway. Staff investigated potential alternatives to remediate this erosion. As stated by the applicant's consulting engineer, this area will continue to erode if the slope face is not rounded and cleaned of loose debris and if vegetation is not re-established. The estimated removal of loose debris would be approximately 10 to 15 cu. yds. of material. The proposed rip rap energy dissipator will ensure that no further erosion of the slope occur. The second drainage improvement involves the construction of a 20 sq. ft. system on the eastern side of the residence. As stated in the geologic report, drainage flow on this side of the property and a deeply eroded gully on State land has scoured a considerable area at the southeast corner of the property between the base of the terrace bluff face and the top of the sea cliff. The third improvement involves the replacement of the patio

located seaward of the house, which as designed will include subdrains and surface gradients of at least 2% along principal directions of drainage to ensure protection of the foundation. Special condition #6 requires that the applicant agree that should the project drainage structure fail or result in any erosion of the bluff, that they will be responsible for any necessary repairs or restoration of the eroded areas.

The revegetation of the site in combination with the control of runoff over the bluff edge should significantly reduce erosion on this bluff. Based on the recommendations of the consulting geologist the Commission finds that the development will be free from geologic hazards so long as all the recommendations made by the geologic consultants are incorporated into the project plans. Therefore, the Commission finds it necessary to require the applicant to submit project plans that have been certified in writing by the consulting Soils and Engineering Geologists as conforming to their recommendations.

The Coastal Act recognizes that new development, such as a soldier pile wall to stabilize the bluff face and existing residence, may 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.

The Commission finds that due to the unforeseen possibility of wave attack, erosion, and flooding, the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission is requiring the applicant to waive any claim of liability on the part of 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 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.

Therefore, the Commission finds, that pursuant to Sections 30253 and 30235 of the Coastal Act, the proposed project could be found feasible with the required special conditions relative to landscaping, drainage, construction responsibility and debris removal and the recordation of an assumption of risk deed restriction. Only as conditioned is the project consistent with the Coastal Act sections relating to geologic stability and shoreline processes.

C. Environmentally Sensitive Habitat Areas and 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 30240 of the Coastal Act 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 30250(a):

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30251 of the Coastal Act states:

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

Section 30230 of the Coastal Act mandates that marine resources be maintained, enhanced and when feasible restored. Areas, such as ESHAs, are to be given special protection to provide to sustain their habitat. Likewise, Section 30240 of the Coastal Act mandates that only resource dependent uses be allowed in ESHAs. Such uses could include a fish ladder in a stream, a public trail in parkland, or restoration. These are uses which would enhance or restore an ESHA. Section 30251 of the Coastal Act suggests that development restore or enhance an area, and mandates the minimization of landform alteration and the protection of public views. Finally, Section 30250 of the Coastal Act calls for new development to not contribute, individually or cumulatively, to the degradation of coastal resources.

Consistent to Section 30240 of the Coastal Act, Policy 98 of the LUP suggests that development should have no adverse impacts on sensitive marine and beach

habitat areas, and Policy 99 of the LUP suggests that development in areas adjacent to sensitive beach and marine habitat areas be designed and sited to prevent impacts which could degrade the environmentally sensitive habitats. Policy 101 suggests that only resource dependent uses be permitted in sensitive marine and beach habitats. And finally, Policy 104 of the LUP suggests that the restoration of damage to habitats, when possible, be required as a condition of permit approval. These policies, used by the Commission in guidance in numerous past permit actions, offer specific guidance to carry out Sections 30240 and 30250 of the Coastal Act.

In addition, the LUP contains a number of policies regarding viewsheds and the protection of unobstructed vistas from public roads, parks and beaches consistent with Section 30251 of the Coastal Act. These policies have been used as guidance by the Commission in numerous past permit actions in evaluating a project's consistency with Section 30251 of the Coastal Act. Policy 129, for example, suggests that structures should be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment. Policy 128 suggests further setbacks, then required for safety, from bluffs to minimize or all together avoid impacts on public views from beaches. And finally, Policy 130 suggests that in highly scenic areas new development, which includes fences, landscaping and drainage devices, be sited and designed to protect views along the coast, minimize alteration of the natural landforms, be visually compatible with and subordinate to the character of the area and be sited so as to not significantly intrude in to the skyline.

The subject site is located adjacent to the west of El Matador State Beach. The bluff face is part of the applicant's property and no portion of the proposed work is located on State or public lands. The proposed project which is intended to stabilize a coastal bluff, involves improving the drainage and repair and replace the existing staircase on the face of a coastal bluff on a 2.25 acre developed lot in western Malibu. The approximate 125 ft. long (43 ft. high) soldier-pile wall and grade beams into a coastal bluff will be located below ground and as explained in the preceding section will not be visible for some time well in to the future (approximately 150-200 years based on 1/4 in. yearly erosion rate). The project also includes the construction of two rip rap energy dissipators: 250 sq. ft. and 20 sq. ft. in size with improvements to the existing drainage system. The 20 sq. ft. system will be located adjacent to the state beach and the pipes associated with the system as well as the rip rap structure itself, may be visible from the beach area. The applicant is also proposing the retention of a the wooden counterfort retaining walls located on the upper southwest portion of the bluff face. In addition, the placement of 120 cu. yds. of fill (in this same area on an existing flat area adjacent to the counterfort walls) is proposed. Presently, the counterfort wall is planted with native vegetation. As proposed by the applicant, both the wall and the fill material will be maintained by introducing native vegetation in the areas of disturbance. Special condition #2 requires that the gully located on the western side of the property is recontoured as well to minimize erosion and visual impacts associated with the scarp of the slope failure. Lastly, the project includes the repair and replacement of the bluff face stairs and gang plank ramp structure. The applicant has submitted evidence that these stairs were constructed in the 1960's and that the footpath were in existence in the 1950s. Given the applicant is proposing to replace the stairs as they existed (wooden), the Commission notes that this activity is considered repair and maintenance under the Coastal Commission's Administrative Regulation guidelines.

Further, as proposed this projects calls for significant development on a coastal bluff. Any development on the bluff removes vegetation and therefore removes nesting, feeding, and shelter habitat for marine animals. This would result in a loss or change in the number and distribution of species. These marine species which utilize the bluffs are an important component in the ecology of marine life, including invertebrates and large maine mammals. Policy 108 and 116 of the LUP suggest that development be designed as to not disturb sensitive marine mammal habitats. Although the bluff itself will not have direct impacts on marine mammals, it will have indirect impacts through habitat loss and increased erosion. The cumulative effect of increased development on coastal bluffs would further degrade the marine habitat as well as the bluff habitat.

As discussed in the preceding section regarding geologic stability, landscaping and irrigation on the bluff would have adverse effects on the bluff if the planting plan called for the placement of non-native vegetation, for example. Likewise, planting only portions of the bluff would not maximize the erosion control. The retention of non-native vegetation would diminish the habitat value on site, and the placement of jutte netting without plantings would not be beneficial to a successful project and would cause adverse visual impacts. Irrigation of the bluff face would add more water thereby reducing the stability of the slope; thus, water usage should be monitored. The Commission recognizes that some irrigation immediately adjacent to the residence may be necessary for purposes of fire suppression and such irrigation in the form of a drip system would be allowed. In order to ensure that the project objective -- stabilizing the coastal bluff is realized without placing the property at risk for fire, the applicant shall have the landscaping and irrigation plan reviewed by L. A. County Department of Forestry prior to submitting the plan to their consulting geotechnical engineer for approval. Any changes required by the Department of Forestry shall be made to the maximum extent feasible, providing that said changes are consistent with the recommendations set forth by the consulting geotechnical engineer. Thus, the required landscaping and restoration of the site will serve two purposes. First, it will implement the consulting engineers' recommendations regarding site stability; and, second, it will serve to enhance the sensitive coastal bluff habitat.

Additionally, to protect the visual views of the site, the drainage pipes, which are necessary for control of runoff, should be of a natural earth tone color. Bright, white or black colors are noticeable and break up the pristine bluff views. This color restriction is noted in special condition 8. The Commission finds that only as conditioned, is the proposed project consistent with Sections 30230, 30231, 30240, 30250, and 30251 of the Coastal Act.

D. Septic System

The Commission recognizes that the potential build-out of lots in Malibu, and the resultant installation of septic systems, may contribute to adverse health effects and geologic hazards in the local area. Section 30231 of the Coastal Act states that:

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

The applicant is not proposing to expand their existing septic system. However, the existing system is located at a 50 ft. elevation, below the existing residence. As stated in the geotechnical report, "The leach field appears to have been compromised by the same erosion and slumping processes active on the bluff face." The report further concludes that, "The private sewage disposal system should be evaluated by a registered sanitary engineer for serviceability." Given that the project itself is proposed for the purpose of stabilizing the site, where instability exists in part because of slope saturation, staff required the applicant to perform the above analysis prior to completion of the report's analysis. The applicant subsequently submitted a letter by Mr. Richard Sherman, Topanga Underground, general contractors, dated October 20, 1995. Mr. Sherman states that, "The check of the system reflected that the system was operating properly." and that, "There is no evidence that the piping is leaking, that the tank is not working properly or that the leachfield has failed."

Staff discussed the assertions made by Mr. Sherman with the applicant's consulting engineers. The consulting engineers underscored the importance of having a qualified sanitarian engineer investigate the existing system. Therefore, special condition #7 has been drafted and requires the applicant to submit evidence that an evaluation of the existing system by a registered sanitary engineer has occurred and a report that confirms the system's serviceability and overall integrity. In addition, the applicant is required to submit an approval of the proposed development relative to its impact on the existing private sewage disposal system from the City of Malibu, Environmental Health Department. As stated in the condition, any substantial changes in the proposed development approved by the Commission which may be required by the consultant would require an amendment to the permit or a new coastal permit.

As stated above, the required review will ensure that the City and a sanitarian engineer performed the necessary geologic analysis of the septic system and that the proposed project will not adversely impact the biological productivity and quality of the coastal waters located south of the subject site. Therefore, as conditioned, the Commission finds that the proposed project is consistent with Section 30231 of the Coastal Act.

E. Public Access

New development on a beach or between the nearest public roadway to the shoreline and along the coast raise issue with the public access policies of the Coastal Act.

Section 30210

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 resources from overuse.

Section 30211

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.

A conclusion that access may be mandated by Section 30212 does not end the Commission's inquiry. As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with ... the need to protect ... rights of private property owners..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the U.S. Supreme Court's decision in the case of Nollan vs. California Coastal Commission. In that case, the court ruled that the Commission may legitimately require a lateral access easement where the proposed development has either individual or cumulative impacts which substantially impede the achievement of the State's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate those impacts.

The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access of such projects can include among others, encroachment on lands subject to the public trusts thus physically excluding the public; interference with natural shoreline processes which are necessary to maintain publically-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and ability to use and cause adverse impacts on public access such as above.

In the case of this project, all development is located on the face of the bluff on the applicant's property. A vertical access by way of El Matador State Beach is located approximately 1/4 mile to the east of the subject site. Vertical access opportunities does not exist through the project site and there is no evidence of any public prescriptive access that exists on the site. Therefore, the proposed development will have no adverse impact on public access and is consistent with the relevant public access sections of the Coastal Act.

E. Local Coastal Program

Section 30604 of the Coastal Act states that:

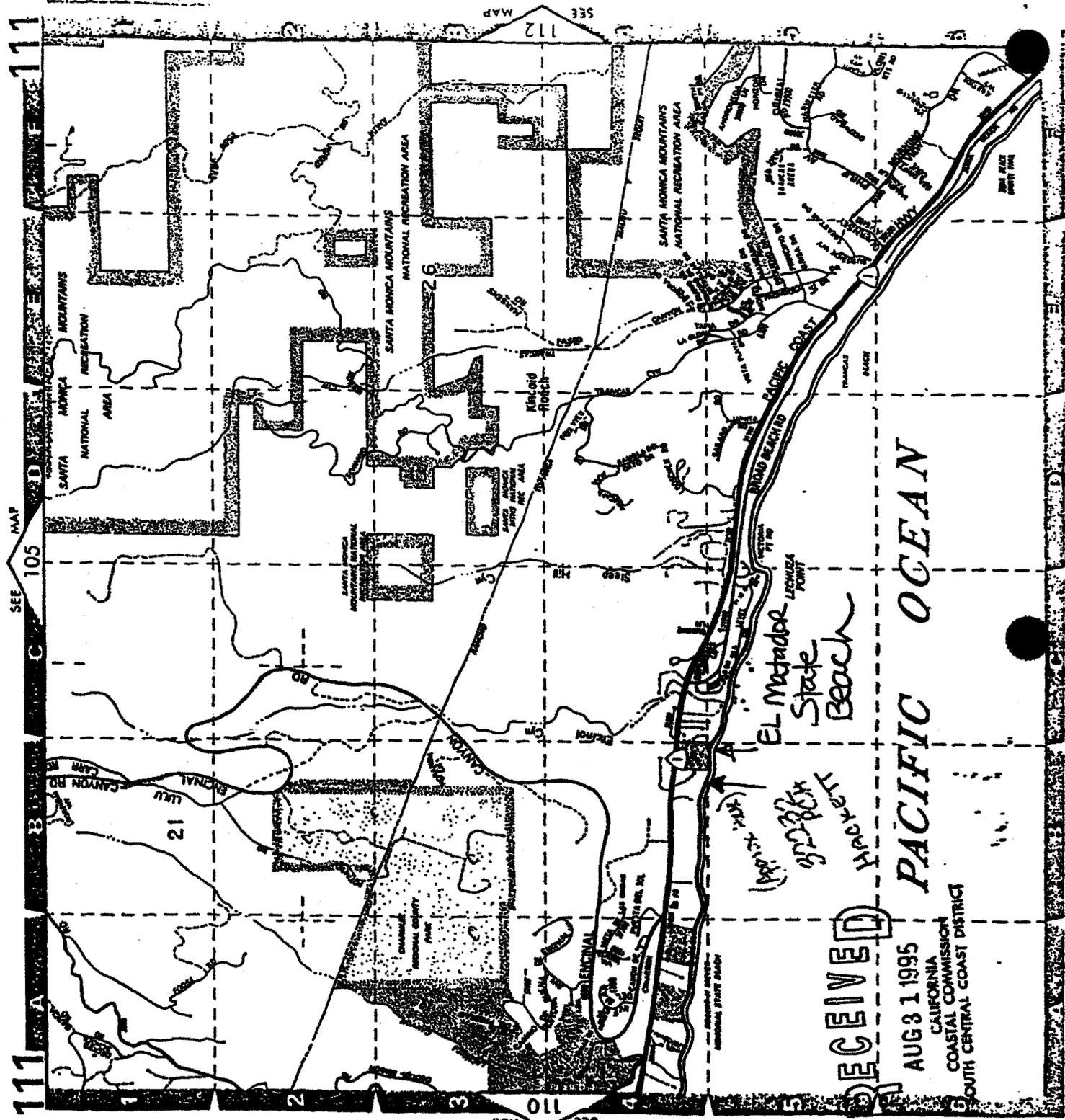
a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the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

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

F. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment. 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.

0103R



SEE MAP 111
 SEE MAP 110
 SEE MAP 109
 SEE MAP 108
 SEE MAP 107
 SEE MAP 106
 SEE MAP 105
 SEE MAP 104
 SEE MAP 103
 SEE MAP 102
 SEE MAP 101
 SEE MAP 100

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 CALIFORNIA
 COASTAL COMMISSION
 SOUTH CENTRAL COAST DISTRICT

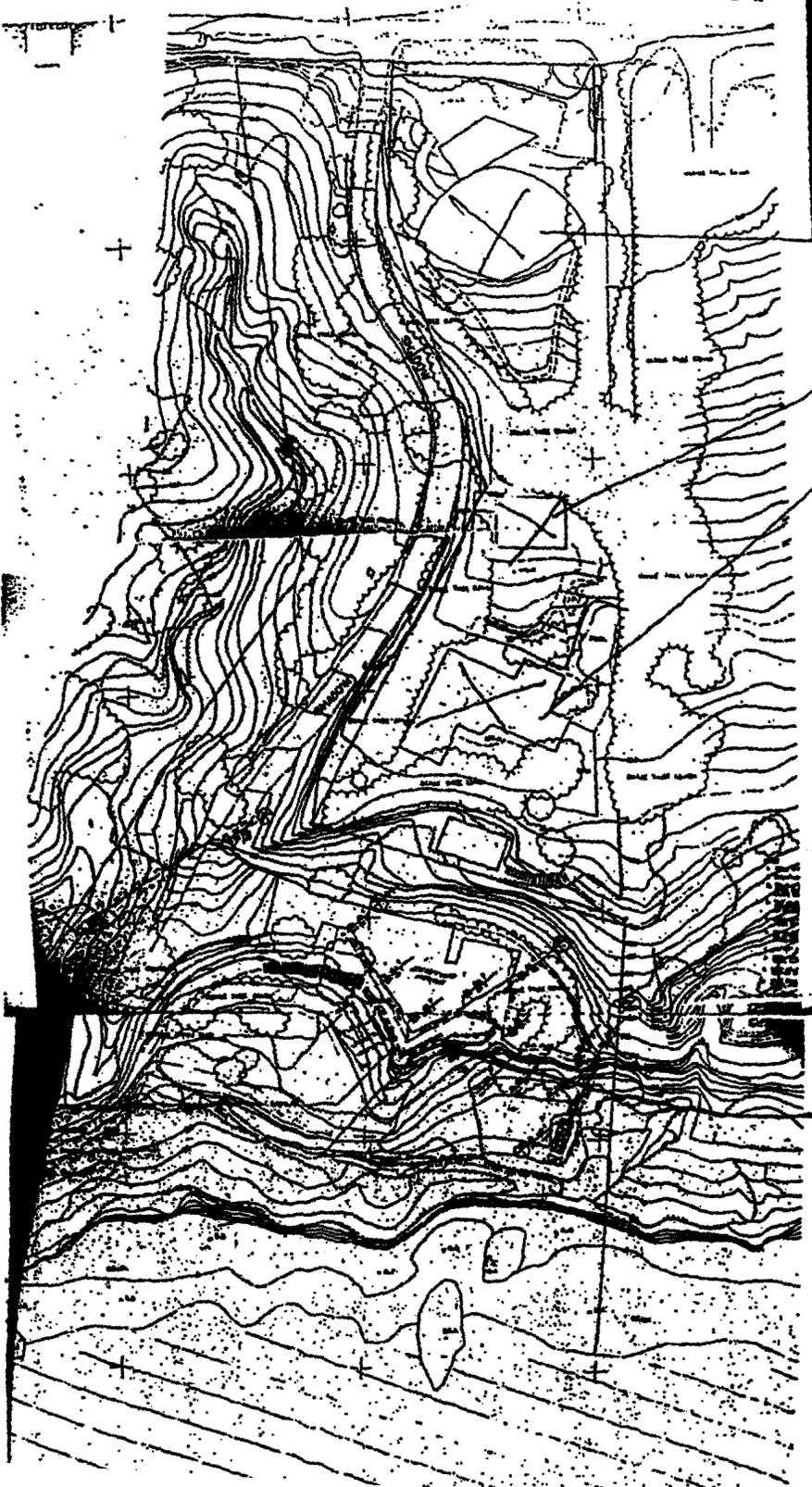
EXHIBIT NO 1
 APPLICATION NO.
 4-95-176
 area map
 Revised Findings

EXHIBIT NO. 2

APPLICATION NO.
4-95-176

site plan

Revised Findings



Other
SFR
located
on Bluff Top

location of
soldier-pile
wall

* Approximate location of Bluff Restoration Areas

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 COASTAL COMMISSION

EXHIBIT NO. 3
 APPLICATION NO.
 4-95-176
 Revised Findings
 SHE PLAN
 Bluff Restoration Area

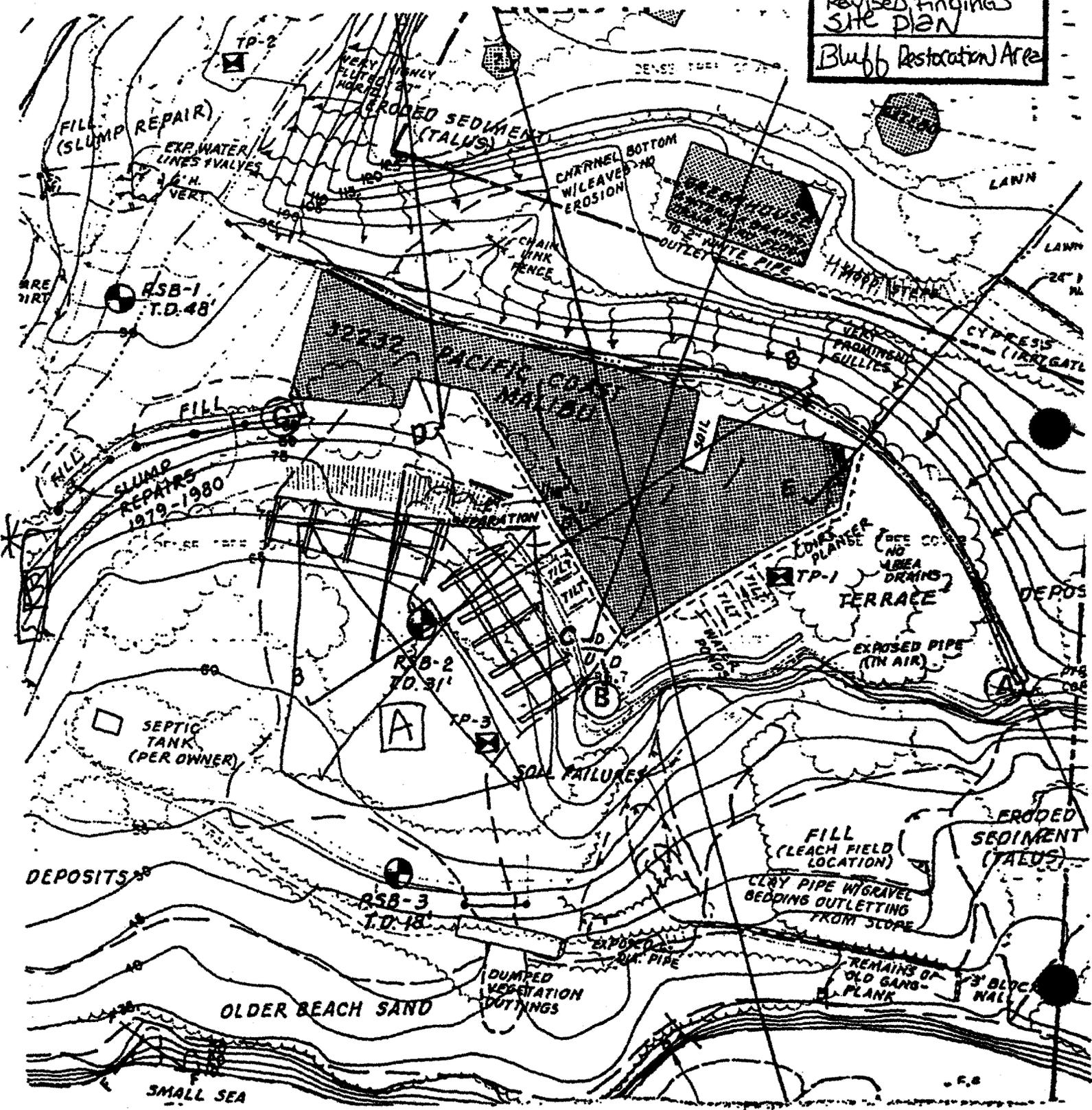
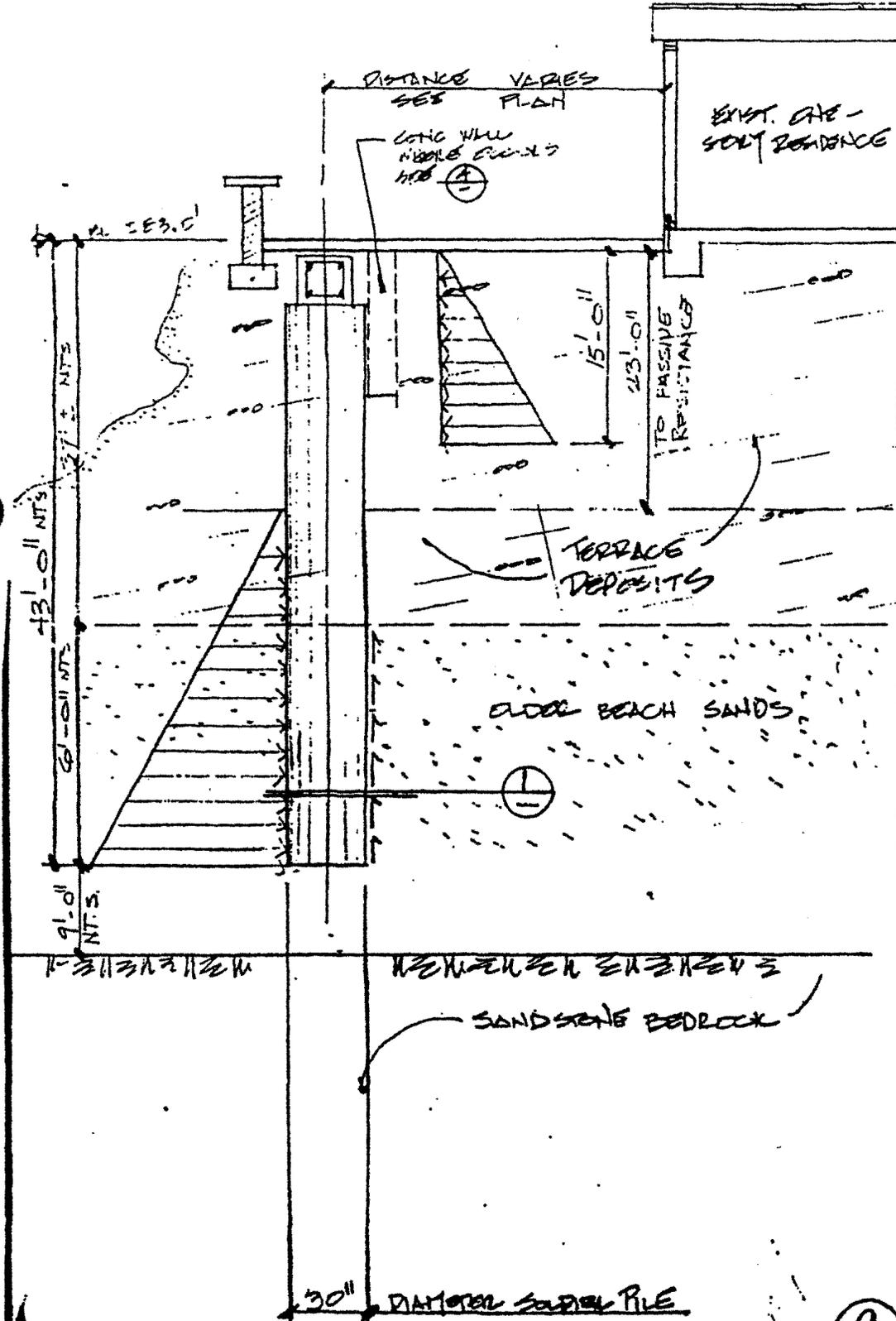


EXHIBIT NO. 4

APPLICATION NO.
4-95-176

subsurface
elevation

Revised Findings



9

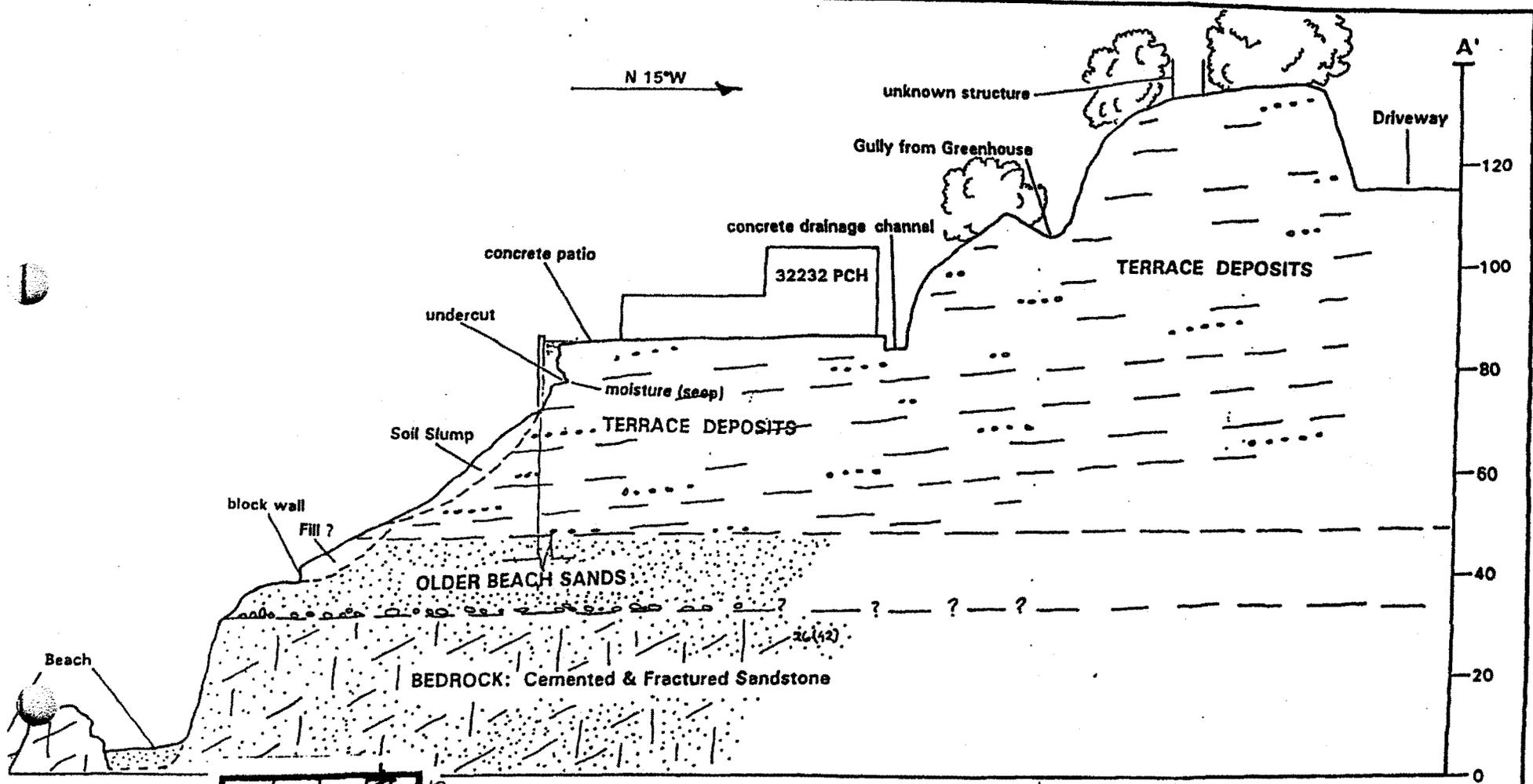


EXHIBIT NO. 5
 APPLICATION NO.
 4-95-176
 Alternative 3
 Proposed by Applicant

Revised Findings

GEOLOGIC CROSS-SECTION A-A'		
SCALE: 1" = 20'	APPROVED BY:	DRAWN BY JF
DATE: 4/26/95		REVISED
HACKETT/MALIBU		
P.N.759.10-95	DRAWING NUMBER	

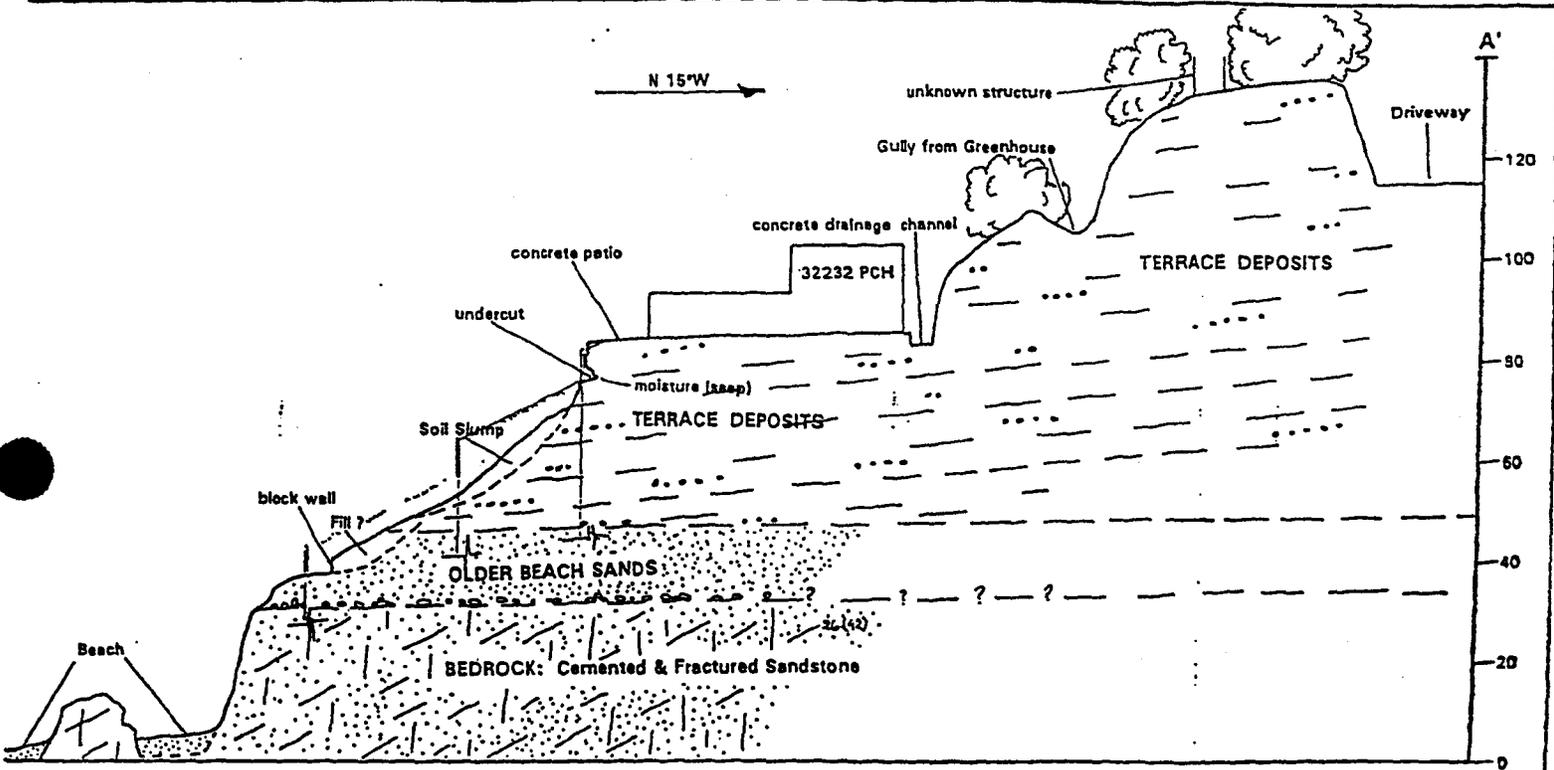
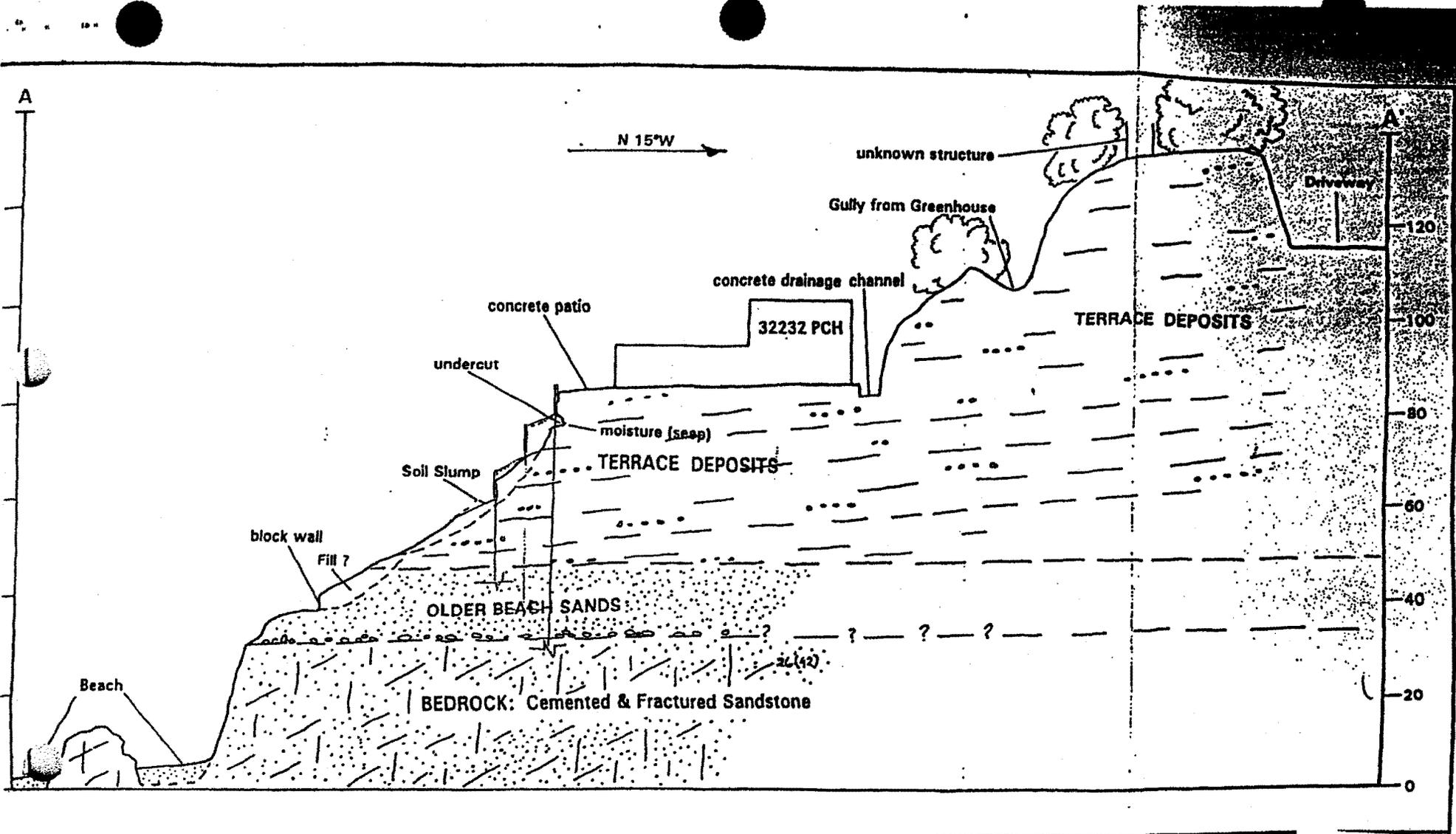


EXHIBIT NO. 6
 APPLICATION NO.
Revised Findings
 4-95-176
Alternative 1

GEOLOGIC CROSS-SECTION A-A'		
SCALE: 1" = 20'	APPROVED BY:	DRAWN BY JF
DATE: 4/26/95		REVISED
HACKETT/MALIBU		
P.N.759.10-95	DRAWING NUMBER	



ALTERNATIVE 2

GEOLOGIC CROSS-SECTION	
SCALE: 1" = 20'	APPROVED BY:
DATE: 4/26/95	
HACKETT/MALIBU	
P.N. 759.10-95	

EXHIBIT NO. 7
 APPLICATION NO. REVISED 5/10/95
 4-95-176
 Alternative 2

Exhibit 4

CALIFORNIA COASTAL COMMISSION

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



Page 1 of 3
Date: September 11, 1995
Permit No. 4-95-110

COASTAL DEVELOPMENT PERMIT

On August 9, 1995, the California Coastal Commission granted to:

Steven & Harriet Nichols this permit subject to the attached Standard and Special conditions, for development consisting of:

Bluff stabilization and restoration of a coastal bluff face, on a developed lot, involving the placement of below grade soldier piles and a cast-in-place retaining wall, between soldier piles, at the top of the bluff; replacement of drainage pipes; construction of a drainage swale with 1.5 foot high walls and steps; landscaping and temporary irrigation, and is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 32588 Pacific Coast Highway, Malibu.

Issued on behalf of the California Coastal Commission by

PETER DOUGLAS
Executive Director

By: Susan Friend
Coastal Program Analyst

ACKNOWLEDGMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

Date

Signature of Permittee

COASTAL DEVELOPMENT PERMIT

Page 2 of 3
Permit No. 4-95-110

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 in the application for permit, subject to any special conditions 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 project during its development, 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.

SPECIAL CONDITIONS:

1. Revised Landscaping Plans

Prior to the issuance of the permit the applicant shall submit, for the review and approval of the Executive Director, two sets of a revised landscaping plan prepared by a landscape architect or resource specialist for review and approval by the Executive Director. The plans shall include the following:

- a) The removal of all invasive plant material currently on site, such as Castor Bean (Ricinus communis) and Iceplant (Carpobrotus edulis).
- b) A planting plan, for erosion control, habitat protection and visual enhancement purposes, which may include hydroseeding, hand seeding, planting or any combination of planting and seeding on all disturbed portions of the bluff face, including the location of the proposed drainage swale.

COASTAL DEVELOPMENT PERMIT

Page 3 of 3
Permit No. 4-95-110

(b. cont'd)

No hydroseeding shall occur in areas of the bluff where native plant material is already established. To minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist of native, drought resistant plants, endemic to coastal bluffs, as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended Native Plant Species for Landscaping Wildland Corridors in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.

c) The location of any jutte netting on site. If jutte netting is to be placed on site, it must be of a type that is biodegradable and can only be used in conjunction with the planting or seeding of an area. Furthermore, the applicant shall be responsible for the continued removal of all non-native invasive plant material from the site until the establishment of the area. Establishment is recognized as 90% germination of the seeding, or 90% coverage of the site if a mixture of plants and seeds are used.

d) An irrigation plan which show no irrigation below the 75 foot contour line. Irrigation must be above ground and used on a supplemental basis for a period not to exceed two years from the commencement of the project. At the end of the two year period, the applicant must remove all irrigation material from the bluff face. This time period may be extended by the Executive Director for good cause.

e) The removal of all tarps from the site at the commencement of development on site. No tarps may be used on site during revegetation of the bluff face.

2 Drainage Pipe Color

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, which restricts the color of the drainage pipes to earth tone colors compatible with the surrounding environment. White and black tones shall not be acceptable. The document shall run with the land for the life of the structure approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens.

3. Assumption of Risk Deed Restriction

Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the applicant understands that the site may be subject to extraordinary hazard from during storms and from erosion or slope failure and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and 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.

CALIFORNIA COASTAL COMMISSION

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

Filed: 7-6-95
 49th Day: 8-24-95
 180th Day: 1-2-96
 Staff: SPF-VNT *SEF*
 Staff Report: 10-26-95
 Hearing Date: Nov. 14-17, 1995
 Commission Action on Findings::

STAFF REPORT: REVISED FINDINGS**TU22a**

APPLICATION NO.: 4-95-110

APPLICANT: Steven and Harriet Nichols AGENT: James Harnish

PROJECT LOCATION: 32588 Pacific Coast Highway, City of Malibu; L.A. County

PROJECT DESCRIPTION: Bluff stabilization and restoration of a coastal bluff face on a developed lot, involving the placement of below grade soldier piles and a cast-in-place retaining wall between soldier piles 16 feet landward of the top of the bluff; replacement of drainage pipes; construction of a drainage swale with 1.5 foot high above ground splash walls and runoff velocity reducing steps; landscaping and temporary irrigation.

COMMISSION ACTION: Approval with changes to the conditions

DATE OF COMMISSION ACTION: August 10, 1995

COMMISSIONERS ON PREVAILING SIDE: Areias, Doo, Flemming, Giacomini, Hisserich, Vincent, Pavley, Rick, Staffel, Vargas and Calcagno.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends that the Commission adopt the following revised findings in support of the Commission's action on August 10, 1995 approving with conditions the permit for bluff stabilization and restoration of a coastal bluff face involving the placement of below grade soldier piles and a cast-in-place retaining wall between soldier piles, landward of the top of the bluff; replacement of drainage pipes; construction of a drainage swale with 1.5 foot high above ground splash walls and runoff velocity reducing steps; landscaping and temporary irrigation.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 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. 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. Revised Landscaping Plans

Prior to the issuance of the permit the applicant shall submit, for the review and approval of the Executive Director, two sets of a revised landscaping plan

prepared by a landscape architect or resource specialist for review and approval by the Executive Director. The plans shall include the following:

- a) The removal of all invasive plant material currently on site, such as Castor Bean (Ricinus communis) and Iceplant (Carpobrotus edulis).
- b) A planting plan, for erosion control, habitat protection and visual enhancement purposes, which may include hydroseeding, hand seeding, planting or any combination of planting and seeding on all disturbed portions of the bluff face, including the location of the proposed drainage swale. No hydroseeding shall occur in areas of the bluff where native plant material is already established. To minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist of native, drought resistant plants, endemic to coastal bluffs, as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended Native Plant Species for Landscaping Wildland Corridors in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- c) The location of any jutte netting on site. If jutte netting is to be placed on site, it must be of a type that is biodegradable and can only be used in conjunction with the planting or seeding of an area. Furthermore, the applicant shall be responsible for the continued removal of all non-native invasive plant material from the site until the establishment of the area. Establishment is recognized as 90% germination of the seeding, or 90% coverage of the site if a mixture of plants and seeds are used.
- d) An irrigation plan which shows no irrigation below the 75 foot contour line. Irrigation must be above ground and used on a supplemental basis for a period not to exceed two years from the commencement of the project. At the end of the two year period the applicant must remove all irrigation material from the bluff face. This time period may be extended by the Executive Director for good cause.
- e) The removal of all tarps from the site at the commencement of development on site. No tarps may be used on site during revegetation of the bluff face.

2. Drainage Pipe Color

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, which restricts the color of the drainage pipes to earth tone colors compatible with the surrounding environment. White and black tones shall not be acceptable. The document shall run with the land for the life of the structure approved in this permit, binding all successors and assigns, and shall be recorded free of prior liens.

3. Assumption of Risk Deed Restriction

Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide: (a) that the

applicant understands that the site may be subject to extraordinary hazard from wave run-up during storms and from erosion or slope failure and the applicant assumes the liability from such hazards; and (b) that the applicant unconditionally waives any claim of liability on the part of the Commission and agrees to indemnify and hold harmless the Commission and its advisors relative to the Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and 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.

IV. Findings and Declarations.

A. Project Description and Background

The applicants are proposing to stabilize a coastal bluff and improve the drainage on the face of a coastal bluff on a 1.98 acre developed lot in western Malibu. Specifically, the stabilization and repair work involves the placement of soldier piles and a cast-in-place concrete retaining wall approximately sixteen feet landward of the top of the bluff and across the entire length of the bluff, a drainage swale with splash walls and runoff velocity reducing steps, the replacement of two existing drainage pipes, temporary irrigation, and landscaping.

The applicant asserts that the proposed work is necessary to stabilize the bluff by preventing excess saturation from slope drainage and rain water on the bluff face. Excess saturation is the main reason given by the consulting engineering geologists for on-going slope erosion. Erosion has occurred on the face of the bluff on the west side of the site, which is a result of a concentration of uncontrolled runoff from a broken drainage pipe on the neighboring site. Erosion has also occurred at the top of the bluff on the east side of the property resulting from the previous installation of stairs which were to be removed under a previous coastal development permit to restore the bluff. The consulting engineer states that this erosion has resulted in near vertical scarps at the top of the slope.

The residence is setback 100 feet from the top of the bluff; and the deck for the pool, which is the most seaward development is approximately 50 feet from the top of the bluff. The residence was built with support by conventional and deepened footings as recommended by the consulting geotechnical engineer who prepared the initial geology report for the residence. Observations of the exterior and interior of the residence by one of the applicant's engineering geologists, revealed no distress to the residence or foundation system. The swimming pool, located seaward of the residence, was constructed as required and is not exhibiting any structural distress, cracks, or failures.

The subject property is located approximately 345 feet to the west of La Piedra State Beach, and extends from Pacific Coast Highway to the sandy beach. The subject site was developed with a single family residence, guest house, pool and tennis court in 1988 under coastal development permit 5-88-66 (Zal). Physical relief on the property from Pacific Coast Highway to the sandy beach is approximately 150 feet. Slopes on the site range from nearly horizontal for the residential pad and nearly vertical for the bluff face.

The first application for development on this site was 5-85-765 (Lunsford), for the construction of a single family residence set over 100 feet from the edge of the bluff. This project also included a guest house, tennis court, swimming pool, and a private septic system. This application was approved by the Commission; however, the permit expired before any construction commenced on site.

Later, in 5-88-066 (Zal), the new owner applied for a single family residence with a guest house, a tennis court, a swimming pool, a motor court with a fountain, a septic system, a private driveway, and 156 cubic yards of cut. The Commission approved this project with three special conditions which required revised plans, septic system approval from Los Angeles County Department of Health Services, and a future improvements deed restriction. The revised plans required that no portion of the project's structural height exceed 35 feet, the guest house not exceed 750 square feet and the project not exceed more than 80% of the lineal frontage of the lot. This permit was issued and the residence built.

In 1991, the previous owner illegally graded the top of the bluff and built a stairway down the face of the bluff. The Commission's district staff discovered the violation and pursued an enforcement action against the previous owner. The owner applied for an after-the-fact permit to retain the development [5-91-632 (Zal)]. However, the Commission unanimously denied the stairway on the basis that the stairway caused excessive landform alteration and adverse visual and environmental impacts to the bluff face.

To resolve the outstanding violation, the previous owner then applied for the removal of the stairway and complete revegetation of the bluff face, including the placement of native plants and jutte netting [5-91-775 (Zal)]. Only 12 cubic yards of grading was done to reduce the cut slopes on the bluff face; the main cut slope at the top of the bluff was not to be restored. The applicant was issued a waiver for this development. However, the previous owner did not complete the work as stated on the approved plans at that time. Instead, the previous owner built a series of small crib walls in the location of the stairway and stated that these short crib walls were necessary for erosion and drainage control and to stabilize the bluff. These walls also acted as a stairway for beach access. The applicant then applied for an after-the-fact permit for these drainage devices.

This application 4-93-057 (Zal), was later withdrawn by the applicant. The withdrawal of the application occurred after staff informed the applicant that he had not presented sufficient evidence to show that the residence was in any danger of failure from slope erosion or retreat. The purpose of the crib walls, as noted by the previous owner's geologist was to stabilize the bluff and act as drainage control devices; the work would also result in a walkway down the bluff. Since bluffs are, by nature, unstable and there was no evidence that the residence was in any danger from bluff retreat, staff was recommending denial of the application. The removal of all man-made materials from the bluff and revegetation of the slope was completed in late 1993, and the violation case was closed. However, it appears that after the enforcement staff confirmed that the steps had been removed and revegetation was taking hold, the stairs at the top of the bluff were again installed. These stairs, which traverse approximately the first thirty feet of the bluff are located at the cut slope, just above the slope failure on the east side of the property.

B. Geologic Stability

As stated in the previous section, this project involves the placement of soldier piles with a cast-in-place retaining wall between the soldier piles, across the entire width of the property, approximately sixteen feet landward of the top of the bluff. The soldier piles and retaining wall encroach within twelve feet of the bluff at one point. The project also involves a drainage swale with steps and two bench drains in the location of a previous, unpermitted stairway; the replacement of two 12 inch flex drainage pipes with CMP drainage pipes in the same location; irrigation on the entire bluff face; and hydroseeding of the entire bluff face. This work is required, according to West Coast Geotechnical Engineers, for "protection of the subject site and public beach from future and continued erosion and degradation of the slope bluff face." The resulting project will stabilize the bluff and provide on-slope drainage devices to collect sheet-flow, according to the consulting geologist.

Section 30253 of the Coastal Act mandates that new development provide for geologic stability and integrity and minimize risks to life and property. Section 30235 of the Coastal states that construction which alters natural shoreline processes shall be permitted only when required to protect existing structures from erosion, and only when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Likewise, Section 30250(a) of the Coastal Act states that new development not adversely affect, either individually or cumulatively, coastal resources. Section 30240 of the Coastal Act calls for the protection of environmentally sensitive habitat areas, and Section 30251 calls for the protection of visual resources and mandates the restoration and enhancement of visual qualities when feasible. Any development on a coastal bluff will affect coastal resources.

Coastal bluffs, such as this one, are unique geomorphic features that are characteristically unstable and have significant environmental and visual value. This coastal bluff is a designated environmentally sensitive habitat area. Any development on a coastal bluff could have adverse impacts to the environmental and visual qualities of the bluff, and natural shoreline processes. Therefore, it is necessary to review any proposed project first for the necessity of the project and compliance with Section 30253 of the Coastal Act.

Section 30253 states in part:

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 30235 of the Coastal Act states:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline

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

To assist in the determination of the consistency of a project with Section 30253 and 30235 of the Coastal Act, the Commission has, in past permit actions, looked to the Malibu Land Use Plan (LUP) for guidance. The LUP has been found to be consistent with the Coastal Act and provides specific policies for development along the Malibu coast. Policy 147 suggests that development be evaluated for impacts on and from geologic hazards. Policy 148 suggests that development be limited on unstable slopes to assure that development does not contribute to slope failure. Policies 163 and 164 suggest that development on blufftop lots be setback from the bluff and that geologic reports be prepared to address the geologic issues. Finally, Policy 165 suggests that no permanent structures be permitted on bluff faces.

The applicant has submitted two geology reports with the application. The first report is a "Preliminary Engineering Geologic Reconnaissance Report" prepared by Mountain Geology, Inc., and dated May 12, 1995. The purpose of this report was to evaluate the stability of the site and the geologic structure of the site with respect to stabilization of the bluff. The second geotechnical engineering report, dated May 10, 1995 by West Coast Geotechnical consulting engineers and geologists contained opinions regarding the site conditions and how those conditions affect the proposed developments. This second report contained copies of the original geotechnical and soils reports prepared for the construction of the residence. The reports state that bluff retreat has occurred with failures up to fifteen feet wide at the top of the bluff. Without this repair work, there will be a significant loss of property, according to the consulting geologist. The consulting geologist has concluded that

...the earth materials at the top of the slope are unstable and subject to (sic) degradation. This instability represents a hazard to the subject property, improvements, and public whom are utilizing the beach immediately downslope to the south.

In the original geotechnical engineering report prepared for the single family residence in 1985, dated August 13, 1985, the consulting geologist, Tucker Incorporated stated that no groundwater was observed in exploratory drill holes; however a spring was noted near the toe of the bluff. No active ground water or adverse moisture which could adversely affect construction was anticipated. And finally, the report notes that:

Runoff in the past has not created any significant adverse erosional conditions on the site.

The consulting engineer concluded that much of the precipitation that falls directly on the top of the bluff would percolate on site and sheet-flow off the bluff. The consulting engineer, in 1985, found that no adverse evidence of past bedrock instability was present on the subject or adjacent sites, and concluded that continued gross stability of the subject site was favorable.

One of the recommendations of this consulting engineer was to preclude concentrated runoff over the southerly descending slope. All drainage was to be directed to non-erosive devices.

Likewise, the soils report prepared in 1985 by Baseline consultants concluded that slope stability of the bluff exceeds the normally accepted factor of safety for "stable" slopes. The soils engineer recommended that no water shall be allowed to pond or drain down the slope in a concentrated and uncontrolled manner. At more than 100 feet from the edge of the bluff, the setback of the residence is more than adequate for structural protection from the natural hazards stated in the reports.

Erosion on coastal bluffs is expected to occur. Coastal bluffs are unstable and erosional by nature. The residence on site was purposely setback over 100 feet from the edge of the bluff because it is expected that erosion and bluff retreat will occur on this bluff. In order to find development on this bluff consistent with Section 30253 and 30235 of the Coastal Act, the applicant must provide ample, conclusive evidence, that there is a current geologic hazard that has put the residence in danger and that the proposed development is the minimum development for remediating the hazard.

In this case, erosion of the bluff has been exaggerated by the unpermitted placement of a stairway which resulted in a steep cut on the east side of the bluff and a broken drain pipe which resulted in significant erosion on the west side of the bluff. The circumstances in this case are unique, as the instability of the slope appears to have been increased by previous unpermitted developments on the bluff face. The consulting geologist has stated that because of these adverse geologic conditions, erosion control devices are now necessary to protect the bluff from an increase in bluff retreat and thereby protect the subject property, residence and backyard amenities from damage.

The current consulting geotechnical engineer has stated that two sections of the bluff failed after the rains of 1995. The first failure occurred on the west side of the property when the drainage pipe on the neighboring lot failed directing increased amounts of water onto the subject site. The second failure, on the east side of the lot occurred in the vicinity of the old stairway, just below the cut slope at the top of the bluff which could not be restored. Treated wood posts acting as erosion control devices were allowed to be placed in this portion of the bluff, under coastal development permit 5-91-775 (Za1). Below this area is where the slope failure occurred. To prevent any further erosion, the applicants placed tarps on the bluff face.

These failures of the slope resulted from uncontrolled drainage and an intrusion of water both from the broken drainage pipe and rainfall, according to the consulting geotechnical engineer. However, because of these failures, the site is now susceptible to erosion from surface runoff. The engineer states that the slope failures represent an extremely dangerous condition which will result in continued failures and degradation of the slope without the placement of erosion control devices. As a result of the recent minor failures the slope's stability has decreased leaving the near-vertical slopes more susceptible to failure. The consulting engineer has stated that up to fifteen feet of bluff has been lost from these recent slope failures. The rate of bluff retreat is expected to increase from the recent slope failures which resulted from the illegal stairway and broken drainage pipe. The

consulting geologist indicates there are deep seated failures which will occur, causing a significant loss of the bluff face. When these failures are expected to occur was not provided by the consulting geologist. The geologist has also stated that there is a fissure on the top of the bluff on the adjacent property which could continue onto the subject lot. In order to provide for a long term protection of the residence with the least amount of disturbance to the bluff, the consulting geologist is proposing to construct a soldier pile wall at the top of the bluff. The concrete swales on the bluff face are proposed to collect surface runoff and reduce erosion.

The City of Malibu has reviewed this project. The initial geology and geotechnical review sheet prepared by the City of Malibu found the project not approved in the building stage. In order to approve the plan the City of Malibu required the consulting geologist discuss the effects of continued bluff erosion and surficial instability on the face of the piles and retaining walls, and comment on potential damage to the drainage system as a result of bluff erosion and surficial instability. The City also stated that the concrete drainage swale must be periodically cleared of all loose soil, and that erosion control measures on the bluff face following construction of the improvements be provided. The City required this modification and the engineers recommendations to be shown on stamped plans.

In response to this geologic review sheet, the consulting geologist submitted an addendum to the geology report which stated that the final plans will be reviewed for compliance with their recommendations, and that a comprehensive landscape and irrigation plan will be prepared for the City's review, and that the soldier pile and retaining wall will provide stabilization needed in the future from the deep-seated failures. The consulting geologist also noted that the soldier piles and retaining walls are founded deep enough not to be affected, and that the concrete drainage swale will be maintained to insure adequate performance. Upon submittal of the addendum report, the City of Malibu approved the project with regards to geology. The City of Malibu views this development as feasible to stabilize the bluff.

Upon receipt of this application staff was concerned over the placement of the soldier piles at the edge. In response to staff's concerns, the applicant redesigned the project by moving the location of the soldier piles and retaining wall to a location which is approximately 16 feet landward of the top of the bluff. The consulting geologist stated that due to the geologic hazards on the site, the wall can not be moved any further landward. In order to be effective in retarding bluff retreat, the soldier piles and the wall must be located within the zone of failure. At its proposed location, 16 feet from the edge of the bluff, the soldier pile wall is not expected to interfere with the natural processes of bluff erosion and will not exacerbate the current conditions. Since protection of the residence and hardscaping will be necessary at some point in the future, the Commission finds that as proposed, the placement of the soldier piles landward of the edge of the bluff is consistent with Section 30235 and 30253 of the Coastal Act. Similarly, the repair and replacement of the drainage pipes on the bluff are consistent with Section 30235 and Section 30253 of the Coastal act as they provide erosion control in a non-erosive manner and do not adversely impact the natural beach or bluff processes.

The final development proposed to reduce runoff and hence erosion from the bluff is a drainage swale located on the bluff face with two smaller bench

drains. In this case, the engineer designed the drainage swale to follow the direction of the previous unpermitted stairway. The drainage swale also contains velocity reducers, called "steps." Given the steepness of the bluff face, erosion will occur, even with the drainage swale. The swale will need to be constantly maintained to be effective. The consulting geologist has stated that the drainage swale and associated structures are required to catch rain water and prevent further erosion of the bluff which will be exacerbated by the recent slope failures. The Commission finds that this situation is unique and that erosion control measures are required to reduce the erosion which has been exaggerated by the previous unpermitted developments on site.

Along with the placement of the drainage swale to catch runoff, the reduction of the erosion of the bluff through revegetation of the bluff and placement of geotextiles, such as jutte netting is critical. These measures in combination with the control of runoff over the bluff edge should significantly reduce erosion on this bluff. It should also be noted that there is very little erosion occurring at the toe of the bluff because the base of the bluff is primarily a very hard bedrock layer. Therefore, the combination of erosion control measures mentioned above should provide adequate erosion control to stabilize the bluff.

The applicant has provided a landscaping plan which incorporates these erosion control measures. However, in order for the landscape plan to be effective in mitigating erosion, the plan must comply with certain parameters. To begin with, the plan should include coverage of all exposed areas. Next, the plan should use the minimal amount of irrigation to minimize the amount of water on the bluff face. An increase in saturation of the soil will lead to further failures. Finally, the plan should use native vegetation endemic to bluffs; these endemic plant species are more likely to survive because their morphology and growth behavior is adapted to steep bluffs. The plan submitted by the applicant does not contain these parameters. Therefore the Commission finds it necessary to require the applicant to submit revised landscaping plans, as outlined in special condition 1.

Finally, the Coastal Act recognizes that development on a coastal bluff may involve the taking of some risk. The proposed measures can not completely eliminate the hazards associated with bluffs such as bluff erosion and failure. Coastal Act policies require the Commission to establish the appropriate degree of risk acceptable for the proposed development and to establish 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.

The Commission finds that due to the unforeseen possibility of erosion, bluff retreat, and slope failure, the applicant shall assume these risks as a condition of approval. Because this risk of harm cannot be completely eliminated, the Commission must require the applicant to waive any claim of liability on the part of 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 show that the applicant is aware of and appreciates the nature of hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development.

The Commission finds that only as conditioned is the project consistent with the Coastal Act sections 30235 and 30253..

C. Environmentally Sensitive Habitat Areas and 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 30240 of the Coastal Act 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 30250(a):

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30251 of the Coastal Act states:

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

Section 30230 of the Coastal Act mandates that marine resources be maintained, enhanced and when feasible restored. Areas, such as ESHAs, are to be given special protection to sustain their habitat. Likewise, Section 30240 of the Coastal Act mandates that only resource dependent uses be allowed in ESHAs. Such uses could include a fish ladder in a stream, a public trail in parkland, or restoration. These are uses which would enhance or restore an ESHA. Section 30251 of the Coastal Act suggests that development restore or enhance an area, and mandates the minimization of landform alteration and the protection of public views. Finally, Section 30250 of the Coastal Act calls for new development to not contribute, individually or cumulatively, to the degradation of coastal resources.

Consistent to Section 30240 of the Coastal Act, Policy 98 of the LUP suggests that development should have no adverse impacts on sensitive marine and beach habitat areas, and Policy 99 of the LUP suggests that development in areas adjacent to sensitive beach and marine habitat areas be designed and sited to prevent impacts which could degrade the environmentally sensitive habitats. Policy 101 suggests that only resource dependent uses be permitted in sensitive marine and beach habitats. And finally, Policy 104 of the LUP suggests that the restoration of damage to habitats, when possible, be required as a condition of permit approval. These policies, used by the Commission in guidance in numerous past permit actions, offer specific guidance to carry out Sections 30240 and 30250 of the Coastal Act.

In addition, the LUP contains a number of policies regarding viewsheds and the protection of unobstructed vistas from public roads, parks and beaches consistent with Section 30251 of the Coastal Act. These policies have been used as guidance by the Commission in numerous past permit actions in evaluating a project's consistency with Section 30251 of the Coastal Act. Policy 129, for example, suggests that structures should be designed and located so as to create an attractive appearance and harmonious relationship with the surrounding environment. Policy 128 suggests further setbacks, then required for safety, from bluffs to minimize or all together avoid impacts on public views from beaches. And finally, Policy 130 suggests that in highly scenic areas new development, which includes fences, landscaping and drainage devices, be sited and designed to protect views along the coast, minimize alteration of the natural landforms, be visually compatible with and subordinate to the character of the area and be sited so as to not significantly intrude into the skyline.

As proposed this projects calls for development on a coastal bluff. Any development on the bluff removes vegetation and therefore removes nesting, feeding, and shelter habitat for marine animals. This would result in a loss or change in the number and distribution of species. These marine species which utilize the bluffs are an important component in the ecology of marine life, including invertebrates and large marine mammals. Policy 108 and 116 of the LUP suggest that development be designed as to not disturb sensitive marine mammal habitats. Although the bluff itself will not have direct impacts on marine mammals, it will have indirect impacts through habitat loss and increased erosion. The cumulative effect of increased development on coastal bluffs would further degrade the marine habitat as well as the bluff habitat.

In this case, there is little vegetation on the upper portions of the bluff due to the extensive erosion and slope failures. The placement of erosion

control devices, in this case, would not adversely affect habitat areas if the surrounding bluff is revegetated and restored. The applicant is proposing to restore the vegetation on the bluff in locations where vegetation was lost. However the submitted landscaping plans include non-native vegetation and an extensive irrigation system. Landscaping and irrigation on the bluff will have adverse effects on the bluff if the planting plan calls for the placement of non-native vegetation which requires extensive irrigation. Likewise, planting only portions of the bluff would not maximize the erosion control or provide the maximum amount of habitat areas. The retention of non-native vegetation would diminish the habitat value on site, and the placement of jutte netting without plantings would not be beneficial to a successful project and would cause adverse visual impacts. Irrigation of the bluff face would add more water thereby reducing the stability of the slope; thus, water usage should be monitored. The applicant has stated that the irrigation is only temporary; however, this is not stated on the plans. Finally, the applicants are proposing to irrigate the entire bluff; however, the lower portion of the bluff, below the 75 foot contour line is well vegetated with native plant species such as Tree Coreopsis (Coreopsis Gigantea), and therefore no irrigation is required.

In order for the landscaping to be beneficial to the environment, and as such consistent with Sections 30240, 30231 and 30230 of the Coastal Act, the applicant shall be required to submit revised landscaping plans which incorporate the removal of non-native, invasive plants; the removal of irrigation below the 75 foot contour line, since this area is already naturally vegetated; place jutte netting on site only in conjunction with the placement of plants; state on the plans that the irrigation will be removed within two years of the commencement of the project; and remove the tarps from the site.

Section 30251 of the Coastal Act mandates the preservation of scenic views from public beaches and other public locations, such as public highways. Coastal Bluffs are considered a scenic element, and development should be minimized or eliminated in order to mitigate any adverse visual impacts from public beaches. In this case, The soldier piles, as proposed, will not be visible from the public beaches below the subject site, and as such is consistent with Section 30251 of the Coastal Act. The landscaping of the bluff, in addition to benefiting the environmental value of the bluff, also enhances the public view. The landscaping also screens the drainage swale, which will be at least partially visible, from the public beaches. As stated above, the placement of the drainage swale is necessary and landscaping will mitigate the visual impacts of the drainage swale. Finally, the project calls for the replacement of the drainage pipes on the bluff face. To protect the visual views of the site, the drainage pipes and swale, which are necessary for control of runoff, should be of a natural earth tone color. Bright, white or black colors are noticeable and break up the pristine bluff views. This color restriction is noted in special condition 3.

The Commission finds that only as conditioned for landscaping and color restricting the drainage pipe, is the proposed project consistent with Sections 30230, 30231, 30240, 30250, and 30251 of the Coastal Act.

D. 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 coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Section 30604(a) of the Coastal Act provides that the Commission shall issue a Coastal Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act. As conditioned, the development will not create adverse impacts and is consistent with the applicable sections of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the ability of the City of Malibu to prepare a certifiable Local Coastal Program that is consistent with the policies of Chapter 3 of the Coastal Act.

E. CEQA

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit application to be supported by a finding showing the application, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(i) 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 impact which the activity may have on the environment.

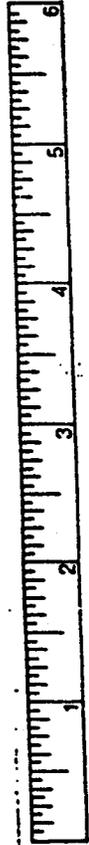
As conditioned, there are no negative impacts caused by the proposed development which have not been adequately mitigated. Therefore, the proposed project, only as conditioned, is found consistent with CEQA and the policies of the Coastal Act.

1807M

Exhibit 1: Location Map
4-95-110

COPYRIGHT © 1988 BY Thomas Bros Maps





1-800-3

TRW•REDI

4473 15
SCALE 1" = 100'

1992
ENCINAL CANYON RD.
PACIFIC COAST HIGHWAY

RECEIVED
JUN 2 1995
CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

25

5

11

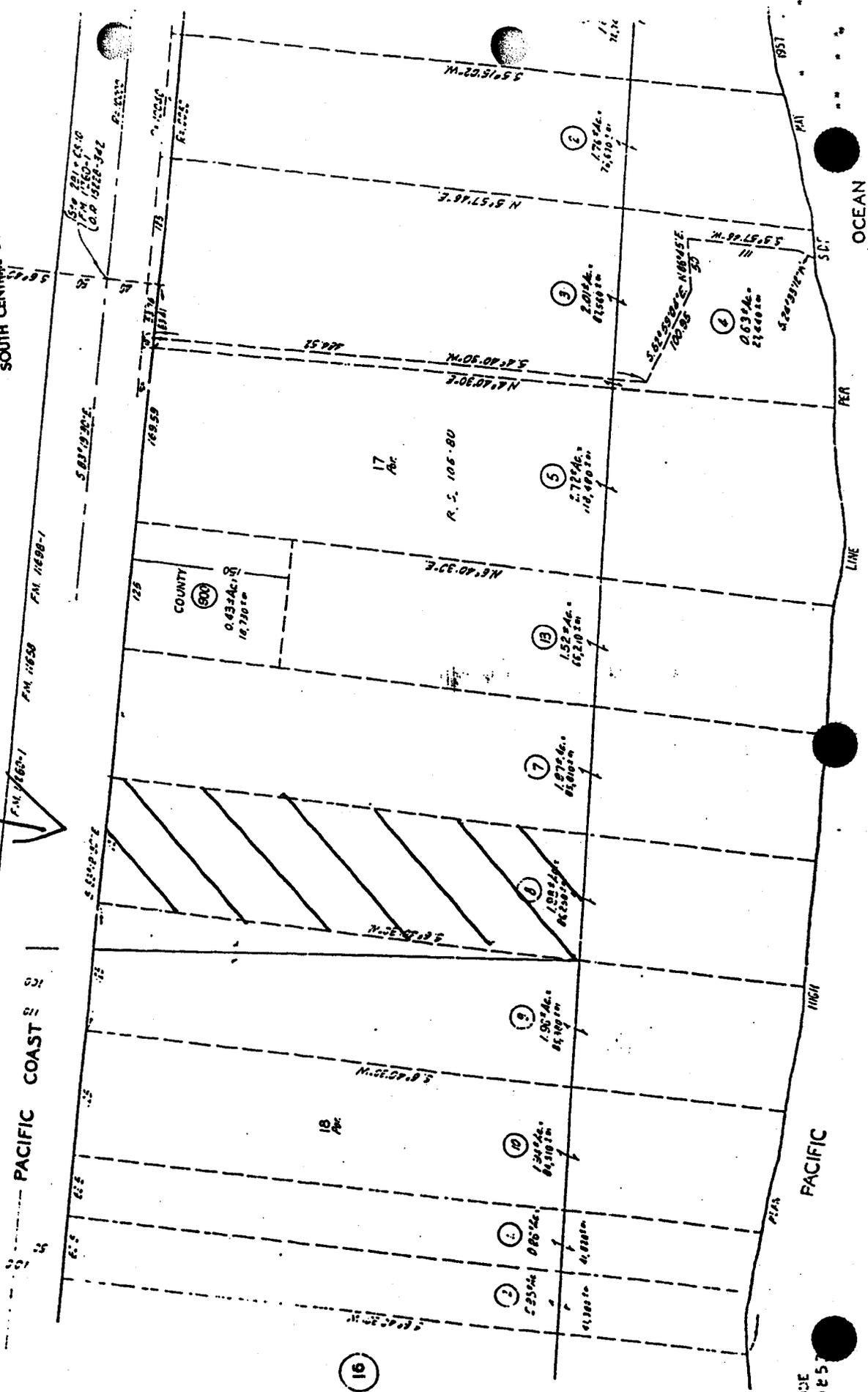


Exhibit 2: Parcel Map
4-95-110

SCALE 1" = 100'

PACIFIC HIGHWAY

OCEAN

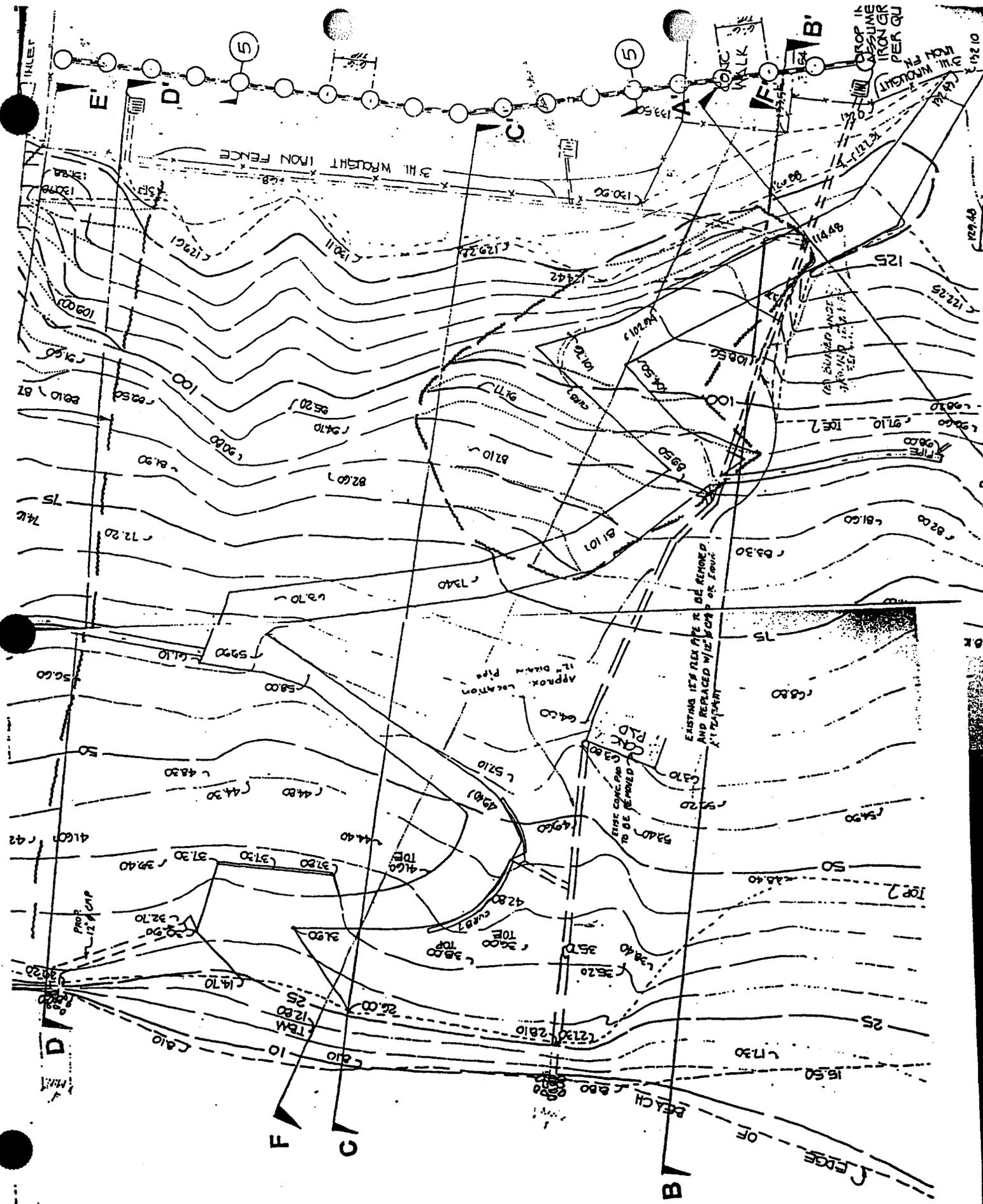


Exhibit 3: Site Plan

4-95-110

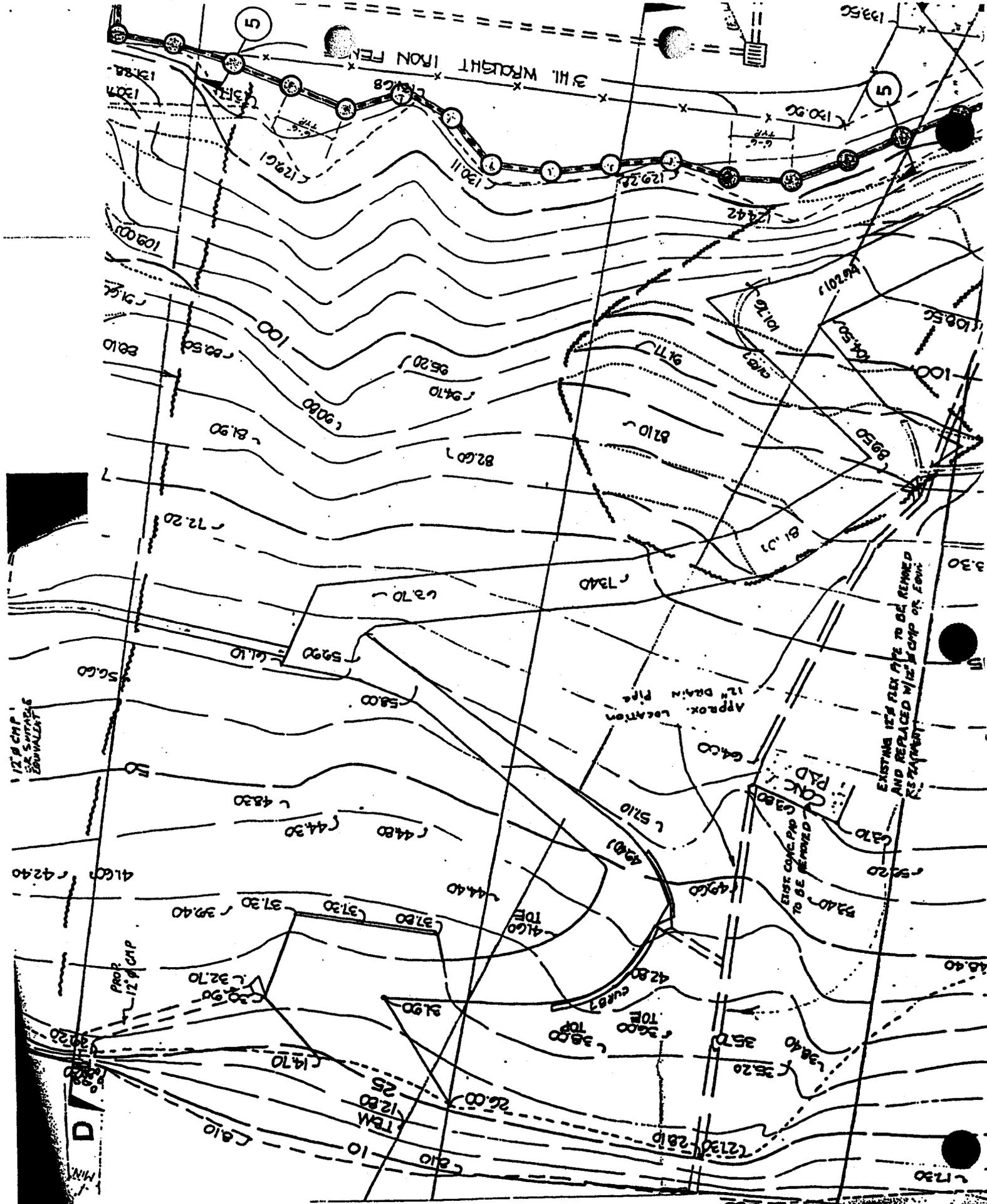
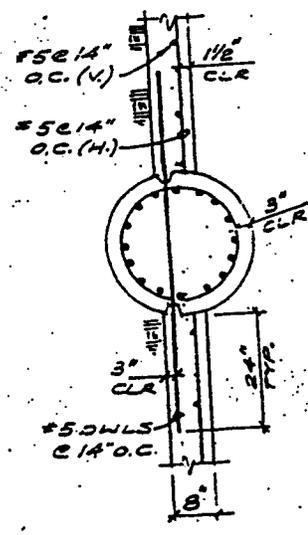


Exhibit 4: Previous Site Plan
 4-95-110 with soldier piles
 at top of bluff

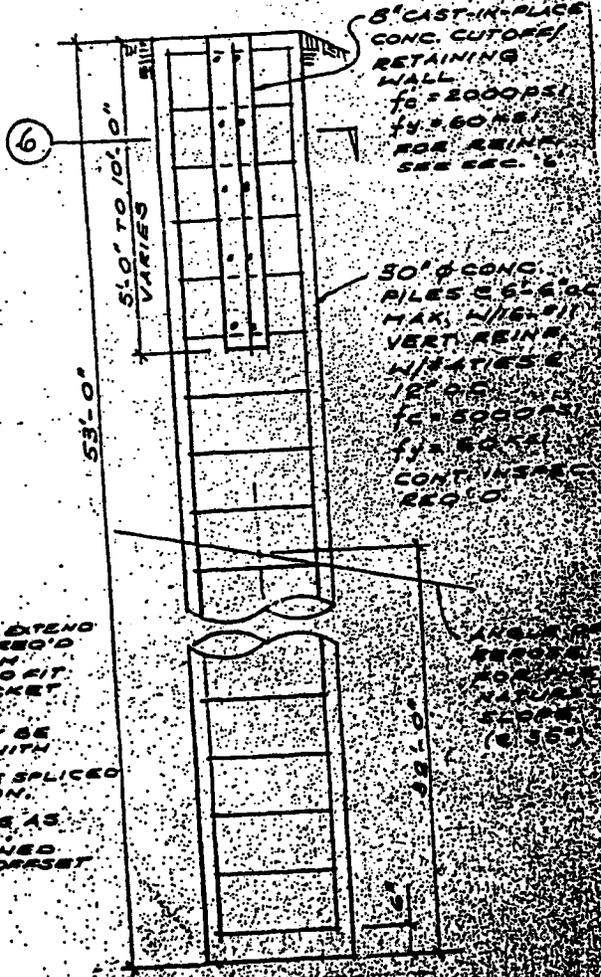
- PORTLAND CEMENT SHALL BE TYPE II, LOW ALKALI, CONFORMING TO U.B.C. STD. 28-1
- AGGREGATE FOR HARDROCK CONCRETE SHALL CONFORM TO ASTM C 33.
- BEFORE CONCRETE IS PLACED CHECK WITH ALL TRADES TO ENSURE PROPER PLACEMENT OF ALL OPENINGS, SLEEVES, CONDUITS, CURBS, ETC., RELATING TO THE WORK.
- ALL WATER SHALL BE REMOVED FROM FOUNDATION EXCAVATIONS PRIOR TO PLACING CONCRETE.
- BAR SPLICES IN CONCRETE SHALL LAP 30 BAR DIAMETERS MINIMUM AND MAY BE WIRED TOGETHER, UNLESS OTHERWISE NOTED ON PLANS.
- NO MORE THAN ONE GRADE OF CONCRETE SHALL BE ALLOWED ON THE JOBSITE AT ANY TIME.



SECTION 6

NOTES:

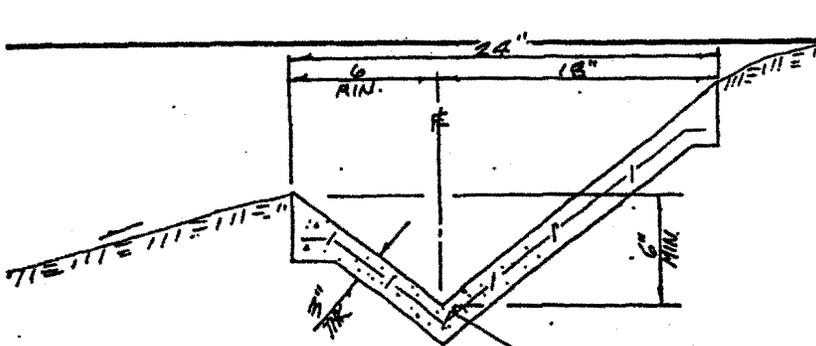
1. PROVIDE CONG. TUBE EXTEND 2' BELOW GRADE AS REQ'D FOR CONG. PILE FORM BEND #5 DOHLS TO FIT IN BLOCK-OUT POCKET AS REQ'D.
2. VERT. SPLICE MAY BE AT ANY SECTION WITH MIN 96" LAP. ALL BARS MAY BE SPLICED AT SAME LOCATION.
3. BENT VERT. BARS AS REQ'D & SPLICE PORTION OF AN OFFSET BAR SHALL NOT EXCEED 1 IN 6.



DETAIL NO 5

N.T.S.

INLET
AND ELEVATION
RATE 132.10
QUIROS SURVEY



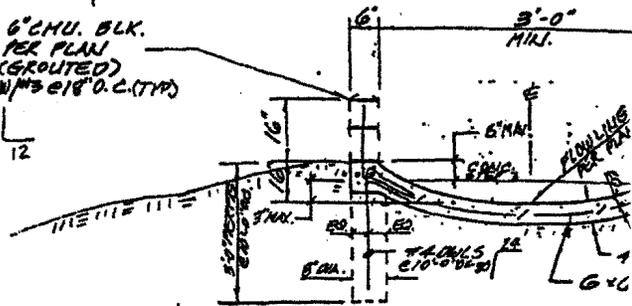
DETAIL NO. 1

NTS

CONC. REINFORCED
W/ 6x6, 10/10 W.W.H.

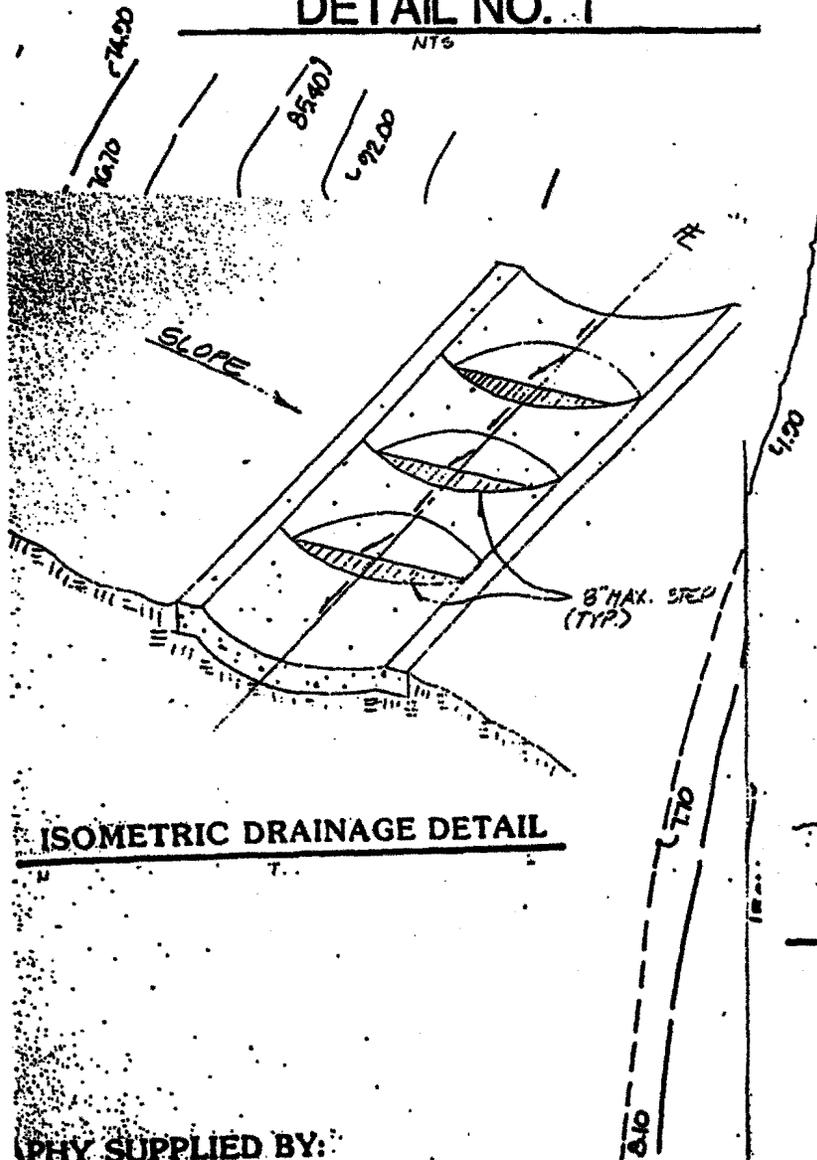
6" CHU. BLK.
PER PLAN
(GROUTED)
W/ 3 @ 18" O.C. (TYP)

12



DETAIL NO.

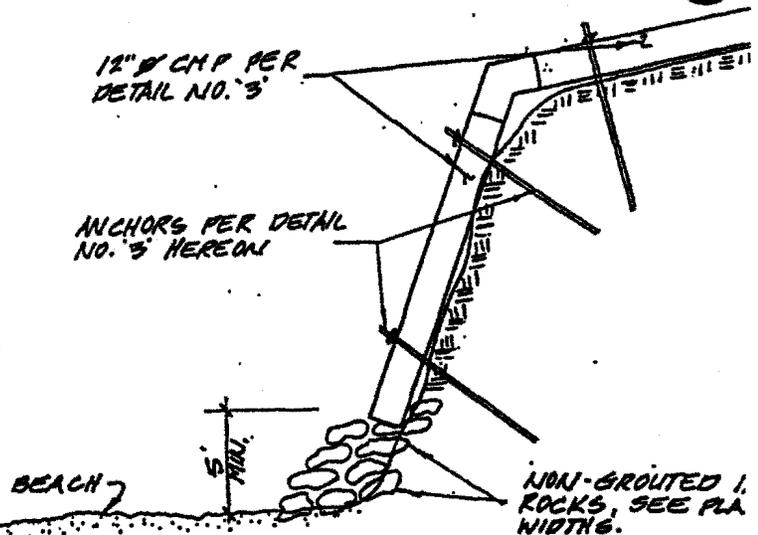
ACCESS FOR SLOPE MA



ISOMETRIC DRAINAGE DETAIL

12" x 8" CMP PER
DETAIL NO. 3

ANCHORS PER DETAIL
NO. 3 HEREON



NON-GROUTED
ROCKS, SEE PLA
WIDTHS.

DETAIL NO. 4

NTS

PHY SUPPLIED BY:

BETZ SURVEYORS
110 865 0021

Exhibit 6: Drainage Details

- 4-95-110

GEOLOGY REFERRAL SHEET

TO: City Geologist
FROM: Planning Department - Case Planner S. Mystrom
DATE: 5/15/95
PROJECT #: PPR 95-077
JOB ADDRESS: 32588 PCH

PROJECT DESCRIPTION:

Coastal Bluff Slope Repair

- The project requires California Coastal Commission review.
- The project previously received a Coastal Commission Development permit but because of revisions needs to obtain a waiver, amendment, or immaterial amendment from the Coastal Commission.
- The project does not require Coastal Commission review.

TO: Malibu Planning Department and/or Applicant
FROM: City Geologist
DATE: 5-18-95

RECEIVED
JUN 2 1995
CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

- The project is geologically feasible and can proceed through the planning process.*
- The project cannot proceed through planning until geological feasibility is determined. A geology review deposit of \$625.00 will be required. In addition, geology and geotechnical (soils) reports may be required which evaluate the site conditions, factor or safety, and potential geologic hazards. All reports should conform to report guidelines established by the City. An additional \$625.00 deposit may be required for review by the City's geotechnical consultant.

[Signature]
Signature

5-18-95
Date

NOTE: Determination of geologic feasibility for planning should not be construed as approval of building and/or grading plans which need to be submitted for Building Department approval. At that time, those plans may require approval of both the City Geologist and Geotechnical Engineer. Additional requirements/conditions may be imposed at the time building and/or grading plans are submitted for review, including requiring geology and geotechnical reports.

* Based upon West Coast Geotechnical report (5-10-95).

Detailed re Exhibit 7: City Geology Approval
4-95-110

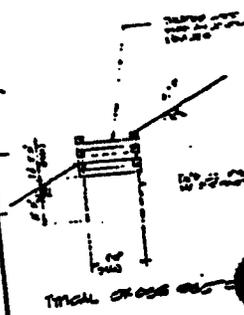
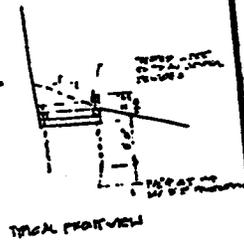
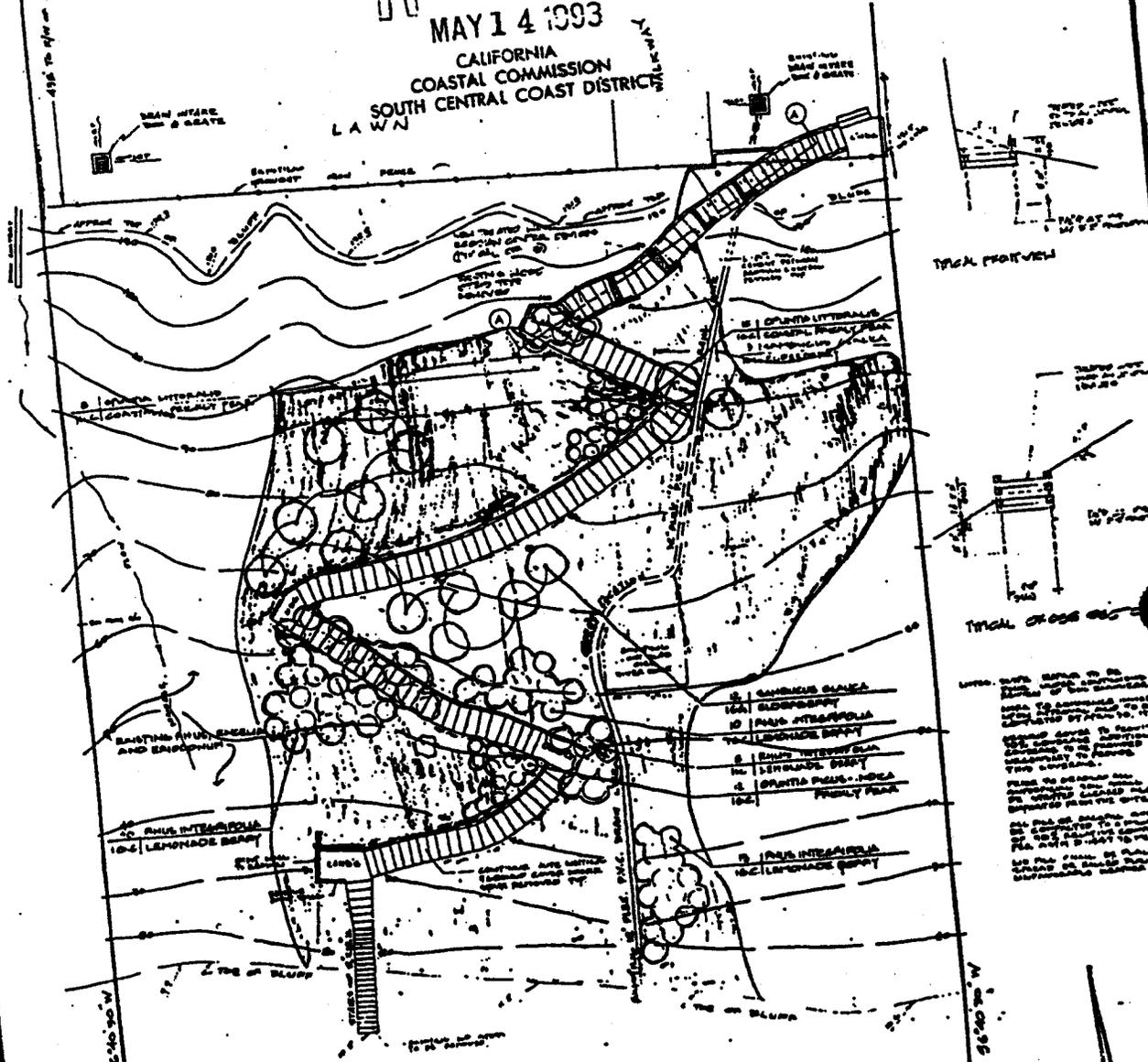
95-110

LEGEND
CALIBRATED REFERENCE OF G.C.C. POINTS
WOOD STAIRS OF G.C.C. (UNLESS OTHERWISE NOTED)
CONCRETE SURFACE
MAIN LANE FENCE
APPROX. ELEVATION SHOWN, SEA LEVEL DATUM (FOR ALL GENERAL REFERENCE AND NOT FOR SURVEY) (ELEVATION BASED ON L.C. MAP OF 1948-1949, SHEET 119 82, 100 82)

EXISTING RESIDENCE NR 32588

RECEIVED
MAY 14 1993

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT
L.A.W.N.



- 1. SANDSTONE SLABS
- 2. CONCRETE
- 3. 1/2" PLANK INTERSTITIAL
- 4. 1/2" LEHNADE BRIST
- 5. 1/2" SANDSTONE SLABS
- 6. 1/2" LEHNADE BRIST
- 7. 1/2" SANDSTONE SLABS
- 8. 1/2" LEHNADE BRIST
- 9. 1/2" SANDSTONE SLABS
- 10. 1/2" LEHNADE BRIST

NOTE:
CONSTRUCTION TO PROVIDE 100% IRRADIATION COVERAGE
UNITS NOTED ABOVE TO BE INSTALLED IN EACH
SECTION BY OWNER. UNPERMITTED UNITS TO
BE PART OF L.A.W.N. 20000 AND BECAUSE
OF OTHER 20000, 20000 TO BE REMOVED.

WHITE METAL ANCHORED WITH 2" PLANK
STAIRS OF G.C.C. (UNLESS OTHERWISE NOTED)
PLANT OF G.C.C. (UNLESS OTHERWISE NOTED)
FROM G.C.C. PLANS OF 1948-49.

ADVISORY:
GENERAL ENGINEERING
1110 11th Street
Malibu, CA 90263
(805) 457-0775

OWNER:
1110 11th Street
Malibu, CA 90263
(805) 457-0775

PERKINS & SPITS
Landscape Architects
2221 10th Street
Santa Monica, California 90404
310-310-0775, Fax 310-310-0775

MAP SHOWING LOCATION OF
EXISTING WOOD STAIRWAY OVER
BLUES BEACH TO THE PROPERTY
AT BEACH TRAFFIC CONCERN
CITY OF MALIBU, CA.
SURVEYED ON SEPT. 12, 1991
BY SURVEYOR SURVEYING
CITY OF MALIBU, CA 90263
C. P. Smith

Exhibit 8: Unpermitted Stairs
before removal
4-95-110

UE: 9/15/93 1009-4-D

CALIFORNIA COASTAL COMMISSION

SOUTH COAST AREA
 245 W. BROADWAY, STE. 380
 P.O. BOX 1450
 LONG BEACH, CA 90802-4416
 (213) 590-5071

Date: December 2, 1991

TO: Hossein Zal
32588 Pacific Coast Highway
Malibu, CA. 90265

SUBJECT: Waiver of Coastal Development Permit Requirement/De Minimis
 Developments—Section 30624.7 of the Coastal Act

Based on your project plans and information provided in your permit application for the development described below, the Executive Director of the Coastal Commission hereby waives the requirement for a Coastal Development Permit pursuant to Section 13238.1, Title 14, California Administrative Code. If, at a later date, this information is found to be incorrect or the plans revised, this decision will become invalid; and, any development occurring must cease until a coastal development permit is obtained or any discrepancy is resolved in writing.

WAIVER # 5-91-775 APPLICANT: Hossein Zal

LOCATION: 32588 Pacific Coast Highway, City of Malibu; Los Angeles County

PROPOSED DEVELOPMENT: Removal of steps, placed without a coastal development permit and denied in coastal development permit application 5-91-632, on a coastal bluff, placement of 5 treated-wood erosion control devices requiring 12 cubic yards of grading, and the revegetation of the bluff with plants endemic to coastal bluffs of the Santa Monica Mountains. All work is to be completed by April 30, 1992; revegetation of the bluff will provide ninety percent coverage of the affected area within ninety days of issuance of the waiver, and, if necessary, replanting will be repeated if the initial planting does not provide adequate coverage.

RATIONALE: The project will resolve an existing violation. It will improve the stability of the site and will have positive environmental impacts by increasing the habitat area and decreasing the amount of disturbed bluff area. In addition, the proposed development will have no adverse impacts on coastal access or resources, is consistent with the County's certified LUP and the Chapter 3 policies of the Coastal Act

This waiver will not become effective until reported to the Commission at their December 10-13, 1991, meeting and the site of the proposed development has been appropriately noticed, pursuant to 13054(b) of the Administrative Code. The enclosed Notice Card shall remain posted at the site until the waiver has been validated and no less than seven days prior to the Commission hearing. If four (4) Commissioners object to this waiver of permit requirements, a coastal development permit will be required.

Charles Damm
 CHARLES DAMM
 South Coast District Director

by: Amy

RECEIVED
 JUN 2 1995

cc: Commissioners/File
 2987E

CALIFORNIA
 COASTAL COMMISSION
 CENTRAL COAST DISTRICT

Exhibit 5

CALIFORNIA COASTAL COMMISSION

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



Page 1 of 3
 Date: July 8, 1998
 Permit Application No. 4-97-162

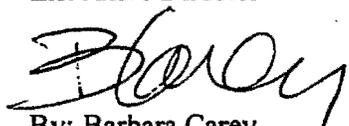
COASTAL DEVELOPMENT PERMIT

On July 7, 1998, the California Coastal Commission granted to Pepperdine University, permit 4-97-162, subject to the attached Standard and Special Conditions, for development consisting of: Landslide remediation including: installation of 27 shear pin caissons ranging from 26 to 43 ft. long; excavation and recompaction of 6,000 cu. yds. of material; export of 18,000 cu. yds. of cut; construction of 253-foot long shotcrete retaining wall (15 ft. max. height); construction of drainage facilities; installation of inclinometers and dewatering systems; removal of existing non-native vegetation and installation of native and non-native vegetation with irrigation; removal and reconstruction of stairs; demolition and reconstruction of existing pool; repairs Latigo Shore Drive, including installation of curb/gutter. (This is a follow-up permit to Emergency Permit 4-97-162-G) and is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 26800 Pacific Coast Highway and 26755 Latigo Shore Drive, Malibu.

Issued on behalf of the California Coastal Commission by,

PETER DOUGLAS
 Executive Director


 By: Barbara Carey
 Coastal Program Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions there

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: public entity is not liable for injury caused by the issuance. . . of any permit. . . " applies to the issuance of this perm

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Adm. Code Section 13158(a).

 Date

 Permittee

A5:

8/

COASTAL DEVELOPMENT PERMIT

Page 1 of 1
Permit Application No. 4-97-16

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 in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans shall 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 project during its development, 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 terms and conditions.

SPECIAL CONDITIONS:

① Assumption of Risk

Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that: (a) the applicant understands that the site may be subject to extraordinary hazard from landslides and erosion and the applicant assumes the risks related to this project from such hazards; and that (b) the applicant unconditionally waives any claim of liability against the California Coastal Commission and agrees to indemnify and hold harmless the California Coastal Commission, its officers, agents and employees relative to the California Coastal Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the interest conveyed and any other encumbrances which may affect said interest.

COASTAL DEVELOPMENT PERMIT

Page 3 of
Permit Application No. 4-97-16

2. Drainage and Erosion Control.

The applicant shall monitor and maintain all surface and subsurface drainage and erosion control facilities in proper working order per the original design specifications. Should any erosion result from drainage from the project site, the applicant shall be responsible for any necessary repairs and restoration.

3. Landscaping Monitoring.

All planting shall be adequate to provide 90 percent coverage within (2) years. Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued coverage. The applicant shall monitor the landscaping on the project site for a period of five (5) years. The applicant shall submit to the Executive Director an annual report on the status of the revegetation, prepared by a qualified biologist, detailing the success of the plantings, including recommendations, if necessary, for additional plantings or other corrective measures. Said reports shall be submitted no later than May 1st of each year. The first report shall be submitted no later than May 1, 1999.

If the consulting biologist determines that additional or different plantings are required, the applicant shall be required to install such plantings by the beginning of the rainy season of that year. If at the completion of the fifth year of monitoring, the consulting biologist determines that the revegetation has, in part or whole, been unsuccessful, the applicant shall submit a revised landscaping plan to remedy those aspects of the original plan that were not successful. The revised plan shall be processed as an amendment to this permit.

TUE 20h

CALIFORNIA COASTAL COMMISSION

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

Filed: 6/8/98
 49th Day: 7/27/98
 180th Day: 12/5/98
 Staff: CAREY *[Signature]*
 Staff Report: 6/18/98
 Hearing Date: 7/7-10/98

**STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER: 4-97-162****APPLICANT: Pepperdine University AGENT: Envicom Corporation****PROJECT LOCATION: 26800 Pacific Coast Highway and 26755 Latigo Shore Drive, City of Malibu, Los Angeles County**

PROJECT DESCRIPTION: Landslide remediation including: installation of 27 shear pin caissons ranging from 26 to 43 ft. long; excavation and recompaction of 6,000 cu. yds. of material; export of 18,000 cu. yds. of cut; construction of 253-foot long shotcrete retaining wall (15 ft. max. height); construction of drainage facilities; installation of inclinometers and dewatering systems; removal of existing non-native vegetation and installation of native and non-native vegetation with irrigation; removal and reconstruction of stairs; demolition and reconstruction of existing pool; repairs to Latigo Shore Drive, including installation of curb/gutter. (This is a follow-up permit to Emergency Permit 4-97-162-G)

LOCAL APPROVALS RECEIVED: City of Malibu Approval in Concept; Building Permits; Grading Permits; Pool and Spa Permit

SUBSTANTIVE FILE DOCUMENTS: 4-97-017 (Pepperdine); 4-97-162-G (Pepperdine), 1) Hydrology and Hydraulics Report, dated 7/21/97, Addendum to the Hydrology and Hydraulics Report, dated 9/9/97, and Addendum to the Hydrology and Hydraulics Report, dated 10/14/97, all prepared by Robert Bein, William Frost, and Associates; and 2) Preliminary Geotechnical Investigation, dated 7/22/97, Supplemental Geotechnical Review of Revised Grading Plans and Response to City of Malibu Geology and Geotechnical Engineering Review Sheet, dated 8/8/97, Recommendations for Stabilization Fill Construction, dated 11/5/97, Review of Stabilization/Fill Revision to Grading Plans, 11/14/97, Geotechnical Recommendations for Pool Construction, dated 8/26/97, and Geotechnical Observation, Testing, and As-Built Report for the South Annex Landslide Stabilization, dated 5/6/98, all prepared by Stoney-Miller Consultants, Inc.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval of the proposed project with special conditions relating to assumption of risk, maintenance of drainage and erosion control facilities, and landscape monitoring. As conditioned, the proposed project will minimize risks from geologic hazard and minimize landform alteration and impacts to visual resources, consistent with Sections 30253 and 30251 of the Coastal Act.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with conditions.

The Commission hereby **grants** a permit, subject to the conditions below, for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, is located between the sea and the first public road nearest the shoreline and is in conformity with the public access and public recreation policies of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions:

1. **Notice of Receipt and Acknowledgement.** 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.

Prior to the issuance of the coastal development permit, the applicant as landowner shall execute and record a deed restriction, in a form and content acceptable to the Executive Director, which shall provide that: (a) the applicant understands that the site may be subject to extraordinary hazard from landsliding and the applicant assumes the liability from such hazards; and that (b) the applicant unconditionally waives any claim of liability on the part of the California Coastal Commission and agrees to indemnify and hold harmless the California Coastal Commission, its officers, agents and employees relative to the California Coastal Commission's approval of the project for any damage due to natural hazards. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens which the Executive Director determines may affect the interest conveyed and any other encumbrances which may affect said interest.

2. Drainage and Erosion Control.

The applicant shall monitor and maintain all surface and subsurface drainage and erosion control facilities in proper working order per the original design specifications. Should any erosion result from drainage from the project site, the applicant shall be responsible for any necessary repairs and restoration.

3. Landscaping Monitoring.

All planting shall be adequate to provide 90 percent coverage within (2) years. Plantings shall be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued coverage. The applicant shall monitor the landscaping on the project site for a period of five (5) years. The applicant shall submit to the Executive Director an annual report on the status of the revegetation, prepared by a qualified biologist, detailing the success of the plantings, including recommendations, if necessary, for additional plantings or other corrective measures. Said reports shall be submitted no later than May 1st of each year. The first report shall be submitted no later than May 1, 1999.

If the consulting biologist determines that additional or different plantings are required, the applicant shall be required to install such plantings by the beginning of the rainy season of that year. If at the completion of the fifth year of monitoring, the consulting biologist determines that the revegetation has, in part or whole, been unsuccessful, the applicant shall submit a revised landscaping plan to remedy

those aspects of the original plan that were not successful. The revised plan shall be processed as an amendment to this permit.

IV. Findings and Declarations.

The Commission hereby finds and declares:

A. Project Description and Background.

The applicant proposes the remediation of an active landslide, including:

- installation of 27 shear pin caissons ranging from 26 to 43 ft. long;
- excavation and recompaction of 6,000 cu. yds. of material;
- export of 18,000 cu. yds. of cut;
- construction of 253-foot long shotcrete retaining wall (15 ft. max. height);
- construction of drainage facilities;
- installation of inclinometers and dewatering systems;
- removal of existing non-native vegetation and installation of native and non-native (non-invasive) vegetation with irrigation;
- removal and reconstruction of stairs;
- demolition and reconstruction of existing pool; and
- repairs to Latigo Shore Drive, including installation of curb/gutter.

The proposed remediation was approved under an Emergency Permit (4-97-162G) and the applicant has already completed the work. The property is comprised of two parcels, 5.9-acres and 4.9-acres in size. While the property is owned by Pepperdine University, the site is not located at the university's Malibu Campus. Rather, the property is located on the seaward side of Pacific Coast Highway and descends to Latigo Shore Drive. The 5.9-acre parcel (known as the "Gull's Way parcel") is developed with a single family residence, garage, guesthouse, pool, greenhouse, and landscaping. The 4.9-acre parcel (known as the "Annex parcel") is largely undeveloped, with the exception of a graded road and pad. An uninhabited mobile trailer was removed from this site. Figure 1 shows the project site vicinity. An aerial view of the project site and the approximate limits of the landslide are shown on Figure 2. Finally, Figure 3 is a photograph of the project site during the grading operation.

The subject landslide affects the southern portion of the Annex parcel, and a very small portion of the eastern edge of the Gull's Way parcel, as well as offsite beachfront parcels along Latigo Shore Drive.

The Commission has previously acted on permit requests for the subject site. In April 1997, the Commission approved Permit 4-97-017 (Pepperdine University) for the installation of an eductor well point system with above ground pipes for the purpose of dewatering and stabilizing the active landslide. The eductor well system consisted of 25 individual well points spaced approximately 10 feet on center. The total depth of the well casings was 50 feet below grade. The pumped ground water was conveyed in above-

ground pipes into an existing storm drain. Dewatering of the site was to occur for six months to two and a half years to evaluate the dewatering effect on the landslide. The project also included the placement of a 10 ft. high "bakers tank" to hold water temporarily. The water held in this tank was tested for water quality prior to release to the storm drain. In the event that the groundwater was not suitable for discharge, it was to be transported to an appropriate wastewater treatment facility for treatment. The Regional Water Quality Control Board issued a permit allowing the applicant to discharge up to 72,000 gallons per day of pumped groundwater to the storm drain. The dewatering system was in place by June 1997 and was operating while the preliminary work for slide remediation was underway. This dewatering system was dismantled in October 1997 to allow for construction of the caissons, retaining wall, and drainage devices.

In August 1997, the Executive Director approved emergency work, under Emergency Permit 4-97-162-G (Pepperdine University). This emergency work included all of the caissons, shotcrete wall, grading, drainage, revegetation, road improvements and other development proposed herein. The Executive Director determined that an unexpected occurrence in the form of continuing displacement of landslide mass causing damage to Latigo Shore Drive and occupied downslope residential structures at 26750, 26758, 26766, and 26770 Latigo Shore Drive required immediate action to prevent or mitigate loss or damage to life, health, property or essential public services. The landslide remediation was approved and construction was inspected by the City of Malibu. The construction was carried out throughout Fall 1997 and was completed by April 1998. As a condition of the Emergency Permit, the applicant was required to apply for a regular Coastal Permit to have the emergency work be considered permanent.

B. Hazards.

Section 30253 of the Coastal Act states, in part, that:

New development shall:

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

The proposed development would be located in the Santa Monica Mountains, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

The applicant proposes the remediation of an active landslide, including the partial removal of the landslide, the provision of lateral support to the landslide through the use of caissons as shear pins, the construction of a shotcrete wall supported on soldier piles to retain the slope above the area of slide debris removal, and the installation of hydraugers.

The applicant has submitted the following reports regarding the proposed project: 1) Hydrology and Hydraulics Report, dated 7/21/97, Addendum to the Hydrology and Hydraulics Report, dated 9/9/97, and Addendum to the Hydrology and Hydraulics Report, dated 10/14/97, all prepared by Robert Bein, William Frost, and Associates; and 2) Preliminary Geotechnical Investigation, dated 7/22/97, Supplemental Geotechnical Review of Revised Grading Plans and Response to City of Malibu Geology and Geotechnical Engineering Review Sheet, dated 8/8/97, Recommendations for Stabilization Fill Construction, dated 11/5/97, Review of Stabilization/Fill Revision to Grading Plans, 11/14/97, Geotechnical Recommendations for Pool Construction, dated 8/26/97, and Geotechnical Observation, Testing, and As-Built Report for the South Annex Landslide Stabilization, dated 5/6/98, all prepared by Stoney-Miller Consultants, Inc.

The subject landslide affects the southern portion of the Annex parcel, and a very small portion of the eastern edge of the Gull's Way parcel, as well as offsite beachfront parcels along Latigo Shore Drive. The approximate boundaries of the subject slide are shown on Figure 2. There is also a landslide complex which, in part, affects the east side of the Annex parcel. The geologists state that:

These geologically ancient but periodically re-activated landslides, informally known as the Latigo Shore Landslide, extend to the east beneath existing residential buildings and are believed to extend to the south beneath residences along Latigo Shore Drive and beyond the shoreline. The South Annex Landslide [*the subject slide*] is located south of the Latigo Shore Landslide complex, separated by an intact bedrock "ridge". (Stoney-Miller Consultants, Inc. 7/22/97)

The subject slide, referred to as the "South Annex Landslide" is also a geologically ancient but recently re-activated slide which is less than 1½ acres in area. The slide is composed of blocks of siltstone, claystone, and sandstone bedrock, overlain by silt and sandy surficial deposits. The geologists estimate the maximum thickness of the slide to be approximately 40 feet.

As stated above, the applicants installed an eductor well system to dewater the slide, slowing its movement in order to provide time to develop remediation plans and to provide site safety during the initial construction. The applicants also monitored the movement of the slide through the use of piezometers to measure groundwater levels and inclinometers to measure ground movement. As of July 1997, the applicant stated that: "the failure has translated horizontally 17.26 inches in an easterly direction, with apparent vertical ground displacement of approximately one foot". As discussed above, the applicant requested an emergency approval to proceed with the slide remediation in August 1997, stating that: "failure to institute on-site emergency work to stabilize the

landslide will result in continuing displacement of the slide mass and damage to Latigo Shore Drive and occupied downslope residential structures..." An Emergency Permit (4-97-162-G) was granted and the slope repair project was carried out. The applicant now proposes a regular permit to make the remediation work permanent.

SPECIFIC PROJECT ELEMENTS

As detailed in the Geotechnical Observation, Testing, and As-Built Report for the South Annex Landslide Stabilization, dated 5/6/98, prepared by Stoney-Miller Consultants, Inc. and as shown on the as-built plans, the specific elements included in the proposed slope remediation project are:

The installation of 27 shear pin caissons ranging from 26 to 43 ft. long. The three foot diameter caissons were drilled and poured in place in two parallel rows perpendicular to the direction of slide movement. These shear pins provide lateral support to the landslide and are used in lieu of a buttress fill. The caissons range in length from 26.3 feet to 44.1 feet. The location of the caissons is shown on Figure 4.

The construction of a 253-foot long shotcrete retaining wall (15 ft. max. height). This wall is supported on 44, two-foot diameter H-beam reinforced soldier piles. The wall is located along the eastern edge of the Gull's Way parcel and accommodates the grade change between developed upper parcel and the slope resulting from the landslide removal. In order to construct this wall, the project includes the **demolition and reconstruction of the existing pool** that is part of the Gull's Way estate. The pool has not yet been reconstructed.

The excavation and recompaction of 6,000 cu. yds. of material and the export of 18,000 cu. yds. of cut. The 18,000 cu. yds. of material was cut to remove a portion of the slide material. The geology report states that: "...in conjunction with the shear pins previously installed and the dewatering provisions, this partial removal of the landslide provides adequate mitigation of potential gross instability within this portion of the Annex property". Just upslope of the shear pin caissons, a stabilization key was excavated and recompacted to support the fill slope from the point up to the soldier-pile retaining wall. Figure 4 shows the limits of the grading. Latigo Shore Drive and the Gull's Way roadway were regraded and paved and repairs were made to Latigo Shore Drive, including installation of curb/gutter. The excess cut material was transported to Kanan Dume Road and utilized in the repair of that facility.

The construction of drainage facilities, including both surface and subsurface drainage in order to improve site surface drainage and to maintain groundwater conditions near or below design stability levels. Surface drainage from the reconstructed slope, behind the retaining wall, and from the pool area is conveyed in v-ditches, intercepted into subsurface pipes and conveyed to an existing storm drain which crosses under Latigo Shore Drive. Additionally, a permanent dewatering system, consisting of 21 hydraugers was installed just above Latigo Shore Drive. The hydraugers provide for the drainage of groundwater in order to ensure that groundwater

levels do not destabilize the reconstructed slope. The groundwater flow is also conveyed to the existing storm drain. Figure 5 shows the drainage plan.

During the construction of the project, several existing monitoring instruments were removed or destroyed. New **inclinometers and piezometers** have been installed and the applicant will continue to read these new instruments as well as others previously in place in order to monitor slope movement and groundwater levels. Readings taken since completion of the project indicate: "the landslide movement has effectively halted with a nominal current average rate of approximately 0.02 inch per month..." A pronounced drop in the groundwater level has also been recorded since the installation of **hydraugers**.

The removal of existing non-native vegetation and installation of native and non-native vegetation with irrigation. All existing vegetation was removed in the areas of grading and construction. The landscaping plan shown in Figure 7 was prepared and submitted for staff review prior to implementation, as required by a special condition of the emergency permit. The plan consists primarily of native vegetation. The planting plan consists of "islands" of trees and shrubs planted across the reconstructed slope with a grass mix hydroseeded in the areas between. Additionally, fast-growing vines are provided adjacent to the retaining wall area.

The removal and reconstruction of stairs which provide access from the Gull's Way parcel down the slope to Latigo Shore Drive. These stairs had to be removed for the construction of the retaining wall and site grading. When the construction was completed, new stairs were constructed.

PROJECT ALTERNATIVES

The applicant states that in developing the landslide repair plan, four alternatives were also considered which include:

1. Complete site regrading;
2. Tiered tieback wall system;
3. Overall site dewatering; and
4. Buttress key and soldier pile retaining wall.

The complete site regrading alternative included the complete removal of the landslide from Latigo Shore Drive to the west. This alternative was not chosen because of the infeasibility of conducting earthwork operations at grades below sea level and the significant potential for destruction of the adjacent residences as a result of such work.

The tiered tieback wall system alternative involved the construction of up to ten retaining walls from Latigo Shore Drive upslope to the west. The constraints to implementation of this alternative included the infeasibility of constructing multiple walls in an area of active ground movement, the necessary overall height of the walls, and the visual impact of such walls.

The overall site dewatering concept alternative included the installation of sufficient dewatering wells to more thoroughly remove groundwater from the slide mass. This alternative was not chosen because adequate engineering factors of safety could not be achieved with this alternative alone.

Finally, the buttress key and soldier pile retaining wall design would have included export of 20,000 cu. yds. of landslide debris, and removal and recompaction of approximately 22,000 cu. yds. of material for the construction of a buttress key structure intersecting the slide plane. This alternative also included laying back the upper slope, terminating into a retaining wall near the location of the existing swimming pool. Although this alternative was considered feasible, the proposed project substitutes caissons for the buttress key structure, reducing site grading while achieving the same safety factors.

ANALYSIS

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in areas of high geologic, flood, and fire hazard and that it assure stability and structural integrity, and neither create nor contribute significantly to erosion, or geologic instability. As discussed above, the proposed project involves the remediation of an active landslide which endangered existing structures both above and below the slide area. The applicant considered the four alternative methods of slope repair described above. The proposed project was determined to be the most effective means of repair that could minimize landform alteration and visual impact. The applicant's geologic engineering consultants determined that the proposed project would minimize risks from geologic hazard and would assure stability. The consulting geotechnical engineers concluded that:

1. Based on our review, we consider the proposed stabilization of the South Annex Landslide to be feasible from a geotechnical engineering standpoint, provided that the recommendations of this report are implemented during design, grading, and construction. Three primary constraints must be addressed with respect to this project. They are:
 - The protection of existing improvements during and after construction.
 - Excavating large diameter caissons in the hard bedrock, below groundwater. Caving conditions should be anticipated in landslide debris.
 - Adequate long-term monitoring and maintenance of the horizontal drain system.
2. We consider that the anticipated grading will not adversely affect, nor be adversely affected by, the adjoining properties if due precautions are taken as recommended herein... (Stoney-Miller Consultants, Inc. 7/22/97)

In addition to the applicant's consultants, the project design specifications were reviewed and approved by the City of Malibu. The applicant has submitted an approved Geologic Review Sheet. Furthermore, the City permitted and inspected all aspects of

the remediation project as it was carried out. Finally, in the consulting geotechnical engineer's As-Built Report (5/6/98) for the project, the consultants conclude that:

Based on our observations as presented herein, the subject construction was performed in accordance with our recommendations and with the City of Malibu Building Code. The subject installation and grading are considered to be geotechnically acceptable.

Based on the findings and recommendations of the consulting geotechnical engineers, the approval of the City of Malibu, and the incorporation of the consultant's recommendation during the construction of the project, the Commission finds that the slope remediation can minimize risks to life and property from geologic hazards and assure stability and structural integrity, as required by Section 30253 of the Coastal Act.

Even though the consultants have determined that the slope remediation will assure stability and minimize risks from geologic hazards, the site is still subject to risk from landsliding. There are other landslides in the immediate area. The risk of harm cannot be completely eliminated. As such, the Commission finds it necessary to require the applicant to assume the risk of development. Special Condition No. 1 requires the recordation of an assumption of risk deed restriction. As conditioned to assume risk of failure, the applicant is required to waive any claim of liability against the Commission or any damage or economic harm suffered as a result of the permitted development. The applicant's assumption of risk, when executed and recorded on the property deed, will show that the applicant is aware of and appreciates the nature of hazards which exist on the site and which may adversely affect the stability or safety of the proposed development.

As described above, the proposed project includes the installation of drainage and erosion control facilities designed to ensure that surface and subsurface drainage is controlled. Additionally, hydraugers are included to maintain groundwater levels. These measures contribute greatly to the continuing stability of the site. In order to ensure that these facilities remain in good condition and operate properly, the Commission finds it necessary to require the applicant to monitor and maintain all drainage and erosion control facilities on the site. This requirement is set out in Special Condition No. 2.

In conclusion, based on the analysis discussed above, the Commission finds that the proposed development, as conditioned to assume the risk of development and to monitor and maintain all drainage and erosion control devices, will minimize risk to life and property from geologic hazard, and will assure stability and structural integrity. As such, the Commission finds that the proposed development, as so conditioned, is consistent with Section 30253 of the Coastal Act.

C. Visual Resources.

Section 30251 of the Coastal Act states that:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to

protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

As described above, the proposed slide remediation project includes grading, the removal of 18,000 cu. yds. of slide material, and the construction of a 253 foot long retaining wall which is a maximum of 15 feet in height. The proposed project is located downslope of Pacific Coast Highway and, as such, would not be visible from the highway adjacent to the project site. However, the reconstructed slope and retaining wall are visible from northbound Pacific Coast Highway south of the project site.

The proposed 18,000 cu. yds. of cut is a substantial amount of grading. The resulting manufactured slope and retaining wall could potentially impact visual resources. As discussed above, it was necessary to remediate the subject landslide in order to protect existing structures. The applicant considered alternative projects to repair the slope. One alternative would have been to completely regrade the site to remove the landslide. Although the retaining wall could have been eliminated or lowered in height, this alternative would have resulted in substantially more landform alteration and was infeasible from a technical standpoint. Another alternative considered was the use of a tiered tieback wall system which involved the construction of up to ten retaining walls from Latigo Shore Drive upslope to the west. This alternative would have reduced the amount of grading but the constraints to implementation of this alternative included the infeasibility of constructing multiple walls in an area of active ground movement, the necessary overall height of the walls, and the visual impact of such walls. As such, the proposed project minimizes landform alteration.

As part of the project, the applicant proposes to revegetate the reconstructed slope, using primarily native vegetation. The landscaping plan shown in Figure 7 was prepared and submitted for staff review prior to implementation, as required by a special condition of the emergency permit. The plan consists primarily of native vegetation. The planting plan consists of "islands" of trees and shrubs planted across the reconstructed slope with a grass mix hydroseeded in the areas between. Additionally, fast-growing vines are provided adjacent to the retaining wall area. The landscaping plan has been implemented on the site. If the vegetation thrives on the site, over time the plants will soften and lessen the visibility of the manufactured slope and retaining wall. The vines will grow over the face of the retaining wall, softening the look of the wall and minimizing its visual impact. In order to ensure that the vegetation grows well and provides adequate coverage, the Commission finds it necessary to require the applicant to monitor the site. Should the plantings fail or should they fail to provide adequate coverage, replacement or supplemental plantings shall be required. Special Condition No. 3 requires the applicant to monitor the vegetation on the project site to ensure the success of the plantings.

In conclusion, the Commission finds that the proposed slope remediation is the preferred alternative, will minimize landform alteration, and will minimize adverse impacts to visual resources provided that the revegetation of the site is successful as required by Special Condition No. 3. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30251 of the Coastal Act.

D. Public Access and Seaward Encroachment.

Coastal Act Section 30210 states that:

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

Coastal Act Section 30211 states:

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

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

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

All projects between the first public road and the sea requiring a Coastal Development Permit must be reviewed for compliance with the public access provisions of Chapter 3 of the Coastal Act. The Commission has required public access to and along the shoreline in new development projects and has required design changes in other projects to reduce interference with access to and along the shoreline. The major access issue in such permits is the occupation of sand area by a structure or blockage of access to the beach, in contradiction of Coastal Act policies 30210, 30211, and 30212. However, a conclusion that access may be mandated does not end the Commission's inquiry. As noted, Section 30210 imposes a duty on the Commission to administer the public access policies of the Coastal Act in a manner that is "consistent with ... the need to protect ... rights of private property owners..." The need to carefully review the potential impacts of a project when considering imposition of public access conditions was emphasized by the U.S. Supreme Court's decision in the case of Nollan

vs. California Coastal Commission. In that case, the court ruled that the Commission may legitimately require a lateral access easement where the proposed development has either individual or cumulative impacts which substantially impede the achievement of the State's legitimate interest in protecting access and where there is a connection, or nexus, between the impacts on access caused by the development and the easement the Commission is requiring to mitigate these impacts.

The Commission's experience in reviewing shoreline residential projects in Malibu indicates that individual and cumulative impacts on access of such projects can include among others, encroachment on lands subject to the public trust thus physically excluding the public; interference with natural shoreline processes which are necessary to maintain publicly-owned tidelands and other public beach areas; overcrowding or congestion of such tideland or beach areas; and visual or psychological interference with the public's access to and the ability to use public tideland areas.

In the case of the proposed project, the project site, while located between the first public road and the sea, is not a beachfront parcel. Rather, the site extends from Pacific Coast Highway downslope to the inland edge of Latigo Shore Drive. There are beachfronting parcels on the seaward side of Latigo Shore Drive which are developed with single family residences. The proposed project therefore, would not occupy sandy beach area. Likewise, the proposed project will obviously not extend development any further seaward. Further, there are no beach access routes currently crossing the property. Finally, the Commission has previously found in Permit 4-97-017 (Pepperdine) for temporary dewatering wells, that the drainage from the site would not result in significant ponding on the beach which could adversely impact access along the beach. The drainage from the site after the subject project would be reduced so there would still be no impact from ponding of water on the beach.

For all of these reasons, the Commission finds that the project would have no individual or cumulative adverse impacts on public access. Therefore, the Commission finds that a condition to require lateral access is not appropriate and that the project, as proposed, is consistent with Coastal Act Sections 30210, 30211, and 30212.

E. 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 Development Permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with

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

F. California Environmental Quality Act.

Section 13096(a) of the Commission's Code of Regulations requires Commission approval of a coastal development permit 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)(i) 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 would have on the environment.

The previous sections of these findings contain extensive analysis of the potential significant adverse impacts that could be caused by the proposed development as well as proposed or required mitigation measures and alternatives. Four alternatives to the proposed slope remediation were considered. The complete site regrading alternative included the complete removal of the landslide from Latigo Shore Drive to the west. This alternative was not chosen because of the infeasibility of conducting earthwork operations at grades below sea level and the significant potential for destruction of the adjacent residences as a result of such work.

The tiered tieback wall system alternative involved the construction of up to ten retaining walls from Latigo Shore Drive upslope to the west. The constraints to implementation of this alternative included the infeasibility of constructing multiple walls in an area of active ground movement, the necessary overall height of the walls, and the visual impact of such walls.

The overall site dewatering concept alternative included the installation of sufficient dewatering wells to more thoroughly remove groundwater from the slide mass. This alternative was not chosen because adequate engineering factors of safety could not be achieved with this alternative alone.

Finally, the buttress key and soldier pile retaining wall design would have included export of 20,000 cu. yds. of landslide debris, and removal and recompaction of approximately 22,000 cu. yds. of material for the construction of a buttress key structure intersecting the slide plane. This alternative also included laying back the upper slope, terminating into a retaining wall near the location of the existing swimming pool.

Although this alternative was considered feasible, the proposed project substitutes caissons for the buttress key structure, reducing site grading while achieving the same safety factors.

As such, the proposed project is the preferred alternative, minimizing landform alteration, visual impacts, and assuring structural stability. Conditions are included to require the applicant to assume the risk of development, to monitor and maintain all drainage and erosion control facilities, and to ensure the success of revegetation.

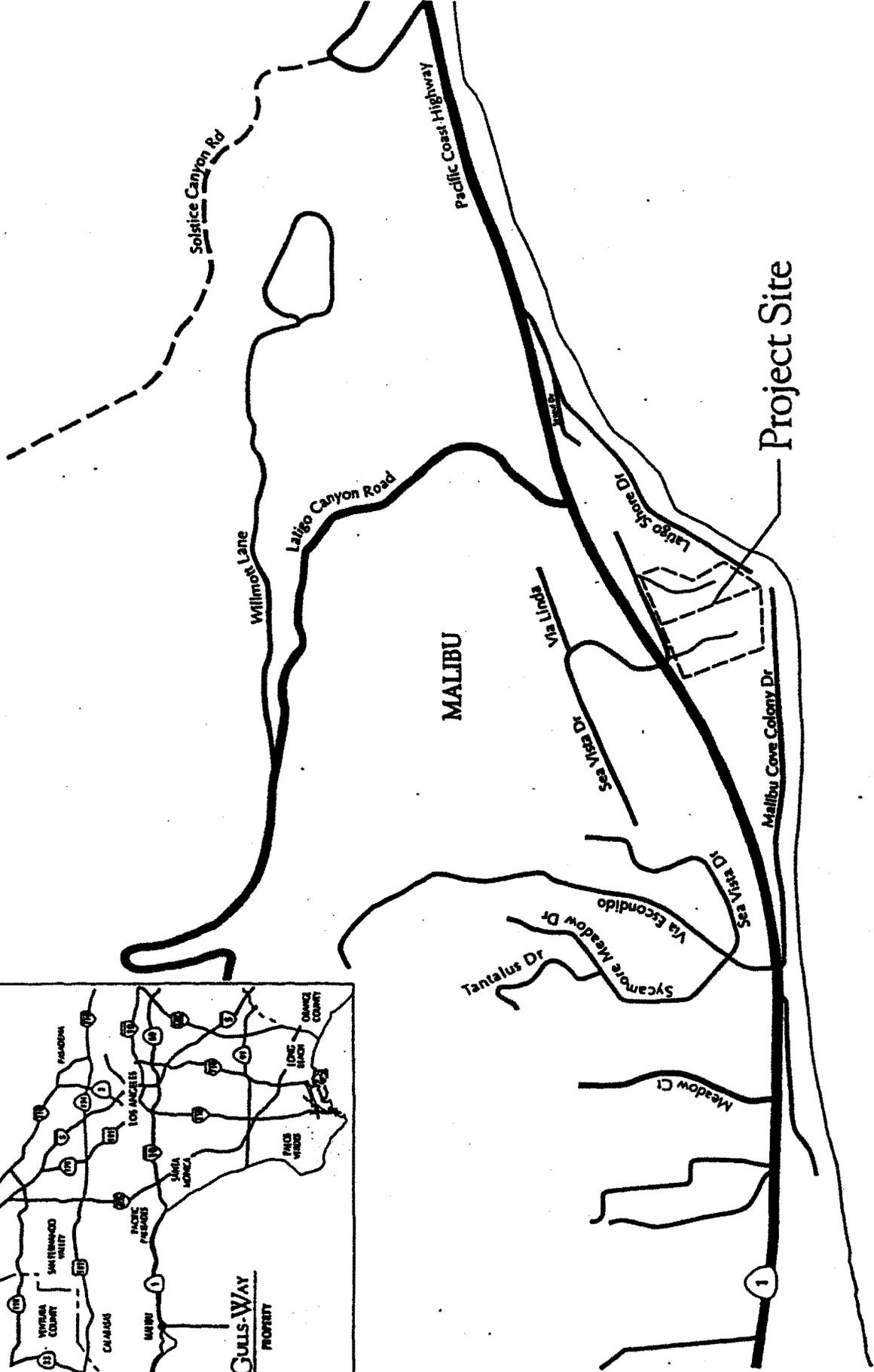
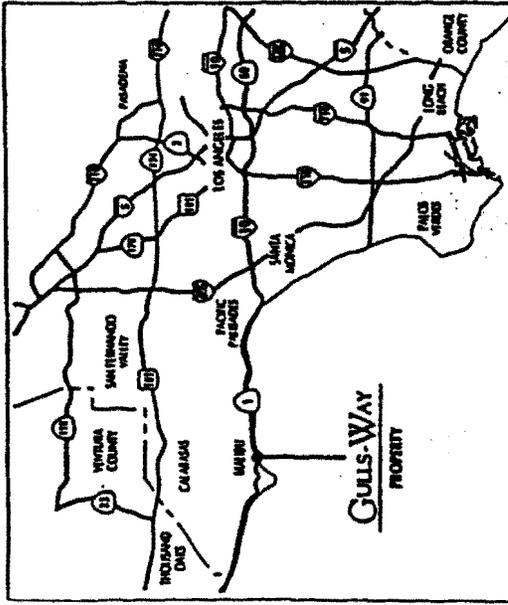
Therefore, for all the reasons discussed and cited in the above findings, the Commission finds that there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects that the project would have on the environment. The proposed development would not cause significant, adverse environmental effects that would not be adequately mitigated by the conditions imposed by the Commission. Therefore, the proposed project, as conditioned, is found consistent with CEQA and the policies of the Coastal Act.

LIST OF FIGURES

FIGURE NUMBER	DESCRIPTION
1	Vicinity Map
2	Aerial View
3	Photograph
4	Site Plan
5	Drainage Plan
6	Cross Section
7	Landscaping Plan

GULLS-WAY

PERMIT APPLICATION



LOCAL VICINITY

Prepared by:
ENVICOM



GULLS-WAY PERMIT APPLICATION



LEGEND

 Approximate Property and Parcel Boundaries

 Approximate Limits of South Annex Landslide

GULLS-WAY
PERMIT APPLICATION



Area of Stabilization Fill and
Buried "Soldier" Pilings

Prepared By:
ENVICOM
CORPORATION

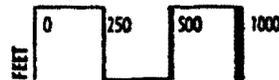
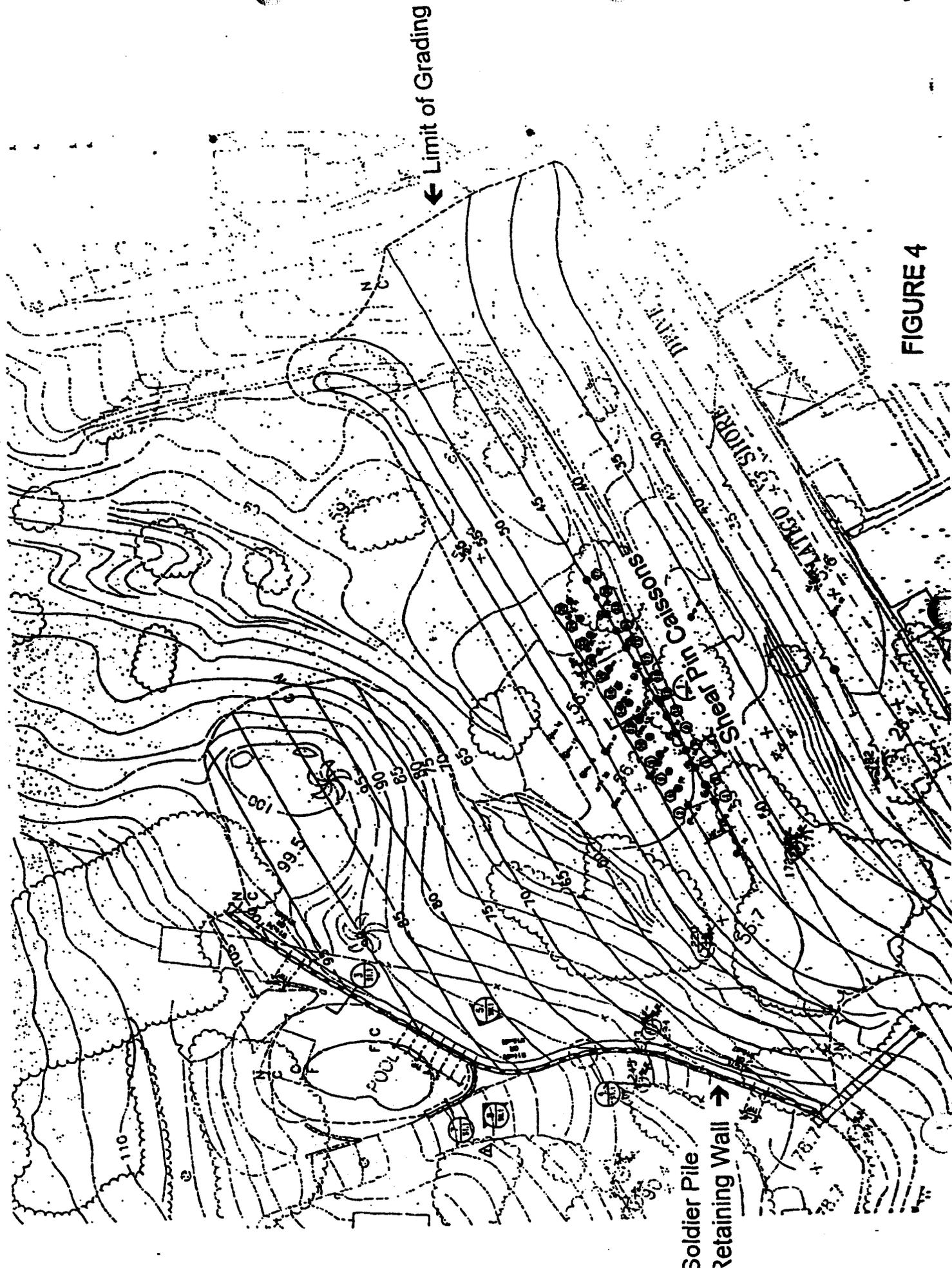
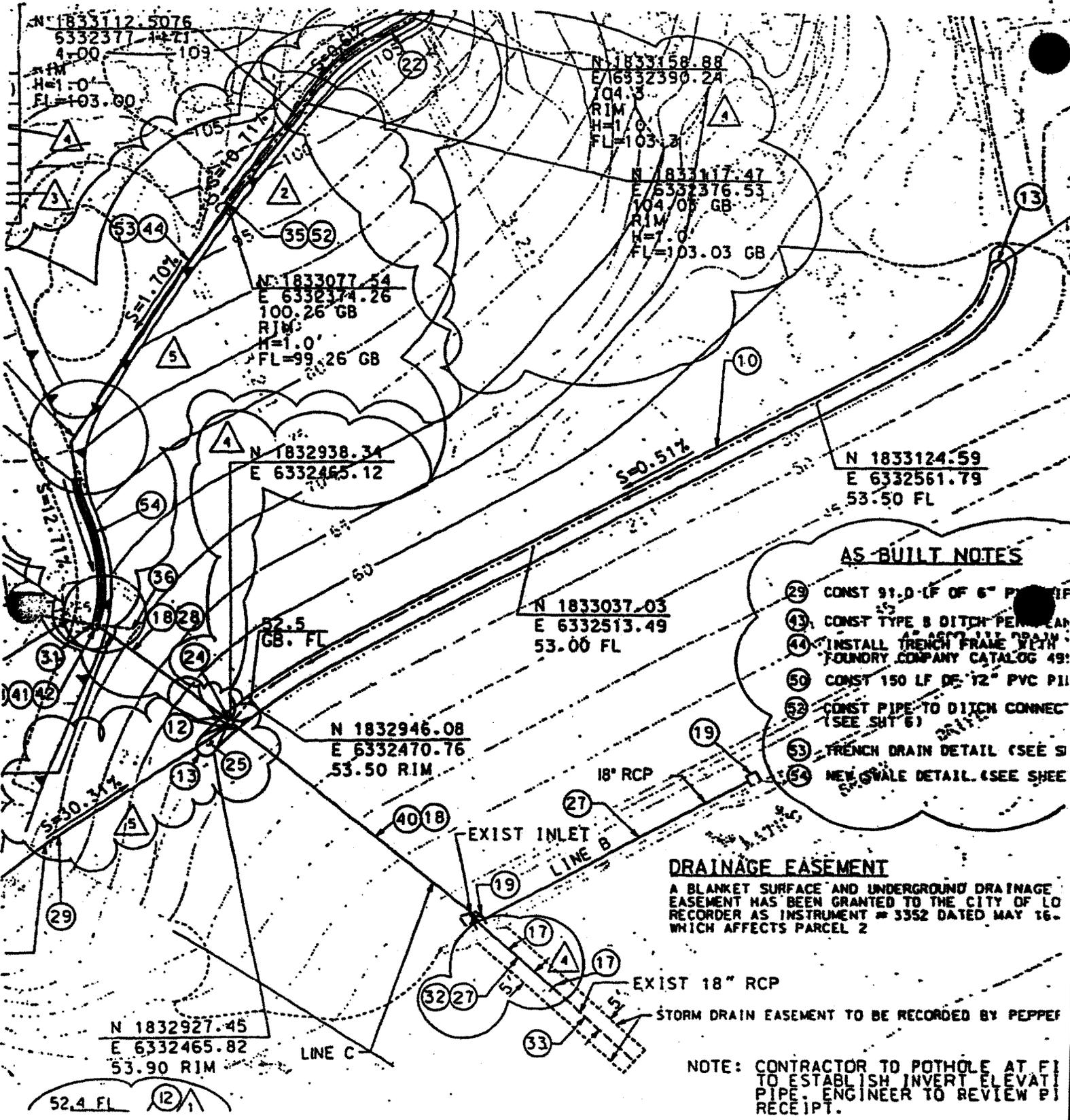


FIGURE 3





AS-BUILT NOTES

- 29 CONST 91.0 LF OF 6" PVC PIPE
- 43 CONST TYPE B DITCH PENN PAIR
- 44 INSTALL TRENCH FRAME WITH FOUNDRY COMPANY CATALOG 49:
- 50 CONST 150 LF OF 12" PVC PII
- 52 CONST PIPE TO DITCH CONNEC (SEE SUT 6)
- 53 FRENCH DRAIN DETAIL (SEE S
- 54 NEW SWALE DETAIL (SEE SHEE

DRAINAGE EASEMENT

A BLANKET SURFACE AND UNDERGROUND DRAINAGE EASEMENT HAS BEEN GRANTED TO THE CITY OF LO RECORDER AS INSTRUMENT # 3352 DATED MAY 16, WHICH AFFECTS PARCEL 2

STORM DRAIN EASEMENT TO BE RECORDED BY PEPPEP

NOTE: CONTRACTOR TO POT HOLE AT F1 TO ESTABLISH INVERT ELEVATION PIPE. ENGINEER TO REVIEW PIPE RECEIPT.

FIGURE 5

Exhibit 6

CALIFORNIA COASTAL COMMISSION

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

Page I of 4
 Date: July 15, 1999
 Permit Application No. 4-98-315

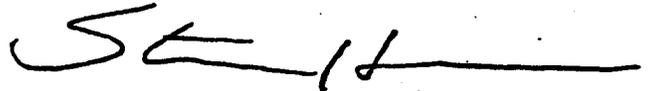
COASTAL DEVELOPMENT PERMIT

On June 7, 1999, the California Coastal Commission granted to Katherine Hayles & Patricia Moore, this permit 4-98-315, subject to the attached Standard and Special Conditions, for development consisting of: The applicants are requesting approval for 6,587 cu. yds. of grading (1,301 cu. yds. of cut, 900 cu. yds. of fill, and 4,386 cu. yds. of removal and recompaction) in order to remediate a slope failure. The proposed project also includes the widening of an existing 15 ft. wide driveway to 20-25 ft. in width, the removal of an existing rubble wall, removal of an existing 80 sq. ft. concrete structure, and removal of an existing pool and is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 22148 Monte Vista Rd. & 22155 Eden Rd. Topanga.

Issued on behalf of the California Coastal Commission by,

PETER DOUGLAS
 Executive Director



By: Steven M. Hudson
 Coastal Program Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal Admin. Code Section 13158(a).

 Date

 Permittee

A5: 8/95

COASTAL DEVELOPMENT PERMIT

Page 2 of 4
Permit Application No. 4-98-315

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 in the application for permit, subject to any special conditions 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 project during its development, 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.

SPECIAL CONDITIONS:

1. Landscaping and Erosion Control Plan

Prior to the issuance of the coastal development permit, the applicant shall submit a landscaping and erosion control plan for review and approval by the Executive Director. The plan shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

- (a) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. To minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used. Irrigated lawn, turf, or groundcover planted within a 50 ft. radius (fuel modification zone) of the proposed residence shall be selected from the most drought tolerant species, subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

COASTAL DEVELOPMENT PERMIT

Page 3

Permit Application No. 4-98-343

(b) All cut and fill slopes shall be stabilized with planting within 60 days of receipt of the certificate of occupancy. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;

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

(d) Should grading take place during the rainy season (November 1 - March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations and maintained through the development process to minimize sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location.

(e) Five years from the completion of development, the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies that the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

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

2. Plans Conforming to Geologic Recommendation

All recommendations contained in the Geologic and Soils Engineering Report by Homestead Geotechnical Consultants dated 10/30/98; Limited Geologic and Soils Engineering Report by Homestead Geotechnical Consultants dated 10/19/98; Geotechnical Response Letter by Homestead Geotechnical Consultants dated 5/7/99; Geologic and Soils Engineering Addendum Report by Homestead Geotechnical Consultants dated 4/15/99; Geologic and Soils Engineering Addendum Report by Homestead Geotechnical Consultants dated 2/18/99; and the Geologic and Soils Engineering Addendum Report by Homestead Geotechnical Consultants dated 1/13/99 shall be incorporated into all final design and construction including grading and drainage. All plans must be reviewed and approved by a geologic/geotechnical engineer as conforming to said recommendations. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

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

COASTAL DEVELOPMENT PERMIT

Page 4 of
Permit Application No. 4-98-3

3. Drainage Plans and Maintenance Responsibility

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a run-off and erosion control plan designed by a licensed engineer which assures that runoff from the road and all other impervious surfaces on the subject parcel are collected and discharged in a non-erosive manner. Site drainage shall not be accomplished by sheetflow runoff. With acceptance of this permit, the applicant agrees that should any of the project's surface or subsurface drainage structures fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

4. Removal of Excavated Material

Prior to the issuance of the coastal development permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excavated material, including concrete debris resulting from removal of the existing pool, from the site. Should the dump site be located in the Coastal Zone, a coastal development permit shall be required.

5. Assumption of Risk, Waiver of Liability and Indemnity

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

B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant, landowner(s), 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 full description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors, assigns, and shall be recorded free of prior liens that the Executive Director determines may affect enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

1000 CALIFORNIA ST., SUITE 200

JRA, CA 93001

(805) 641 - 0142

Filed: 5/17/99
49th Day: 7/5/99
180th Day: 11/13/99
Staff: S. Hudson *ja*
Staff Report: 5/20/99
Hearing Date: June 7, 1999
Commission Action:

**STAFF REPORT: CONSENT CALENDAR****APPLICATION NO.:** 4-98-315**APPLICANTS:** Katherine Hayles and Patricia Moore**PROJECT LOCATION:** 22148 Monte Vista Road and 22155 Eden Road, Topanga; Los Angeles County**PROJECT DESCRIPTION:** The applicants are requesting approval for 6,587 cu. yds. of grading (1,301 cu. yds. of cut, 900 cu. yds. of fill, and 4,386 cu. yds. of removal and recompaction) in order to remediate a slope failure. The proposed project also includes the widening of an existing 15 ft. wide driveway to 20-25 ft. in width, the removal of an existing rubble wall, removal of an existing 80 sq. ft. concrete structure, and removal of an existing pool.**LOCAL APPROVALS RECEIVED:** Los Angeles County Department of Building and Safety Approval in Concept.**SUBSTANTIVE FILE DOCUMENTS:** Geologic and Soils Engineering Report by Homestead Geotechnical Consultants dated 10/30/98; Limited Geologic and Soils Engineering Report by Homestead Geotechnical Consultants dated 10/19/98; Geotechnical Response Letter by Homestead Geotechnical Consultants dated 5/7/99; Geologic and Soils Engineering Addendum Report by Homestead Geotechnical Consultants dated 4/15/99; Geologic and Soils Engineering Addendum Report by Homestead Geotechnical Consultants dated 2/18/99; Geologic and Soils Engineering Addendum Report by Homestead Geotechnical Consultants dated 1/13/99.**SUMMARY OF STAFF RECOMMENDATION**

Staff recommends approval of the proposed project with five (5) special conditions regarding landscape plans, plans conforming to geologic recommendation, drainage plans and responsibility, removal of excavated material, and assumption of risk. An ancient landslide is located on the project site. In February 1998, a slope failure occurred on the subject site. The applicants are requesting approval for 6,587 cu. yds. of grading (1,301 cu. yds. of cut, 900 cu. yds. of fill, and 4,386 cu. yds. of removal and recompaction) in order to remediate the slope failure. The proposed project also includes the widening of an existing driveway and the removal of existing structures damaged by the 1998 slide. Old Topanga Canyon Creek, designated by the certified Malibu/Santa Monica Mountains Land Use Plan as an environmentally sensitive habitat area (ESHA), is located downslope approximately 400 ft. to the east of the project site on the opposite (eastern) side of Old Topanga Canyon Road.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local governments having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

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. Landscaping and Erosion Control Plan

Prior to the issuance of the coastal development permit, the applicant shall submit a landscaping and erosion control plan for review and approval by the Executive Director. The plan shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

(a) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control and visual enhancement purposes. To minimize the need for irrigation and to screen or soften the visual impact of development all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used. Irrigated lawn, turf, or groundcover planted within a 50 ft. radius (fuel modification zone) of the proposed residence shall be selected from the most drought tolerant species, subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

(b) All cut and fill slopes shall be stabilized with planting within 60 days of receipt of the certificate of occupancy. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;

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

(d) Should grading take place during the rainy season (November 1 - March 31), sediment basins (including debris basins, desilting basins, or silt traps) shall be required on the project site prior to or concurrent with the initial grading operations and maintained through the development process to minimize sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location.

(e) Five years from the completion of development, the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies that the on-site landscaping is in conformance with the landscape plan

approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

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

2. Plans Conforming to Geologic Recommendation

All recommendations contained in the Geologic and Soils Engineering Report by Homestead Geotechnical Consultants dated 10/30/98; Limited Geologic and Soils Engineering Report by Homestead Geotechnical Consultants dated 10/19/98; Geotechnical Response Letter by Homestead Geotechnical Consultants dated 5/7/99; Geologic and Soils Engineering Addendum Report by Homestead Geotechnical Consultants dated 4/15/99; Geologic and Soils Engineering Addendum Report by Homestead Geotechnical Consultants dated 2/18/99; and the Geologic and Soils Engineering Addendum Report by Homestead Geotechnical Consultants dated 1/13/99 shall be incorporated into all final design and construction including grading and drainage. All plans must be reviewed and approved by a geologic/geotechnical engineer as conforming to said recommendations. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultant's review and approval of all project plans.

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

3. Drainage Plans and Maintenance Responsibility

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a run-off and erosion control plan designed by a licensed engineer which assures that run-off from the road and all other impervious surfaces on the subject parcel are collected and discharged in a non-erosive manner. Site drainage shall not be accomplished by sheetflow runoff. With acceptance of this permit, the applicant agrees that should any of the project's surface or subsurface drainage structures fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary

repairs to the drainage system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

4. Removal of Excavated Material

Prior to the issuance of the coastal development permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excavated material, including concrete debris resulting from the removal of the existing pool, from the site. Should the dump site be located in the Coastal Zone, a coastal development permit shall be required.

5. Assumption of Risk, Waiver of Liability and Indemnity

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site(s) may be subject to hazards from extraordinary hazard from landslides, erosion, and mud and/or debris flows; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant, and landowner(s), shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicants are requesting approval for 6,587 cu. yds. of grading (1,301 cu. yds. of cut, 900 cu. yds. of fill, and 4,386 cu. yds. of removal and recompaction) in order to remediate a slope failure. The proposed project also includes the widening of an existing 15 ft. wide driveway to 20-25 ft. in width, the removal of an existing rubble wall, removal of an existing 80 sq. ft. concrete structure, and removal of an existing pool.

The project site includes two separate adjacent hillside parcels approximately 0.9 and one acre in size located approximately 300 ft. west of Old Topanga Canyon Road. Slopes on site descend from the north east to the south west at an approximate slope ratio (H:V) of 2:1 (26°) to 3:1 (18°). The upslope parcel (22155 West Eden Road) has been previously developed with a graded level pad, single family residence, pool, and a small concrete structure located on the bluff slope. A single family residence is currently being constructed on the level graded pad located on the downslope parcel (22148 Monte Vista Road) consistent with Coastal Development Permit 4-97-091 which was issued by the Commission on September 12, 1997.

An ancient landslide is located on the western and eastern portions of the project site. In February 1998, a slump slide occurred on the subject site after a water pipe began to leak. The slide area is approximately 11,250 sq. ft. in size and is located on the slope between the existing residence on the upslope portion of the subject site and the residence in the process of being constructed on the downslope portion of the site. The proposed project will serve to stabilize the slope located between the two subject parcels. In addition, the applicants also propose to widen the existing driveway and remove a small existing rubble wall located on the downslope parcel and remove the existing pool and a small concrete structure located on the upslope parcel which have been damaged by the slope failure.

Although the project site is not located within an environmentally sensitive habitat area (ESHA) and no streams cross the project site, the Commission notes, however, that Old Topanga Canyon Creek, designated by the certified Malibu/Santa Monica Mountains Land Use Plan as ESHA, is located downslope approximately 400 ft. to the east of the project site on the opposite (eastern) side of Old Topanga Road. The project site is partially visible from a portion of Old Topanga Canyon Road. However, the Commission notes that the project site will be partially screened from public view by existing vegetation and that the remediated slope will be visually consistent with the previously existing slope and will not result in any adverse effects to visual resources.

B. Hazards

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

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

An ancient landslide is located on portions of the project site. In February 1998, a slump slide occurred on the subject site after a water pipe began to leak. The slide area is approximately 11,250 sq. ft. in size and is located on a slope between an existing residence on the upslope portion of the subject site and a residence in the process of being constructed on the downslope portion of the site. The applicant is requesting approval for 6,587 cu. yds. of grading (1,301 cu. yds. of cut, 900 cu. yds. of fill, and 4,386 cu. yds. of removal and recompaction) in order to remediate the slope failure. The proposed grading will include approximately 57 cu. yds. of cut and 160 cu. yds. of fill to widen an existing 15 ft. wide driveway located on the downslope parcel within and adjacent to the slide area to 20-25 ft. in width. In addition, the proposed grading also includes approximately 300 cu. yds. of fill to restore the area where the existing pool, damaged by the 1998 slide, will be removed.

The Geologic and Soils Engineering Report by Homestead Geotechnical Consultants dated 10/30/98 states:

Based upon our exploration, it is our finding that the proposed slope repair is feasible from a geologic and soils engineering standpoint, provided our advice and recommendations are made a part of the plans and are implemented during construction. It is the opinion of the undersigned that the proposed slope repair will be safe against hazards from landslide, settlement or slippage, and that the proposed slope repair will not have an adverse effect on the geologic stability of the property outside the repair area provided our recommendations are following during construction.

The Geologic and Soils Engineering Report by Homestead Geotechnical Consultants dated 10/30/98; Limited Geologic and Soils Engineering Report by Homestead Geotechnical Consultants dated 10/19/98; Geotechnical Response Letter by Homestead Geotechnical Consultants dated 5/7/99; Geologic and Soils Engineering Addendum Report by Homestead Geotechnical Consultants dated 4/15/99; Geologic and Soils Engineering Addendum Report by Homestead Geotechnical Consultants dated 2/18/99; and the Geologic and Soils Engineering Addendum Report by Homestead Geotechnical Consultants dated 1/13/99 include a number of geotechnical recommendations to ensure the stability and geotechnical safety of the site. To ensure that the recommendations of the geotechnical engineering consultants have been incorporated into all proposed development, Special Condition Two (2) requires the applicant to submit project plans certified by the consulting geotechnical engineer as

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

In addition, the Geologic and Soils Engineering Report by Homestead Geotechnical Consultants dated 10/30/98 also states that:

All slopes should be planted as soon as possible after completion of grading.

*...
Pad and roof drainage should be collected and transferred to the street or natural drainage courses located below the building area in non-erosive drainage devices... Drainage also should not be allowed to flow over the slope in a concentrated manner. It is recommended that all drainage devices be checked for performance on a regular basis and repaired or replaced as necessary.*

The Commission finds that the minimization of site erosion will add to the stability of the site. Erosion can best be minimized by requiring the applicant to landscape all disturbed and graded areas of the site with native plants, compatible with the surrounding environment. Thus, Special Condition One (1) has been required to ensure that all proposed disturbed and graded areas are stabilized and vegetated. In addition, to ensure that drainage is conveyed off site in a non-erosive manner, the Commission finds that it is necessary to require the applicant, as required by Special Condition Three (3), to submit drainage plans certified by the consulting geotechnical engineer as conforming to their recommendations. Further, to ensure that the project's drainage structures will not contribute to further destabilization of the project site or surrounding area and that the project's drainage structures shall be repaired should the structures fail in the future, Special Condition Three (3) also requires that the applicant agree to be responsible for any repairs or restoration of eroded areas should the drainage structures fail or result in erosion.

In addition, the Commission notes that the amount of new cut grading proposed by the applicant is larger than the amount of fill to be placed and will result in approximately 401 cu. yds. of excess excavated material. Excavated materials that are placed in stockpiles are subject to increased erosion. The Commission also notes that additional landform alteration would result if the excavated material were to be retained on site. In order to ensure that excavated material will not be stockpiled on site and that landform alteration is minimized, Special Condition Four (4) requires the applicant to remove all excavated material, including concrete debris resulting from the removal of the existing pool, from the site to an appropriate location and provide evidence to the Executive Director of the location of the disposal site prior to the issuance of the permit. Should the dump site be located in the Coastal Zone, a coastal development permit shall be required. Therefore, the Commission finds that the proposed project, as conditioned above, is consistent with Section 30253 of the Coastal Act.

The Commission further notes that the proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

The Geologic and Soils Engineering Report by Homestead Geotechnical Consultants dated 10/30/98 indicates that an ancient landslide is located on the subject site. The Coastal Act recognizes that certain development, such as the proposed project to remediate a slope failure, may 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.

As such, the Commission finds that due to the unforeseen possibility of erosion and slope failure, the applicant shall assume these risks as a condition of approval. Therefore, Special Condition Two (2) 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, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site, and which may adversely affect the stability or safety of the proposed development.

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

C. Environmentally Sensitive Habitat Area

Section 30230 of the Coastal Act states that:

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 states:

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 states:

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

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

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams 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, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values.

Although the project site is not located within an environmentally sensitive habitat area (ESHA) and no streams cross the project site, the Commission notes, however, that Old Topanga Canyon Creek, designated by the certified Malibu/Santa Monica Mountains Land Use Plan (LUP) as ESHA, is located downslope approximately 400 ft. to the east of the project site on the opposite (eastern) side of Old Topanga Road. To assist in the determination of whether a project is consistent with sections 30230, 30231 and 30240 of the Coastal Act, the Commission has, in past coastal development permit actions for new development in the Santa Monica Mountains, looked to the certified Malibu/ Santa Monica Mountains LUP for guidance. The Malibu LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. The Malibu/Santa Monica Mountains LUP policies regarding protection of significant watersheds are among the strictest and most comprehensive in addressing new development. In its findings regarding the certification of the Malibu/Santa Monica Mountains LUP, the Commission emphasized the importance placed by the Coastal Act on protection of sensitive environmental resources finding that:

Coastal canyons in the Santa Monica Mountains require protection against significant disruption of habitat values, including not only the riparian corridors located in the bottoms of the canyons, but also the chaparral and coastal sage biotic communities found on the canyon slopes.

In addition, Policy 82 of the LUP, in concert with the Coastal Act, provides that grading shall be minimized to ensure that the potential negative effects of runoff and erosion on watershed and streams is minimized. Policies 84 and 94, in concert with the Coastal Act, provide that disturbed areas shall be revegetated with native plant species within environmentally sensitive habitat areas and significant.

In the case of the proposed project, the Commission finds that the proposed 6,587 cu. yds. of grading (1,301 cu. yds. of cut, 900 cu. yds. of fill, and 4,386 cu. yds. of removal and recompaction) is required to reconstruct a failed slope which threatens both an existing single family residence and new single family residence under construction. The Commission notes, however, that increased erosion on site would subsequently result in a potential increase in the sedimentation of Old Topanga Creek located downslope from the project site. The Commission finds that the minimization of site erosion will minimize the project's potential individual and cumulative contribution to adversely affect the nearby stream. Erosion can best be minimized by requiring the applicant to landscape all disturbed areas of the site with native plants, compatible with the surrounding environment. Therefore, Special Condition One (1) has been required to ensure that all proposed disturbed and graded areas are stabilized and vegetated. In addition, to ensure that drainage is conveyed off site in a non-erosive manner, the Commission finds that it is necessary to require the applicant, as required by Special Condition Three (3), to submit drainage plans certified by the consulting geotechnical engineer as conforming to their recommendations. Further, to ensure that the project's drainage structures will not contribute to further destabilization of the project site or surrounding area and that the project's drainage structures shall be repaired should the structures fail in the future, Special Condition Three (3) also requires that the applicant agree to be responsible for any repairs or restoration of eroded areas should the drainage structures fail or result in erosion.

Therefore, for the reasons discussed above, the Commission finds that the proposed amendment, as conditioned, is consistent with Sections 30230, 30231, and 30240 of the Coastal Act.

D. Local Coastal Program

Section 30604 of the Coastal Act states that:

a) Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with

Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

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

E. CEQA

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

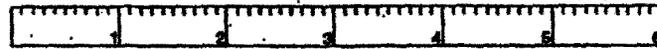
The Commission finds that, the proposed project, as conditioned will not have significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be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

SMH-VNT

File:smh/permits/consent/4-98-315 Hayles/Moore report

4438 | 30

CALR 1" = 150'



SCALE IS 1/16 OF AN INCH

Project Site

OLD TOPANGA CANYON RD.

POR. S.E. 1/4 SEC. 12

DETAIL SCALE 1" = 100'

OLD TOPANGA CANYON RD.

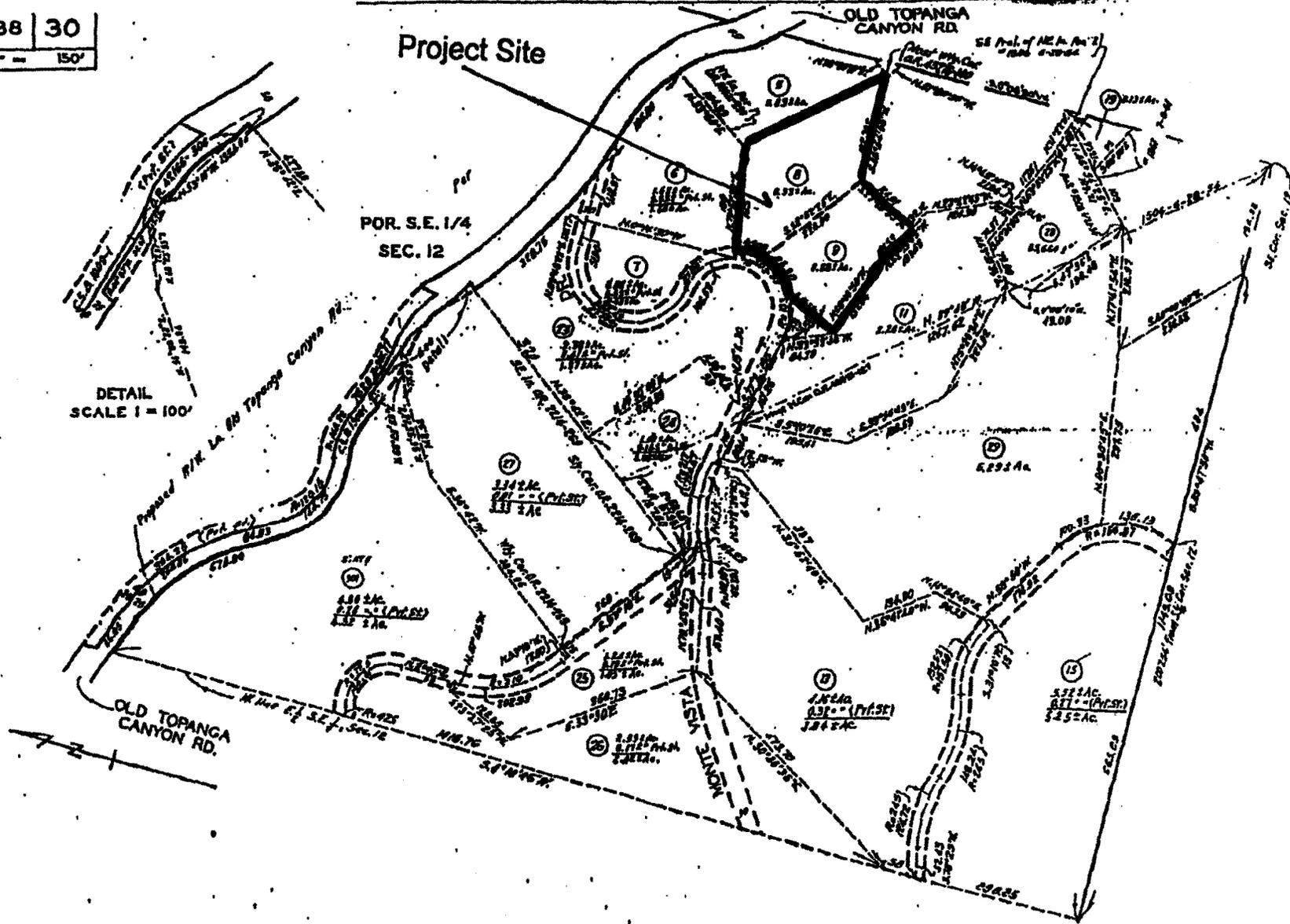


EXHIBIT 2
CDP 4-98-315 (Hayles/Moore)
Parcel Map



Cory W. Gagner & Associates, Architects
 19377 National Highway - Suite 113
 Huntington Beach, CA 92648
 (714) 991-7179 - (714) 991-7946
 FAX (714) 991-3179



Sheet Title

Slope Repair
Grading Plan

Job Name

SLOPE REPAIR

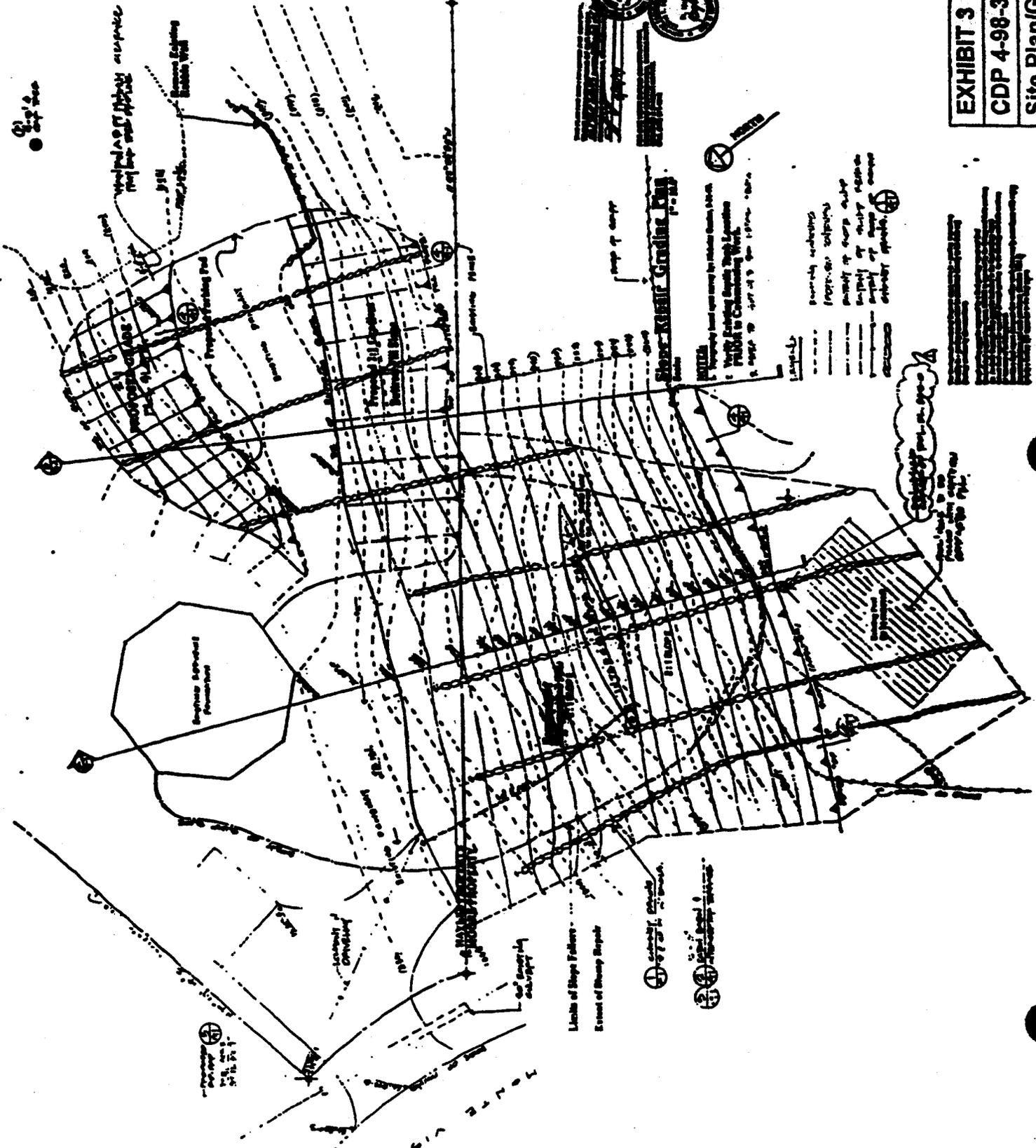
HAYLES PROPERTY
 3118 Main View Drive
 Torrance, CA 90504

MOORE PROPERTY
 3118 Main View Drive
 Torrance, CA 90504

Date-Rev.

0.0.0
 Δ 1.1.1

EXHIBIT 3
CDP 4-98-315 (Hayles/Moore)
Site Plan/Grading Plan





Gray W. Gogner & Associates, Architects
 1721 Industrial Highway, Suite 111
 Culver City, CA 90230
 (310) 391-1178 • (310) 391-7940
 FAX (310) 391-1179



Sheet Title

Project Name
 Site location / Details

Job Name

SLOTTED BRIDGE
 HAYLES PROPERTY
 2118 South Vista Drive
 Torrance, CA 90501
 PROJECT NUMBER
 11184 SLOTTED BRIDGE
 TORRANCE, CA 90501

Date-Rev.
 1-1-98
 0-1-97
 Δ 4-97

EXHIBIT 4
CDP 4-98-315 (Hayles/Moore)
Grading Plan Cross Sections



VICINITY MAP

Owner: Metropolitan Water
 11181 Laramie Ave.
 Culver City, CA, 90230
 Accession Permit # 4428-028-008
 Designated and reclassification of
 Range of Work 1
 Designation:
 Reclassified Classification
 from Transportation District 2
 to within Torrance, CA, 90501.

PROJECT DATA



YARDAGE CALCULATIONS

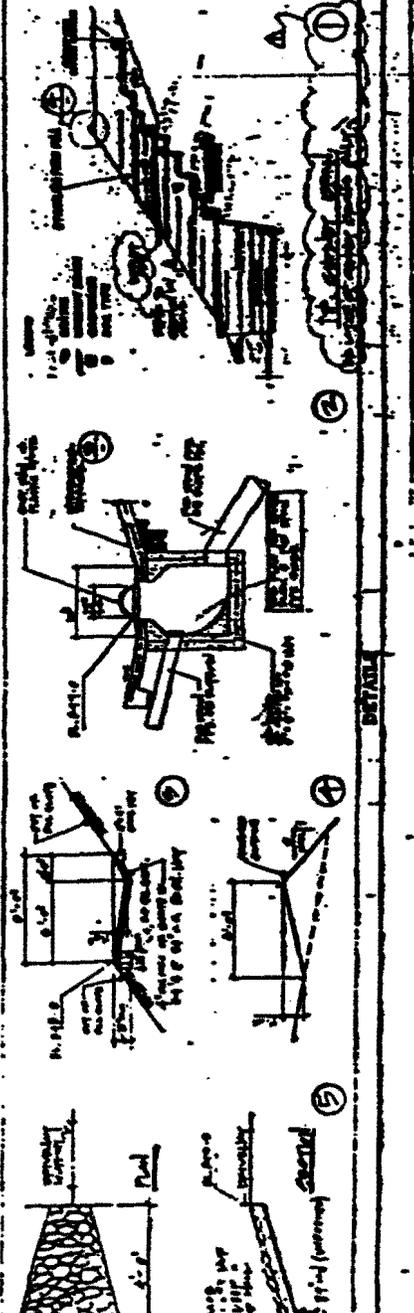
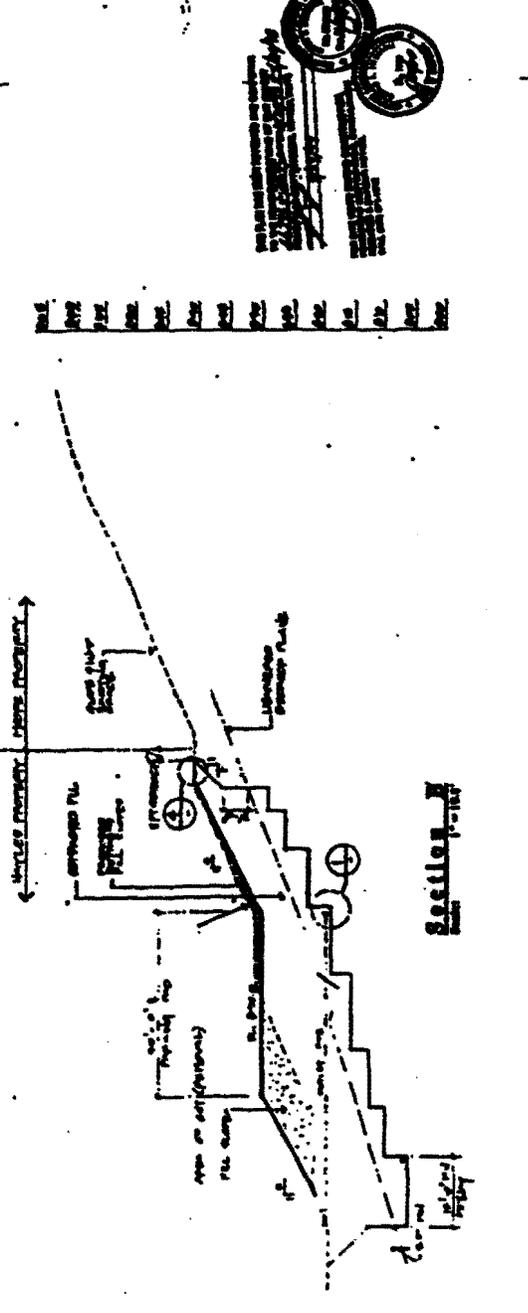
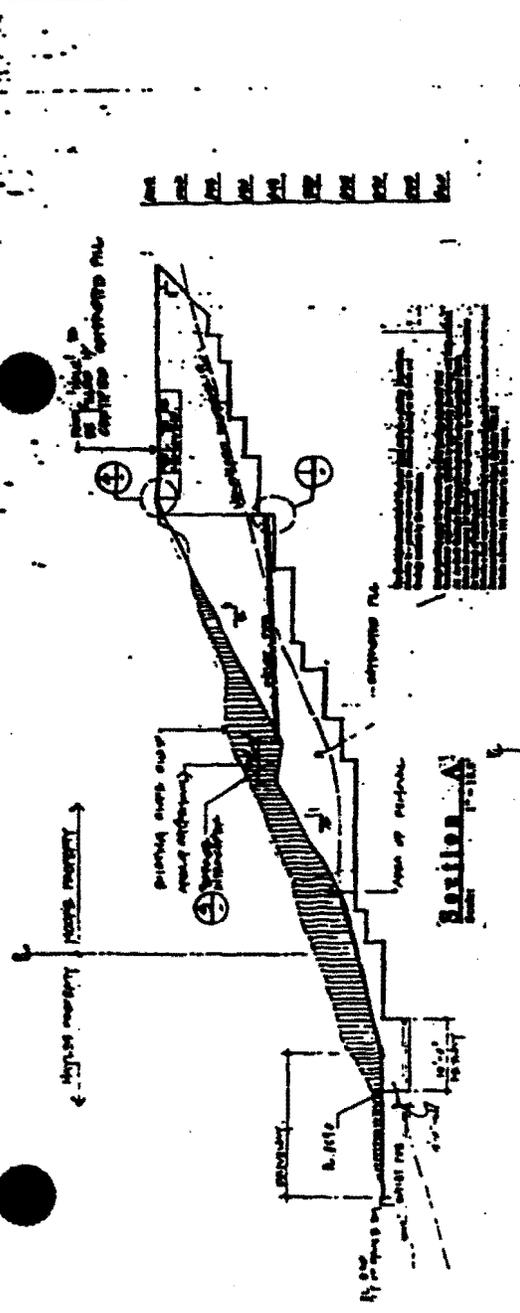


Exhibit 7

CALIFORNIA COASTAL COMMISSION

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

RECEIVED

JAN 28 REC'D



Page 1 of 6

Date: January 24, 2000

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT Permit Application No. 4-99-030

COASTAL DEVELOPMENT PERMIT

On June 7, 1999, the California Coastal Commission granted to McCormick Family Trust, permit 4-99-030, subject to the attached Standard and Special Conditions, for development consisting of: Demolition of an existing 1,890 sq. ft. single family residence, 208 sq. ft. storage structure, 101 sq. ft. laundry structure, and 600 sq. ft. detached garage and the construction of a new 5,814 sq. ft. single family residence, attached 950 sq. ft. 4-car garage, pool, and a 384 ft. long 3-6 ft. high retaining wall. The proposed project also includes approximately 2,055 cu. yds. of grading (391 cu. yds. of cut, 15 cu. yds. of fill, and 1,649 cu. yds. of removal and recompaction in order to remediate a landslide and is more specifically described in the application on file in the Commission offices.

The development is within the coastal zone in Los Angeles County at 7015 Grasswood Ave., Malibu.

Issued on behalf of the California Coastal Commission by,

PETER DOUGLAS
Executive Director

By: Steven M. Hudson
Coastal Program Analyst

ACKNOWLEDGMENT:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4 which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance. . . of any permit. . ." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE. 14 Cal. Admin. Code Section 13158(a).

Jan 26, 2000
Date

Nancy J. McCormick
Permittee

COASTAL DEVELOPMENT PERMIT

Page 2 of 6
Permit Application No. 4-99-030

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 in the application for permit, subject to any special conditions 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 project during its development, 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.

SPECIAL CONDITIONS:

1. Landscaping and Erosion Control Plans

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

COASTAL DEVELOPMENT PERMIT

Page 3 of 6
Permit Application No. 4-99-030

A. Landscaping Plan

- (1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;
- (3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- (4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.
- (5) All invasive and non-native plant species shall be removed from the drainage ravine floor and slopes. The ravine floor and slopes shall be revegetated with appropriate native plant species.
- (6) Vegetation within 50 feet of the proposed house may be removed to mineral earth, vegetation within a 200 foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County.

Removal of vegetation for the purpose of fuel modification within the 50 foot zone surrounding the proposed structure(s) shall not commence until the local government has issued a building or grading permit for the development approved pursuant to his permit. Vegetation thinning within the 50-200 foot fuel modification zone shall not occur until commencement of construction of any structure approved pursuant to this permit. Irrigated lawn, turf and ground cover planted within the fifty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

COASTAL DEVELOPMENT PERMIT

Page 4 of 6
Permit Application No. 4-99-030

B. Interim Erosion Control Plan

- (1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- (2) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained through out the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.
- (3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C. Monitoring

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

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

COASTAL DEVELOPMENT PERMIT

Page 5 of 6
Permit Application No. 4-99-030

2. Plans Conforming to Geologic Recommendation

All recommendations contained in the Geotechnical Engineering Report by Coastline Geotechnical Consultants dated 9/23/97; Preliminary Engineering Geologic Report by Pacific Geology Consultants dated 9/1/97; Supplemental Engineering Geologic Report by Pacific Geology Consultants dated 8/4/98; Geologic and Geotechnical Engineering Response Letter by Coastline Geotechnical Consultants dated 9/4/98; Geologic and Geotechnical Engineering Response Letter by Coastline Geotechnical Consultants dated 8/7/98; and the Supplemental Engineering Geologic Report by Pacific Geology Consultants dated 6/15/98 shall be incorporated into all final design and construction including all grading and drainage improvements. All plans must be reviewed and approved by both the geologic and the geotechnical engineer as conforming to said recommendations. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans.

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

3. Drainage Plans and Maintenance Responsibility

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a run-off and erosion control plan designed by a licensed engineer which assures that run-off from the road and all other impervious surfaces on the subject parcel are collected and discharged in a non-erosive manner. Site drainage shall not be accomplished by sheetflow runoff. With acceptance of this permit, the applicant agrees that should any of the project's surface or subsurface drainage structures fail or result in erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

4. Removal of Excavated Material

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

5. Required Approvals

Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director a Streambed Alteration Agreement or other evidence of approval from the California Department of Fish & Game or evidence that such approval is not required.

COASTAL DEVELOPMENT PERMIT

Page 6 of 6
Permit Application No. 4-99-030

6. Assumption of Risk, Waiver of Liability and Indemnity

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site(s) may be subject to hazards from extraordinary hazard from wildfire, flooding, landslides, erosion, and mud and/or debris flows; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant, and landowner(s), shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST AREA

89 SOUTH CALIFORNIA ST., SUITE 200

VENTURA, CA 93001

(805) 641 - 0142

Filed: 5/17/99
49th Day: 7/5/99
180th Day: 11/13/99
Staff: S. Hudson *[Signature]*
Staff Report: 5/20/99
Hearing Date: June 7, 1999
Commission Action:



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-99-030

APPLICANT: McCormick Family Trust

AGENT: Schmitz & Associates

PROJECT LOCATION: 7015 Grasswood Avenue, City of Malibu; Los Angeles County

PROJECT DESCRIPTION: Demolition of an existing 1,890 sq. ft. single family residence, 208 sq. ft. storage structure, 101 sq. ft. laundry structure, and 600 sq. ft. detached garage and the construction of a new 5,814 sq. ft. single family residence, attached 950 sq. ft. 4-car garage, pool, and a 384 ft. long 3-6 ft. high retaining wall. The proposed project also includes approximately 2,055 cu. yds. of grading (391 cu. yds. of cut, 15 cu. yds. of fill, and 1,649 cu. yds. of removal and recompaction in order to remediate a landslide.

Lot area:	52,708	sq. ft.
Building coverage:	2,810	sq. ft.
Pavement coverage:	2,425	sq. ft.
Ht. abv. ext. grade:	27	ft.

LOCAL APPROVALS RECEIVED: City of Malibu Approval in Concept; City of Malibu Geologic and Geotechnical Approval in Concept; City of Malibu Health Department Approval in Concept; Los Angeles County Fire Department Approval.

SUBSTANTIVE FILE DOCUMENTS: Geotechnical Engineering Report by Coastline Geotechnical Consultants dated 9/23/97; Preliminary Engineering Geologic Report by Pacific Geology Consultants dated 9/1/97; Supplemental Engineering Geologic Report by Pacific Geology Consultants dated 8/4/98; Geologic and Geotechnical Engineering Response Letter by Coastline Geotechnical Consultants dated 9/4/98; Geologic and Geotechnical Engineering Response Letter by Coastline Geotechnical Consultants dated 8/7/98; Supplemental Engineering Geologic Report by Pacific Geology Consultants dated 6/15/98.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends approval of the proposed project with six (6) special conditions regarding landscape plans, plans conforming to geologic recommendation, drainage plans and responsibility, other required approvals, removal of excavated material, and assumption of risk. A natural drainage ravine (approximately 10-30 ft. in depth) is located along the northern portion of the subject site. A landslide is located on the northern portion of the building pad for the proposed residence and the southern descending slope of the drainage ravine immediately below the proposed building site. The proposed grading will serve to remediate the existing landslide.

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local governments having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

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. Landscaping and Erosion Control Plans

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

A. Landscaping Plan

- (1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated October 4, 1994. Invasive, non-indigenous plant species which tend to supplant native species shall not be used.
- (2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;
- (3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
- (4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.
- (5) All invasive and non-native plant species shall be removed from the drainage ravine floor and slopes. The ravine floor and slopes shall be revegetated with appropriate native plant species.

- (6) Vegetation within 50 feet of the proposed house may be removed to mineral earth, vegetation within a 200 foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County.

Removal of vegetation for the purpose of fuel modification within the 50 foot zone surrounding the proposed structure(s) shall not commence until the local government has issued a building or grading permit for the development approved pursuant to his permit. Vegetation thinning within the 50-200 foot fuel modification zone shall not occur until commencement of construction of any structure approved pursuant to this permit. Irrigated lawn, turf and ground cover planted within the fifty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

B. Interim Erosion Control Plan

- (1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- (2) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained through out the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.
- (3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill

slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C. Monitoring

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

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

2. Plans Conforming to Geologic Recommendation

All recommendations contained in the Geotechnical Engineering Report by Coastline Geotechnical Consultants dated 9/23/97; Preliminary Engineering Geologic Report by Pacific Geology Consultants dated 9/1/97; Supplemental Engineering Geologic Report by Pacific Geology Consultants dated 8/4/98; Geologic and Geotechnical Engineering Response Letter by Coastline Geotechnical Consultants dated 9/4/98; Geologic and Geotechnical Engineering Response Letter by Coastline Geotechnical Consultants dated 8/7/98; and the Supplemental Engineering Geologic Report by Pacific Geology Consultants dated 6/15/98 shall be incorporated into all final design and construction including all grading and drainage improvements. All plans must be reviewed and approved by both the geologic and the geotechnical engineer as conforming to said recommendations. Prior to the issuance of the coastal development permit, the applicant shall submit, for review and approval by the Executive Director, evidence of the consultants' review and approval of all project plans.

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

3. Drainage Plans and Maintenance Responsibility

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a run-off and erosion control plan designed by a licensed engineer which assures that run-off from the road and all other impervious surfaces on the subject parcel are collected and discharged in a non-erosive manner. Site drainage shall not be accomplished by sheetflow runoff. With acceptance of this permit, the applicant agrees that should any of the project's surface or subsurface drainage structures fail or result in erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage system and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

4. Removal of Excavated Material

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

5. Required Approvals

Prior to the issuance of the coastal development permit, the applicant shall submit to the Executive Director a Streambed Alteration Agreement or other evidence of approval from the California Department of Fish & Game or evidence that such approval is not required.

6. Assumption of Risk, Waiver of Liability and Indemnity

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

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

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant is proposing the demolition of an existing 1,890 sq. ft. single family residence, 208 sq. ft. storage structure, 101 sq. ft. laundry structure, and 600 sq. ft. detached garage and the construction of a new 5,814 sq. ft. single family residence, attached 950 sq. ft. 4-car garage, pool, and a 384 ft. long 3-6 ft. high retaining wall. The proposed project also includes approximately 2,055 cu. yds. of grading (391 cu. yds. of cut, 15 cu. yds. of fill, and 1,649 cu. yds. of removal and recompaction in order to remediate a landslide.

The subject site is a 52,708 sq. ft. lot located in the generally built out Point Dume area of Malibu consisting of single family residences. Slopes on site descend approximately 10-30 ft. in elevation to the centerline of a natural drainage ravine to the north from the existing driveway and building pad at an approximate slope gradient of 2:1 (26°) to 1.5:1 (34°). Slopes ascend approximately 10-30 ft. in elevation to a neighboring undeveloped parcel to the south from the existing driveway and pad area at an approximate slope gradient of 1:1 (45°). The new proposed residence will be located in the same general area of the subject site as the previously existing residence.

A natural drainage ravine (approximately 10-30 ft. in depth) is located along the northern portion of the subject site. The drainage ravine has been previously landscaped with non-native and invasive plant species primarily consisting of iceplant and ivy ground cover. The drainage ravine is not designated as either an environmentally sensitive habitat area (ESHA) or a disturbed sensitive resource area by the Malibu/Santa Monica Mountains Land Use Plan or as a blue line stream by the United States Geologic Service; however, the Commission notes that water does flow within the natural drainage ravine during each rainy season. A landslide is located on

the northern portion of the building pad for the single family residence and the southern descending slope of the drainage ravine immediately below the proposed building site.

B. Hazards

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

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

The proposed development is located in the Santa Monica Mountains, an area which is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

The applicant is proposing the demolition of an existing 1,890 sq. ft. single family residence, 208 sq. ft. storage structure, 101 sq. ft. laundry structure, and 600 sq. ft. detached garage and the construction of a new 5,814 sq. ft. single family residence, attached 950 sq. ft. 4-car garage, pool, and a 384 ft. long 3-6 ft. high retaining wall.

The new proposed residence will be located in the same general area as the previously existing single family residence. A landslide is located on the northern portion of the existing building pad and the descending slope of the drainage ravine immediately below the proposed building site. The proposed residence will be constructed on the existing relatively flat building pad. The proposed project includes approximately 2,055 cu. yds. of grading (391 cu. yds. of cut, 15 cu. yds. of fill, and 1,649 cu. yds. of removal and recompaction in order to remediate the existing landslide and to stabilize the building pad and drainage ravine slope. All landslide debris and uncompacted fill will be removed and recompacted. In addition, the foundation for the proposed new single family residence will be constructed on caissons in order to ensure structural stability. The proposed grading includes approximately 27 cu. yds. of cut grading to install a 3-6 ft. high retaining wall to stabilize the ascending slope located immediately south of the existing driveway. No retaining walls are proposed within the natural drainage ravine and the applicant's geotechnical consultant has indicated that no retaining walls are required to stabilize the ravine slopes provided the proposed remedial grading is implemented.

The Preliminary Engineering Geologic Report by Pacific Geology Consultants dated 2/10/99 states:

Based on field observation and evaluation of geologic conditions at the site, it is the professional geologic opinion of the undersigned that the construction of a single family residence...and swimming pool is feasible from a geologic standpoint...Providing the recommendations contained in this report, in addition to those of the Geotechnical Engineer are followed, the residence...and swimming pool are safe from landslide hazard, settlement or slippage. In addition, the proposed construction will not adversely affect off-site properties from a geological standpoint.

In addition, the Geotechnical Engineering Report by Coastline Geotechnical Consultants dated 9/23/97 also indicates that the project site will be free from geologic hazards. The report states:

Based on findings summarized in this report, and provided the recommendations of this report are followed, and the designs, grading, and construction are properly and adequately executed, it is our opinion that construction within the building site would not be subject to geotechnical hazard from landslides, slippage, or excessive settlement. Further, it is our opinion that the proposed building and anticipated site grading would not adversely affect the stability of the site, or adjacent properties with the same provisos listed above.

The Geotechnical Engineering Report by Coastline Geotechnical Consultants dated 9/23/97; Preliminary Engineering Geologic Report by Pacific Geology Consultants dated 9/1/97; Supplemental Engineering Geologic Report by Pacific Geology Consultants dated 8/4/98; Geologic and Geotechnical Engineering Response Letter by Coastline Geotechnical Consultants dated 9/4/98; Geologic and Geotechnical Engineering Response Letter by Coastline Geotechnical Consultants dated 8/7/98; and the Supplemental Engineering Geologic Report by Pacific Geology Consultants dated 6/15/98 include a number of geotechnical recommendations to ensure the stability and geotechnical safety of the site. To ensure that the recommendations of the geotechnical and geologic engineering consultants have been incorporated into all proposed development, Special Condition Two (2) requires the applicant to submit project plans certified by both the consulting geotechnical and geologic engineer as conforming to all recommendations by the consulting geotechnical and geologic engineers to ensure structural and site stability. The final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission relative to construction, grading and drainage. Any substantial changes to the proposed development approved by the Commission which may be recommended by the consultants shall require an amendment to the permit or a new coastal permit.

In addition, the Preliminary Engineering Geologic Report by Pacific Geology Consultants dated 9/1/97 also states that:

To reduce the potential for future erosion and soil slippage, it is recommended that slope areas be planted with an erosion retardant ground cover adhering to the following

criteria:...drought resistant...relatively low surface mass weight...fairly deep and extensive root system...low irrigation demand.

...

Positive pad drainage shall be incorporated into the final plans. In no case shall water be allowed to pond within the site, impound against structures, or flow in a concentrated and/or uncontrolled manner down the descending slopes. All surface water shall be conducted away from foundations and slope areas to suitable drainage facilities, via non-erosive devices.

The Commission finds that the minimization of site erosion will add to the stability of the site. Erosion can best be minimized by requiring the applicant to landscape all disturbed and graded areas of the site with native plants, compatible with the surrounding environment. Thus, Special Condition One (1) has been required to ensure that all proposed disturbed and graded areas are stabilized and vegetated. In addition, the Commission notes that the slopes and bottom of the natural ravine where the landslide is located have been previously landscaped with invasive and non-native plant species, primarily consisting of iceplant and ivy. These plant species are generally characterized as having a shallow root structure in comparison with their high surface/foilage weight. The Commission finds that non-native and invasive plant species with high surface/foilage weight and shallow root structures do not serve to stabilize steep slopes, such as the ravine slopes on the subject site, and that such vegetation results in potential adverse effects to the geologic stability of the project site. Therefore, in order to ensure the stability and geotechnical safety of the site, Special Condition One (1) also requires that all invasive and non-native plant species shall be removed from the drainage ravine floor and slopes and that the ravine floor and slopes shall be revegetated with appropriate native plant species. Further, to ensure that drainage is conveyed off site in a non-erosive manner, the Commission finds that it is necessary to require the applicant, as required by Special Condition Three (3), to submit drainage plans certified by the consulting geotechnical engineer as conforming to their recommendations. Further, to ensure that the project's drainage structures will not contribute to further destabilization of the project site or surrounding area and that the project's drainage structures shall be repaired should the structures fail in the future, Special Condition Three (3) also requires that the applicant agree to be responsible for any repairs or restoration of eroded areas should the drainage structures fail or result in erosion.

The Commission notes that the proposed project has been designed to assure stability and structural integrity; however, because there remains some inherent risk in building on sites underlain by landslides, such as the subject site, and due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from the associated risks as required by Special Condition Six (6). This responsibility is carried out through the recordation of a deed restriction. The assumption of risk deed restriction, when recorded against the property, will show that the applicant is aware of and appreciates the nature of the hazards which exist on the site and which may adversely affect the stability or safety of the proposed development and agrees to assume any liability for the same.

It should be noted that an assumption of risk deed restriction for hazardous geologic conditions and danger from wildfire is commonly required for new development throughout the greater Malibu/Santa Monica Mountains region in areas where there exist potentially hazardous geologic conditions, or where previous geologic activity has occurred either directly upon or adjacent to the site in question. The Commission has required such deed restrictions for other development throughout the Malibu/Santa Monica Mountains region.

In addition, the Commission also notes that the amount of new cut grading proposed by the applicant is larger than the amount of fill to be placed and will result in approximately 376 cu. yds. of excess excavated material. Excavated materials that are placed in stockpiles are subject to increased erosion. The Commission also notes that additional landform alteration would result if the excavated material were to be retained on site. In order to ensure that excavated material will not be stockpiled on site and that landform alteration is minimized, Special Condition Four (4) requires the applicant to remove all excavated material, including concrete debris resulting from the removal of the existing pool, from the site to an appropriate location and provide evidence to the Executive Director of the location of the disposal site prior to the issuance of the permit. Should the dump site be located in the Coastal Zone, a coastal development permit shall be required. Therefore, the Commission finds that the proposed project, as conditioned above, is consistent with Section 30253 of the Coastal Act.

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

C. Environmentally Sensitive Resources

Section 30230 of the Coastal Act states that:

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 states:

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 states:

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

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

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams 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, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas must be protected against disruption of habitat values.

To assist in the determination of whether a project is consistent with Sections 30230, 30231 and 30240 of the Coastal Act, the Commission has, in past coastal development permit actions for new development in the Santa Monica Mountains, looked to the certified Malibu/ Santa Monica Mountains LUP for guidance. The Malibu LUP has been found to be consistent with the Coastal Act and provides specific standards for development along the Malibu coast and within the Santa Monica Mountains. In its findings regarding the certification of the Malibu/Santa Monica Mountains LUP, the Commission emphasized the importance placed by the Coastal Act on protection of sensitive environmental resources finding that:

Coastal canyons in the Santa Monica Mountains require protection against significant disruption of habitat values, including not only the riparian corridors located in the bottoms of the canyons, but also the chaparral and coastal sage biotic communities found on the canyon slopes.

In addition, Policy 82 of the LUP, in concert with the Coastal Act, provides that grading shall be minimized to ensure that the potential negative effects of runoff and erosion on watershed and streams is minimized. Policies 84 and 94, in concert with the Coastal Act, provide that disturbed areas shall be revegetated with native plant species within environmentally sensitive habitat areas and significant.

Although the project site is not located within an environmentally sensitive habitat area (ESHA), the Commission notes, however, that a natural drainage ravine (approximately 10-30 ft. in depth) is located on site. The ravine extends in an east-west direction and

outlets to a culvert located under Grasswood Avenue on the eastern boundary of the subject site. The Commission further notes that although the ravine is not designated as a blue-line stream by the United States Geologic Service, the Preliminary Engineering Geologic Report by Pacific Geology Consultants dated 9/1/97 indicates that water flows within the natural drainage ravine during each rainy season. The Commission further notes that seasonal drainage courses, such as the ravine located on the subject site, in conjunction with primary waterways and streams, provide important habitat for riparian plant and animal species. However, in the case of the proposed project site, the riparian habitat within the ravine is highly disturbed as a result of having been previously landscaped with invasive and non-native plant species such as iceplant and ivy.

The proposed project includes approximately 6,587 cu. yds. of grading (1,301 cu. yds. of cut, 900 cu. yds. of fill, and 4,386 cu. yds. of removal and recompaction) to remediate a landslide located on the southern slope and floor of the natural drainage ravine. The California Department of Fish and Game has found that the ravine drainage located on the subject site does constitute a seasonal water course and that the proposed project will require a Streambed Alteration Agreement in order to ensure that adverse effects to the natural drainage course are minimized. Special Condition Five (5) has been required to ensure that, prior to the issuance of a coastal permit, the applicant shall submit to the Executive Director a Streambed Alteration Agreement or other evidence of approval from the California Department of Fish & Game or evidence that such approval is not required.

Section 30231 of the Coastal Act provides that the quality of coastal waters and streams shall be maintained and restored whenever feasible. The proposed grading of the ravine slope and bottom will result in direct and indirect adverse effects to the riparian habitat of the drainage course. Direct adverse effects will include the removal of riparian habitat by grading activity. Indirect adverse effects will include potential erosion on site and increased sedimentation of the drainage course and downstream areas. However, the Commission notes that the proposed grading is necessary to stabilize the slopes on site and to remediate an identified landslide and that there are no feasible alternatives to the proposed project which would result in fewer adverse effects to the riparian habitat. In addition, the Commission finds that the minimization of site erosion will minimize the project's potential individual and cumulative contribution to adversely affect the natural drainage course. Erosion can best be minimized by requiring the applicant to landscape all disturbed areas of the site with native plants, compatible with the surrounding environment. Therefore, Special Condition One (1) has been required to ensure that all proposed disturbed and graded areas are stabilized and vegetated. Further, the Commission notes that the riparian habitat of the natural drainage ravine on the subject site is highly disturbed as a result of having been previously landscaped with invasive and non-native plant species such as iceplant and ivy. The Commission also notes that non-native and invasive plant species with high surface/foilage weight and shallow root structures, such as the iceplant and ivy covering the ravine slopes and bottom on the subject site, do not serve to stabilize steep slopes,

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.

SMH-VNT

File:smh/permits/consent/4-99-315 Hayles/Moore report

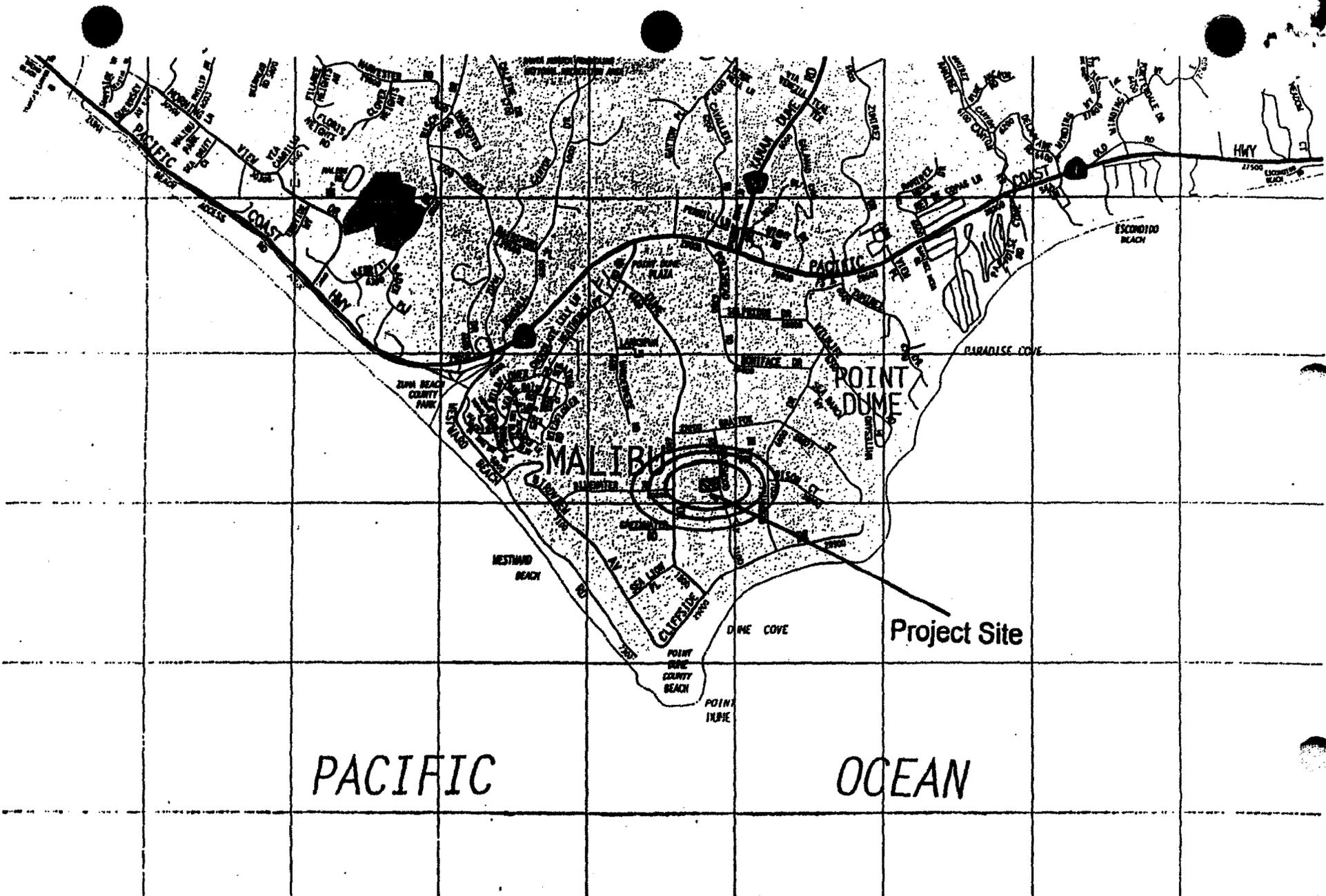
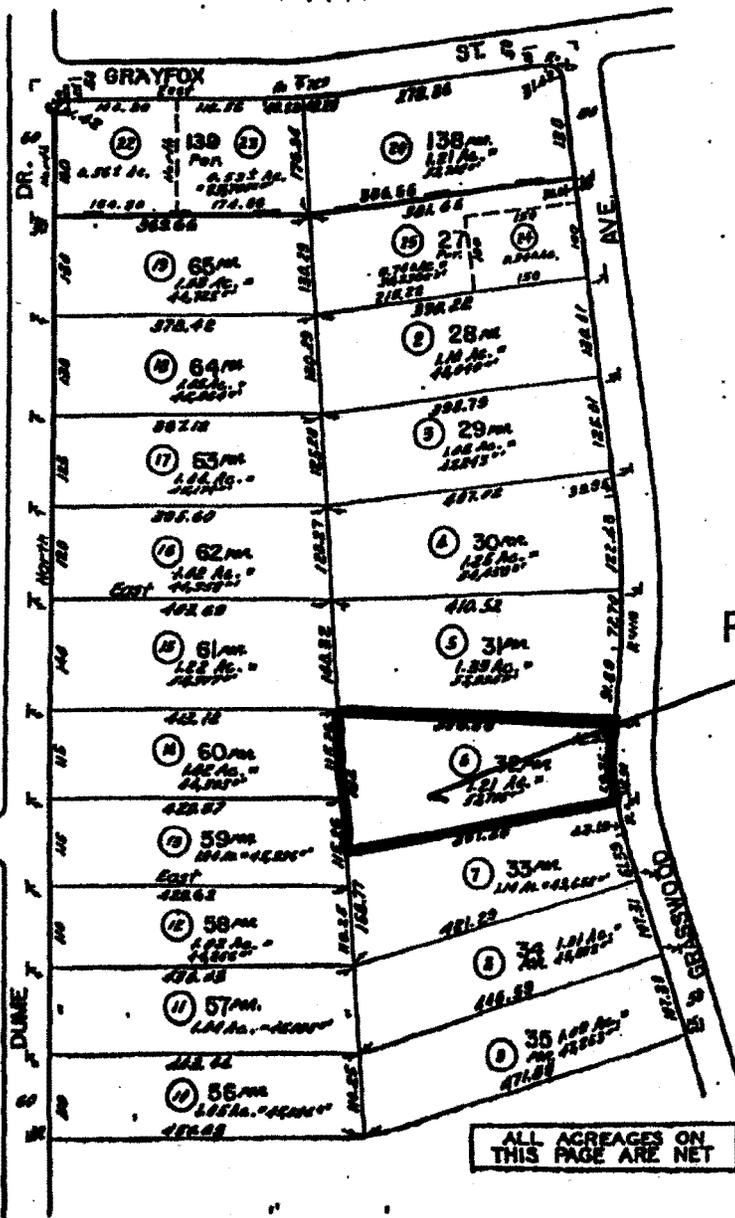


EXHIBIT 1
CDP 4-99-030 (McCormick)
Location Map



RECORD OF SURVEY
 R.S. 57-9-10
 BLUEWATER RD.
 RECORD OF SURVEY
 R.S. 57-47-50

Project Site

ALL ACREAGES ON THIS PAGE ARE NET